

HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW (FOURTH CYCLE)

Joint submission to the Universal Periodic Review of Republic of Azerbaijan by **Human Rights Education and Research Public Association** (Azerbaijan) and **Citizens' Labour Rights Protection League** (Azerbaijan)

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Executive summary

The joint submission prepared by the **Human Rights Training and Research Public Union** and **Citizens' Labor Rights Protection League** is dedicated to the state of implementation of the recommendations No. 141.34, 141.51., 141.67. (recommendations on civil society representatives, including human rights defenders) and 141.38.,141.53.,141.59.,141.72. (recommendations on ensuring freedom of association, expression and assembly and creating conditions for activities of NGOs) by Azerbaijan, which were given during the interactive dialogue regarding the third cycle national report of Azerbaijan, that were considered and accepted by Azerbaijan.

Although certain positive changes have taken place on the recommendations given after the third cycle review of Azerbaijan's UPR, many of the issues mentioned in the recommendations have not been solved and problems remain:

- Although repressive measures against representatives of civil society, including human rights defenders, have partially disappeared, numerous obstacles remain for their activities. Serious restrictions on access to foreign financial sources continue;
- There have been minor changes in the legislation regulating the activities of NGOs, but these changes do not allow NGOs to operate without obstacle. Although there have been some improvements in the registration for NGOs to obtain non-commercial legal entity status, the problem as a whole has not been solved;
- There are problems in ensuring freedom of expression and assembly. Although there are positive points in the law "On Media" adopted in 2021, international and local experts have expressed concern about the inclusion of more restrictive provisions in the law;
- During the reporting period, the number of members of the Bar Association increased more than 2 times. The practice of expulsion or non-admission for political reasons has been stopped. However, the legislation has created restrictions on the independent activity of lawyers.

The presented information covers the changes that occurred in the last reporting period and the problems that need to be solved. Recommendations are presented at the end of the information.

1. Civil society and human rights defenders, the state of ensuring freedom of association

1.1. Repressive measures against civil society and human rights defenders

At the 17th meeting held on May 17, 2018, the UPR Working Group accepted the Azerbaijan report. The recommendations given in Azerbaijan's report included: stopping politically motivated court proceedings against representatives of civil society in the country (recommendation 141.34-Sweden), continuing the measures taken to ensure the protection of human rights defenders and journalists from any harassment or pressure and restrictions on their activities (recommendation 141.54-Palestine). This report also recommended to ensure that human rights defenders are not deprived of lawyer status for political reasons and have the right to represent their clients in courts (recommendation 141.67-Czech Republic).

Although repressive measures against human rights defenders and other civil society representatives have stopped, the legal environment for them to continue

their activities has not been provided. There are still obstacles for human rights NGOs and activists to receive funding from foreign funds, and some of them have to obtain secret funding through third countries.

In the period after the 3rd cycle report, systematic persecution of representatives of civil society, including human rights defenders, which took place in 2014-2016 in the country, was stopped. Previously persecuted and arrested human rights defenders were released prematurely by presidential decree. Many of them already cooperate with authorities, and receive grants from the state budget through the State Support Agency for NGOs. For example, Rasul Jafarov, the head of the "Baku Human Rights Club" public union, an activist of the "Real" party, who was declared a prisoner of conscience by "Amnesty International", was released on March 17, 2016 with the amnesty signed by the president. On April 23, 2020, the Plenum of the Supreme Court overturned the conviction of REAL party chairman Ilgar Mammadov and Human Rights Club chairman Rasul Jafarov and dropped the charges against them. Both of them, as well as several other human rights defenders, have been acquitted and, in addition, they have been paid high compensations.

Several activists who were previously engaged in the protection of human rights in Azerbaijan are currently working as political emigrants in European countries.

Against the background of the weakening of repressive measures, serious problems in the field of human rights protection remain in the country. Access to information by non-governmental organizations has deteriorated significantly. Most of the NGOs, which used to have an office and minimal financial resources, have now turned into a formal organization with no structure and no sustainable activity, based on the voluntary activities of a few activists.

1.2. Legal measures to ensure freedom of association

In 2013-2014, more than 80 restrictions were applied with additions and changes to the NGOs legislation. The main ones are:

- All grant agreements, additions and changes to the grant agreement, including sub-grants provided for in the grant agreement, must be registered. Contracts in other languages must be translated by a notary, and foreign donor contracts must be legalized in Azerbaijan;
- The donor or recipient must submit the financial and economic justification of the grants to the relevant executive authority and must be approved by that authority;
- Contracts for services provided by NGOs with funds obtained from foreign sources should be registered;
- Funds donated in the amount of more than 200 (two hundred) manats (117 US dollars) should be transferred by bank transfer, and information about the amount of donations received and the persons who made the donation should be submitted to the Ministry of Justice in the prescribed manner;
- In order to carry out banking operations on grants and donations, a notification confirming the registration of these grants and donations must be submitted;
- Only foreign and international organizations registered and operating in the country can be donors;

- The Ministry of Justice has been granted broad discretionary power to intervene into the activities of NGOs under the activity presented as studying the compliance of activities of non-governmental organizations, as well as branches or representative offices of non-governmental organizations of foreign countries, with their charters and Azerbaijani legislation;
- In the Code of Administrative Offenses, all activities of NGOs are sanctioned with very high fines, etc.

As a result, public benefit organizations and public associations operating in the country suffered serious losses. Even NGOs providing community development, social and palliative services, and shelters have been forced to limit or cease their activities as a result of the restrictions imposed. A number of non-governmental organizations, which until a few years ago worked with a large budget, provided employment to dozens of people and benefited the society, had to stop their activities due to financial constraints.

Although there were slight positive changes in the legislation regulating the activities of NGOs during the reporting period, these changes did not lead to the restoration of the legal regime for NGOs that existed before 2013.

According to the Decree of the President of the Republic of Azerbaijan dated 21.10.2016 **"On the application of the "one stop shop" principle in the procedure of granting grants by foreign donors in the territory of the Republic of Azerbaijan"**, the procedure for granting grants in the territory of Azerbaijan is carried out on the basis of the "one stop shop" principle. Registration documents can be submitted to the "one stop shop" by the donor or the recipient.

At the initiative of the State Support Agency for NGOs, an expert group was established, with the participation of local and foreign non-commercial organizations, as well as representatives of the Presidential Administration, the Ministry of Justice and the parliament. The package of proposals has been prepared that will ensure that the legislation creates relatively favorable conditions for activities of NGOs with the aim to make amendments and changes to the legislation related to NGOs, including the laws "On Non-Governmental Organizations (Public Unions and Funds)", "On State Registration and Registry of Legal Entities", "On Grants" and other sub-normative-legal acts related to these laws,. Although the proposals have been submitted to the relevant authorities, the package of proposals is still under discussion.

The most serious problems are related to the complicated procedures for registering NGOs to obtain the status of a non-commercial legal entity, restrictions on access to financial sources and sanctions. High fines exist even if they are not applied in practice and limit the activities of NGOs by having a preventive effect.

1.3. Lawyers

Among the recommendations, there is also a recommendation to prevent "...deprivation of the status of a lawyer for political reasons" (Czech Republic). For many years, the Bar Association, an organization of lawyers in Azerbaijan, has functioned more as a repressive body than a defense institution. It was a common practice to remove independent lawyers from the membership of the bar association

under various pretexts, and not to admit well-known lawyers in the field of human rights protection to the Bar Association. As a result, by 2018, there were only 931 lawyers in Azerbaijan, which has a population of more than 10,000,000. Most of lawyers worked in the capital of the country and in administrative regions close to the capital. There were no lawyers in more than 20 administrative regions of the country. This significantly limited the population's access to courts. Since most of the lawyers are men, the gender equality is seriously disturbed. As a result, women victims of domestic violence in the regions did not apply to male lawyers due to national mentality.

In December 2017, the situation changed completely after the formation of a new advisory board at the Bar Association congress. Over the past 4 years, the number of lawyers has more than doubled.

Currently, the number of members of the Bar Association of the Republic of Azerbaijan is 2132. The number of lawyers working in the regions of the Republic of Azerbaijan is 453. The number of lawyers working in the capital is 1,679. There are also 68 Bar Associations in Baku, and 39 Bar Associations in the regions. The number of female lawyers is increasing. The practice of admission and expulsion based on political opinions and convictions has been stopped. Serious steps are being taken towards the independence of the Bar Association. Political motives have been eliminated during the admission to the Bar Association. However, several persons applied to the court claiming that their inability to pass the examination process was due to political motives and tried to ensure their rights. Complaints had been submitted to the European Court on Human Rights passing the domestic legal – litigation mechanisms.

Several lawyers who were previously expelled from the Bar Association were reinstated as members. Lawyer Shahla Humbatova, Aslan Ismayilov and several other lawyers were reinstated as members of the board.

Although there is a positive change, legal restrictions on the activities of lawyers continue. At the end of 2017, amendments were made to the Law "On Lawyers and Lawyer Activities", the Civil Procedural Code and the Administrative Procedural Code. Prior to these amendments, only a lawyer who was a member of the bar could provide defense at all levels of the criminal proceedings. In civil cases, such lawyer monopoly was applied only in cassation and constitutional court proceedings. After the change, the place of representation in civil court cases is replaced by professionals - lawyers. Thus, according to the change, only close relatives of persons can participate in courts as legal representatives. In the court of cassation, the activity of the representative is not allowed. On behalf of legal entities, authorized persons in accordance with the company's charter or employees (full-time employees) specially authorized by those legal entities may participate in the court proceedings (only in first instance and appellate instances).

Although such amendments are presented as an increase in the quality of legal services provided to the population, **as a result, the population's access to courts has been fundamentally limited.** As a result of the limited number of lawyers and their geographically uneven distribution, as well as the relatively high fees for lawyer services, many people, especially the poor, cannot use the services of a lawyer. The provision of a lawyer by the state is mainly applied in criminal cases. Thus, thousands of people are deprived of the right to participate in the courts with their representative, and also they do not apply to the court because they cannot prepare complaints (claims) to the courts, and as a result, their rights are violated. It should

be taken into account that many courts are now electronic and complaints (claims) are submitted electronically with an electronic signature. Many people do not have the opportunity to use these tools.

Another legislative change that limited the role of the defense establishment in the country took place in 2021. With the law signed on July 9, many changes were made to the Civil-Procedural Code. Although some of the changes are aimed at increasing the efficiency of the courts, a provision that severely limits the procedural rights of lawyers has also been mentioned. Article 174.5 added to Article 174 of the Civil-Procedural Code contains such a provision: *“The court may fine persons, their representatives or lawyers up to 500 manats, who clearly obstruct the correct and prompt consideration of the case and its resolution, including those who repeatedly file clearly groundless petitions or complaints. The amount of the fine is determined by the court in a reasonable amount, taking into account the specific circumstances.”*¹.

The expression **“People who clearly obstruct the correct and prompt consideration of the case and its resolution, including those who repeatedly file clearly groundless petitions or complaints”** creates conditions for abuse and increases the discretionary powers of the judge, and creates the possibility of pressure on the lawyers who is independent and seriously defend their client. Starting from July 2021, an alternative dispute resolution procedure before the court has been established in Azerbaijan. According to the adopted mediation law, a mediation institution was established. In family, labor and commercial cases, a mandatory mediation session must be held before going to court. In administrative and civil cases, mediation is carried out voluntarily.

According to the amendment to the Law "On government fee", court fees are not a stable fee as before, but a variable fee depending on the value of the claim. As a result, high fees for some civil disputes (for example, real estate disputes) significantly limit the access to courts for the population, especially the poor population.

Thus, although there are positive changes in the professional organization of lawyers, the process of limiting the rights of lawyers and the public's access to courts is underway.

2. Freedom of expression and assembly

USA (141.38.), Spain (141.53.) and Italy (141.59.) gave relevant recommendations to the government of Azerbaijan to ensure freedom of expression and assembly along with freedom of association. Spain's recommendation proposes to *“repeal recent laws restricting the freedoms of expression, peaceful assembly and association and create safe conditions for the activities of journalists, activists and human rights defenders”*. During the reporting period, a new law "On Media" was adopted. However, no legal and practical measures have been taken to ensure the freedom of assembly.

¹ https://www.e-qanun.az/framework/46945#_edn223

2.1. Freedom of expression

As of 2021, there are 5,382 registered media in the country. Televisions and radios are not included in this number. Registration is not available for print media.

The entry into force of the law "On Media" at the end of 2021 has caused wide discussions in the country. A number of international organizations and international non-governmental organizations, of which Azerbaijan is a member, criticized the new law and prepared statements and reports stating that it limits freedom of expression. The law has established a limitation regarding the founders of the media institution. It is mentioned in articles 26.1.1. and 26.1.2. of the law: *"If the founder of a media organization is a individual, he/she must be a citizen of the Republic of Azerbaijan, residing permanently in Azerbaijan. If the founder is a legal entity, then the majority share in its charter capital (75 percent) must belong to a citizen (citizens) of the Republic of Azerbaijan, permanently residing in the Republic of Azerbaijan and (or) a legal entity (legal entities) registered in the Republic of Azerbaijan."*

The positive aspect of the law is that it does not regulate the activities of social networks and bloggers. The so-called "citizen journalism" which is carried out as a hobby rather than a profession will not be within the scope of this law. It is not mandatory for internet televisions to apply for a license. Unlicensed internet televisions will be able to continue their activities without any obstacle. Permission from state authorities will not be required to establish a print media and online media entity².

However, local and international experts believe that the Law "On Media" is mainly a restrictive law. The Venice Commission operating under the Council of Europe, of which Azerbaijan is a member, gave a final opinion on the law "On Media" adopted in Azerbaijan. It can be seen from the recommendations of the final opinion submitted to the government of Azerbaijan that this institution's attitude towards the new law is negative³.

The recommendations given to Azerbaijan in the document prepared by the commission are as follows:

- Article 26 of the Law - abolish extensive restrictions on the creation of mass media, foreign ownership and foreign financing;
- The Media Registry should be abolished or the excessive conditions required to enter the registry should be removed;
- the conditions for accreditation should be abolished;
- bring the restrictions in the law on content into line with the precedent of Article 10 of the European Convention;
- change the provisions on the protection of journalistic sources;
- remove the license requirement for platform broadcasters;
- it should be sufficient to inform competent authorities for publication and distribution of print and online media products.

The new law defines the powers, duties, formation and directions of activity of the body that regulates the activity of audiovisual media. However, it does not regulate the activities of the body that regulates print and online media. Regarding the activity

² <https://www.azerbaijan-news.az/index.php/az/posts/detail/dovlet-medianin-mutereqqi-deyerler-esasinda-inkisafinda-maraqlidir-1639427069>

³ <https://www.coe.int/en/web/freedom-expression/-/joint-opinion-of-the-venice-commission-and-dgi-on-law-on-media-of-azerbaijan-adopted>

of print and online media, the "Media Development Agency"⁴ was established as a public legal entity in Azerbaijan, and its activity is regulated by another normative-legal act.

2.2. Freedom of assembly

According to Article 49 of the Constitution of the Republic of Azerbaijan, **"Everyone has the freedom to freely assemble together with others"**.

On November 13, 1998, the Law "On Freedom of Free Assembly" was adopted in order to implement Article 49 of the Constitution. After Azerbaijan became a member of the Council of Europe, it was determined that the law did not comply with European standards, and the Parliament of Azerbaijan improved the legislation in cooperation with the Venice Commission of the Council of Europe⁵. Fundamental changes to the law came into force on May 30, 2008. **Although the legislation meets relatively European standards, serious problems remain in the practice of applying the law.**

According to Article 9.6. of the Law *"The relevant executive authority in each city and district must allocate special places for protest meetings, rallies and strikes. The list of proposed places for meetings, rallies and strikes is published in the local press, and information is communicated to the population in other ways. Organizers can choose one of the proposed places for meetings, rallies and strikes. The relevant executive authority may change the list of proposed places for meetings, rallies and strikes based on applications."*

Guided by these provisions of the law, special places have been determined by the decisions of local executive authorities in more than 70 cities and towns of the country. 12 places have been determined in Baku, the capital of the country. These places are in each of the 12 administrative regions of the capital.

In fact, local authorities use this mandate to allocate unsuccessful and unsuitable places for assembly, which creates serious obstacles to the freedom of assembly and does not correspond to the essence of the assembly.

When protestors organize protests outside such places, the authorities consider such actions as "unsanctioned" actions and prohibit these actions. Other grounds for limiting mass events are also indicated in the legislation:

- to protect the public and state security interests;
- to prevent the disruption of public order;
- to prevent the riots or crimes;
- to protect the health of the population;
- to protect the moral norms and spirituality;
- to protect the rights and freedoms of other persons.

However, in practice, when limiting the holding of rallies, pickets, street marches and

⁴ <https://www.media.gov.az/>

⁵The European Commission for Democracy through Law. http://www.venice.coe.int/WebForms/pages/?p=01_Presentation

other mass actions, the relevant authorities do not justify their decisions with the above reasons. The organizers are refused with standard and illegal answers such as *"it is not considered appropriate"*, *"the meeting may violate public order"*, *"the right of the population to rest is violated"*. There are also advisory refusal answers such as *"..currently it is not advisable to hold a meeting on this problem"*.

3. Recommendations

The legislation regulating the activities of non-governmental organizations, including the laws "On non-governmental organizations (public associations and funds)", "On state registration and registry of legal entities", and "On grants" should be revised, and provisions that create obstacles to the activities of civil society institutions and are inconsistent with the constitution of Azerbaijan and international obligations should be removed from the legislation;

Appropriate conditions should be created for the activities of NGOs that defend human rights and take an independent position. Proposals for improving the legal environment should be positively viewed, and measures aimed at increasing the capacity of these NGOs should be expanded;

It should be implemented legislative and practical actions aimed at better ensuring freedom of association, expression and assembly. Legislation should be improved, defects and bad practices should be eliminated.