



CONFERENCE OF INGOs
OF THE COUNCIL OF EUROPE

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CONSEIL DE L'EUROPE

Recommendation on

The opinion of the Expert Council on NGO Law on the amendments in 2009 to the NGO Law in Azerbaijan and their application

CONF/PLE(2011) REC4

Adopted by the Standing Committee on behalf of the Conference of INGOs on 3 October 2011

The Conference of INGOs of the Council of Europe,

Welcomes the opinion of the Expert Council on NGO Law on the amendments in 2009 to the NGO Law in Azerbaijan and their application;

Takes note that the authorities of Azerbaijan were invited to transmit any factual corrections they might deem necessary and that these are expected shortly.

Welcomes the preparation by the Venice Commission of an opinion on “The Compatibility of the Legislation on Non-governmental Organisations in Azerbaijan with Human Rights Standards” which will be adopted at the October 2011 session of the Commission;

Takes note of a number of problems identified by the Expert Council on NGO Law in the amendments in 2009 to the NGO Law in Azerbaijan and their application;

Shares the conclusions of the opinion of the Expert Council on NGO Law on the amendments in 2009 to the NGO Law in Azerbaijan and their application, and in particular paragraphs 137-141:

“The 2009 amendments reverse in a number of significant respects previous efforts to develop a legal framework for the establishment and operation of NGOs that meets the requirements of international standards. This is especially so as regards the restrictions on 'political' and 'governmental' activities, the choice of names, the ability to be founders and office-holders, the capital requirements for foundations and the basis on which foreign NGOs will be allowed to operate.

Apart from the retrograde nature of various substantive provisions, the 2009 amendments suffer from a lack of clarity in their formulation which is inconsistent with the requirement of international standards that the regulatory framework governing the establishment and operation of NGOs should be sufficiently precise and foreseeable.

The most immediate impact of the 2009 amendments has been on existing foreign NGOs, to whom they have been applied in circumstances where their retrospective effect was not made clear and even before the key implementing measure had been adopted. Furthermore they have been applied to NGOs which have never been

shown to have acted incompatibly with the law and the Constitution or the legitimate interests of the Republic of Azerbaijan. This action is incompatible with international standards regarding not only legal certainty but also those concerning NGOs and human rights defenders.

The 2009 amendments exacerbate an environment for the establishment and operation of NGOs that can already be difficult. Moreover, even where the objectives of particular provisions are not inconsistent with international standards, such as the requirement for financial reporting, the scope of the obligation appears to duplicate other similar ones and does not take account of the considerably different character of the NGOs to which it applies so that it becomes unduly burdensome.

Viewed as a whole, the 2009 amendments not only render the NGO Law less compliant with international standards but they also do so without providing any evidence of problems that need to be addressed. However, achieving compliance with international standards will require more than the reversal of those amendments. There is a need also to ensure that the approach to implementing the NGO Law fulfils the spirit as much as the letter of those standards. Furthermore, in removing the objectionable provisions that have been added to the NGO Law, the opportunity should be taken to establish a regime for NGOs that is much more supportive of the essential contribution to be made by NGOs both to the development and realisation of democracy and human rights and to the cultural life and social well-being of democratic societies.”

Recommends, in consequence, that the national authorities of Azerbaijan take appropriate steps to amend the relevant legislation or practice;

Asks the Expert Council on NGO Law to follow developments in Azerbaijan and, be ready to provide advice on the review of NGO legislation and administrative and judicial practices in the implementation of this legislation;

Invites the Expert Council on NGO Law to present the findings of the opinion on the amendments in 2009 to the NGO Law in Azerbaijan also to civil society in the country with a view to supporting civil society’s quest for an enabling environment for civil society in Azerbaijan;

Requests the Expert Council on NGO Law to co-operate closely with the Venice Commission in the follow-up to their respective opinions.