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*Représentant Permanent  
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auprès du Conseil de l'Europe*

Strasbourg,

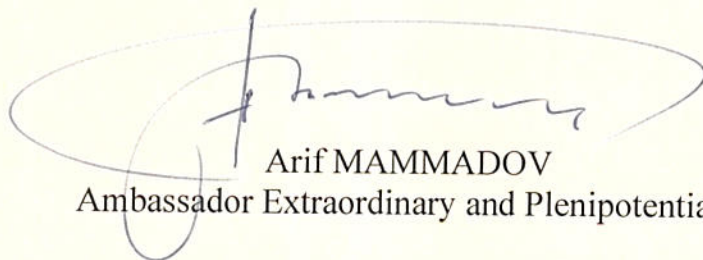
30 March 2012

Nº CE-14/12

Dear Mr. Heydt,

In response to your letter, dated 8 September 2011, I would like to transmit to you, herewith, the comments of the Ministry of Justice of the Republic of Azerbaijan to the opinion on the amendments in 2009 to the NGO Law in Azerbaijan and its application prepared by the Expert Council on NGO Law within the Conference of INGOs.

Yours sincerely,



Arif MAMMADOV  
Ambassador Extraordinary and Plenipotentiary

Mr. Jean-Marie Heydt  
President of the Conference of INGOs  
Council of Europe

*Encl. 9 pages*

## **COMMENTS**

### **by the Ministry of Justice of the Republic of Azerbaijan to the Opinion on Amendments in 2009 to the NGO Law in Azerbaijan and their Application prepared by Expert Council on NGO Law of the Conference of INGOs of the Council of Europe**

In general it should be noted that the Opinion reflects expert's personal approach and subjective observations. In a number of occasions expert's ideas are based not on requirements of the legislation, but on assumptions or contradict legislative provisions at all. It seems like wrong assessment of the legislative requirements and contradictory and misrepresented assumptions are the result of the translation, theoretical approach and superficial interpretation of the relevant norms.

#### **Items 7- 9**

Under Article 4.1 of the Law of the Republic of Azerbaijan on State Registration and State Register of Legal Entities (hereinafter the Registration Law) commercial organizations, and representative offices or branches of foreign legal entities can launch operation only after state registration.

Unlike commercial structures, the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Funds) (the NGO Law) doesn't envisage a requirement for NGOs to be registered as a legal entity in order to start functioning.

According to Civil Code the rights to open up a bank account, buy property, deal with tax requirements and bring or be a respondent in legal proceedings depend on existence of legal entity status. Institutions without status of a legal entity perform these operations through physical persons representing them. Current legislation doesn't contain any restrictions regarding physical person's right to open up a bank account, buy property, sign a labor agreement as an employer, and bring or be a respondent in legal proceedings.

Under Article 43 of the Civil Code the legal entity is a structure registered in a relevant authority. Therefore, NGOs' entitlement to the abovementioned rights depends on their state registration.

#### **Items 11-13**

In order to ensure the constitution<sup>1</sup> right to form associations in line with international standards the NGO and the Registration Laws were adopted on 13.06.2000 and 12.12.2003, respectively. These Laws were prepared together with the experts of the Council of Europe. The right to form associations is protected and guaranteed like any other rights. NGOs are entitled to act independently in the framework of the legislation.



The NGO Law makes a distinction between public associations and funds both in their concepts and management. While, public associations are established by a number of physical or legal persons, funds can be founded by only one physical or legal person. Distinctive features of the public association include: its membership based nature, general meeting as its supreme management body, and absence of nominal capital.

#### **Item 14**

Under Article 5 of the NGO Law, NGOs may be established on the permanent basis or in order to achieve certain objectives. However, the choice whether NGO will be functioning on permanent or temporary basis depends on its founders and this choice is materialized independently and without outside interference. On the other hand, activities of some organizations are conditioned by the existence of temporary common interests and fulfillment of certain functions. Article 59.2.1 of the Civil Code envisages the accomplishment of the constitutive purpose as one of the reasons for liquidation of NGO registered as a legal entity. In this light, Article 5 of the NGO Law is far from being unimportant for public associations.

#### **Item 19**

Pursuant to Article 6.1 of the NGO Law, area of activity of NGOs shall be defined by the organization independently. According to Article 14.1.18 of the Registration Law, locality of the institutions established by a legal person within or outside borders of the Republic of Azerbaijan, their organizational-legal form and data on registration should be included in information about state registry.

Taking into account the simplicity of and short period of time needed for registration procedure of modifications made into NGO statute, change in area of activity can not cause any problems to and restrict opportunities of NGOs. Under Article 9 of the Registration Law, registration of modifications to constitutive documents and other changes in facts are carried out within 5 days. State registered legal persons, representative offices or branches of foreign legal persons, or representative offices and branches of state registered legal persons in the Republic of Azerbaijan are included into state registry without any charges. Modifications into state registry are made without any charges, as well.

It should be noted that indication of NGOs' area of activity is aimed not only at making the management more effective, but also facilitating NGOs' activity and developing cooperation between governmental and non-governmental organizations. This measure is of utmost importance as to ensuring NGOs' cooperation with local authorities and other organizations, as well as promoting public participation. A number of state programs implemented in Azerbaijan include provisions on cooperation between governmental and non-governmental



organizations, NGOs' involvement in ongoing projects and strengthening public control over all activities. In this light, location of NGOs in a certain region and their field of specialization are important for their involvement in implementation of state programs. Furthermore, existence of NGOs abroad serves for the purpose of making the work with Diasporas, and Azerbaijan's humanitarian activity in foreign countries in general more effective.

#### **Item 20**

Current legislation (Article 12.3-1 of the Registration Law) doesn't require the statute of NGOs to contain information on their subsidiary branches or representative offices. An organization should notify the relevant authority about the establishment of a branch or representative office within 10 days.

#### **Items 21-24**

Under Article 15.1 of the NGO Law, notification on establishment of a public association shall be made through written notice to the Ministry of Justice of the Republic of Azerbaijan within 30 days since adoption of a decision on its establishment. A constituent protocol shall be enclosed to the notification as well.

Public association established in this way has no legal personality and there is no liability in the legislation for failing to hand over notification. The mentioned provision is only about informing authorities regarding the existence of a newly established public organization. Notification, being only statistically important, doesn't cause any legal effect either for authorities or public association and has nothing to do with registration procedure.

#### **Items 25-27**

The Registration Law specifies the procedure of state registration for organizations wishing to acquire the status of legal personality. Thus, there is no need for NGO Law to contain the mentioned procedure once more.

Registration process is carried out within the requirements of the law in force and the law contains effective safeguards against illegal actions, as well. Under Article 11 of the Registration Law, documents not provided for by the Law for the state registration of organizations wishing to obtain the status of legal personality, and of amendments either to constituent documents or previously registered facts are allowed only when delivery of such documents has been envisaged in other laws of the Republic of Azerbaijan.

Thus, Item 27 of the Opinion regarding additional documentation (originals of the documents, passports and employment history records of the founders) has nothing in common with reality. It should also be taken into account that pursuant to



Article 5 of the Registration Law, one of the documents to be submitted to the relevant authority for the state registration of the organization wishing to obtain the status of legal entity is a copy of an ID of the founder if he/she is a physical person. Furthermore, in case an authorised representative has been appointed, he/she is also required to submit his/her ID.

#### **Item 28**

Assumption that registration in Baku causes problems for NGOs is groundless. Delivery of the documents by mail is taken into account during document processing. Period of document processing is always the same and adequate irrespective of documents' delivery length by mail. It is an authority's obligation to conduct document processing and registration in time as stipulated by the law.

It should be particularly noted that current legislation contains no prohibitions as to sending applications regarding establishment of a NGOs through email and e-service is the work in progress. Development of "Non-for-profit Legal Entities" computer-aided registration-information system and its incorporation into single information network of registry authorities within the project of Modernization of the System of Justice was singled out as one of the priorities of the State Program on the Development of Justice System in the Republic of Azerbaijan for the years of 2009-2013. In line with implementation of the Presidential Decree on Some Measures in the Field of Organizing E-service by Authorities dated 23.05.2011, opportunities to apply electronically to the Ministry of Justice is being upgraded in order to facilitate the state registration procedure of organizations wishing to obtain the status of legal entity.

#### **Items 29-31**

Pursuant to Regulations on the General Department of Registration and Notary of the Ministry of Justice endorsed by Order#11-T of the Minister dated 19.03.2007 the General Department was assigned with the tasks of state registration of legal entities and conducting state registry. Under Item 7.2 of the Regulations General Department conducts state registration of political parties and legal entities. Pursuant to Item 7.6 the General Department works out centralized state registry of legal entities and ensures it availability.

As regards non-issuance of information about registered legal entities, it should be noted that under Item 5.2.3 of the Regulations on Conducting, Using and Protecting State Registry of Legal Entities endorsed by the Decree #70 of the Cabinet of Ministers dated 13 April 2005, information about state registration of non-for-profit organizations and educational institutions is published at the newspaper "Justice" issued by the Ministry of Justice. As state registry of non-for-profit organizations is public, it's very easy to find out whether certain name of a registered NGO already exists or not. Furthermore, the General Department of Registration and Notary replies to all enquiries in this regard.



### **Items 32-40**

Assumptions that the existence of minor careless mistakes or inaccuracies can be used to conclude that there is false information in the application for registration, the question of expediency of the applicant NGO to pursue the aims set in its statute is taken into account while deliberating on registering or denying registration, and the time frame provided for in the law is not observed are all groundless. As mentioned above, registration process is carried out within the requirements of the law in force and the law contains effective safeguards against illegal actions, as well.

Under Article 8.3 of the Registration Law if it is found out that there are shortcomings in the submitted documents which do not lead to denying state registration, Ministry of Justice returns these documents to the applicant and designates additional 20 days for rectifying mistakes. All in all, the applicant gets the reasons (provisions of the law) for refusal in written and they are clarified in terms of a concrete legal norm.

According to Article 11 of the Registration Law, it is not allowed to deny either state registration or revisions into the state registry on the basis of any other ground other than provided for by the law in force. The same Article disallows denying state registration or enrolment into the state registry of organizations applying for the status of legal entity based on assumptions of inexpediency of their establishment.

An organization could be denied state registration only in cases provided for in Article 11.3 of the Registration Law. According to this Article, registration of an NGO is denied if: a) submitted documents contradict the Constitution, the Registration Law or any other Laws of the Republic of Azerbaijan; b) goals, duties and forms of activity of an organization are in contradiction with the legislation; c) an NGO with the same name has already been registered; and d) shortcomings in constituent documents found out by the relevant authority are not removed within 20 days.

If decision is taken to prolong the deadline for processing documents, the founders are informed about that decision in written form. It should be underlined that prolongation of the period for processing documents is considered to be an exceptional case and it is applied rarely.

### **Items 42-47**

NGOs can acquire property from the following sources: regular or single-time membership fees by founders or members of social communities; voluntary property shares and donations; receipts from sales of goods, provision of works and services; dividends and revenues generated from shares, bonds, other securities and savings; income generated as a result of use or sales of its own property; grants; and other income not prohibited by the legislation.

Under Article 31 of the NGO Law, in the event of action contrary to the objectives of the NGO Law, the Ministry of Justice can warn the NGO in written form or instruct it to eliminate the violations. In case an NGO has received warning or instruction more than twice within one year, it may be liquidated by court's decision.

NGOs have a right to appeal against such warnings or instructions.

No legal-normative act governs responsibility for breaches of the NGO Law. Administrative offences contained in the Code of Administrative Offences are about accounting and breach of the legislation on grants. Warnings by the Ministry of Justice for the breach of legislation and statute can not be assessed as a type of liability due to its nature of recommendation and prevention.

### **The 2009 Amendments**

#### **Items 58-67 (Applicability)**

Article 1.4 of the NGO Law excludes from its application political parties, trade unions, religious associations and local self-governments, as well as the entities established to carry out the functions of these institutions and those NGOs whose activities are regulated by other laws. It is due to the fact that registration and activity of the mentioned organizations are regulated by special legal acts. Thus, assessment of Article 1.4 as restrictive and vain is unclear.

#### **Items 68-71 (Names)**

The amendment to Article 3.1 of the NGO Law aims at preventing the illegal use of names of state agencies or of distinguished people of Azerbaijan (without consent of their close relatives or inheritors), and of national symbols of the Republic of Azerbaijan and foreign states, and of symbols of state agencies, international and other organizations and of legally protected trade marks. Pursuant to this amendment, NGOs can't use the names of state agencies and of distinguished people of Azerbaijan (without consent of their close relatives or inheritors) in their names.

As in practice there were cases when founders of some NGOs tried to use names of state agencies in their activities or the name of the Republic of Azerbaijan in their interactions with international institutions. At the same time, use of names of



distinguished people (renowned scientists, cultural figures, politicians etc.) led to their close relatives' discontent. Thus, in order to prevent confusion and such negative cases, the mentioned amendment has been introduced to Article 3.1.

#### **Items 72-76 (Branches)**

It should be mentioned that the requirement for the deputy chiefs of branches and representative offices of NGOs founded by aliens or foreign legal entities be citizens of the Republic of Azerbaijan is aimed at improving our citizens' knowledge in the field through drawing them into the work of foreign NGOs, helping them to make a career at foreign structures, disseminating the experience of foreign countries, and opening up of new job places. At the same time, drawing in local experts who know the structure, traditions, needs etc. of the country, foreign NGOs get additional opportunities for effective fulfilment of their activities.

#### **Items 76-81 (Founders)**

Amendments introduced into Article 9.1-1 of the NGO Law determines the legal basis for aliens with the right to permanent residence in the Republic of Azerbaijan and stateless persons to establish NGOs in the territory of the Republic of Azerbaijan, thus ensures their close participation in public life.

#### **Items 82-84 (Members)**

In practice a lot of disputes occur between steering bodies and members of NGOs regarding the issue of membership. As a result of these disputes and not keeping the register of members, courts nullify the decisions of supreme and executive bodies of NGOs which leads to new litigations and results in malfunctioning of the organization. With the aim of protecting the rights of NGO members, Article 10.4 of the NGO Law provides for that a public union must, within 30 days of receiving state registration, ensure the establishment of the register of its members. This register is an internal document of the organization and it is not required to submit it to the authorities. This provision neither enjoins nor restricts the activity of NGOs or previously registered branches or representative offices of foreign legal entities in Azerbaijan.

#### **Items 85-87 (Establishment)**

Frequently, funds set out big goals in front of them. However, due to the lack of finance they fail to carry out these works, thus damaging both their declared aims and prestige. At the same time, this failure leads to confusion in elaborating state policy in this field and in allocation of certain financial resources. In this regard, the NGO Law stipulates the minimal amount of nominal capital for funds.



### **Items 88-96 (Registration of foreign NGOs)**

Article 12.3 of the NGO Law provides that the state registration of branches and representative offices of foreign NGOs is to be carried out upon the agreement signed with those organisations. This agreement is a document signed with an organization on behalf of the state, and which is based on bilateral consent and free will and reflects obligations of both sides. The agreement includes issues of special importance to the development and security of Azerbaijan, as well. At the same time, after agreement is signed, the decision on state registration is taken not by one body, but on the basis of collegial opinion. This aims at preventing subjectivism. In essence the agreement is a statement regulating relationship of an NGO with the state and its procedure of conclusion serves for an organization's prestige in its interactions with the state.

### **Items 97-105 (Statutes)**

In order to prevent an overlap in activities of NGOs and state and local self-government agencies, and appropriation of functions and powers defined by law, Article 13.3 of the NGO Law stipulates that statutes of NGOs shall not allow to usurp the powers of state and local self-governments, and to envisage state control and inspection functions as well.

### **Items 106-108 (Sources of property)**

The requirement to report on grants (both giving and receiving) is not a new norm and this provision has already been included in the Law of the Republic of Azerbaijan on Grants, dated 17.04.1998.

Amendments to Article 2231.1 to the Code of Administrative Offences have nothing to do with 2009 amendments to the NGO Law. In 2008 amendments were introduced into Article 223-1.1 of the Code of Administrative Offences (failure to submit grant contracts and decisions for registration) and the fine (app. 20-50€) for this kind of offence was increased (1000-2500€). It should be noted that Items 2.1 and 2.2 of the Regulations on Registration of Grant Contracts (Decisions) endorsed by the Presidential Decree of 12.04.2004 elaborates documents (notarized copy of application and grant contract (decision)) required for registration of grant contract. Registration of grant contracts at the Ministry of Justice is conducted in a facilitated way and NGOs encounter no obstacles in this regard.

### **Items 109-117 (Supervision and responsibility)**

The Law of the Republic of Azerbaijan on Combating Legalization of Financial Resources or other Properties Criminally Obtained and Financing Terrorism was adopted in 2009. And the requirement for NGOs to submit financial statements to the Ministry of Finance is connected with the implementation of this Law. This Law defines any NGO that is engaged, as part of its activities, in acquiring, gathering, granting, or transferring finance as a participant of monitoring. Supervision over use of grants awarded by the state in accordance with its intended purpose and submission of the relevant information on grant to the registration authority by a donor give an opportunity for determining directions of financial resources spent to the development of civil society, detecting areas in need, formulating state policy in this area, and increasing transparency in the activity of NGOs.

#### **Items 118-119 (Amending statutes of existing NGOs)**

As 2009 amendments to the NGO Law do not require NGOs to make amendments to their statutes, it is unnecessary to set a timeframe for this purpose. It should be noted that recently no NGO has been liquidated on the basis of Article 31 of the NGO Law and in this regard, Items 118-119 of the Opinion is completely incorrect.

#### **Application of the 2009 amendments**

#### **Items 120-136**

During 2011, NGOs failed to submit all necessary documents for state registration of legal entities in 73 cases. However no NGO was held responsible for that. At the same time, in 2011 only 9 organizations were held responsible for 15 administrative offences committed by 13 NGOs. In some cases fines envisaged by the Code of Administrative Offences were substituted with warnings.

As regards the National Democratic Institute (NDI) of the United States, it should be noted that this organization, contrary to Article 4.1 of the Registration Law, was functioning without state registration. The Ministry of Justice had notified both NDI and Human Rights House Foundation about the necessity to bring their activities into line with the legislative requirements.

Both organizations have applied to the Ministry of Justice for registration of their representative offices in Azerbaijan and currently these documents are being considered in accordance with the Regulations on Negotiating Agreement on State Registration of Branches or Representative Offices of Foreign NGOs in Azerbaijan endorsed by the Decision #43 of the Cabinet of Ministers dated 16.03.2011.