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Protection of the Right to Freedom of Assembly and Association under ECHR: Compliance Difficulties in Azerbaijan

MASTER'S THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

RIGA, 2018

SUMMARY

The protection of the right to freedom of peaceful assembly and association under the ECHR and compliance difficulties in Azerbaijan, regarding these rights are discussed in this master thesis. The protection of the right to freedom of peaceful assembly and association is one of the critical elements for the development of democracy, and these rights are protected by international documents such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred as the European Convention on Human Rights or the ECHR). Furthermore, the protection of these rights at national level must be compatible with the standards of the Council of Europe. The imposition of restrictions on the right to freedom of peaceful assembly and association also violates the right to freedom of expression. The main problems and gaps in the national legislation are explained in detail, and research provides the primary solutions for these problems and also weaknesses. Therefore, the research question is to find out whether Azerbaijani government did implement commitments to the Council of Europe regarding the right to freedom of assembly and association, and whether there are sufficient grounds for the restrictions on the freedom of peaceful assembly and association.

The author's method is to analyze the right to freedom of peaceful assembly and association in Azerbaijan and try to show the reality in Azerbaijan regarding fulfilling its obligations under the ECHR.

The primary methodological tool used is a study of general theoretical frameworks of the protection of the right to freedom of peaceful assembly and association under the ECHR, as well as interviews and analysis of the current situation in Azerbaijan.

The current paper contains three chapters. The first chapter outlines the Azerbaijan-Council of Europe relations: a brief history of this relationship, accession process of Azerbaijan to the Council of Europe and also the current relationship between Azerbaijan and Council of Europe. The importance of the right to freedom of peaceful assembly and association are discussed in the second chapter. Additionally, the relevant domestic legislation on protection of the right to freedom of peaceful assembly and association is analyzed in the second chapter. However, problems and challenges related to freedom of peaceful assembly and the influence of the current political and economic situation for protection of these rights are discussed in the second chapter. Chapter three describes the scope of restrictions on freedom of peaceful assembly and association in the domestic law and under the ECHR.

TABLE OF ABBREVIATIONS

CoE	Council of Europe
CSSN	Council on State Support to NGOs under Auspices of the President
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
ECtHR	European Convention on Human Rights European Court of Human Rights
IDPs	Internally Displaced Persons
NGO	Non-governmental organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliament Assembly of Council of Europe
UN	United Nations
VC	Venice Commission
WHO	World Health Organization

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1. INTRODUCTION

The right to freedom of peaceful assembly and association is globally recognized as the primary element of the development of democracy. Furthermore, the European Court of Human Rights (hereinafter referred to as ECtHR) has demonstrated the importance of freedom of peaceful assembly in its judgments. In *James and Webster v. the United Kingdom*, Court stated that protection of freedom of peaceful assembly is necessary for creating diverse, open-minded and tolerant society.¹ The association can address and solve problems that are essential to society. This right is recognized by various international treaties, such as the European Convention on Human Rights (hereinafter referred to as the ECHR).² However, this right is secured by the Constitution of the Republic of Azerbaijan.³ But, there are problems about the protection of the right to freedom of peaceful assembly and association in Azerbaijan. The background of freedom of assembly and association-related issues mainly trace back to the anti-democratic systems that survived in Azerbaijan for a long time. The Azerbaijan Republic is a young country and established in 1918. But, after two years of independence Azerbaijan joined the Soviet Union in 1920. Azerbaijan was formally independent and was under Russian Empire between 1920 and 1990. All political parties, except Communist Party of Azerbaijan, were banned, leaders of other political parties were subjected to attacks by Russian Empire. Human rights did not exist in Azerbaijan during the Soviet period. The notion, in its current meaning, appeared only towards the end of the Soviet Union (1985-1991) and quickly became one of the leading slogans of the political struggle of this period. Azerbaijan proclaimed its independence as a result of collapse of the Soviet Union in 1991.⁴

Azerbaijani government started to build international relations with international organizations, such as United Nations, Council of Europe (hereinafter referred to as the CoE) after regaining its independence in 1991. The joining to Council of Europe was important for the Azerbaijani government due to some reasons. Firstly, one of the functions of the Council of Europe is to support the democratic development in the world as well as helping former Soviet States to incorporate into the European community.⁵ Although, joining the Council of Europe should provide an opportunity for Azerbaijani government for establishment relationship with member states of Council of Europe on energy issues.⁶

Azerbaijani government has obligations to the Council of Europe with regard to the right to freedom of peaceful assembly and association, but Azerbaijan did not implement these

¹ *James and Webster v. the United Kingdom*, 13 August 1981, Series A no. 44, p. 25, § 63.

² Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, (ECHR), Article 11. Available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf. Accessed February 15, 2018.

³ The Constitution of the Republic of Azerbaijan, 1995. Article 49, 58. Available on: <http://en.president.az/azerbaijan/constitution>. Accessed February 22, 2018.

⁴ Yashar Rzayev, *Azerbaijan Romani: Siyaset ve Milli Dusunce* (Azerbaijani Novel: Political and National Thought), (Baku: Education Press, 2010), pp. 22-27.

⁵ Rachel Denber, "Hopes and Lessons 20 years After the Collapse of the Soviet Union. World Report 2012: After the Fall", *Human Rights Watch*. Available on: <https://www.hrw.org/world-report/2012/country-chapters/europe/central-asia-global>. Accessed February 24, 2018.

⁶ *Ibid.*

obligations which shall be analyzed below.⁷ Also, States must protect the right to freedom of peaceful assembly and association and also must create a good environment for people for enjoying these rights. But, many restrictive amendments were made to the Law on Non-Governmental Organizations (Public Associations and Foundations), the Azerbaijani Law on Freedom of Assembly and other legislative acts by Azerbaijani government. The Venice Commission gave opinions on the amendments to the Law on Non-Governmental Organizations and Law on Freedom of Assembly and said that these amendments failed to ensure and protect freedom of assembly and association in Azerbaijan.⁸

The purpose of this work is to mention these contentious issues and to survey how far Azerbaijani government achieves its commitments on freedom of peaceful assembly and association under the ECHR. Additionally, this paper looks to scrutinize the validity of restrictions on freedom of peaceful assembly and association as provided by ECHR and the legality of measures taken by Azerbaijani government to restrict the work of NGOs and holding the demonstrations.

The Author will describe the implementation of the right to freedom of peaceful assembly and association. The current situation related to these rights will be analyzed based on domestic and international legislation, the case law of ECtHR and documents of CoE and OSCE.

The Author will describe the accession of Azerbaijan to the Council of Europe in the first chapter of the thesis. However, the current relationship between Azerbaijan and CoE will be observed by the author in the second chapter. It is important to analyze this because Azerbaijani authority did not implement its obligations on protecting the right to freedom of peaceful assembly and association and the government faces to lose its membership in the Council of Europe.

The Author will try to show the real situation of protecting the right to freedom of assembly and association in Azerbaijan in the second chapter of the thesis. It is important to know what difficulties had regarding the right to freedom of assembly and association in Azerbaijan. Additionally, the problematic provision of domestic legislation concerning freedom of assembly and association will be analyzed based on international human rights standards.

The legitimacy of restriction on the right to freedom of peaceful assembly and association under the domestic law will be analyzed in the third chapter of the thesis. It is essential to define some restrictions which are not compatible with the ECHR.

Finally, the author shall provide solutions through recommendations for protecting the right to freedom of peaceful assembly and association in Azerbaijan.

⁷ Institute for Reporters' Freedom and Safety, *Opinion no.222 Implementation of Azerbaijan's commitment to the Council of Europe*, 2013, p. 6. Available on: https://www.irfs.org/wp-content/uploads/2013/10/Opinion-No-222_Implementation_of_Azerbaijan_commitments_to-the_Council_of_Europe.pdf. Accessed February 24, 2018.

⁸ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, 2014. Available on: <https://rm.coe.int/1680306ff8>. Accessed on February 24, 2018. See also, Venice Commission, *Opinion on the Law on Freedom of Assembly in Azerbaijan*, 2007. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)034-e). Accessed February 24, 2018.

2. AZERBAIJAN AND COUNCIL OF EUROPE RELATIONS: A BRIEF HISTORY OF THIS RELATIONSHIP

2.1 Establishment of Relationship between the Azerbaijan and Council of Europe. The Accession of the Azerbaijan to the Council of Europe

It was time for Azerbaijan to build relations with the international organizations after regaining its independence in 1991. Firstly, Azerbaijan joined to the United Nations (hereinafter referred as the UN) on March 2, 1992. Also, Azerbaijan joined many programs of UN and had a good relationship with the UN.⁹ Azerbaijan joined to the Organization for Security and Co-operation in Europe (hereinafter referred as the OSCE).¹⁰ Being a member of the Organization for Security and Co-operation in Europe was necessary for the Azerbaijan in relation to the conflict between Armenia and Azerbaijan.¹¹ A dispute started between Azerbaijan and Armenia on the area of Nagorno-Karabakh at the beginning of 1988. There are more than 500,000 internally displaced persons (IDPs) who lost their house as a result of this conflict in Azerbaijan. Still, this dispute continues between Armenia and Azerbaijan.¹²

The Membership at the Council of Europe was essential for Azerbaijan and the Azerbaijani government started to build a relationship with the Council of Europe. Firstly, Azerbaijan applied to Council of Europe for getting special guest status on January 24, 1992. The first attempt was unsuccessful, generally joining process to Council of Europe was long and challenging.¹³ Because there was no mechanism to enlarge the Council of Europe to Caucasus region, also the level of democratic progress was deemed suspicious in Caucasus countries.¹⁴ Moreover, the Azerbaijani government and the members of Parliament traveled to Strasbourg to meet with officials of CoE for building the relationship with CoE. During this meeting, the content and essence of the mediation mission of the CoE to resolve the Nagorno-Karabakh conflict was agreed by the parties.¹⁵ This meeting was significant for the Azerbaijani government to determine the forms of cooperation with the CoE. In conclusion of this new cooperation, the Committee of Ministers of the Council of Europe approved a declaration on Nagorno-Karabakh on 12 March 1992. Furthermore, the Azerbaijani government invited the officials of Council of Europe to Azerbaijan for monitoring of the political and legal situation. The experts of CoE traveled to Azerbaijan in

⁹ Azernews, "Azerbaijan marks 25th anniversary of its joining UN", 3 March 2017. Available on: <https://www.azernews.az/nation/109754.html>. Accessed February 25, 2018.

¹⁰ The Ministry of Foreign Affairs of Azerbaijan, "OSCE". Available on: <http://www.mfa.gov.az/en/content/840>. Accessed February 25, 2018.

¹¹ Administrative Department of the President of the Republic of Azerbaijan Presidential Library, *Azerbaijan in the International Arena*. Available on: <http://files.preslib.az/projects/azerbaijan/eng/g18.pdf>. Accessed February 25, 2018.

¹² Nathalie Tagwerker, "Azerbaijan Closes Last of Emergency Camps" *UN Refugee Agency*, February 07, 2008. Available on: <http://www.unhcr.org/news/latest/2008/2/47aaf6734/azerbaijan-closes-emergency-camps.html>. Accessed February 25, 2018.

¹³ Adil Valiyev, *Azerbaycan ve Avropa Surasi* (Azerbaijan and Council of Europe), (Baku; Eurasia Press, 2009), p. 30.

¹⁴ *Ibid.*

¹⁵ *Ibid*, p.31.

1993 for learning the legal situation. Within this meeting, the representatives of CoE discussed with Azerbaijan officials on improving domestic legislation, ratification of relevant international conventions and humanitarian aid to Azerbaijan by the CoE.¹⁶

In 1994, the Council of Europe decided to send a commission to the Caucasus region, as well as to Azerbaijan to learn the situation and to clarify the essence of the special guest status. The commission obtained necessary information from the Azerbaijan, and all information was published in Europe.¹⁷ Moreover, the Parliament Assembly of the Council of Europe (hereinafter referred as the PACE) approved Resolution 1047, praising cease-fire between Armenia and Azerbaijan on November 10, 1994.¹⁸

Furthermore, the representatives of PACE were invited to Azerbaijan for observing its first Parliamentary election since obtaining independence, as well as a referendum on adopting a new constitution, which was held on 12 November 1995.¹⁹ It was good that critical fundamental rights and freedoms, as well as the right to freedom of peaceful assembly and association, were described in the First Constitution of the Republic of Azerbaijan. Finally, four years after applying, Azerbaijan obtained special guest status to Council of Europe in 1996.²⁰

After obtaining special guest status, Haydar Aliyev, the President of Azerbaijan Republic sent the letter to Secretary General of Council of Europe that Azerbaijan would like to become a full member of CoE and join to the European Convention on Human Rights in 1996.²¹ Azerbaijan started to build relations with the member states of the CoE on economic, cultural and humanitarian issues after getting special guest status. However, by obtaining the special guest status in 1996, Azerbaijan was allowed to be represented at the Parliamentary Assembly of the Council of Europe and to join some Conventions which was adopted by the CoE.²² It should be noted that accession process brought some positive changes to domestic legislation of Azerbaijan. It was important to change some laws and also to adopt new laws within European standards. The Azerbaijani Parliament (Milli Majlis) approved a resolution on the exclusion of the death penalty from legislation on February 3, 1998. In the same year, censorship on media was forbidden.²³ The PACE observed the Presidential election in Azerbaijan, which was held in 1998. The officials of PACE mentioned that progress had been achieved in organizing the election campaign.²⁴ After long-term monitoring of the situation in Azerbaijan, Committee of Ministers of the Council of Europe approved Resolution 14(2000) on invitation of Azerbaijan to join to the CoE.²⁵

¹⁶ Valiyev, *Azerbaycan ve Avropa Surasi*, p.32.

¹⁷ *Ibid*, p.34.

¹⁸The Parliament Assembly of Council of Europe. *Resolution on the conflict in Nagorno-Karabakh*, no 1047 (1994). Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16458&lang=en>. Accessed February 25, 2018.

¹⁹ Valiyev, *Azerbaycan ve Avropa Surasi*, 34.

²⁰ *Ibid*, 35.

²¹ *Ibid*, p.37.

²² *Ibid*.

²³ *Ibid*, p.98.

²⁴ *Ibid*, p.44.

²⁵ PACE, *Opinion on Azerbaijan's application for membership in the Council of Europe*, no 222, (2000). Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16816&lang=en>. Accessed February 25, 2018.

Finally, after eight years, Azerbaijan joined to the Council of Europe on 25 January 2001.²⁶ During this session, Heydar Aliyev, the President of Azerbaijan Republic made a speech about accession. He stated:

To be a member of the Council of Europe is an important event for Azerbaijan and Council of Europe. We hope that we could give our contribution for protecting of European values.²⁷

Furthermore, the Azerbaijani government had agreed to honor specific commitments while joining to the Council of Europe on 25 January 2001. All commitments were described on Opinion No. 222 (2000) on Azerbaijan's application for membership of the Council of Europe, signed by the President of Azerbaijan and the Speaker of the Azerbaijani Parliament.²⁸ There were a lot of commitments, but some commitments were related to human rights. One of them was to evaluate the rules on registration and appeals procedures of association and if needed to change the registration and appeals procedures within one year of Azerbaijan's accession.²⁹ Within this commitment, Milli Majlis (National Assembly) adopted the Law on State Registration and State Registry of Legal Entities in 2003. This law regulates the registration of non-governmental organizations as well as branches or representative of foreign non-governmental organizations.³⁰ However, many restrictive amendments were made to this law by the Milli Majlis in recent years.

Moreover, in 2002, some amendments to Constitution were adopted with a referendum. Amendments consisted of an extension of competence of parliament, giving a right to people for appealing to Constitutional Court.³¹ Establishment of Ombudsman's Office was another commitment to the Council of Europe and Azerbaijani authorities implemented this commitment. On March 5, 2002, Milli Majlis (Parliament) adopted a Constitutional law on Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan and Human Rights Commissioner Institution was established. The main purpose of this institution is to protect all fundamental rights and freedoms, which are described in Constitution and international agreements. Elmira Suleymanova, the first Ombudswoman was appointed by the Milli Majlis on July 2, 2002.³² She is still leading this institution, but she is often criticized for her approach on the protection of specific elements of human rights, especially the right to freedom of expression and the right to assembly and association. However, the Azerbaijani government did not implement all of their commitments, which were the basis of Opinion No. 222 (2000) on Azerbaijan's request for membership.

²⁶ Valiyev, *Azerbaijan ve Avrupa Surasi*, 45.

²⁷ "Heydar Aliyev Heritage" International Library. The address of his Excellency Mr. Heydar Aliyev, President of the Republic of Azerbaijan at the session of the Parliamentary Assembly of the Council of Europe. Available on: <http://lib.aliyev-heritage.org/en/3817043.html>. Accessed February 25, 2018.

²⁸ PACE, Opinion 222 (2000).

²⁹ *Ibid*, para IV h.

³⁰ The Republic of Azerbaijan, *Huquqi Sexslerin Dovlet Qeydiyyatı ve Dovlet Reyestri Haqqında Qanun* (Law on State registration and State Registry of Legal Entities), 2003, Article 2. Available on: <http://e-qanun.gov.az/framework/5403>. Accessed February 26, 2018.

³¹ *Ibid*, p.71.

³² Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, Establishment date of the institution. Available on: <http://www.ombudsman.gov.az/az/view/pages/172>. Accessed February 26, 2018.

2.2 Ratification of the European Convention for Protection of Human Rights and Fundamental Freedoms

On April 15, 2002, Azerbaijan ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in the same day.³³ Most critical fundamental rights and liberties, as well as the right to freedom of peaceful assembly and association, are defined in Convention. Azerbaijan is under the jurisdiction of European Court of Human Rights (ECtHR). It was important for people because they obtained a right to send the application to European Court of Human Rights if violation of their rights occurred. The European Convention on Human Rights and Case law of European Courts of Human Rights are essential human rights appliances throughout the Europe, which guarantees fundamental human rights for each person within the jurisdiction of CoE member states. According to Constitution of Azerbaijan Republic, international agreements are an inseparable part of Azerbaijan legislation.³⁴ Constitution says:

Whenever there is disagreement between normative-legal acts in legislative system of the Azerbaijan Republic (except Constitution of the Azerbaijan Republic and acts accepted by way of the referendum) and international agreements wherein the Azerbaijan Republic is one of the parties, provisions of international agreements shall dominate.³⁵

According to the Vienna Convention on the Law of Treaties that any state can sign a treaty with excluding the power of the provision which is called reservation.³⁶ Azerbaijan made two reservations to Article 5 (right to liberty), 6 (fair trial) and 10 (freedom of expression) while ratifying the European Convention on Human Rights.³⁷ The first reservation was made by Azerbaijani government with regard to Article 5 (right to liberty) and 6 (right to a fair trial) of the ECHR. Azerbaijani government made a reservation to Article 5 and 6 to keep the right of army officials to judge crimes during wartime.³⁸ Additionally, a reservation to Article 10 was not related to war situation in Azerbaijan. It was related to the establishment of mass media Companies Entities by foreign citizens, and this process shall be regulated by interstate treaties.³⁹ However, except the reservation, a declaration was made by Azerbaijani government, and it says:

The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Convention in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation (the schematic map of the occupied territories of the Republic of Azerbaijan is enclosed).⁴⁰

³³ Council of Europe, Treaty list for a specific State. Available on: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/AZE?p_auth=RKa5Q0VN. Accessed February 26, 2018.

³⁴ The Constitution of the Republic of Azerbaijan, Article 148.

³⁵ *Ibid*, Article 151.

³⁶ United Nations, *Vienna Convention on the Law of Treaties (with annex)*. Concluded at Vienna on 23 May 1969. Article 1 (d). Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. Accessed February 26, 2018.

³⁷ Council of Europe, Reservation and Declarations for Treaty No.005- Convention for Protection of Human Rights and Fundamental Freedoms. Available on: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&NT=005&VL=1>. Accessed February 27, 2018.

³⁸ *Ibid*.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

It should be mentioned many of domestic legislation were not compatible with European standards when Azerbaijan made reservations to the European Convention on Human Rights. Because Azerbaijan was under Russian Empire for more than 80 years and it needed to change many provisions of the various domestic legislation, and also adopt new laws. About this issue, Azerbaijan could have made more reservations, not only two articles. Although, making a lot of reservations would not be acceptable. However, these reservations were made as a result of the discussion of Parliament of the Republic of Azerbaijan.

2.3 The Relationship between the Azerbaijan and Council of Europe in 2018

Council of Europe is an international organization, and the primary aim of this organization is to protect human rights values and to support the development of democracy in Europe. The membership to Council of Europe is important to States for the establishment a relationship with all Member States. However, many commitments related the protection of human rights as well as the right to freedom of peaceful assembly and association were not implemented by the Azerbaijani authorities for 17 years. Furthermore, many resolutions on protecting the right to freedom of peaceful assembly and association were not implemented by the Azerbaijani government. Additionally, many judgments of the ECtHR on violation of human rights as well as, the right to freedom of peaceful assembly and association were not implemented by Azerbaijani government. But the Statute of the Council of Europe says:

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.⁴¹

The judgment of *Ilgar Mammadov v. Azerbaijan* was made by the ECtHR on 22 May 2014. Ilgar Mammadov was a chairman of the REAL opposition movement. He was a presidential candidate, which was held in 2013 and he always criticized the government. He was arrested on fake charges seven months before the election and he is still in prison. ECtHR held that Mammadov was arrested for his political activities.⁴² The government did not implement this judgment, and the infringement process was initiated by the Committee of Ministers of CoE against Azerbaijan on 5 December 2017. The ECtHR is reviewing whether Azerbaijan failed to fulfill its commitment to abide by the court's judgment in case of Ilgar Mammadov. After finding the violation by the ECtHR the voting rights of Azerbaijan should be suspended, even Azerbaijan can be removed from membership of the Council of Europe.⁴³ It should be noted that it is the first time that the Committee

⁴¹ The Statute of the Council of Europe, 1949, Article 3. Available on: <https://rm.coe.int/1680306052>. Accessed February 27, 2018.

⁴² *Ilgar Mammadov v. Azerbaijan* [First Section], no. 15172/13, 22 May 2014, § 63. Available on: <http://hudoc.echr.coe.int/eng/?i=001-144124>. Accessed March 03, 2018.

⁴³ Council of Europe, "Committee of Ministers launches infringement proceedings against Azerbaijan", December 05, 2017. Available on: <https://www.coe.int/en/web/portal/news-2017/->

of Ministers started infringement proceedings against a member state of CoE. But the main reason is that Azerbaijani government failed the implementation of ECtHR's judgments including judgments regarding freedom of assembly and association. Azerbaijani authorities does not want to lose the membership of Council of Europe, because still, this organization is the most important for Azerbaijan. Some reasons of the importance of CoE for Azerbaijan were explained by Marat Kengerlinsky, the Counselor Permanent Representation of the Republic of Azerbaijan to the Council of Europe. Firstly, he argued that the Council of Europe is important for Azerbaijan because the CoE offered its support to solve the Nagorno-Karabakh by peaceful means. Additionally he has stated that Azerbaijan is part of European community after joining to the Council of Europe. It helped the Azerbaijani government to build a relationship with the European Member States.⁴⁴ Azerbaijan is not a member of European Union and needs the Council of Europe for integrating into the European community

Moreover, Phillippe Dam, Advocacy director, Europe, and Central Asia Division of Human Rights Watch argues that infringement proceeding will take more time, which is an opportunity to the Azerbaijani government to change its politics regarding political prisoners issue in Azerbaijan.⁴⁵

THE MEANING OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION AND IMPLEMENTING THEM IN AZERBAIJAN

3.1 The Meaning and Importance the Right to Freedom of Peaceful Assembly and Association

The right to freedom of peaceful assembly is a fundamental right and people can enjoy this right individually or jointly with other people.⁴⁶ A public meeting, rally, protests, pickets are included in freedom of peaceful assembly. But ceremonies of weddings and funeral, festive and mourning actions are not included in freedom of peaceful assembly.⁴⁷ The aim of assemblies may be political, social, etc. But there should not be any violence during enjoyment of this right. Any assembly must be peaceful. A demonstration could be held for discussing any issue or just for the mutual sharing interests.⁴⁸ The terminology of the assembly must be outlined in domestic

[/asset_publisher/StEVosr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan](#). Accessed March 03, 2018.

⁴⁴ Marat Kengerlinsky, "Ten years of Azerbaijan's membership in the Council of Europe: A look back and into the future", September 01, 2010. Available on: http://biweekly.ada.edu.az/vol_3_no_16-17/Ten_years_of_Azerbaijan_membership_in_the_Council_of_Europe.htm. Accessed March 06, 2018.

⁴⁵ Phillippe Dam, "Azerbaijan Faces Legal Action for Defying European Court", *Human Rights Watch*, 2017. Available on: <https://www.hrw.org/news/2017/09/26/azerbaijan-faces-legal-action-defying-european-court>. Accessed March 06, 2018.

⁴⁶ OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010. Available on: <https://www.osce.org/odihr/73405?download=true>. Accessed March 06, 2018.

⁴⁷ The Republic of Azerbaijan, Serbest Toplasmaq Azadligi Haqqinda Qanun (The Law on Freedom of Assembly), 1998. Article 4. Available on: <http://www.e-qanun.az/framework/3229>. Accessed March 06, 2018.

⁴⁸ *Ibid.*

legislation of each State. Because it is important to define the scope of the right to freedom of peaceful assembly at the national level.⁴⁹

The right to freedom of association guarantees the right to establish the associations. People can join associations freely. Trade Unions, political parties, non-governmental organizations and religious unions are in the form of association.⁵⁰ The ECtHR also outlined the meaning of the association in its judgments. The court said:

The citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.⁵¹

The right to freedom of peaceful assembly is important for the development of individuals and prosperity of society. The right to freedom of assembly is essential for candidates during elections. The views of the candidates can be publicized through the holding assembly. The right to freedom of peaceful assembly and association are documented in the Constitutions of states, before their classification in international human rights treaties.⁵² For example, the first amendment to the Constitution of the United States says:

Congress shall make no law abridging the right of the people peaceably to assemble.⁵³

Furthermore, the European Court of Human Rights has often demonstrated the importance of respect for the right to freedom of peaceful assembly and association in its judgments. For example, in *Gorzelik and others v. Poland* the Court Stated:

Indeed, the state of democracy in the country concerned can be gauged by the way in which this freedom is secured under national legislation and in which the authorities apply it in practice (ibid.). In its case-law, the Court has on numerous occasions affirmed the direct relationship between democracy, pluralism and the freedom of association and had established the principle that only convincing and compelling reasons can justify restrictions on that freedom. All such restrictions are subject to rigorous supervision by the Court.⁵⁴

Furthermore, Maina Kaai, the former Special Rapporteur on the rights to freedom of peaceful assembly and of association mentioned in his report that the right to freedom of peaceful assembly and association is necessary for economic development, democracy, and human dignity.⁵⁵

⁴⁹ OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*.

⁵⁰ OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Association*, 2015. Available on: <https://www.osce.org/odihr/132371?download=true>. Accessed March 05, 2018.

⁵¹ *Sidiropoulos and others v. Greece* [GC], no. 26695/95, 10 July 1998. § 40. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-58205>. Accessed March 06, 2018.

⁵² William A. Schabas, *The European Convention on Human Rights – A Commentary*. (Oxford: Oxford University Press, 2015), p. 483.

⁵³ *Ibid.*

⁵⁴ *Gorzelik and others v. Poland* [GC], no. 44158/98, 17 February 2004. § 88. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-61637>. Accessed March 06, 2018.

⁵⁵ General Assembly of United Nations, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association*, 2016. Available on:

The right to freedom of peaceful assembly, together with the right to freedom of expression and association, provides sufficient protection for the gathering of people.⁵⁶ Also, the right to freedom of peaceful assembly and association can be linked to the right to freedom of religion. In *Moscow Branch of the Salvation Army v. Russia*, Court found a violation of Article 11 (the right to freedom of assembly and association) in light of the right to freedom of religion. In this case, the registration of the Moscow Branch of the Salvation Army has been refused.⁵⁷

In many countries, where wages are unequal and given less importance to social solidarity, trade unions try to solve social inequalities that are not efficiently resolved through the political system. Historically, trade unions have played an important role in the creation of democratic and pluralistic societies. The non-governmental organizations are necessary for developing democracy.⁵⁸ NGOs could help to protect people's rights and also supervise the activities of governments. However, non-democratic countries, also some EU states pressured NGOs to stop their activities.⁵⁹

However, the right to freedom of peaceful assembly and association give individuals the opportunity to deliver specific problems to states and international organizations more effectively. Nevertheless, the right to freedom of peaceful assembly and association are not absolute rights; there could be a restriction within international human rights standards. Therefore, it is required that states must create an appropriate environment to exercise the right to freedom of peaceful assembly and association. It should be noted that state cannot ensure the protection of the right to freedom of peaceful assembly and association without appropriate domestic legislation.⁶⁰

3.2 Relevant Domestic Legislation

It was mentioned above that the right to freedom of peaceful assembly and association recognized by the different international treaties, but appropriate domestic legislation is necessary to ensure these rights. Azerbaijan must respect and fulfill the right to freedom of peaceful assembly and association under the ECHR, and if legislative acts violate the international obligations, requirements of international agreements prevail.⁶¹ The Constitution is the leading legal act in

http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E. Accessed March 06, 2018.

⁵⁶ OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*.

⁵⁷ *Moscow Branch of the Salvation Army v. Russia* [First Section], no.72881/01, 5 October 2006, § 75. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-77249>. Accessed March 06, 2018.

⁵⁸ OSCE (ODIHR)-Venice Commission, *Guidelines on Freedom of Association*.

⁵⁹ Israel Butler, "NGOs are vital to democracy-Here's why", *Liberties EU*. Available on: <https://www.liberties.eu/en/news/ngo-why-they-are-needed-accountability-democracy-civil-organisation/11727>. Accessed March 06, 2018.

⁶⁰ OSCE (ODIHR)-Venice Commission, *Guidelines on Freedom of Association*. See also, OSCE (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*.

⁶¹ The Constitution of the Republic of Azerbaijan, Article 151.

Azerbaijan, but there are particular acts to regulate the right to freedom of peaceful assembly and association.

The Constitution of Azerbaijan itself guarantees freedom of peaceful assembly and association. The right to freedom of peaceful assembly outlined in Article 49 of Constitution of the Republic of Azerbaijan. This Article says that everyone has the right to meetings.⁶² According to Article 58 of Constitution, everyone has right to join other people freely.⁶³

However, the Constitution proposes some limitations to freedom of assembly. It says that the right to peaceful assembly is contingent on not violating “public order and morals.”⁶⁴ It means that Azerbaijani government could impose broad restrictions on the right to freedom of peaceful assembly for protection of public order and morals. However, the ECtHR has stated that it is allowed to impose restrictions on the right to freedom of assembly on public order ground, but it must be necessary in a democratic society.⁶⁵

According to the Constitution, activity of unions intended for the forcible overthrow of legal state power on the territory of the Republic of Azerbaijan or a part thereof is prohibited.⁶⁶ However, it is not clear that why the Constitution has used the phrase “unions” not “association”. Because it means that only the activity of public unions can be prohibited on these grounds which were described in this article.

The Law on Freedom of Assembly is an essential legal act, adopted in 1998 before accession to the Council of Europe. Many provisions of this law are compatible with European standards.⁶⁷ This law sets out a legal framework to exercise the right to freedom of peaceful assembly in Azerbaijan. The definition and forms of peaceful assembly, also procedures for holding an assembly are described in this law. However, the legal restrictions on the freedom of assembly were imposed under this law. Many amendments were made to the Law on Freedom of Assembly since adoption. Last change was made in 2015.⁶⁸ According to the Article 2 of the Law on Freedom of Assembly, the state shall secure equality of persons during the realization of the free assembly.⁶⁹ Generally, the Constitution of the Republic of Azerbaijan prohibited the discrimination. The Constitution says:

The state guarantees equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions, and other public organizations. Rights and liberties of a person, a citizen, cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging.⁷⁰

⁶² *Ibid*, Article 49.

⁶³ *Ibid*, Article 58.

⁶⁴ *Ibid*, Article 49.2.

⁶⁵ *Güneri and Others v. Turkey* [GC], no. 42853/98, 43609/98, 44291/98, 12 July 2005, ECHR. Available on: <http://hudoc.echr.coe.int/ENG?i=003-1393542-1460795>. Accessed March 06, 2018.

⁶⁶ *Ibid*, Article 58 (2)

⁶⁷ The Law on Freedom of Assembly of the Republic of Azerbaijan, Article 2.

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*, Article 2.

⁷⁰ The Constitution of the Republic of Azerbaijan, Article 25.3.

As said by Article 5 of the Law on Freedom of Assembly, a written notification should be sent by the assembly organizers five days before assembly. The time and venue of assembly must be agreed with the body of executive power, and also the body of executive power has to make important measures for holding an assembly.⁷¹ Contrary to this law, body executive powers argue that assembly organizers need authorization for holding an assembly and many times the body of executive powers did not allow for holding assembly without any reason. Furthermore, spontaneous assemblies do not require organizers to provide written notification, it is regulated by the same law, but there could be same restrictions to spontaneous assembly.⁷² Generally, the European Convention on Human Rights does not require prior notification for holding an assembly. But some member states, such as Poland and Azerbaijan included a provision to their domestic laws on requiring advance notification for forthcoming assemblies.⁷³ Furthermore, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association mentioned in his report that prior notification must be obligatory to large assemblies, not small or spontaneous assemblies. However, Special Rapporteur explained that States could require prior notification for protecting public safety.⁷⁴ Moreover, in *Rassemblement Jurassien Unité Jurassienne v. Switzerland*, the European Commission on Human Rights stated:

Such a procedure is in keeping with the requirements of Article 11 .1, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting, and accordingly does not as such constitute interference with the exercise of the right.⁷⁵

Consequently, after receiving the notification, the body of executive power should inform organizers about its response. If it is not held in one of the prohibited places or it does not coincide with another event, the security and safety of participants should be provided by the body of executive power. Additionally, list of venues for holding assemblies is put together by the body of executive powers which identify remote and unsuitable locations. Objective criteria are not used in the compilation of the list, resulting in inadequate venues for assemblies. However, people cannot hold the assembly in some places that are described in the Law on Freedom of Assembly. For example, it is prohibited to hold an assembly in a radius of 200 meters around buildings of Parliament of the Republic of Azerbaijan, Constitutional Court, the Supreme Court, etc.⁷⁶ Furthermore, there is no official ban on holding assemblies in the center of cities, particularly in Baku, but the body of executive powers do not allow to hold the assembly in the center of Baku. However, this is contrary to the principle of proportionality. The principle of proportionality requires that any restrictions on freedom of assembly must be proportional. The authorities should not restrict an assembly in the center of cities.

⁷¹ The Law on Freedom of Assembly of the Republic of Azerbaijan, Article 5.1.

⁷² *Ibid*, Article 5.7.

⁷³ OSCE (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, Para 115.

⁷⁴ General Assembly of United Nations, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association*, 2013, Para 52. Available on:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf.

Accessed March 07, 2018.

⁷⁵ *Rassemblement Jurassien Unité Jurassienne v. Switzerland*, no. 8191/78, Commission decision of 10 October 1979, DR 17, p.119.

⁷⁶ The Law on Freedom of Assembly of the Republic of Azerbaijan, Article 9.

Moreover, individuals and legal entities can be the organizer of assembly, but all names of organizers should be written in the notification.⁷⁷ It should be noted that Azerbaijani government made a positive change to the Law on Freedom of Assembly on allowing foreigners and non-nationals for holding the assembly in Azerbaijan. Until 2008, this law did not allow to foreigners and stateless for enjoying of a right to peaceful assembly in Azerbaijan. It was not in line with international human rights law, because international human right law calls that non-nationals also enjoy the freedom of peaceful assembly.⁷⁸

Although, the people's right to appeal to domestic courts is defined in the Law on Freedom of Assembly. A decision of the body of executive powers on not allowing to hold assembly must be reviewed by court within two days.⁷⁹ However, the ECtHR has stated that there must be a possibility to get a decision for holding assembly.⁸⁰ But in many cases, the decisions were not reviewed by the courts in time, in Azerbaijan.

Furthermore, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission have prepared guidelines on freedom of assembly for helping member states to conform their legislation on freedom of peaceful assembly with the European standards. States can improve their domestic legislation within this guideline.⁸¹ Additionally, the OSCE/ODIHR and OSCE Office in Baku prepared guidelines on the implementation of the Law on Freedom of Assembly of the Republic of Azerbaijan.⁸² It was mentioned that the right to freedom of peaceful assembly should be regulated by well-prepared legislation. Generally, the many issues related to the protection of the right to freedom of assembly are included in the Law on Freedom of Assembly. But there are problems with regard to the implementation of this law. Additionally, amendments to the Law on Freedom of Assembly were adopted without discussion with the community. But according to the Law of the Republic of Azerbaijan on Public Participation, amendments or draft laws should be discussed with the community, because it could help in understanding the necessity of these changes in society. Last amendments to this law were adopted by the Milli Majlis without public discussion.⁸³

Moreover, the OSCE/Venice Commission stated in its Guidelines on Freedom of Assembly that it is important to inform the community on regulating body for holding an assembly. The regulating body is the body of executive powers in Azerbaijan.⁸⁴ However, the community was not informed about it, and generally, the doors of the body of executive powers are closed to the community in Azerbaijan. In some cases, spontaneous assemblies were held against the body of executive powers of different regions. Because the main function of the body of executive powers is to solve the socio-economic problems within its competence. However, instead of addressing

⁷⁷ *Ibid.* Article 6 (1, 2).

⁷⁸ *Ibid.*, Article 8,9.

⁷⁹ *Ibid.*, Article 11.

⁸⁰ *Baczowski and others v. Poland*, no. 1543/06, 03 May 2007. Para 81. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-124656>. Accessed March 07, 2018.

⁸¹ OSCE (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*.

⁸² OSCE's Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the implementation of the Law on Freedom of Assembly of the Republic of Azerbaijan, 2008*. Available on: <https://www.osce.org/odihr/34311?download=true>. Accessed March 09, 2018.

⁸³ The Republic of Azerbaijan. *Ictimai Iştirakçiliq haqqında Qanun (Law on Public Participation)*, 2013. Article 1. Available on: <https://www.president.az/articles/10814>. Accessed March 09, 2018.

⁸⁴ OSCE/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, Para 61.

people's problems in the regions, the body of executive powers interferes with their rights, especially the property rights and other social rights. The negative aspect of the Law on Freedom of Assembly is that there are no provisions about the liability of the body of executive powers for violation of the right to freedom of peaceful assembly. However, sanctions are envisaged for obstruction of freedom of assembly in Criminal Code of the Republic of Azerbaijan and Code of Administrative Offences of the Republic of Azerbaijan against individuals and legal entities.⁸⁵ But sanctions against police are regulated by the Law on Police of the Republic of Azerbaijan for violation of Law on Freedom of Assembly.⁸⁶

The right to freedom of association was recognized in international documents, such as the United Nations (UN) Universal Declaration of Human Rights (Article 20)⁸⁷, UN International Covenant on Civil and Political Rights (Article 22)⁸⁸ also ECHR. However, the types of the association are regulated by various national laws more extensively.⁸⁹ The OSCE/ODIHR and the Venice Commission prepared guidelines on Freedom of Association for providing legislative support to ensure the freedom of association in member states of OSCE and CoE. Also, OSCE/ODIHR and the Venice Commission assisted member states to make their legislation on freedom of association. However, domestic legislation of the member states must be compatible with the international human rights standards.⁹⁰

The Registration process of associations:

The Registration of Non-Governmental Organizations (NGOs) and political parties are regulated equitably and by the sole legislation the Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities without prejudice to areas of work of organizations. According to the Law on State Registration and State Registry of Legal Entities, an institution proposing to obtain the status of a legal entity - a person or a group of persons can apply to a relevant executive power body.⁹¹ An NGO (Public Association or Foundation) should submit documents required by the law to the Ministry of Justice, which reviews the documents and if there are any shortcomings, sends the documents back to the applicant. The NGO should re-send the documents after correcting the shortcomings.⁹² Generally, the registration is not obligatory for NGOs. Political parties are also not obliged to register. But it was mentioned in the Law of the Republic of Azerbaijan on Political Parties (hereinafter referred as the Law on Political Parties)

⁸⁵ The Criminal Code of the Republic of Azerbaijan, 1999. Article 169. Available on:

<http://www.wipo.int/edocs/lexdocs/laws/en/az/az017en.pdf>. Accessed March 09, 2018;

See also, The Republic of Azerbaijan. Inzibati Xetelər Məcəlləsi (the Code of Administrative Offences of the Republic of Azerbaijan), 2000. Article 180, 513. Available on: <http://www.e-qanun.az/code/24>. Accessed March 09, 2018.

⁸⁶ The Republic of Azerbaijan. Polis Haqqında Qanun (Law on Police), 1999, Article 33. Available on:

<http://www.e-qanun.az/framework/2937>. Accessed March 09, 2018

⁸⁷ United Nations, *Universal Declaration of Human Rights*, 1948. Article 20. Available on:

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf. Accessed March 09, 2018.

⁸⁸ United Nations, *International Covenant on Civil and Political Rights*, 1966, Article 22. Available on:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed March 09, 2018.

⁸⁹ OSCE (ODIHR)/Venice Commission, *Guidelines on Freedom of Association*.

⁹⁰ *Ibid.*

⁹¹ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 2.

⁹² *Ibid.*, Article 8.

that political parties shall be registered.⁹³ However, it was noted that the non-registered political party could not act as a registered party.⁹⁴ According to the Law on Political Parties, the political parties can be registered by 1,000 members of the political party.⁹⁵ However, this provision is not precise, because it does not refer to any concrete legal reasons for this requirement. However, the ECtHR extended to the political parties the right to freedom of association in its judgments. For example, in *United Communist Party of Turkey and Others v. Turkey* Court stated that political parties are included to the scope of Article 11 of ECHR.⁹⁶

However, regulations of the registration process are very complicated in Azerbaijan and are in inconsistent with the European standards. State registration of non-governmental organizations, as well as branches or representative of foreign NGOs, should be implemented no more than 40 days. But, time can be extended for an additional 30 days if needed for additional investigation of documents.⁹⁷ Also, according to the Law on State Registration and State Registry of Legal Entities, Ministry of Justice must identify all mistakes and shortcomings in the documents at once, and stop finding new mistakes to justify refusal of the registration.⁹⁸ But Ministry of Justice sent back documents many times with finding new mistakes. In many cases, the Ministry of Justice refused the applications of NGOs to refer to Article 5 of the Law on State Registration and State Registry of Legal Entities that documents are not appropriate to requirements. However, in these cases, instead of rejecting the registration of NGOs, the Ministry of Justice could ask to provide additional documents which are not appropriate to law. However, The Venice Commission has stated that registration should not be refused based on technical issues.⁹⁹ Moreover, there is no precise data about some registered and unregistered NGOs and political parties in Azerbaijan in recent years. Because Ministry of Justice did not publish this information on the website. According to the Venice Commission that 2,700 NGOs are registered and, there are 1.000 unregistered NGOs in Azerbaijan until 2014.¹⁰⁰

Furthermore, according to the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations), (hereinafter referred as the Law on Non-Governmental Organizations) an NGO or legal representatives of NGOs may be founded by non-nationals or stateless persons who have a residence permit in Azerbaijan.¹⁰¹ But non-nationals or stateless cannot be a member of political parties. This is discrimination against non-nationals and is not compatible with international human rights standards. But states must ensure that domestic

⁹³ The Republic of Azerbaijan, *Siyasi Partiyalar Haqqında Qanun* (Law of the Republic of Azerbaijan on Political Parties), 1992, Article 14.1. Available on: <http://www.e-qanun.az/framework/7090>. Accessed March 10, 2018.

⁹⁴ *Ibid*, Article 14.2.

⁹⁵ *Ibid*, Article 4.

⁹⁶ *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, no. 133/1996/752/951, §25. Available on: <http://hudoc.echr.coe.int/eng/?i=001-58128>. Accessed March 12, 2018.

⁹⁷ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 8.3.

⁹⁸ *Ibid*.

⁹⁹ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Foundations) as amended of the Republic of Azerbaijan*.

¹⁰⁰ *Ibid*, Para 6.

¹⁰¹ Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations), 2000, Article 9.1-1. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/AzerNGOlaw.pdf>. Accessed March 12, 2018.

legislation provides mechanisms needed for permitting individuals to associate and form political parties with others.¹⁰²

The other types of association are the religious organizations and trade unions. The religious organizations should be registered, is not allowed to operate in Azerbaijan without state registration. The religious organizations are registered by the State Committee on Religious Associations of the Republic of Azerbaijan. Also, the registration of religious organizations is regulated by the Law of the Republic of Azerbaijan on Freedom of Religious Beliefs.¹⁰³ But, the OSCE/ODIHR and the Venice Commission mentioned in its Guidelines for Review of Legislation Pertaining to Religion or Belief, the activities of religious organizations can be regulated with the same legislation which applies to other associations.¹⁰⁴ In some countries, religious organizations are not obliged to register. However, in *Gorzelik v. Poland*, Court mentioned that obtaining legal status is one of the features of the right to association.¹⁰⁵ It should be noted that there is no provision for allowing or prohibiting to foreigners to establish religious organizations in the territory of Azerbaijan Republic. This gaps in the law allow the relevant registrar body to restrict to foreigners for the establishment of religious organizations in Azerbaijan. Moreover, Trade Unions can obtain legal status after state registration, but state registration is not obligatory for trade unions.¹⁰⁶ Trade unions may be formed by workers, pensioners and educated persons.¹⁰⁷ However, the creation of trade unions is not widespread in Azerbaijan.

Regulation of activities and access to funding of associations:

The most commonly used type of association in Azerbaijan is non-governmental organizations. From 2005, public participation was directed towards civil society, particularly NGOs and youth organizations without affiliation with political parties. The main act is the Law on Non-Governmental Organizations, and it regulates the operation of non-governmental organizations and foundations, as well as branches and representations of foreign non-governmental organizations.¹⁰⁸ But this law has some negative aspects. Firstly, if a non-governmental organization, as well as a branch or representative office of a foreign non-governmental organization, is issued written warnings more than twice in a year they could be liquidated by court decision based on the application, which was submitted by relevant executive powers.¹⁰⁹ This provision allows to Ministry of Justice to liquidate human rights NGOs. Because the courts are not independent in Azerbaijan. However, the Council of Europe recommended that NGOs can be liquidated if the organization has gone bankrupt or NGO does not function for a long time and if NGO makes the

¹⁰² OSCE/ODIHR and the Venice Commission, *Guidelines on Political Party Regulation*, 2011. Para 15. Available on: <https://www.osce.org/odihr/77812?download=true>. Accessed March 12, 2018.

¹⁰³ The Republic of Azerbaijan. Dini Etiqad Azadligi haqqinda Qanun (Law of the Republic of Azerbaijan on Freedom of Religious Beliefs), 1992. Article 1. Available on: <http://www.e-qanun.az/framework/7649>. Accessed March 09, 2018.

¹⁰⁴ OSCE (ODIHR)/Venice Commission, *for Review of Legislation Pertaining to Religion or Belief*, 2004. Para 1. Available on: <https://www.osce.org/odihr/13993?download=true>. Accessed March 09, 2018.

¹⁰⁵ *Gorzelik and others v. Poland*. Para 88.

¹⁰⁶ The Republic of Azerbaijan, Hemkarlar Ittifaqi Haqqinda Qanun (the Act of the Republic of Azerbaijan on Trade Unions), 1994. Article 4. Available on: <http://www.e-qanun.az/framework/8987>. Accessed March 12, 2018.

¹⁰⁷ *Ibid*.

¹⁰⁸ The Law on Non-Governmental Organizations (Public Associations and Foundations) Article 9.

¹⁰⁹ *Ibid*, Article 31.4.

serious violation of relevant laws.¹¹⁰ However, Article 31 of the Law on Non-Governmental Organizations provides an opportunity to members for applying to court on suspension the activity of NGOs, when NGOs violated the rights of its members.¹¹¹ This is an unnecessary power which was given to members. Because the relationship with the member is an internal issue regulates with Statutes of NGOs. However, Article 10 of Law on Non-Governmental Organizations says that getting NGO's membership and termination of membership is determined by Statutes of NGOs. But NGO must ensure that any member could apply to organization and court on termination of membership.¹¹² It is unnecessary intervention on the relationship between NGOs and members, however, under this provision NGOs can be avoid the acceptance of membership of people. Another negative aspect of this law is that the appropriate executive authority should be informed of the activities of NGOs, as well as the branches and representatives of foreign NGOs.¹¹³ However, physical and legal entities cannot create any obstacles to an executive authority for learning activity of NGOs as well as branches and representatives of foreign NGOs.¹¹⁴ This change was unnecessary because Ministry of Justice can learn the compliance of the activities NGOs and representatives of foreign NGOs in accordance with the legislation of the Republic of Azerbaijan under Clause of the Regulation on the Ministry of Justice of Azerbaijan Republic.¹¹⁵ This change provides an opportunity to Ministry of Justice for learning the activities of NGOs without any reason. Before this change, Ministry of Justice should search in NGO's office together with representative of Ministry of Finance or other organizations. There was no need to give more power to Ministry of Justice because the Ministry used this power for punishing independent NGOs in recent years. However, this provision makes NGOs dependent on the Ministry of Justice because they are afraid of heavy fines and abolition. Furthermore, access to funding of NGOs is regulated by the Law of the Republic of Azerbaijan on Grants (hereinafter referred as Grant Law, or Azerbaijani Law on Grants). According to this law, Public Associations and individual persons have to send the copies of agreements to the Ministry of Justice for registration after signing grant agreements.¹¹⁶ They have to send sub-grant agreements and amendments to agreements for registration too. The registration process is regulated by Rules No. 216 of the Cabinet of Ministers of the Republic of Azerbaijan.¹¹⁷ The weak side of this provision that NGOs are not able to operate without registration of grant agreements.¹¹⁸

¹¹⁰ The Committee of Ministers of Council of Europe, Recommendation on Legal Status of Non-Governmental Organizations in Europe, no. 14, 2007. Para 47. Available on: <https://rm.coe.int/16807096b7>. Accessed March 12, 2018.

¹¹¹ The Law on Non-Governmental Organizations (Public Associations and Foundations), Article 31 (6).

¹¹² *Ibid*, Article 10.

¹¹³ *Ibid*, Article 30-1.1.

¹¹⁴ *Ibid*, Article 30-1.3.

¹¹⁵ The Republic of Azerbaijan. Edliyye Nazirliyi haqqında Esasname (Clause of the Regulation on the Ministry of Justice of the Republic of Azerbaijan), 2006. Article 9.13. Available on: <http://www.justice.gov.az/?view=posts&id=1095>. Accessed March 17, 2018.

¹¹⁶ The Law of the Republic of Azerbaijan on Grant, 1998. Article 4.4. Available on: [file:///Users/gunayismayilova/Downloads/Azerbaijan_Law_on_grant_1998_am2013_en%20\(1\).pdf](file:///Users/gunayismayilova/Downloads/Azerbaijan_Law_on_grant_1998_am2013_en%20(1).pdf). Accessed March 17, 2018.

¹¹⁷ Cabinet of Ministers of the Republic of Azerbaijan, Rule Registration of Grant Agreements/Contracts (Decisions/Orders), no. 216, 2015. Article 1.2. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/ResAzer.pdf>. Accessed March 17, 2018.

¹¹⁸ *Ibid*.

Moreover, the activities of trade unions are regulated by the Act of the Republic of Azerbaijan on Trade Unions (hereinafter referred as Act on Trade Unions) and Labour Code of the Republic of Azerbaijan. According to the Act on Trade Unions, the Trade Unions cannot carry out political activities and should not depend on the NGOs, political parties, and state bodies.¹¹⁹ Furthermore, Azerbaijan is a member of the International Labour Organization and has ratified the International Labour Organization's Conventions.¹²⁰ Trade unions have right to engage in collective bargaining under the Act on Trade Unions of Azerbaijan and.¹²¹ However, Article 4 of International Labour Organization Convention No. 98 concerning the Right to Organize and to Bargain Collectively states:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.¹²²

Additionally, trade unions may have property, financial resources, and foreign currency funds based on collective property rights.¹²³ Furthermore, the operation and access to funding of the political parties are regulated by the Law on Political Parties. According to this law that only a citizen of the Republic of Azerbaijan can donate to political parties, but this amount cannot be more than ten thousand in a year. Moreover, the religious organizations have the right to use the property of states, public institutions or citizen which was given on contractual basis.¹²⁴

Therefore, there are some problematic gaps in these laws, because some laws were adopted at least 16 years ago. They should be revised now with the purpose to better express human rights standards. However, there are many problems about the implementation of these laws.

3.3 Problems and Challenges on the Protection of the Right to Freedom of Peaceful Assembly and Associations

Azerbaijan is a member of Council of Europe for 17 years. It is a very lengthy period, but Azerbaijani government did not implement the commitments to the Council of Europe on human rights during these years. Human rights violation is a long-term and widespread problem in Azerbaijan. Although violation of the right to freedom of peaceful assembly and association is not

¹¹⁹ *Ibid*, Article 6.

¹²⁰ International Labour Organization, *Convention No. 98 concerning the right to Organise and to Bargain Collectively*, 1949, Article 4. Available on: http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102556. Accessed March 12, 2018.

¹²¹ The Act of the Republic of Azerbaijan on Trade Unions, Article 14.

¹²² International Labour Organization, *Convention on Right to Organise and Collective Bargaining*, Article 4.

¹²³ The Act of the Republic of Azerbaijan on Trade Unions, Article 24.

¹²⁴ The Law of the Republic of Azerbaijan on Political Parties, Article 16.

result of actions of certain subjects and groups or committed beyond the existing system or state apparatus. Public officials responsible for the violations view it as a part of their service duties and not as an infringement of the law.

The Azerbaijani government restricts the right freedom of peaceful assembly and association. The government made amendments to the Law on Freedom of Assembly on extending the length of administrative detention and increasing fines for coordinating and participating in unofficial assemblies.¹²⁵ These sanctions and other punishments are widely applied to rebuke many citizens who exercise their right to freedom of assembly. Sanctions applied on organizers of unofficial assemblies are disproportionately harsh. In many cases, local authorities refused to allow assemblies in suitable places within cities. Local authorities had a list of venues, which is available for people holding an assembly. Most of them are outside the center and, they are inadequate venues for assemblies. Additionally, people are not able to hold any spontaneous assembly in Baku and surrounding regions. Police intervene in spontaneous demonstrations, flash mobs and other small and unofficial gatherings. However, before the official demonstration, political activists are called to the police department for interrogation. Police officers pressured activists not to participate in the protests which are organized by the opposition parties. The activists are arrested for 15-30 days for resisting police before holding an assembly.¹²⁶ In *Huseynli and others v. Azerbaijan*, ECtHR holds that arrest of political activists before protests amounted to an interference with the applicants' right to freedom of peaceful assembly. The court considered administrative detentions were made to punish them for political activities.¹²⁷

Furthermore, political activists are arrested for participating in assembly. The ECtHR ruled that arrest of people for participating in assembly will constitute an interference with the right to freedom of assembly.¹²⁸ Additionally, Nils Muiznieks, former Commissioner for Human Rights of the Council of Europe mentioned in his report that police used force against activists who participated in demonstrations, and he called the government and stated:

Authorities have to adopt effective measures to prevent the use of force against peaceful protestors by law enforcement officials.¹²⁹

Although, PACE adopted a resolution regarding the functioning of democratic institutions in Azerbaijan and criticized that arresting the political activists for barring the assemblies have negative influence to the implementation of the right to freedom of peaceful assembly.¹³⁰

¹²⁵ Freedom of House, *Report on Freedom in the World*, 2016. Available on:

<https://freedomhouse.org/report/freedom-world/2016/azerbaijan>. Accessed March 20, 2018.

¹²⁶ Meydan TV, "AFPF argues that Party members detained for protest", April 01, 2018. Available on: <https://www.meydan.tv/az/site/news/28038/>. Accessed April 02, 2018.

¹²⁷ *Huseynli and others v. Azerbaijan* [Fifth Section], no. 67360/11,67964/11, 69379/11, 11 February 2016, § 63. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-160429>. Accessed April 02, 2018.

¹²⁸ *Galstyan v. Armenia* [Third Section], no. 26986/03, 11 November 2007, § 102, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-83297>. Accessed April 02, 2018.

¹²⁹ Commissioner for Human Rights of the Council of Europe, *Report by Nils Muiznieks following his visit to Azerbaijan from 22 to 24 May 2013*. Available on: [https://rm.coe.int/ref/CommDH\(2013\)14](https://rm.coe.int/ref/CommDH(2013)14). Accessed April 02, 2018.

¹³⁰ PACE, Resolution on the functioning of democratic institutions in Azerbaijan, no. 2184 (2017), Para 14. Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24188&lang=en>. Accessed April 02, 2018.

It should be noted that there is no any assembly that turned violent during recent years. All assemblies were held peacefully. Furthermore, journalists had been subjected to torture during the demonstration. Police used physical force against journalists even they were wearing a special vest identifying them as a journalist. Sarvan Rizvanov, a former journalist was subjected to torture by police during the demonstration in 2005. In *Rizvanov v. Azerbaijan*, the ECtHR found a violation of the Article 3 (prohibition of torture) of the ECHR, and it mentioned that torture and inhuman or degrading treatment was prohibited by the ECHR.¹³¹

Freedom of association is a right, which was violated by government rapidly. NGOs are divided into two groups, independent and pro-government NGOs. Independent NGOs are subjected to pressure for criticizing the government's activities. The criminal case against local and international NGOs launched in April 2014 by the Serious Crimes Investigation Department of the Prosecutor General's Office.¹³² Furthermore, the Chairmanship of the Committee of Ministers of the Council of Europe was undertaken by Azerbaijan from May till November of 2014. Until Chairmanship, restrictive amendments were made to the Law on Non-Governmental Organizations, Azerbaijani Law on Grants which created difficulties for NGOs operating.¹³³ During the Chairmanship, independent NGO leaders, Intigam Aliyev, Rasul Jafarov, and Leyla Yunus were imprisoned with fake charges. In *Jafarov v. Azerbaijan*, ECtHR mentioned that the real aim of Jafarov's detention was to punish him for human rights activities.¹³⁴ Some NGO leaders were subjected to travel bans as part of the criminal case against NGOs. The Author was deputy chairman of Institute for Reporters' Freedom and Safety in 2014. It was independent NGO, whose aim is to protect and promote fundamental freedoms especially freedom of expression in Azerbaijan. The author had travel ban as part of this criminal case, but there was no charge against her, just was a witness and was interrogated three times by the investigators. This ban was a violation of Law of the Republic of Azerbaijan on Leaving and Coming country and Passports, where law says that only people that cannot leave the country are against those who have an ongoing criminal case.¹³⁵ Simultaneously, the bank accounts of NGOs and their leaders had been frozen in 2014, and still, some NGOs' bank accounts remain under freeze. Additionally, high tax fines were made against independent NGOs within this criminal case. NGOs applied to the court for cancellation of the decision, but the proceedings were suspended by domestic courts.¹³⁶

On April 11, 2018, there was an extraordinary presidential election in Azerbaijan. However, the Elections Monitoring and Democracy Studies Center (EMDS), whose primary aim is to protect the election rights in the country, was not able to observe this election. The reason is the wrong

¹³¹ *Rizvanov v. Azerbaijan* [First Section], no. 31805/06, 17 April 2012, § 43. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-110488>. Accessed April 02, 2018.

¹³² Institute for Reporters' Freedom and Safety, "NGO crackdown continues-yet another NGO searched", May 17, 2015. Available on: <https://www.irfs.org/news-feed/ngo-crackdown-continues-yet-another-ngo-searched/>. Accessed April 02, 2018.

¹³³ International Media Support, *Report on Azerbaijan's Council of Europe Chairmanship: the End of Civil Society.*, 2014, p.10. Available on: https://www.mediasupport.org/wp-content/uploads/2014/12/AZ-chairmanship-crackdown-report_FINAL.pdf. Accessed April 02, 2018.

¹³⁴ *Jafarov v. Azerbaijan* [First Section], no. 69981/14) 16 March 2016. §162. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-161416>. Accessed April 02, 2018.

¹³⁵ The Republic of Azerbaijan, *Olkeye gelmek, olkeden getmek ve Passportlar haqqinda Qanun* (The Law of the Republic of Azerbaijan on Leaving and Coming country and Passports), 1994, Article 1. Available on: <http://www.mfa.gov.az/files/file/42.pdf>. Accessed April 02, 2018.

¹³⁶ Zohrab Ismayil, a Facebook message to author, April 02, 2018.

NGO policy in the country. After changing the NGO legislation, NGOs are not able to get any fund, generally no possibility to work independently in Azerbaijan.¹³⁷ Now, the main national donor is Council for the Support to NGOs under the President, which allocates funds to mainly pro-governmental NGOs. The Council of Europe has repeatedly expressed concern over these violations, and several resolutions were adopted by PACE against Azerbaijan. Regarding the violation of freedom of association PACE stated:

Ensure that no pressure or repression is exerted on civil society organizations and their members and create an environment conducive to NGO activities, removing travel bans affecting NGO leaders, journalists and political activists, including human rights lawyer Intigam Aliyev and investigative journalist Khadija Ismayilova.¹³⁸

However, amendments to NGO legislation have paralyzed the activities of NGOs. Also, some tax penalties for NGOs and the criminal cases have been filed against NGOs, also remain. Bank accounts of NGOs and NGO leaders have not been lifted, and there is still a travel ban on some NGO leaders continue. NGO leaders are exposed to groundless checks when leaving the country.

Furthermore, the religious organizations are also subjected to a pressure of government. The Muslim Unity Movement is a religious organization, and at least seventy members of this union were arrested in 2015. Police attacked to a mosque in Nardaran for arresting these people. The members of the religious organization are accused of trying to establish an Islamic government in Azerbaijan. These people are sentenced 10-20 years in prison. Additionally, they had been subjected to torture during detention.¹³⁹

It should be mentioned that opposition political parties are not able to hold Congress. Because the body of executive powers refused to provide a venue for holding a congress of political parties. However, a political party shall be established through the holding of constituent congress.¹⁴⁰ For example, in 2017, REAL Movement planned to establish a political party. They applied to the Baku City Executive for allocating venue to hold a constituent congress. However, the Baku City executive power refused to allocate venue for the Congress. REAL Movement applied to other political parties for allowing them to hold a congress in their places. Musavat Party agreed to give its office, but the chair of Musavat Arif Hajili was summoned to the office of Organized Crimes Unit and was notified against the event. Following the pressure by the authorities, Musavat party suggested to postpone the Congress, and the Congress of REAL Movement was postponed.¹⁴¹ Additionally, political parties cannot participate in the elections. Candidates of opposition political parties are not registered by the Central Election Commission. In *Khanhuseyn Aliyev v. Azerbaijan*, Court found a breach of Article 3 of Protocol I. Khanhuseyn Aliyev was registered as a candidate for Parliamentary Election from opposition bloc, but an Appeal canceled his registration. In this case, Court concluded:

¹³⁷ Anar Mammadli, e-mail message to author, April 11, 2018.

¹³⁸ PACE, Resolution no. 2184 (2017), Para 16.7.2.

¹³⁹ Meydan TV, "Islamic Games: Repression on Believers in Azerbaijan", May 13, 2017. Available on: <https://www.meydan.tv/en/site/society/22910/>. Accessed April 11, 2018.

¹⁴⁰ The Law of the Republic of Azerbaijan on Political Parties, Article 5-1.

¹⁴¹ Meydan TV, "Musavat Party was warned about Congress", December 14, 2017. Available on: <https://d9mc3ts4czbpr.cloudfront.net/az/site/politics/26553/>. Accessed April 11, 2018.

the applicant's disqualification from running for election was not based on sufficient and relevant evidence, the procedures of the electoral commission and the domestic courts did not afford the applicant sufficient guarantees against arbitrariness, and the domestic authorities' decisions lacked sufficient reasoning and were arbitrary.¹⁴²

Therefore, the authorities attempt to undermine political participation by any means. The authorities, who command a significant amount of resources, have mainly been "successful" in weakening the political participation. Active interference of the government is likely to continue. Additionally, it should be noted that the Council of Europe's activities are not satisfactory and some members of PACE members of parliament have been corrupted. Independent Investigative Body on Corruption Accusations in PACE prepared report on systemic bribery of a number of deputies. Some deputies received gifts and voted in favor of certain states. It was mentioned that deputies of PACE received various gifts from Azerbaijani government.¹⁴³

3.4 The Influence of the Current Political and Economic Situations

Azerbaijan is a young post-Soviet state which gained its independence in 1991. Like other post-Soviet states, Azerbaijan does not have well-established state institutions. Institutions of democratization, human rights, and participation, the focus of the document, were introduced to the political discourse of Azerbaijan only recently, after the collapse of the Soviet Union. It should be noted that there are many problems on protection of the right to freedom of assembly and association in Azerbaijan since 2005. Most international principles do not work to solve these problems. Freedom House stated in its report that Azerbaijan has been governed by Ilham Aliyev and this country is recognized as a corrupted country.¹⁴⁴

Violation of the right to freedom of peaceful assembly and association in Azerbaijan are compatible with the interests of the political regime and are carried out to remove any developments that could negatively influence those interests. However, many state officials, especially President Aliyev argues that there is no violation of freedom of assembly and association. Ilham Aliyev, President of Azerbaijan, stated that all human rights, as well as the right to freedom of assembly and association are protected in Azerbaijan.¹⁴⁵ In fact, people cannot enjoy the right to freedom of peaceful assembly and association. During a conversation with Clare Short, the chair of Extractive Industries Transparency Initiative (EITI) Ilham Aliyev accepted that he knew about the crackdown against NGOs and NGO leaders which was made in 2014. He stated:

¹⁴² *Khanhuseyn Aliyev v. Azerbaijan*, [First Section], no. 19554/06, 21 February 2012, § 42. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-109144>. Accessed April 11, 2018.

¹⁴³ Independent Investigation Body of PACE, *Report of the on the allegations of corruption within the Parliamentary Assembly of Council of Europe*, 2018, Available on: <http://assembly.coe.int/Communication/IBAC/IBAC-GIAC-Report-EN.pdf>. Accessed April 11, 2018.

¹⁴⁴ Freedom House, *Freedom in the World 2017*, Available on: <https://freedomhouse.org/report/freedom-world/2017/azerbaijan>. Accessed April 11, 2018.

¹⁴⁵ Azertag, "President Ilham Aliyev addressed the opening of 72nd Session of UN General Assembly", September 20, 2017. Available on: [https://azertag.az/en/xeber/President Ilham Aliyev addressed opening of 72nd Session of UN General Assembly VIDEO-1095443](https://azertag.az/en/xeber/President%20Ilham%20Aliyev%20addressed%20opening%20of%2072nd%20Session%20of%20UN%20General%20Assembly%20VIDEO-1095443). Accessed April 11, 2018.

Yes, we have imposed restrictions on the civil society because of the Maidan events in Ukraine and other events taking place in the region. But I am proud that I put our country's signature at EITI in London in 2003. I'd like that we remain in this organization. If anyone gives us a concrete explanation of what the problems are, I will give an order for the elimination of those problems, so that the civil society can freely operate within EITI.¹⁴⁶

Furthermore, the President and other state officials showed aggression against opposition party leaders and also NGO leaders. In 2014, President Ilham Aliyev made a speech at the fifth meeting of Azerbaijani diplomatic service bodies in the Ministry of Foreign Affairs. In his speech, he showed that all violations were made under his control and he does not want to fulfill international obligations of Azerbaijan on human rights.¹⁴⁷

Ramiz Mehdiyev, the Head of Azerbaijani Presidential Administration gave interviews and wrote some articles on the activity of NGOs and opposition political parties. He argued that NGOs sends unjustified reports to international organizations because international organizations had the plan to organize anti-Azerbaijan campaigns in the international area.¹⁴⁸

Therefore, the main reason for violation of freedom of assembly and association is Azerbaijani government. The country is governed by the President and the members of parliament, judges, ministers and impartiality was questioned by the people. Azerbaijan was attractive for the United States (US), and European Union (EU) and Azerbaijan started partnerships with US and EU on energy. Over the last 16 years, State Oil Fund of Azerbaijan (SOFAZ) collected more than \$133 billion from international oil-gas projects.¹⁴⁹ But the oil price started to decrease, and there were two devaluations in Azerbaijan in 2015. People tried to hold protests on social problems and were subjected to pressure by the government. There is no income social security in Azerbaijan. Revenue of government is very less from the non-oil sector, and the government is using pressure policy to maintain silence in the country. This policy had led to violations of freedom of peaceful assembly and association.

Ilham Aliyev, the current President, was elected for the fourth term on April 11, 2018. This election was boycotted by some opposition parties, such as Musavat Party, REAL Alternative party. The parties argue that the early election date left them with inadequate time to significantly participate.¹⁵⁰ After the election, the new crackdown started against activists. The relatives of political activists who are outside the country were arrested with fake charges to pressure the political activists from stopping their activities.¹⁵¹ Therefore, people cannot influence the current

¹⁴⁶ Institute for Reporters' Freedom and Safety, "Conversation with Ilham Aliyev about pressure on civil society". October 12, 2015. Available on: <https://www.irfs.org/news-feed/conversation-with-ilham-aliyev-about-pressure-on-civil-society/>. Accessed April 11, 2018.

¹⁴⁷ Radio Liberty, "President Aliyev: some people who called themselves the opposition or human rights activist", 2014. Available on: <https://www.azadliq.org/a/25448937.html>. Accessed April 11, 2018.

¹⁴⁸ Vestnik Kavkaza, "Could a Euromaidan happen on Azadlig Square?", 2014. Available on: <http://vestnikkavkaza.net/articles/politics/59569.html>. Accessed April 11, 2018.

¹⁴⁹ Renking News Agency, "SOFAZ has so far received over \$ 133 billion in oil and gas projects", April 04, 2018. Available on: <http://renking.az/site/news?id=1303>. Accessed April 11, 2018.

¹⁵⁰ OSCE Office for Democratic Institutions and Human Rights Election Observation Mission Republic of Azerbaijan, *Interim Report on Early Presidential Election 2018 in Azerbaijan*. Available on: <https://www.osce.org/odihr/elections/azerbaijan/376570?download=true>. Accessed April 12, 2018.

¹⁵¹ Meydan TV, "Ordukan's nephew was detained", April 29, 2018. Available on: <https://www.meydan.tv/az/site/news/28501/>. Accessed May 01, 2018.

political power, and it has led violations of fundamental rights, especially freedom of peaceful assembly and association.

THE SCOPE OF RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION UNDER THE ECHR AND IN DOMESTIC LEGISLATION

4.1 Principles of the Restrictions on the Right to Freedom of Peaceful Assembly and Association under the ECHR

As it was mentioned in above that right to freedom of assembly and association are not absolute rights, there could be restrictions regarding these rights. The second paragraph of Article 11 of ECHR stated:

States parties may impose certain limitations on the exercise of this right. However, such restrictions must be (a) prescribed by law; (b) necessary in a democratic society; and (c) in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.¹⁵²

The Constitutional Court of the Azerbaijan Republic mentioned in its decision of October 21, 2005, On Interpretation of Article 49 of the Constitution that some demonstrations may create dissatisfaction or be offensive to the people who are not sharing the same ideas. However, participants should be able to hold this demonstration without fear of being exposed to physical harm by their competitors. The court also stated that:

Freedom of peaceful assembly can not only lead to the state's refusal to intervene: a completely negative concept would be incompatible with the goals and objectives of Article 11 of the Convention.¹⁵³

Principles of restriction on the right to freedom of peaceful assembly and association;

a) Prescribed by law

The intervention to right to freedom of assembly and association should be proposed by law. In other words, States should include some restrict provisions to domestic legislation and States can refrain from international human rights standards by these legal provisions. It is necessary that domestic legislation must be clear and accessible to people.¹⁵⁴

¹⁵² ECHR, Article 11.2.

¹⁵³ The Republic of Azerbaijan, Konstitusiyaya Mehkemesinin qerari (Decision of Constitutional Court of the Republic of Azerbaijan On Interpretation of Article 49 of the Constitution), 2005. Available on: <http://www.e-ganun.az/framework/16450>. Accessed May 01, 2018.

¹⁵⁴ Loukis G. Loucadies, "Restrictions or Limitations on the Rights Guaranteed by the European Convention on Human Rights", 4 *Finnish Yearbook International*. 334 (1993): p. 344.

Additionally, the ECtHR has stated that, laws must be accessible to people.¹⁵⁵

Furthermore, another point is whether there are or not some legitimate aims for restrictions. There are some categories of legitimate aims for restrictions:

- in the interests of national security or public safety;
- for the prevention of disorder or crime;
- for the protection of health or morals;
- for the protection of the rights and freedoms of others.¹⁵⁶

Public Safety- one of the legitimate aim which proposes the protection people's safety, also their physical completeness and property from severe harm. Restrictions for public safety should only be called when adequate security measures and effective remedies are provided. The state must assure public safety, and there is no possibility to give this duty to the organizer of the assembly. However, organizers must help to ensure the safety of people.¹⁵⁷

Protection of health or morals-the right to freedom of assembly and association is an essential element of the right to health together with other fundamental rights. The state can restrict the right to freedom of peaceful assembly and association for protecting people from a serious danger to their health.¹⁵⁸ A state can use public morals as a legitimate aim of restricting a right to freedom of assembly and association. However, it should be mentioned that if the state applies to public morality, useful aspect can be entitled differently in different cultures. Consequently, primary values of the public groups should be respected.¹⁵⁹

Protection of the rights and freedoms of others- it should be noted that the right of a person to exercise his or her right should not infringe the right of another person. If there is a conflict between two rights preference must be given to rights, which are not subject to any restriction. ECtHR is a "living instrument" which was accepted on many occasions. In *Tyrer v. the United Kingdom* court held that court applies to situations while a balance between public and private interests is created. It depends on the particular situation of the cases.¹⁶⁰

- b) **Necessary in a democratic society** – is also a requirement for restrictions on freedom of assembly and association under ECHR. There should be established a balance between the right of individual and society interests. States have a responsibility to establish this balance and also a State must define what is "necessary in a democratic society" in every case¹⁶¹. In *Handyside v. the UK*, ECtHR explained that “necessary” in this subject does not mean

¹⁵⁵ *Maestri v. Italy* [GC], no. 39748/98, 17 February 2004, § 30, ECHR. Available on: <http://hudoc.echr.coe.int/eng/?i=001-61638>. Accessed May 01, 2018.

¹⁵⁶ Steven Greer, “The exceptions to Articles 8 to 11 of the European Convention on Human Rights”, *Council of Europe Publishing* (1997). Available on: [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15\(1997\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf). Accessed May 01, 2018.

¹⁵⁷ *Ibid*, p.18.

¹⁵⁸ OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Peaceful Assembly*.

¹⁵⁹ *Ibid*.

¹⁶⁰ *Tyrer v. the United Kingdom*, no. 5856/72, Commission decision of 25 April 1978, § 31. Available on: <http://hudoc.echr.coe.int/eng/?i=001-57587>. Accessed May 01, 2018.

¹⁶¹ OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Association*, p. 24.

“useful”, “reasonable” or “desirable”.¹⁶² States must be able to prove that the public authorities have serious reasons for interferences. It is interesting that there is no single definition of democratic society, but Siracusa Principles says:

While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.¹⁶³

Additionally, the requirement of necessity embraces the component of proportionality. Proportionality requires the presence of balance between the grounds for interference and intensity of restrictions on the right to freedom of assembly and association. It means that the restrictions must be 'proportionate to the legitimate aims'.¹⁶⁴ The former President of the European Court of Human Rights Rolf Ryssdal once said:

The theme that runs through the Convention and its case law is the need to strike a balance between the general interest of the community and the protection of the individual's fundamental rights.¹⁶⁵

4.2 Restrictions on the Right to Freedom of Peaceful Assembly and Association under Domestic Legislation

The principles of restrictions on the right to freedom of assembly and association in ECHR were discussed above. In this section, the restrictions in the domestic law on the right to freedom of peaceful assembly and association will be researched. It should be noted that common restrictions for all rights are described in Constitution of Azerbaijan Republic.

The Constitution says that rights and liberties of a human being and citizen may be partially and temporarily restricted on an announcement of war, martial law and state of emergency, and also mobilization, taking into consideration international obligations of the Azerbaijan Republic. The population of the Republic shall be notified in advance about restrictions as regards their rights and liberties.¹⁶⁶ It should be mentioned that this restriction is unjustified and not compatible with the ECHR. Because Azerbaijani government argued that they will apply these restrictions during wartime, emergency situation. According to Article 15 of the ECHR, during wartime or in an emergency State can derogate from its obligations under ECHR. However, this provision gives more power to the authority for restricting human rights. Furthermore, some restrictions on the right to freedom of peaceful assembly and association are described in the Constitution. According

¹⁶² *Handyside v. the United Kingdom*, No 5493/72 of Commission decision of 7 December 1976. Available on: <http://hudoc.echr.coe.int/eng/?i=001-115187>. Accessed May 01, 2018.

¹⁶³ United Nations, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, 1984. Available on: <http://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf>. Accessed May 01, 2018.

¹⁶⁴ OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Association*.

¹⁶⁵ Brigitte Bierlein, “The principle of proportionality”. Available on: http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Brigitte_Bierlein.pdf. Accessed May 01, 2018.

¹⁶⁶ The Constitution of the Republic of Azerbaijan, Article 71.3

to Constitution activity of unions intended for the forcible overthrow of legal state power on the whole territory of the Azerbaijan Republic or a part thereof is prohibited.¹⁶⁷ However, the Constitution says that everyone has the right to peaceful assembly, gatherings, rallies, demonstrations, street marches and pickets, without prejudice to public order or public morals, by giving notice to relevant public authorities.¹⁶⁸ It was mentioned that Azerbaijani government added to Article 49 of Constitution new words, such as "public morals," "public order." It is interesting that authority has used "public order," "public morals" like the ECHR. The previous provision was that:

Everyone has the right, having notified respective governmental bodies in advance, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets.¹⁶⁹

However, there are several restrictions on the right to freedom of assembly and association in other specific legal acts, which regulate the right to freedom of peaceful assembly and association.

4.2.1 Restrictions on Formation and Registration of the Non-Governmental Organizations in Azerbaijan

States have positive obligation to adopt laws, which regulate implementation process of associations and create appropriate conditions for the functioning of associations. One form of association is a non-governmental organization. According to Council of Europe's recommendation on the legal status of non-governmental organizations in Europe that any person can establish NGO independently.¹⁷⁰

Law on State Registration and State Registry of Legal Entities allows NGO for operating without state registration, but commercial entities, branches and representatives of foreign legal entities cannot operate without state registration. If foreign NGOs operate without registration, there will be a penalty against them.¹⁷¹ According to Code of Administrative Offences individuals have to pay 2000-3000 AZN (approximately 960-1400 EUR), legal entities have to pay 5000-8000 AZN (approximately 2400-3840 EUR) for operating the branches and representatives of foreign legal entities and commercial entities without state registration.¹⁷² But the Venice Commission explained in its opinion that, if local NGO can operate without state registration, branches or

¹⁶⁷ *Ibid*, Article 58 (4).

¹⁶⁸ *Ibid*, Article 49 (2).

¹⁶⁹ The Constitution of the Republic of Azerbaijan, 1995. A previous version of Article 49. Available on: http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf. Accessed May 02, 2018.

¹⁷⁰ The Committee of Ministers of Council of Europe, *Recommendation on Legal Status of Non-Governmental Organizations in Europe*, Para. 16.

¹⁷¹ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 4 (1).

¹⁷² Code of Administrative Offences of the Republic of Azerbaijan, Article 582.

representatives of foreign legal entities must be able to operate without state registration.¹⁷³ However, Commission mentioned that:

The need for such a procedure, i.e. for international NGOs to create local branches and representatives and have them registered, is in itself questionable.¹⁷⁴

Moreover, the restriction on the right to freedom of association requires an explanation based upon a legitimate purpose and requires proportionality between the limitation and that purpose. The comprehensive description of this restriction hinders any proportionality assessment in certain situations of each case. Furthermore, a legal status provides more power to NGOs for operating officially. The registered NGOs can open a bank account, buy property and they may benefit from tax preferences. But local NGOs are not obliged to register, they can operate on an informal basis. But many NGOs are interested in obtaining legal status and they submitted all relevant documents for registration. In practice, the registration of many NGOs have been refused by a decision of Ministry of Justice. The Ministry of Justice repeatedly refused to register the NGOs and send back the applications based on shortcomings in applications. But under the law all shortcomings should be found at the same time. The ECtHR has stated that the denial of registration of NGOs will constitute an interference with the right to freedom of association.¹⁷⁵

Additionally, the Ministry of Justice does not send any responses in time. In *Nasibova v. Azerbaijan*, the ECtHR found a violation of Article 11 of the ECHR, because Ministry of Justice refused to register “The Journalist Inquiry Centre” Public Association which was established 2001.¹⁷⁶ The Ministry of Justice did not send any official letter to the organization about the refusal of registration for more than one year and four months, but there is a time limit for registration, which was 30 days (now 40 days). In this case, Court also mentioned that an interference with the right to freedom of association would not be justified under paragraph 2 of Article 11 of ECHR.¹⁷⁷ Additionally, in *Ramazanova and others v. Azerbaijan*, Court mentioned that the significant delays in the registration procedure, if attributable to the Ministry of Justice, will constitute an interference with the right to freedom of association.¹⁷⁸ However, after these decisions of the ECtHR, Azerbaijani government made amendments to Law on State Registration and State Registry of Legal Entities and extended the time limit for registration of NGOs to forty days and this time can be extended to additional thirty days if needs to further investigation.¹⁷⁹ The Venice Commission also criticized this change and said that, generally the registration process is very long and difficult and there are systemic problems with regard to implementation of law on registration of NGOs.¹⁸⁰

¹⁷³ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, Para 43.

¹⁷⁴ *Ibid*, Para 55.

¹⁷⁵ *Tsonev v. Bulgaria* [First Section], no.45369/99, 13 April 2006, §43. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-73291>. Accessed May 02, 2018.

¹⁷⁶ *Nasibova v. Azerbaijan*, [First Section], no. 4307/04), 18 January 2008. §29. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-82825>. Accessed May 02, 2018.

¹⁷⁷ *Ibid*.

¹⁷⁸ *Ramazanova and Others v. Azerbaijan*, [First Section], no. 44363/02, 1 February 2007, §54-60. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-79301>. Accessed May 02, 2018.

¹⁷⁹ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 8 (1, 2).

¹⁸⁰ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, Para 46.

Furthermore, according to the law, NGOs can be registered in Baku and regions. But it should be mentioned that the registration process is very complicated in Azerbaijan. In many cases, Ministry of Justice demands additional documents, not required under the Law on State Registration and State Registry of Legal Entities. With regard to this complicated process the Venice Commission recommended that:

The registration is still possible only in Baku, be it that the documents may be sent by mail and plans to introduce computer-based registration and establish a single information network of registry authorities are reportedly being considered.¹⁸¹

Additionally, this problem was criticized in the 2015 CSO Sustainability Index Report. It says that the registration of NGOs in Azerbaijan is very complicated. The Ministry of Justice creates obstacles for registration and requires some additional documents which are difficult to get these documents¹⁸².

Furthermore, there is a mixed provision in the Law on Non-Governmental Organizations on the establishment of NGOs by foreigners in the territory of the Azerbaijan. Under this law, foreigners and stateless persons who have a permanent residence in Azerbaijan can establish NGO in Azerbaijan. But Article 7 of this law says that the deputies of the chairperson of NGOs founded by foreigners, as well as branches or representative of foreign NGOs must be a citizen of the Azerbaijan Republic. It is not clear that whether there is essentially a commitment to appoint a deputy head. However, the Constitution says that foreign citizens and stateless persons who are staying in the Azerbaijan Republic can enjoy all rights like citizens of the Azerbaijan Republic.¹⁸³ Additionally, the ECHR itself mentioned that:

Nothing in Articles 10, 11, and 14 of ECHR may be considered as an obstacle to the High Contracting Parties to the imposition of restrictions on the political activity of aliens.¹⁸⁴

Therefore, the Azerbaijani government interfered with the right to freedom of association by prohibiting to establish NGOs by foreigners through this provision.

Additionally, the branches and representatives of NGOs of foreign countries can obtain state registration basis on international agreements which concluded between the NGOs and the state authority.¹⁸⁵ This provision imposed new requirements upon branches and representations of foreign NGOs that can seriously hinder registration and their activities.

Moreover, the Ministry of Justice requires the number of members of NGOs for registration of NGOs.¹⁸⁶ But the Law on State Registration and State Registry of Legal Entities says that the registration of members should be completed within thirty days after obtaining state registration of NGO.¹⁸⁷ NGOs must not be obliged to submit the number of its members. However, in practice the

¹⁸¹ *Ibid.*

¹⁸² United States Agency for International Development Bureau for Europe and Eurasia, *2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 2015, p.34. Available on: https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIReport_2015_Update8-29-16.pdf. Accessed May 02, 2018.

¹⁸³ The Constitution of the Republic of Azerbaijan, Article 69.1.

¹⁸⁴ ECHR, Article 16.

¹⁸⁵ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 6 (1.2-1).

¹⁸⁶ *Ibid.*, Article 14.2.3.

¹⁸⁷ *Ibid.*, Article 8.1.

Ministry of Justice requires to disclose the names of members of NGOs and this is violation of right to freedom of association and also the right to respect for private life.¹⁸⁸ Venice Commission also ruled that this requirement is not reasonable and is an illegal interference in the NGOs' internal working.¹⁸⁹ Additionally, the branches and representations of foreign NGOs are obliged to submit document about the term of service of head and deputy of branches and representations of foreign NGOs and also the name, nationality, address of deputy head.¹⁹⁰ Furthermore, NGOs and branches and representations of foreign NGOs are also obliged to submit the document to the Ministry of Justice on the composition and the term of service of their executive body.¹⁹¹ But the Committee of Ministers of Council of Europe said:

NGOs should ensure that their management and decision-making bodies are in accordance with their statutes but they are otherwise free to determine the arrangements for pursuing their objectives. In particular, NGOs should not need any authorization from a public authority in order to change their internal structure or rules.¹⁹²

Moreover, PACE has repeatedly indicated its concern on registration of NGOs in Azerbaijan. PACE called on Azerbaijani authorities to improve registration procedures for foreign NGOs, also to create an appropriate environment for NGOs to operate independently.¹⁹³

Whereas, according to the Law on State Registration and State Registry of Legal Entities any change in registered facts should be registered and NGOs will get new registration certificate.¹⁹⁴ NGOs have to submit documents to Ministry of Justice for registration no later than forty days after changing the legal address, chairperson of NGOs. However, Ministry of Justice must register changes in five days, if not contrary to the Law on State Registration and State Registry of Legal Entities. Without registration of changes, NGOs cannot operate, and failure of this provision leads administrative liability.¹⁹⁵ But Azerbaijani government used this provision to pressure to NGOs from stopping their activity. In 201

4, some organizations made changes in their organizations and sent application to Ministry of Justice for registration of these changes, but Ministry of Justice refused to register these changes with illegitimate reasons. For example, Public Association for Assistance to Free Economy (PAAFE) elected new chairperson and sent all documents to Ministry of Justice for registration its changes in 2014. However, Ministry of Justice denied registration of changes for seven times.¹⁹⁶ The Ministry of Justice argued that documents were signed by the founder not a chairperson. But this argument contradicts with the provision which was described in above. Because it was mentioned that, firstly NGOs must register the changes and after obtain registration certificate they

¹⁸⁸ OSCE/ODIHR-Venice Commission, *Guidelines on Freedom of Association*, para 167.

¹⁸⁹ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, Para 71.

¹⁹⁰ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 14.2.4.

¹⁹¹ *Ibid*, Article 14.2.5.

¹⁹² The Committee of Ministers of Council of Europe, *Recommendation on Legal Status of Non-Governmental Organizations in Europe*, no. 14, 2007. Para 47. Available on: <https://rm.coe.int/16807096b7> . Accessed May 02, 2018.

¹⁹³ PACE, Resolution on the honouring of obligations and commitments by Azerbaijan, no.1917, Final version, 2013, Para.18.8. Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19451&lang=en>. Accessed May 02, 2018.

¹⁹⁴ The Law of the Republic of Azerbaijan on State Registration and State Registry of Legal Entities, Article 9.1.

¹⁹⁵ *Ibid*, Article 9 (3, 4).

¹⁹⁶ Zohrab Ismayil, a Facebook message to author, May 02, 2018.

can do anything under these changes. So, in this case, the chairperson of NGO was elected by members and without registration the document cannot be signed by the chairperson. This refusal was unlawful, but domestic courts upheld the position of the Ministry of Justice. Zohrab Ismayil, the founder and chairperson of this organization is outside of Azerbaijan and trying to work from outside individually. Because without registration he cannot sign any grant agreement behalf of NGO and the NGO could not operate in Azerbaijan officially.¹⁹⁷ Before this amendment NGOs were obliged to send information to Ministry of Justice on changing of their legal address. This requirement was compatible with international human rights standards, but later amendment is not in accordance with international human rights standards.

Therefore, for five years Azerbaijan authority made a lot of changes to NGO legislation however the aim was not to protect the right to freedom of association or improvement of civil society environment in Azerbaijan. Government made these changes to pressure to independent NGOs from stopping the activities on protecting fundamental freedoms in Azerbaijan. Intigam Aliyev, human rights NGO leader mentioned that Council of Europe does not have the sufficient tools to force states to comply with their obligations, and in some cases, Council of Europe does not make any effort for it. He added that in result of these restrictive amendments to the NGO legislation, Azerbaijan's membership was suspended by International Transparency Coalitions, Open Government Partnership and Extractive Industries Transparency Initiative.¹⁹⁸

4.2.2 Restrictions on Access to Funding of NGOs

According to Law on Non-Governmental Organizations (Public Associations and Foundations) grants, donations, membership fees are the primary sources for forming NGO property.¹⁹⁹ However, Azerbaijan authority made several restricting amendments to NGO legislation on access to funding in 2015. According to the Azerbaijani Law on Grants, there are three steps for obtaining fund from international donors: i) An obligation for foreign donor organizations to get a right to issue grants to NGOs in Azerbaijan; ii) Registration of grant agreement by NGOs and obtaining notification about registration.²⁰⁰

An obligation for donor organizations to obtain a right to issue grants to NGOs in Azerbaijan

According to the Azerbaijani Law on Grants, foreign donors must obtain the right to issue a grant to NGOs in the territory of Azerbaijan Republic, which is regulating with the Rules of the Cabinet of Ministers of Azerbaijan Republic.²⁰¹ Firstly, the documents should be submitted to the

¹⁹⁷ *Ibid.*

¹⁹⁸ Intigam Aliyev, e-mail message to author, May 02, 2018.

¹⁹⁹ The Law of the Republic of Azerbaijan on Non-Governmental Organizations, Article 24.

²⁰⁰ The Law of the Republic of Azerbaijan on Grant. Article 3, 4.

²⁰¹ Cabinet of Ministers of the Republic of Azerbaijan, Rule on Procedure for Foreign Donors to Obtain the Right for Provision of Grants in the Territory of the Republic of Azerbaijan, no.339 of the, 2015. Article 2. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/AzerReg.pdf>. Accessed May 02, 2018.

Ministry of Finance by foreign donors for obtaining a right to issue grant to NGOs in Azerbaijan.²⁰² The draft agreement, project duration, amount, the financial-economic feasibility of the grant and power of attorney of a representative of foreign donors should be added to the application. However, there was a requirement to submit founding documents of foreign donors but were removed from this Rules in 2017. Ministry of Finance must review the application within seven days, but Ministry of Finance can prolong this time for additional seven days. Total days were thirty days for reviewing documents but were reduced to fourteen days in 2017.²⁰³ Moreover, relevant government authorities may express their views on the subject of the grant when the appeal is reviewed.²⁰⁴ This provision gives more power to state authorities to interference the activities of NGOs. The source of grant of foreign donors is not from state-budget of Azerbaijan, and state authorities cannot express any view on the subject of the grant. Also, NGOs must be able to operate independently and can receive fund without difficulty. Additionally, if a grant is aimed to support activities in the area, which are covered by the state, this could be a basis for the rejection of the financial-economic feasibility of the grant project.²⁰⁵ Providing an opinion on financial- economic feasibility may be rejected if all required documents are not attached to the application and if purpose and financial, the economic usefulness of the grant is inaccurate.²⁰⁶ Foreign donors can issue a grant to NGOs in the territory of the Republic of Azerbaijan after obtaining of the Ministry of finance on the financial–economic feasibility.²⁰⁷ The weakness of this provision is that the right to issue grant should be obtained by foreign donors for each grant agreement.²⁰⁸ By 2013, there was no requirement that foreign donors must get a right for issuing a grant to NGOs in Azerbaijan. In result of this amendment international human rights NGOs have been prevented from operating in Azerbaijan. Given the current situation and the possibility of the rejection, no international donor is interested in going through the mentioned procedure. However, Venice Commission held that there is no any criteria for allowing foreign NGOs to issue grant in the Azerbaijani Law on Grant.²⁰⁹ This gives more power to state agencies to create procedure for foreign NGOs for getting a right to issue grant in Azerbaijan. With regard to this provision the Venice Commission recommended:

The relevant authority competent to authorize the grant as well as the procedure to be followed and the criteria on the basis of which the authorization is given be clearly indicated in the law.²¹⁰

Registration grant agreement by NGOs and obtaining notification about registration

The next step is the registration of grant agreement and obtaining notification on registration of the grant agreement. According to Azerbaijani Law on Grants, NGOs must register all grant agreements.²¹¹ The rules of 5 June 2015 further establish the regulations on the registration

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, Article 3.1.

²⁰⁵ *Ibid.*, Article 3.3.

²⁰⁶ *Ibid.*, Article 3.4.

²⁰⁷ *Ibid.*, Article 4.

²⁰⁸ *Ibid.*, Article 2.1.

²⁰⁹ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, Para 64.

²¹⁰ *Ibid.*

²¹¹ The Law of the Republic of Azerbaijan on Grant, Article 4.4.

of Agreements (decisions) on Receiving (Awarding) Grants by physical and legal entities.²¹² Without registration, NGOs are not able to carry out any bank transactions, or other activities are covered by the grant agreement.²¹³ The Rules set out the prohibition on NGOs to use the fund without registration of the grant agreement. According to Code of Administrative Offences, individuals have to pay 1000-2500 AZN (Approximately 1300 EUR), and legal entities have to pay 5000-7000 AZN (approximately 2400-3300 EUR) for failure to submit a grant agreements for registration.²¹⁴ All grant agreements and also sub-grant agreement should be sent to Ministry of Justice by NGOs for registration since the signing of agreements to thirty days.²¹⁵ The Venice Commission criticized this provision and held that in practice registration of grant agreement have been refused by the Ministry of Justice and NGOs did not have access to funding.²¹⁶

Furthermore, national donors, which work based on state budget must send information about grant agreements to Ministry of Justice for registration no later than seven days (compared to three days previously).²¹⁷ Following documents should be attached to the application on registration of the grant agreement: i) a copy of original agreements; ii) a copy of identification card of individuals (who signs grant agreement); iii) a copy of power of attorney of a person who submitted the application on behalf of legal entity or individual. Additionally, grant agreements should be legalized if documents (agreements) prepared in the foreign country and all documents must be translated into Azerbaijani if the documents are in a foreign language.²¹⁸ The main national donor is the Council on State Support to NGOs under Auspices of the President (CSSN) of the Republic of Azerbaijan. But in practice independent NGOs are not supported by CSSN. The Council on State Support to NGOs under Auspices of the President supports the pro-governmental organizations, however, the amount of grant is very less (approximately 4000-5000 EUR for six months).

The Ministry of Justice must register the grant agreements within 15 days if there is not contrary to Azerbaijani Law on Grants and Rules of the Cabinet Ministers on registration of grants. However, if there needs to investigate documents Ministry of Justice can prolong the time for additional 15 days.²¹⁹ Ministry of Justice can send back the documents to the application if there are shortcomings and applicant has ten days for eliminating the shortcomings and providing additional documents to Ministry of Justice.²²⁰ Registration of grant agreement may be refused by Ministry of Justice if all documents are not submitted, or additional documents are falsified or not precise.²²¹ Moreover, the Rules of the Cabinet Ministers on registration of grants requires that each service contract must be registered and all relevant documents should be sent to Ministry of Justice. NGOs and individuals should be fined from 2500 to 8000 AZN (approximately 1200-3900 EUR)

²¹² Cabinet of Ministers of the Republic of Azerbaijan, Rule Registration of Grant Agreements/Contracts (Decisions/Orders), no. 216.

²¹³ *Ibid*, Article 1.7.

²¹⁴ The Code of Administrative Offences of the Republic of Azerbaijan, Article 432.

²¹⁵ Cabinet of Ministers of the Republic of Azerbaijan, Rule Registration of Grant Agreements/Contracts (Decisions/Orders), no. 216, Article 1.5.

²¹⁶ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, Para 68.

²¹⁷ Rules No. 216 of the Cabinet of Ministers of the Republic of Azerbaijan, Article 1.6.

²¹⁸ *Ibid*, Article 2.

²¹⁹ *Ibid*, Article 4.1

²²⁰ *Ibid*, Article 4.6.

²²¹ *Ibid*, Article 5.

for working without a contract or unregistered contracts. But there is no accurate liability for failure to submit service contracts for registration.²²²

Generally, unregistered NGOs can conclude grant agreement. However, in practice, this issue is very complicated. Because according to the Rules of the Cabinet Ministers on registration of grants, there are two forms for registration of grant agreement: i) for individuals; ii) for legal entity (registered), but there is no form for unregistered NGOs. It requires that application should be signed and approved with the stamp of NGOs. However, unregistered NGOs do not have a stamp, because they were not registered by Ministry of Justice. But the founders or chairpersons of unregistered NGOs can sign an agreement behalf of their NGOs. But it makes problem to NGOs, because many foreign donors give a grant to NGOs, not individuals. Moreover, Azerbaijani government argue that it is required to register all grants, because some NGOs receive funds in cash and do not pay taxes.²²³ But Venice Commission noted in its opinion that this change gives more power to authorities and in result of this power, consistency in the implementation of NGOs is inaccessible.²²⁴

NGO leaders have the same concerns. Rasul Jafarov, chairman of Human Rights Club, said that amendments included to the legislation regulating operations of the civil society, grants and donations, in fact, prohibited activities of non-registered NGOs.²²⁵ Another NGO leader Intigam Aliyev thinks that restrictive amendments were made to paralyze the activities NGOs, which are in the critical position to the Azerbaijan authority.²²⁶ It should be noted that two NGO leaders, Intigam Aliyev and Rasul Jafarov, were arrested for tax evasion, abuse of power, illegal business activities and embezzlement charges. Prosecutor office argued that Human Rights Club is an unregistered NGO and they did not register grant agreements and get income from grant agreements. The charges against NGO leaders were fabricated. Because there is no specific provision to prohibit to operate of unregistered NGOs in Azerbaijan. If NGO did not register grant agreements, they could face fines, not criminal liability. It shows that the leaders of NGOs were arrested without legal grounds and the purpose of these arrests was to stop the activities of the NGOs. However, in *Jafarov v. Azerbaijan*, Court noticed that NGO legislation in Azerbaijan are very strict and restrictive.²²⁷

Donations

Azerbaijan authority made restrictive changes to the Law on Non-Governmental Organizations on donation issue. NGOs can accept donations by this law without a term to attain any purpose.²²⁸ However, the donation should be given by a citizen of the Azerbaijan Republic, legal entities registered in Azerbaijan and branches and representatives of foreign legal entities,

²²² The Code of Administrative Offences of the Republic of Azerbaijan, Article 432 (4).

²²³ Trend News Agency, "Some NGOs try to change Azerbaijan's Constitutional through donor funding", November 19, 2014. Available on: <https://en.trend.az/azerbaijan/politics/2334649.html>. Accessed May 03, 2018.

²²⁴ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, 2014. Para 68.

²²⁵ Rasul Jafarov, e-mail message to author, May 03, 2018.

²²⁶ Intigam Aliyev, e-mail message to author, May 03, 2018.

²²⁷ *Jafarov v. Azerbaijan*, Para 120.

²²⁸ The Law of the Republic of Azerbaijan on Non-Governmental Organizations, Article 24.1.

which agreed with Azerbaijan authority.²²⁹ One of the requirements to justify restrictions on the right to freedom of association is to comply with the principle of proportionality. Prohibition for foreigners to donate is contrary to international state's obligation to promote respect for the right to freedom of association. However, the Committee of Ministers of Council of Europe recommended:

NGOs should be free to solicit and receive funding – cash or in kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.²³⁰

According to the Law on Non-Governmental Organizations all information on amount of the received donations should be submitted to Ministry of Justice within 15 days, based on Rules of Cabinet of Ministers on procedures to present information of donations by NGOs as well as branches or representative of foreign NGOs.²³¹ NGOs, as well as branches or representative of foreign NGOs, could receive donation up to 200 AZN (approximately 100 EUR) in cash. If the donation is more than 200 AZN, this amount should be transferred to the bank account of NGOs as well as branches or representative of foreign NGOs.²³² The Venice Commission criticized this amendment and mentioned in its opinion that under this amendment NGOs are deprived of cash donations.²³³

However, bank operations or any other operations on donations cannot be realized without submitting information to Ministry of Justice about it.²³⁴ NGOs, as well as branches or representative of foreign NGOs, could be fined from 2000-10000 AZN (approximately 5000 EUR) if they will receive donation more than 200 AZN in cash. However, individuals or NGOs, as well as branches or representative of foreign NGOs, could face fines for donating cash. Individuals must pay 250-500 AZN (approximately 120-250 EUR) and NGOs as well as branches, or representative of foreign NGOs must pay 3500-7000 AZN (approximately 1700- 3500 EUR).²³⁵ Moreover, the amount of the received donation and the identity of the donor should be submitted to Ministry of Finance by NGOs, as well as branches and representatives of foreign NGOs. Article 465 of Code of Administrative Offences says that NGOs, as well as branches or representative of foreign NGOs, shall be fined from 5000 AZN to 8000 AZN in case of not adding the information on an amount of the received donation and the identity of the donor to financial report.²³⁶ It is very interesting that

²²⁹ *Ibid.*

²³⁰ The Committee of Ministers of Council of Europe, *Recommendation on Legal Status of Non-Governmental Organizations in Europe* Para 50.

²³¹ Cabinet of Ministers of the Republic of Azerbaijan, Rules on submission of information about amount of donation received by NGOs as well as by branches or representations of NGOs of foreign states and about the donor no. 336, 2015. Article 2. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/Azerdonate.pdf>. Accessed May 03, 2018.

²³² *Ibid.*, Article 1.3.

²³³ Venice Commission, *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, 2014. Para 66.

²³⁴ Cabinet of Ministers of the Republic of Azerbaijan, Rules on submission of information about amount of donation received by NGOs as well as by branches or representations of NGOs of foreign states and about the donor no. 336, Article 1.4.

²³⁵ The Code of Administrative Offences of the Republic of Azerbaijan, Article 466.

²³⁶ *Ibid.*, Article 465.

the issue of receiving grants from individuals is regulated by law, but there is no provision on the fact that individuals can or not receive donations.

Chingiz Ganizade, a Member of Parliament of Azerbaijan Republic, argued that restriction on receiving donations is for transparency and they made these amendments based on experiences of other democratic countries, such as the United Kingdom. However, in fact, he accepted that they made these restrict changes for controlling funds of NGOs.²³⁷ The argument of Parliament member is not reasonable. If the issue of transparency is an essential reason to these prohibitions, only information about the number of donations received from NGOs, as well as for as branches or representative of foreign NGOs may be required. However, it required submitting information on the identity of the donors. However, there is no sufficient ground for requiring the information on identification of donors. At the same time, this is the violation of confidentiality between parties and significantly reduced the number of donors. In some non-democratic countries like Azerbaijan, people do not support NGOs that are involved in the protection of human rights, because they are afraid of government's pressure. Azerbaijani authorities have also chosen a legitimate way for obtaining the list of people who supports human rights NGOs in Azerbaijan and the agencies pressure them illegally. Furthermore, NGOs already had internal regulations for donation process in Azerbaijan. The person who donated to a non-governmental organization, as well as branches or representations of foreign NGOs must include all information about her/him, or legal entity and form should be signed by the person who donated. Additionally, NGOs include information on donations to their financial report which submitted to the Ministry of Finance once a year. Therefore, this restriction had no consistent basis and was made to monitor the financial position of the NGOs.

Access to funding is an essential part of the right to freedom of association, but restrictive amendments to NGO legislation deprive NGOs to operate in Azerbaijan. Also, there is no possibility to enjoy their right to freedom of association. However, this right guaranteed by the ECHR which is binding to Azerbaijan authority. PACE itself mentioned:

The legislative environment for the operation of non-governmental, non-commercial organizations, including the regulation of matters relating to their State registration, funding, and reporting requirements has been restrictive and has been found not to be compliant with European standards by some Council of Europe bodies.²³⁸

However, these restrictions give power to Azerbaijan authority to control the NGOs and authority exceeded limits for restrictions, which are provided by international standards. Therefore, Azerbaijani government must respect its obligations to the Council of Europe on human rights and must remove all restrictive amendments from NGO legislation, and also must create a suitable environment for civil society.

²³⁷ Mina Muradova, "Azerbaijan Restricts NGO Funding", *The Central Asia-Caucasus Analyst*, February 20, 2013, Available on: <https://www.cacianalyst.org/publications/field-reports/item/12654-azerbaijan-restricts-ngo-funding.html>. Accessed May 03, 2018.

²³⁸ PACE, Resolution 2184 (2017), Para 13.

4.2.3 Restrictions on Formation and Access Funding of Trade Unions, Religious Organizations and Political Parties

i) Political parties

According to Article 58 of Constitution of the Republic of Azerbaijan, everyone has right to establish a political party, trade unions, and other unions and also can join to the unions.²³⁹ However, the Constitution of Azerbaijan prohibits the formation of political parties whose purpose is to violate the country's independence and its territorial integrity.²⁴⁰ Under the law on Political Parties, political parties shall be registered, and the registration is carried out by the Ministry of Justice. The registration of political parties is regulated by Law on State Registration and State Registry of Legal Entities.²⁴¹ In fact, registration is not obligatory, but registration is required to participate in elections. According to Election Code of Azerbaijan Republic, a party must submit the registration certificate for registration of candidates of party.²⁴² Thus, two specific legislative acts are contrary to each other and are not compatible with the Constitution of Azerbaijan and also ECHR. Furthermore, the Copenhagen Document mentioned the importance the protection of the right to establish a political party. It says:

Respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.²⁴³

Under Copenhagen document and also ECHR member states have an obligation to secure the rights of people on establishing or joining political parties. However, in many cases, the Ministry of Justice refused to register the political parties. The OSCE /ODIHR and Venice Commission Guidelines of Political Party Regulations stated that the requirement and procedures for registration of political parties must be reasonable.²⁴⁴ Also, the grounds for denying registration should be explained clearly, but the Ministry of Justice sent a letter and stated that documents are not compatible with Article 5 of the Law on State Registration and State Registry of Legal Entities.²⁴⁵ According to Law on Political parties, only the citizens of Azerbaijan Republic can be a member of political parties, but foreign citizens and stateless do not have right to be a member of political parties in Azerbaijan.²⁴⁶ This provision is discrimination against foreigners who have a permanent residence in Azerbaijan. However, the Protocol 12 of the ECHR stated:

The enjoyment of any right set forth by law shall be secured without discrimination on any

²³⁹ The Constitution of the Republic of Azerbaijan, Article 58 (2).

²⁴⁰ The Law of the Republic of Azerbaijan on Political Parties, Article 14.

²⁴¹ The Law on State Registration and State Registry of Legal Entities, Article 5.

²⁴² The Republic of Azerbaijan, Secki Mecellesi (Election Code of the Republic of Azerbaijan), 2003. Article 54. Available on: <http://www.e-qanun.az/code/17>. Accessed May 04, 2018.

²⁴³ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990. Available on: <https://www.osce.org/odihr/elections/14304?download=true>. Accessed May 04, 2018.

²⁴⁴ OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, Para 66.

²⁴⁵ The Law on State Registration and State Registry of Legal Entities, Article 5.

²⁴⁶ The Law of the Republic of Azerbaijan on Political Parties, Article 8.

ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.²⁴⁷

Additionally, Venice Commission mentioned its guidelines that general prohibition for foreign citizens and stateless to be a member of political parties in Azerbaijan is not reasonable.²⁴⁸ Moreover, there is some restriction on access funding of political parties. Political Parties can not receive fund from foreign states and foreign legal entities, foreigners, national legal entities, NGOs, religious organizations and foundations.²⁴⁹ However, the Committee of Ministers of the Council of Europe recommended that there could be a limitation for political parties on receiving funding from foreign states or legal entities with regard to preventing corruption.²⁵⁰ But it should be noted that there are sufficient grounds for a limitation on funding from national legal entities. Additionally, there is a limitation on receiving fund from individuals. One person cannot donate more than ten thousand AZN (manat) in a year.²⁵¹ There is no any explanation or sufficient ground for this limitation and also the necessity to democratic society. Also, this is interference to the right of individuals on joining to political parties independently. Because making donations to political parties is a form of political participation. Furthermore, the fund shall be allocated from the state budget. But there is a limitation. Law on Political Parties says:

10 percent of the funds allocated from the state budget shall be divided proportionally to the number of earned votes, among the political parties that nominated candidates who earned at least 3 percent of the valid votes in the last elections of the Milli Majlis of the Republic of Azerbaijan, but which are not represented in the Milli Majlis of the Republic of Azerbaijan. 40 percent of the funds shall be equally divided among the political parties represented in the Milli Majlis of the Republic of Azerbaijan, and 50 percent shall be divided proportionally to the number of elected Members of the Parliament.²⁵²

It should be noted that unregistered political parties or parties whose did not participate in elections cannot receive funds from the state budget. This is unjustified and also provides more power to ruling party in Azerbaijan. In practice, funds are not allocated to political parties from state budget. However, fund is necessary for political parties for fulfilling their functions. Also, states have obligation to provide equal opportunity to the political parties.

ii) Trade Unions and Religious Organizations

Trade Unions also are not obliged to register for operating in Azerbaijan, because there is no any provision on obligatory of registration. But the Act of Azerbaijan Republic on Trade Unions

²⁴⁷ The Protocol 12 of the ECHR, Article 1. Available on:

https://www.echr.coe.int/Documents/Library_Collection_P12_ETSI177E_ENG.pdf. Accessed May 04, 2018.

²⁴⁸ Venice Commission, Guidelines and Explanatory Report on Legislation on Political Parties: Some Specific Issue, 2004, p. 4. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)007-e). Accessed May 04, 2018.

²⁴⁹ The Law of the Republic of Azerbaijan on Political Parties, Article 17.

²⁵⁰ The Committee of Ministers of Council of Europe, *Recommendation no. 4 on common rules against corruption in the funding of political parties and electoral campaigns*, 2003, Article 7. Available on:

[https://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](https://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interface2006/rec%202003%20(4)%20pol%20parties%20EN.pdf). Accessed May 04, 2018.

²⁵¹ The Law of the Republic of Azerbaijan on Political Parties, Article 19.7.

²⁵² *Ibid*, Article 17-1.2.

stated that trade unions can obtain legal status after state registration.²⁵³ Laws must be clear and simple, but this provision shows that there is a gap in the law. This gap may give more power to government for restricting the formation of Trade Unions. Moreover, the right to strike is essential for operations of trade unions. The right to strike may be restricted or prohibited in military or emergency situations. Although, the right to strike cannot be used in areas of vital importance for people's health and safety, such as hospital department, telephone communication, etc.²⁵⁴ However, in *Enerji Yapi-Yol Sen v. Turkey* ECtHR stated that right to strike is not absolute right and could be restrictions with regard to right to strike.²⁵⁵

Furthermore, religious organizations are obliged to register. They cannot operate without state registration.²⁵⁶ It should be mentioned that the religious organizations are a tool for exercising the right to freedom of religion or belief. In *Kimlya and others v. Russia*, ECtHR held that refusal the registration of religious organizations amounted to an interference with the exercise of the right to freedom of association.²⁵⁷ OSCE/ODIHR and Venice Commission prepared Guidelines on the Legal Personality of Religious or Belief Communities and stated that states must ensure that obtaining a legal status must be simple for religious organizations.²⁵⁸

4.2.4 Restrictions on Freedom of Peaceful Assembly in Azerbaijan

States have an obligation to establish a mechanism to ensure the freedom of assembly is enjoyed and to prevent unreasonable barriers. It was mentioned above that freedom of assembly is not an absolute right, there could be restrictions on the right to freedom of assembly, but restriction should be prescribed by law and must be compatible with international human rights standards. However, restrictions on freedom of assembly should be proportionate. Article 7 of the Law on Freedom of Assembly says:

No restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.²⁵⁹

²⁵³ The Act of Azerbaijan Republic on Trade Unions, Article 4.

²⁵⁴ The Labour Code of the Azerbaijan Republic, 1999, Article 280-281. Available on: <http://www.e-qanun.az/code/7>. Accessed May 04, 2018.

²⁵⁵ *Enerji Yapi-Yol Sen v. Turkey* [Third Section], no. 68959/01, 21 April 2009, Para 24. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-92267>. Accessed May 04, 2018.

²⁵⁶ The Law of the Republic of Azerbaijan on Freedom of Religious Beliefs, Article 12.

²⁵⁷ *Kimlya and others v. Russia* [First Section], no. 76836/01 and 32782/03, 1 October 2009. Para 84. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-94565>. Accessed May 04, 2018.

²⁵⁸ OSCE/ODIHR and Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities*, 2014. Para 17. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e). Accessed May 03, 2018.

²⁵⁹ The Law of the Republic of Azerbaijan on Freedom Assembly, Article 7.1.

However, the same law says that restrictions could be related to: i) Place; ii) Time; iii) Content. But these cannot be contrary to the purposes prescribed in above.²⁶⁰ However, the ECtHR has stated that the organizers are free to choose the time and place within the limits, which are described in the second paragraph of Article 11.²⁶¹

i) Restrictions on Time

The body of executive power can change the time of the assembly if there will be another event at the same time and the same venue or will be any conflict between the participants of assembly and participant of counter-assembly.²⁶² However, it is not certain that there will always be a conflict between an assembly and a simultaneous counter-assembly. The ECtHR also stated that the participants of assemblies cannot be subject to physical violence by the participant of counter-assembly.²⁶³ Court also held that the states have a responsibility to protect freedom of assembly and must take appropriate measures for both assemblies. However, the OSCE ODIHR / Venice Commission Guidelines says that;

the blanket application of legal restrictions-for example, banning all demonstrations during certain times, or in particular locations or public places that are suitable for holding assemblies -tends to be over-inclusive. Thus, they will fail the proportionality test, because no consideration has been given to the specific circumstances in each case. Legislative provisions that limit the holding of assemblies to only certain specified sites or routes (whether in central or remote locations) seriously undermine the communicative purpose of freedom of assembly, and should be regarded as a prima facie violations of the right. Similarly, the regulation of assemblies in residential areas or of assemblies at night time should be handled on a case-by-case basis rather than being specified as prohibited categories of assemblies.²⁶⁴

ii) Restrictions on Place

According to Law on Freedom of Assembly, people cannot hold any assembly in a radius of 200 meters around buildings of Parliament of the Republic of Azerbaijan, the bodies of executive power, Constitutional Court, the Supreme Court, Courts of Appeal of the Republic of Azerbaijan, and the Supreme Court of the Nakhchivan Autonomous Republic; on bridges, in tunnels, at construction areas, and protection zones of trunk pipelines, airports, subway, railway constrictions, defense units, on the territory used for military purposes, also in a radius of 150 meters around the territory of penitentiaries, pre-trial detention and psychiatric medical

²⁶⁰ *Ibid*, Article 7.4.

²⁶¹ *Saska v. Hungary*, [Second Section], no. 458050/08, 27 November 2012, para 21, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-114769>. Accessed May 03, 2018.

²⁶² The Law of the Republic of Azerbaijan on Freedom Assembly, Article 9.1.

²⁶³ *Alekseyev v. Russia* [First Section], no. 4916/07, 21 October 2010, para 73, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-101257>. Accessed May 03, 2018.

²⁶⁴ OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Assembly*, para 43.

institutions.²⁶⁵ These restrictions are not necessary in democratic society. There must be sufficient grounds for these restrictions. Because there is no clear justification on reasonable grounds for this restriction. It was mentioned that the same restriction was made to legislation by the British government for prohibiting people to hold any assembly in near to Parliament buildings. However, this provision was removed from legislation later.²⁶⁶ In *Barankevich v. Russia*, the ECtHR found a violation of freedom of assembly interpreted in the light of freedom of thought, conscience, and religion. In this case, local authority did not allow to hold a service of worship in the park. The government argued that the service could have caused to dissatisfaction and public disorder. However, the court mentioned that this restriction was not necessary for democratic society.²⁶⁷ Although, the body of executive power has an obligation to make the list of places for holding an assembly and these places should be published on media.²⁶⁸ But the body of executive power does not respect this provision of law. They made a list but the list was not published in any media. In fact, the community was not informed about venues for holding an assembly. Moreover, very few venues were included in this list, and many of them are outside of the city.

iii) Content-based restrictions

According to the Law on Freedom of Assembly, local authorities can prohibit or suspend the assembly if the assemblies are accompanied by calls to discrimination, hostility, violence, propagandizing national, propagandizing war, racial or religious discord.²⁶⁹ This is not clear and merely a provision. Because some participants should make a public call to discrimination, hostility, or violence, etc., in assembly and assembly shall be prohibited based on this provision. However, principle 4 of the Council of Europe Committee of Ministers says:

National law and practice should allow the courts to bear in mind that specific instances of hate speech may be as insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.²⁷⁰

Also, the ECtHR ruled that there could be content-based restrictions on freedom of assembly based on persuasive reasons.²⁷¹

Additionally, assembly held with political aims shall be prohibited 24 hours before the day of elections (Presidential, Parliamentary, also Ali Majlis of Nakhichevan Autonomous and municipal).²⁷² But it cannot emphasize that a peaceful assembly is forbidden for political purposes

²⁶⁵ The Law of the Republic of Azerbaijan on Freedom Assembly, Article 9.3.

²⁶⁶ OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Assembly*, p. 38.

²⁶⁷ *Barankevich v. Russia*, [First Section], no. 10519/03, 26 October 2007. Para 35. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-81950>. Accessed May 04, 2018.

²⁶⁸ The Law of the Republic of Azerbaijan on Freedom Assembly, Article 9.6.

²⁶⁹ *Ibid*, Article 8 (1, 2).

²⁷⁰ The Committee of Ministers of Council of Europe, Recommendation on Hate Speech, no. 97, 1997, para 43. Available on: [https://www.coe.int/t/dg4/cultureheritage/mars/source/resources/references/04%20-%20CM%20Rec\(97\)20%20Hate%20Speech.pdf](https://www.coe.int/t/dg4/cultureheritage/mars/source/resources/references/04%20-%20CM%20Rec(97)20%20Hate%20Speech.pdf). Accessed May 04, 2018.

²⁷¹ *Primov and others v. Russia* [First Section], no. 17391/06, 12 June 2014, Para 135. ECtHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-144673> . Accessed May 04, 2018.

²⁷² The Law of the Republic of Azerbaijan on Freedom Assembly, Article 8.3.

at any time. However, people can call for the resignation of the government, it should not be prohibited, if there is no call on violence, radical discrimination and etc. Generally, there is a need to add this provision to the Law on Freedom of Assembly, because it is forbidden to conduct election campaigns 24 hours before Election Day in accordance with election legislation. Holding assembly is one of the primary tools of the election campaign. So, there was no need to mention this provision separately if the holding of the assembly was prohibited.

It should be noted that some of the provisions of the Law on Freedom of Assembly are misunderstood in Azerbaijan. Under this law, the organizer of assemblies must send a notification to the body of executive power for coordinating the time, venue of assembly and also organizing appropriate security measures by the body of executive power.²⁷³ So, organizers are obliged to send only a notification, do not need any permission for holding an assembly. However, in practice notification process has been replaced by a system of authorization. Nils Muznieks, the Commissioner for Human Rights of Council of Europe, stated that assembly organizers do not need any permission and the requirement for notification must be compatible with European standards.²⁷⁴ However, a prior notification process is bureaucratic in Azerbaijan. The body of executive power must review the notification of the organizers, and if there is any restriction, a clear explanation should be sent to organizers in soon. In *Eva Molnar v. Hungary*, the ECtHR says:

A prior notification requirement would not normally encroach upon the essence of that right. It is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorization.²⁷⁵

However, in *Bukta and Others v. Hungary*, ECtHR mentioned that if the peaceful assembly does not comply with a notice requirement, the decision to dissolve the peaceful assembly without any unlawful conduct of participants is a disproportionate restriction on peaceful assemblies.²⁷⁶

Furthermore, the body of executive power has obligations on protecting freedom of assembly and body of executive power must not exceed the powers assigned to it by law, but the body of executive power did it for many times. For example, on November 18, 2017, a group of lawyers wanted to hold a protest related to the abolition of the institution of legal representation by non-bar members. But the Executive authority of Baku City exceeded the limits of its authority and stated that it was not appropriate to protest the elimination of the representation since the parliament adopted it and signed by the president. The answer of the body of executive power was a gross violation of competencies of the body of executive power.²⁷⁷

According to the Law on Freedom of Assembly, the body of executive power must send its decision to organizers until 3-days prior to the assembly, because organizers may have more time

²⁷³ *Ibid*, Article 5.1.

²⁷⁴ Committee on the Honouring of Obligations and Commitments by the Member States of the Council of Europe, *Report on functioning of democratic institutions in Azerbaijan*, 2017, para 69. Available on: <http://website-pace.net/documents/19887/3258251/20170907-AzerbaijanInstitutions-EN.pdf/1e6f0d15-1836-428b-a0c9-7f41ac8ece87>. Accessed May 04, 2018.

²⁷⁵ *Eva Molnar v. Hungary* [Second Section] no.10346/05, 07 January 2009. Para 35. ECHR. Available on: <http://hudoc.echr.coe.int/eng/?i=001-88775>. Accessed May 04, 2018.

²⁷⁶ *Bukta and Others v. Hungary* [Second Section], no. 25691/04, 17 October 2007. Para 36. ECHR 2007-III.

²⁷⁷ Meydan TV “New Laws May Leave Azerbaijanis Without Legal Representation”, November 2, 2017. Available on: <https://www.meydan.tv/en/site/society/25986/>. Accessed May 04, 2018.

for making preparations for the assembly.²⁷⁸ But in many cases, the body of executive power violated the law and sent the response to the organizers only one day before the assembly. In many cases executive authority did not allow to hold an assembly, they offered to change the date or place of assembly, but there was no another assembly on the same day and place.

Furthermore, a spontaneous assembly is considered a reaction to any incident. However, there is no requirement to send notification in advance on spontaneous assembly. But spontaneous assembly can be restricted or suspended for national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or the protection of the rights and freedoms of others, also if assembly accompanied by calls to discrimination, hostility, violence and etc.²⁷⁹ However, contrary to this provision, police intervened the assembly and used force against the participants of spontaneous assembly. The argument of the police was that this assembly was not agreed with body of executive power. But spontaneous assemblies should not be suspended, because there is no requirement for sending notification in advance. In *Balcik v. Turkey* Court mentioned that:

Where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.²⁸⁰

Additionally, private places are not regulated by the Law on Freedom of Assembly. But in many cases, police interfered using force and dispersed the protestors from a private place. For example, in 2008, thirty persons held a gathering at cafe for celebrating the anniversary of the birth of Che Guevara. But they were arrested by police. Emin Huseynov, a journalist, was taken to the police office and beaten there. In *Huseynov v. Azerbaijan*, ECtHR found that police intervention was an unlawful interference with his freedom of assembly.²⁸¹

Article 14 of Law on Freedom of Assembly sets out the duties of police regarding holding an assembly. Police can suspend the unlawful assembly, to detain individuals who are participants at the protest with cold steel, pieces of stone, glass, etc.²⁸² An important right of police is to use proper force for suspending the assembly and dispersal of the participants of assembly.²⁸³ However, in many cases, the police exceeded their authority and used inappropriate force for suspending the assembly. It should be noted that physical force and equipment for using force must be proportional to the danger in all cases.²⁸⁴ Because police have obligations under Law on Freedom of Assembly, also they must know that the state has an obligation to protect the freedom of assembly. As well as, Code of Conduct for Law Enforcement Officials of UN says:

Law enforcement officials may use force only when strictly necessary and to the extent

²⁷⁸ The Law of the Republic of Azerbaijan on Freedom Assembly, Article 10.

²⁷⁹ *Ibid*, Article 5.4.

²⁸⁰ *Balcik v Turkey* [Third Section], no. 25/02, 29 February 2008. Para 52. ECHR Available on: <http://hudoc.echr.coe.int/eng?i=001-83580>. Accessed May 04, 2018.

²⁸¹ *Huseynov v. Azerbaijan* [First Section], no 59135/09, 07 August 2015. Para 90. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-154161>. Accessed May 04, 2018.

²⁸² The Law of the Republic of Azerbaijan on Freedom Assembly, Article 14.1.

²⁸³ *Ibid*, Article 14.2.

²⁸⁴ The Law of the Republic of Azerbaijan on Freedom Assembly, Article 14.6.

required for the performance of their duty.²⁸⁵

Although, persons who violated the Law on Freedom of Assembly (not sending a notification, calling violence,) could be subject to administrative detention and fines. Criminal or administrative liability on violation of the law on freedom of assembly described in Criminal Code of Azerbaijan Republic and also Code of Administrative Offences. According to Criminal law, persons could face a penalty, and two years' imprisonment for infringement of rules on implementing meetings.²⁸⁶ However, there is administrative liability related to freedom of assembly. Individuals and legal entities could be subject to massive fines and imprisonment for up to two months for violation of rules of organizing and holding of meetings. Individuals have to pay 1500-3000 AZN (approximately 800-1500 EUR), legal entities must pay 15,000-30,000 AZN (around 8000-15000 EUR). Also, people could face to imprisonment for up to two months or 300-600 AZN fines for participating in a meeting, rally, which not organized in accordance with the Law on freedom of Assembly.²⁸⁷ Additionally, individuals must pay 1500-300 AZN and legal entities 15,000-30,000 AZN for obstructing a lawful assembly.²⁸⁸ But until 2012 the administrative detention was 15 days, and fines were very low for organizing and participating unlawful assembly, then authority increased the administrative penalties and days of detention. Because people were active and held many protests against the government. The government started to use these amendments to pressure to political activists in 2013.

Therefore, these restrictive amendments to the laws only serve the purposes of the government. Since the government's goals limiting freedom of assembly are not legitimate, these steps have no legal basis.

5. RECOMMENDATIONS

Violation of freedom of assembly and associations have become a central issue in Azerbaijan. These rights are essential for enjoying the freedom of expression and also right to election. We have discussed the main problems and challenges above. Now the central question is how to solve these problems and to establish a proper environment for protecting freedom of peaceful assembly and association in Azerbaijan. It is clear that, first of all, the government must demonstrate the political will to solve these problems. Firstly, Azerbaijani government should follow the recommendations of international organizations for protecting the right freedom of assembly and association. Venice Commission of the Council of Europe gave an opinion regarding the law on freedom of assembly and also laws on freedom of association. However, the OSCE/ODHIR prepared guidelines on freedom of peaceful assembly and association, this guideline must be taken into account, and the international standards should be learned.

²⁸⁵ UN General Assembly, *Resolution on Code of Conduct for Law Enforcement Officials*, no. 34/169, 1979, Article 3. Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>. Accessed May 04, 2018.

²⁸⁶ The Criminal Code of the Republic of Azerbaijan, Article 169.

²⁸⁷ The Code of Administrative Offences of the Republic of Azerbaijan, Article 513.

²⁸⁸ *Ibid*, Article 180.

During the research, it was ascertained that one of the most critical issues is registration of NGOs. Many documents are required for registration of NGOs in Azerbaijan. In fact, NGOs are not able to operate in Azerbaijan without state registration. There is no specific provision to prohibit operation of NGOs without registration, but there is a gap that NGOs must register all grant agreements and application for registration should be stamped by NGOs. However, unregistered NGOs do not have a stamp. Therefore, in order to eliminate this gap, the government should add the provision to NGO legislation that NGOs can operate without state registration. Also, the scope of documents, which are required from NGOs for registration should be decreased. The Ministry of Justice has refused to register the NGOs, especially human rights NGOs since 2005 and many NGOs sent the application to the ECtHR. Moreover, in fact, political parties are not able to attend elections without state registration, because this is prohibited by the Election Code. The government must review the two laws, and this unjustified provision should be removed from the Election Code, and both acts must be compatible with the Constitution of Azerbaijan and ECHR.

As discussed above, one of the most critical issues in freedom of association is access to funding. NGOs do not have access to funding. Firstly, foreign donors must obtain the right to issue a grant, and this requirement has severely hindered NGOs receiving grants. Because international donors are not interested in following this unjustified provision. Additionally, NGOs are not able to carry out bank operations or any other activity related grant agreement without registration of agreement. However, it must be enough to present information on received grants and donations in an annual financial report, which is submitted to Ministry of Finance. With regard to this issue, registration of grants and donations must be removed from the national legislation. Also, limitation on receiving donations must be abolished. Also, everyone, including foreigners and foreign NGOs should be able to give donations to NGOs in Azerbaijan. In the view of the author, with regard to this issue obtaining a right to issue grant must be abolished. Donors must be free for issuing grants. Also, a requirement to present notice for bank operations on grants and donations should be repealed. However, there is a limitation for political parties for receiving funds from individuals, but there are no sufficient grounds for this restriction. Additionally, this limitation is an unjustified interference in the activities of parties. The government must remove this provision from legislation because this issue is an internal issue and may be regulated by the charter of a political party.

Another important issue is a prohibition to foreigners to establish NGOs in Azerbaijan territory without citizen of Azerbaijan. It was mentioned above that there are two provisions which are contrary each other and also to Constitution of Azerbaijan Republic. In order to have a satisfactory result, the requirement for establishment NGOs by foreigners must be reviewed, because such provision in law should not be allowed.

Besides changing legislation, Azerbaijani authorities pressure independent NGOs. A criminal case was opened against national and international NGOs 4 years ago and is still open. Bank accounts of many NGOs were frozen, Ministry of Taxes made huge fines against NGOs. Several NGO leaders were arrested in 2014. The main reason is that government does not want to provide an environment for operation of NGOs in Azerbaijan. In order to improve the system of protection of the freedom of association firstly, the government must stop to pressure to independent NGOs, and criminal case against national and international NGOs should close in soon.

Another issue is related to the freedom of peaceful assembly. Law on Freedom of Assembly

and case-law system of ECHR says that there is no need to send notification in advance for spontaneous assemblies. But police intervened on these spontaneous assemblies regularly. In some cases, police intervened on assemblies which were held in accordance with Law on Freedom of Assembly. I think that to solve this issue; police must stop intervening on lawful assembly and participants of assemblies must not be arrested for participating in lawful assemblies. However, another solution is that police officers must be trained on implementation of Law on Freedom of Assembly of Azerbaijan Republic. Because the law on freedom of peaceful assembly must be interpreted in accordance with the provisions of the ECHR.

It was mentioned that judges of domestic courts could not make any decision without permission of the government. For example, Ministry of Justice refused to register NGOs, and the local court upheld this decision. However, ECtHR found a violation of freedom of association with regard to registration of some NGOs. Azerbaijani government has an obligation to improve the court system in the country, and authority must fulfill this obligation immediately.

Finally, Azerbaijani government must fulfill the obligations to the Council of Europe with regard to the right to freedom of peaceful assembly and association. Also, all decision of ECtHR should be implemented by Azerbaijani government.

Additionally, I think that Council of Europe is still an essential organization for protecting fundamental freedoms in the world. However, some deputies in PACE are not independent and they received gifts from the Azerbaijani government. It is good that the measures against these deputies were taken by the Council of Europe. These deputies lost their voting right in PACE for some years, Samad Seyidov, the head of delegation of the Republic of Azerbaijan in PACE is also included this list. The PACE must continue to take measures against such deputies. Another important issue is, the infringement proceedings started against Azerbaijan for not implementing the judgments of ECtHR, as well as the judgments with regard to the right to freedom of assembly and association. Moreover, the Council of Europe must demand the Azerbaijani government to fulfil its obligations to Council of Europe on protection of fundamental rights, as well as the right to freedom of peaceful assembly and association. Furthermore, the Council of Europe must start negotiation with the Azerbaijani government on creating appropriate environment on functioning of associations in Azerbaijan. Additionally, it was researched that one main problem is related the refusal of registration of independent NGOs in Azerbaijan. In my opinion, ECtHR could adopt a pilot judgment to put the government's commitment to legislative reform. Because the right to freedom of association is important right in the Convention. However, it was discussed that many restrictive amendments were made to NGO legislation and also the laws to regulate the right to freedom of peaceful assembly. The ECHR must demand that all draconian amendments from NGO legislation and legislations acts related to freedom of peaceful assembly should be removed from domestic legislation.

6. CONCLUSION

In the first chapter of this paper, the establishment process of the relationship between Azerbaijan and Council of Europe was researched. Research showed that the accession of Azerbaijan to the Council of Europe took years and proved difficult. It was mentioned that accession of Azerbaijan to Council of Europe was essential to the country. During accession process, the first Constitution of Azerbaijan Republic was adopted. Also, Azerbaijani government adopted legislation in order to secure the freedom of peaceful assembly and association. The death penalty was abolished, and other relevant laws were passed. Additionally, the paper has examined the current relationship between Azerbaijan and Council of Europe. The Committee of Ministers of Council of Europe started infringement proceeding against Azerbaijan. In result of this proceeding, Azerbaijan could lose its voting right, even could lose the membership in the Council of Europe. However, the question is whether the Council of Europe is important for Azerbaijani government. Some officials argue that the relationship with Council of Europe is important for Azerbaijan to building stronger economic and political relations with member states of CoE. Others say that the Council of Europe has lost its power and adopts resolutions against Azerbaijan under the influence of the Armenian lobby. Another interesting issue is that most of the local people do not know about it, because all television channels, print media was controlled by the government and they represented that Council of Europe as an unimportant institution and the power of the current government is preached. Currently, the investigative body on Corruption Accusations in PACE prepared a report and report was adopted in PACE. According to this report, the Azerbaijani government gave several gifts (caviar for several thousand dollars, girls for the night, and trivial money) to a member of PACE for voting in favor to Azerbaijan on specific issues. As result of these gifts, some resolutions were not adopted in PACE on violation of human rights.

The paper observed the current problems and challenges in ensuring the freedom of assembly and association in Azerbaijan. Firstly, the research has revealed that there are essential gaps in domestic legislation, and these gaps provided more power to the Azerbaijani authorities to control the activities of NGOs, also pressure political activists. It was mentioned that actual violations caused by the application of laws or other normative acts by state bodies. In this case, the law itself is not a problem, but its application by a state body leads to a violation. Actual violations of rights are widespread in Azerbaijan. Additionally, analysis of attitudes, influence, and interests of the actors of the political scene of Azerbaijan indicates that the current situation does not allow for the democratization. It is very difficult to predict the future course of the situation. One can assess the situation of human rights in early years of the independence – during the mixed period – as partially good or satisfactory. However, the situation deteriorated during the following period despite increasing commitments on human rights of the country before international institutions like the Council of Europe. Research has highlighted that human rights violations in Azerbaijan are systematic, institutional, regular and recurrent. In some cases, state bodies commit actions that violate human rights unintentionally (*in good faith*). However, in many cases, human rights are violated by state bodies intentionally. During 2013-2018, the authorities carried out a systematic crackdown targeting, first, independent youth organizations, then NGOs and then conservative youth groups. The crackdown resulted in inertia when it comes to participation which

can be observed only in meetings of non-activist nationalist youth groups, charity campaigns on social media, informal gatherings of activists and their discussions on social media. Generally, the accessibility of human rights by the general population is very low. Traditional methods of reaching broader community by human rights activists have not been successful. The need for new approaches to political rights, particularly the triple rights (freedoms of expression, assembly, and association). Political rights require creative methods and regular innovation. The creativity and innovative approaches applied before 2014, but the crackdown on civil society also negatively affected this area.

Moreover, the paper has examined whether restrictions on the right to association and assembly are legitimate or not. Most of the restrictions on the right to freedom of assembly and association adapted to the standards of Council of Europe. State agencies use restrictions not described in the law to stop the activities of NGOs also excessive fines and detentions to silence the free voice of political activists. However, it was mentioned in national law that, restrictions to freedom of assembly and association must be prescribed by law, also must be necessary in a democratic society in order to protect national security, the rights of others, etc. Additionally, all restrictions must be proportionate. Therefore, review of the standards of international organizations, gaps, and shortages in the legal norms showed that Azerbaijani government must remove disproportionate restrictions from legislation and all restrictions should be limited with the standards of the Council of Europe.

It should be mentioned that there are many problems and challenges related to protecting freedom of assembly and association. Azerbaijan joined the Council of Europe 16 years ago. The research showed that during accession process and after becoming the member of CoE, Azerbaijani government made positive changes to legislation for protecting fundamental freedoms, as well as freedom of assembly and association. Because Haydar Aliyev, the former president of Azerbaijan Republic thought that relationship with Council of Europe is essential for Azerbaijan and he made a lot of effort for this accession. However, after his death, his son and current president Ilham Aliyev has taken steps to deteriorate the relations between Azerbaijan and Council of Europe.

Therefore, the answer to the research questions that, Azerbaijan authority did not implement the commitments to the Council of Europe with regard to protecting the freedom of assembly and association in Azerbaijan. However, the researched also showed that Azerbaijan did not fulfill its international obligations with regard to all fundamental liberties not only freedom of association and assembly. Moreover, the paper observed there are no sufficient grounds for the restrictions on freedom of assembly and association. The government is not interested in ensuring political liberties, including freedom of assembly and association, and considers them dangerous for authoritarian governance. The government's aims for limiting the freedom of association and assembly are not legitimate. The European Court of Human Rights has questioned the legitimacy of such restrictions and the need for a democratic society in its judgments against Azerbaijan regarding the violations of freedom of assembly and association. However, restrictions on freedom of assembly and association is criticized by various international organizations, even some international organizations, such International Transparency Coalitions, Open Government Partnership and Extractive Industries Transparency Initiative, have decided to suspend Azerbaijan's membership in this organization due to its restrictive environment for NGOs.

BIBLIOGRAPHY

Primary Sources:

1) Legislation

International Documents

Council of Europe, *the European Convention for the Protection of Human Rights and Fundamental Freedoms*, Available on: http://www.echr.coe.int/Documents/Convention_ENG.pdf

International Labour Organization, *Convention No. 98 concerning the right to Organise and to Bargain Collectively*, 1949, Article 4. Available on: http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102556.

The Statute of the Council of Europe, 1949. Available on: <https://rm.coe.int/1680306052>.

United Nations, *Vienna Convention on the Law of Treaties* (with annex). Concluded at Vienna on 23 May 1969. Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

United Nations, *Universal Declaration of Human Rights*, 1948. Available on: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

United Nations, *International Covenant on Civil and Political Rights*, 1966. Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

Domestic Legislation

The Constitution of the Republic of Azerbaijan. 1995. Available on: <https://en.president.az/azerbaijan/constitution>.

The Criminal Code of the Republic of Azerbaijan, 1999. Available on: <http://www.wipo.int/edocs/lexdocs/laws/en/az/az017en.pdf>.

The Cabinet of Ministers of the Republic of Azerbaijan, Rule Registration of Grant Agreements/Contracts (Decisions/Orders), no. 216, 2015. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/ResAzer.pdf>.

The Constitution of the Republic of Azerbaijan, 1995. A previous version of Article 49. Available on: http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf.

The Labour Code of the Azerbaijan Republic, 1999, Article 280-281. Available on: <http://www.e-qanun.az/code/7> . Accessed May 04, 2018.

The Law of the Republic of Azerbaijan on Grant, 1998. Available on: [file:///Users/gunayismayilova/Downloads/Azerbaijan_Law_on_grant_1998_am2013_en%20\(1\).pdf](file:///Users/gunayismayilova/Downloads/Azerbaijan_Law_on_grant_1998_am2013_en%20(1).pdf).

The Law of the Republic of Azerbaijan on Grant, 1998. Available on: file:///Users/gunayismayilova/Downloads/Azerbaijan_Law_on_grant_1998_am2013_en.pdf.

The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations), 2000. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/AzerNGOlaw.pdf>.

The Rules of the Cabinet of Ministers of the Republic of Azerbaijan, No. 216, 2015. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/ResAzer.pdf>.

The Republic of Azerbaijan. Dini Etiqad Azadligi haqqinda Qanun (Law of the Republic of Azerbaijan on Freedom of Religious Beliefs), 1992. Available on: <http://www.e-qanun.az/framework/7649>.

The Republic of Azerbaijan, Edliyye Nazirliyi haqqinda Esasname (Clause of the Regulation on the Ministry of Justice of the Republic of Azerbaijan), 2006. Available on: <http://www.justice.gov.az/?view=posts&id=1095>.

The Republic of Azerbaijan, Huquqi Sexslerin Dovlet Qeydiyyatı ve Dovlet Reyestri Haqqında Qanun (Law on State registration and State Registry of Legal Entities), 2003. Available on: <http://e-qanun.gov.az/framework/5403>.

The Republic of Azerbaijan, Hemkarlar ittifaqi haqqında Qanun (The Act of the Republic of Azerbaijan on Trade Unions) 1994. Available on: <http://www.e-qanun.az/framework/8987>.

The Republic of Azerbaijan. İctimai İstirakçilik haqqında Qanun (Law of the on Public Participation), 2013. Available on: <https://www.president.az/articles/10814>.

The Republic of Azerbaijan. İnzibati Xetəlar Məcəlləsi (the Code of Administrative Offences

of the Republic of Azerbaijan), 2000. Available on: <http://www.e-qanun.az/code/24>.

The Republic of Azerbaijan, Olkeye gelmek, olkeden getmek ve Passportlar haqqında Qanun (The Law of the Republic of Azerbaijan on Leaving and Coming country and Passports), 1994. Available on: <http://www.mfa.gov.az/files/file/42.pdf>.

The Republic of Azerbaijan. Polis Haqqında Qanun (Law on Police), 1999, Article 33. Available on: <http://www.e-qanun.az/framework/2937>.

The Republic of Azerbaijan, Siyasi Partiyalar Haqqında Qanun (Law of the Republic of Azerbaijan on Political Parties), 1992, Available on: <http://www.e-qanun.az/framework/7090>.

The Republic of Azerbaijan, Serbest Toplasmaq Azadligi Haqqında Qanun (The Law on Freedom of Assembly), 1998. Available on: <http://www.e-qanun.az/framework/3229>.

The Republic of Azerbaijan, Secki Mecellesi (Election Code of the Republic of Azerbaijan), 2003. Article 54. Available on: <http://www.e-qanun.az/code/17>.

Case Law

Alekseyev v. Russia, no. 4916/07, 21 October 2010, para 73, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-101257>.

Baczkowski and others v. Poland, no. 1543/06, 03 May 2007. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-124656>.

Barankevich v. Russia, no. 10519/03, 26 October 2007. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-81950>.

Bukta and Others v. Hungary, no. 25691/04, 17 October 2007. ECHR 2007-III.

Balcik v Turkey, no. 25/02, 29 February 2008. ECHR Available on: <http://hudoc.echr.coe.int/eng?i=001-83580>.

Eva Molnar v. Hungary, no.10346/05, 07 January 2009. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-88775>.

Enerji Yapi-Yol Sen v. Turkey, no. 68959/01, 21 April 2009. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-92267>.

Galstyan v. Armenia, no. 26986/03, 11 November 2007, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-83297>.

Gorzelik and others v. Poland, no. 44158/98, 17 February 2004. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-61637>.

Güneri and Others v. Turkey, no. 42853/98, 43609/98, 44291/98, 12 July 2005, ECHR. Available on: <http://hudoc.echr.coe.int/ENG?i=003-1393542-1460795>.

Huseynov v. Azerbaijan, no 59135/09, 07 August 2015. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-154161>.

Huseynli and others v. Azerbaijan, no. 67360/11,67964/11, 69379/11, 11 February 2016, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-160429>.

Handyside v. the United Kingdom, No 5493/72 of Commission decision of 7 December 1976. Available on: <http://hudoc.echr.coe.int/eng?i=001-115187>.

Ilgar Mammadov v. Azerbaijan, no. 15172/13, 22 May 2014. ECHR, Available on: <http://hudoc.echr.coe.int/eng?i=001-144124>.

James and Webster v. the United Kingdom, 13 August 1981, Series A no. 44.

Jafarov v. Azerbaijan, no. 69981/14, 16 March 2016. §162. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-161416>.

Khanhuseyn Aliyev v. Azerbaijan, no. 19554/06, 21 February 2012, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-109144>.

Kimlya and others v. Russia, no. 76836/01 and 32782/03, 1 October 2009. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-94565>.

Moscow Branch of the Salvation Army v. Russia, no.72881/01, 5 October 2006. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-77249> .

Maestri v. Italy, no. 39748/98, 17 February 2004, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-61638>.

Nasibova v. Azerbaijan, no. 4307/04), 18 January 2008. §29. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-82825>.

Primov and others v. Russia, no. 17391/06, 12 June 2014. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-144673>.

Ramazanova and Others v. Azerbaijan, no. 44363/02, 1 February 2007. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-79301>.

Rassemblement Jurassien Unité Jurassienne v. Switzerland, no. 8191/78, Commission decision of 10 October 1979, DR 17.

Rizvanov v. Azerbaijan, no. 31805/06, 17 April 2012, ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-110488>.

Sidiropoulos and others v. Greece no. 26695/95, 10 July 1998. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-58205>.

Saska v. Hungary, no. 458050/08, 27 November 2012. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-114769>. Accessed May 03, 2018.

Tyrer v. the United Kingdom, no. 5856/72, Commission decision of 25 April 1978. Available on: <http://hudoc.echr.coe.int/eng?i=001-57587>.

Tsonev v. Bulgaria, no.45369/99, 13 April 2006. ECHR. Available on: <http://hudoc.echr.coe.int/eng?i=001-73291>.

United Communist Party of Turkey and Others v. Turkey, judgment of 30 January 1998, no. 133/1996/752/951. Available on: <http://hudoc.echr.coe.int/eng?i=001-58128>.

Secondary Sources

1) Reports and other official documents

Commissioner for Human Rights of the Council of Europe, *Report by Nils Muižnieks following his visit to Azerbaijan from 22 to 24 May 2013*. Available on: [https://rm.coe.int/ref/CommDH\(2013\)14](https://rm.coe.int/ref/CommDH(2013)14). Accessed April 01, 2018.

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990. Available on: <https://www.osce.org/odihr/elections/14304?download=true>. Accessed May 04, 2018.

Freedom of House, *Report on Freedom in the World*, 2016. Available on: <https://freedomhouse.org/report/freedom-world/2016/azerbaijan>. Accessed March 20, 2018.

Freedom House, *Freedom in the World 2017*, Available on: <https://freedomhouse.org/report/freedom-world/2017/azerbaijan>. Accessed April 11, 2018.

General Assembly of United Nations, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association*, 2016. Available on: http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E. Accessed March 06, 2018.

General Assembly of United Nations, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association*, 2013, Para 52. Available on: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf. Accessed March 07, 2018.

Institute for Reporters' Freedom and Safety. *Opinion no.222 Implementation of Azerbaijan's commitment to the Council of Europe*, 2013, p. 6. Available on: https://www.irfs.org/wp-content/uploads/2013/10/Opinion-No-222_Implementation_of_Azerbaijan_commitments_to_the_Council_of_Europe.pdf. Accessed February 24, 2018.

International Media Support, *Report on Azerbaijan's Council of Europe Chairmanship: The End of Civil Society*, 2014, p.10. Available on: https://www.mediasupport.org/wp-content/uploads/2014/12/AZ-chairmanship-crackdown-report_FINAL.pdf. Accessed April 01, 2018.

Independent Investigation Body of PACE, *Report of the on the allegations of corruption within the Parliamentary Assembly of Council of Europe*, 2018, Available on: <http://assembly.coe.int/Communication/IBAC/IBAC-GIAC-Report-EN.pdf>. Accessed April 11, 2018.

OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Association*, 2015. Available on: <https://www.osce.org/odihr/132371?download=true>. Accessed March 05, 2018.

OSCE Office for Democratic Institutions and Human Rights (ODIHR)- Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010. Available on: <https://www.osce.org/odihr/73405?download=true>. Accessed March 06, 2018.

OSCE's Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the implementation of the Law on Freedom of Assembly of the Republic of Azerbaijan*, 2008. Available on: <https://www.osce.org/odihr/34311?download=true>. Accessed March 09, 2018.

OSCE/ODIHR and the Venice Commission, *Guidelines on Political Party Regulation*, 2011. Available on: <https://www.osce.org/odihr/77812?download=true>. Accessed March 12, 2018.

OSCE (ODIHR)/Venice Commission, *for Review of Legislation Pertaining to Religion or Belief*, 2004. Available on: <https://www.osce.org/odihr/13993?download=true>. Accessed March 09, 2018.

OSCE Office for Democratic Institutions and Human Rights Election Observation Mission Republic of Azerbaijan, *Interim Report on Early Presidential Election 2018 in Azerbaijan*. Available on: <https://www.osce.org/odihr/elections/azerbaijan/376570?download=true>. Accessed April 12, 2018.

OSCE/ODIHR and Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities*, 2014. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CEDL-AD\(2014\)023-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CEDL-AD(2014)023-e). Accessed May 03, 2018.

PACE, *Resolution on the functioning of democratic institutions in Azerbaijan*, no. 2184 (2017), Para 14. Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24188&lang=en>. Accessed April 02, 2018.

PACE. *Opinion on Azerbaijan's application for membership in the Council of Europe*, no 222, (2000). Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16816&lang=en>. Accessed February 25, 2018.

PACE, *Resolution on the honouring of obligations and commitments by Azerbaijan*, no.1917, Final version, 2013, Para.18.8. Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19451&lang=en>. Accessed May 02, 2018.

Svante E Cornell. *Report no. 46 on Nagorno Karabakh Conflict*. 1999. p.1. Available on: https://is.muni.cz/el/1423/podzim2012/MVZ208/um/35586974/Cornell_The_Nagorno-Karabakh_Conflict.pdf. Accessed February 25, 2018.

The Republic of Azerbaijan, *Konstitusiyaya Mehkemesinin qerari (Decision of Constitutional Court of the Republic of Azerbaijan On Interpretation of Article 49 of the Constitution)*, 2005. Available on: <http://www.e-qanun.az/framework/16450>. Accessed May 01, 2018.

The Cabinet of Ministers of the Republic of Azerbaijan, *Rule on Procedure for Foreign Donors to Obtain the Right for Provision of Grants in the Territory of the Republic of Azerbaijan*, no.339 of the, 2015. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/AzerReg.pdf>. Accessed May 02, 2018.

The Cabinet of Ministers of the Republic of Azerbaijan, *Rules on submission of information about amount of donation received by NGOs as well as by branches or representations of NGOs of foreign states and about the donor* no. 336, 2015. Available on: <http://www.icnl.org/research/library/files/Azerbaijan/Azerdonate.pdf>. Accessed May 03, 2018.

The Committee of Ministers of Council of Europe, *Recommendation on Legal Status of Non-Governmental Organizations in Europe*, no. 14, 2007. Para 47. Available on: <https://rm.coe.int/16807096b7>. Accessed May 02, 2018.

The Committee of Ministers of Council of Europe, *Recommendation no. 4 on common rules against corruption in the funding of political parties and electoral campaigns*, 2003. Available on: [https://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interfa ce2006/rec%202003%20\(4\)%20pol%20parties%20EN.pdf](https://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20interfa ce2006/rec%202003%20(4)%20pol%20parties%20EN.pdf). Accessed May 04, 2018.

The Committee of Ministers of Council of Europe, *Recommendation on Hate Speech*, no. 97, 1997. Available on: [https://www.coe.int/t/dg4/cultureheritage/mars/source/resources/references/04%20-%20CM%20Rec\(97\)%20Hate%20Speech.pdf](https://www.coe.int/t/dg4/cultureheritage/mars/source/resources/references/04%20-%20CM%20Rec(97)%20Hate%20Speech.pdf). Accessed May 04, 2018.

The Committee on the Honouring of Obligations and Commitments by the Member States of the Council of Europe, *Report on functioning of democratic institutions in Azerbaijan*, 2017. Available on: <http://website-pace.net/documents/19887/3258251/20170907-AzerbaijanInstitutions-EN.pdf/1e6f0d15-1836-428b-a0c9-7f41ac8ece87>. Accessed May 04, 2018.

The Parliament Assembly of Council of Europe. *Resolution on the conflict in Nagorno-Karabakh, no 1047* (1994). Available on: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16458&lang=en>. Accessed February 25, 2018.

The Protocol 12 of the ECHR. Available on: https://www.echr.coe.int/Documents/Library_Collection_P12_ETS177E_ENG.pdf. Accessed May 04, 2018.

The Venice Commission. *Opinion on the Law on Non-Governmental Organizations (Public Associations and Funds) as amended by the Republic of Azerbaijan*, 2014. Available on: <https://rm.coe.int/1680306ff8>. Accessed on February 24, 2018

The Venice Commission. *Opinion on the Law on Freedom of Assembly in Azerbaijan*, 2007. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)034-e). Accessed February 24, 2018.

The Venice Commission, *Guidelines and Explanatory Report on Legislation on Political Parties: Some Specific Issue*, 2004. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)007-e). Accessed May 04, 2018.

United Nations, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, 1984. Available on: <http://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf>. Accessed May 01, 2018.

United States Agency for International Development Bureau for Europe and Eurasia, *2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 2015. Available on: https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIReport_2015_Update8-29-16.pdf. Accessed May 02, 2018.

UN General Assembly, *Resolution on Code of Conduct for Law Enforcement Officials*, no. 34/169, 1979. Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>. Accessed May 04, 2018.

2) Articles

Scholarly

Bierlein, Brigitte. "The principle of proportionality". Available on:

http://www.constcourt.md/public/files/file/conferinta_20ani/programul_conferintei/Brigitte_Bierlein.pdf.

Butler, Israel. "NGOs are vital to democracy-Here's why", *Liberties EU*, April 11, 2017

Available on: <https://www.liberties.eu/en/news/ngo-why-they-are-needed-accountability-democracy-civil-organisation/11727>.

Greer, Steven. "The exceptions to Articles 8 to 11 of the European Convention on Human Rights", *Council of Europe Publishing* (1997). Available on:

[https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15\(1997\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf).

Kengerlinsky, Marat. "Ten years of Azerbaijan's membership in the Council of Europe: A look back and into the future", September 01, 2010. Available on:

http://biweekly.ada.edu.az/vol_3_no_16-17/Ten_years_of_Azerbaijan_membership_in_the_Council_of_Europe.htm. Accessed March 06, 2018.

Loucadies, Loukis G. "Restrictions or Limitations on the Rights Guaranteed by the European Convention on Human Rights", *4 Finnish Yearbook International*. 334 (1993): p. 344.

Mina Muradova, "Azerbaijan Restricts NGO Funding", *The Central Asia-Caucasus Analyst*, February 20, 2013, Available on: <https://www.cacianalyst.org/publications/field-reports/item/12654-azerbaijan-restricts-ngo-funding.html>.

Tagwerker, Nathalie. "Azerbaijan Closes Last of Emergency Camps" *UN Refugee Agency*, February 07, 2008. Available on:

<http://www.unhcr.org/news/latest/2008/2/47aaf6734/azerbaijan-closes-emergency-camps.html>.

Non-Scholarly

Azernews, "Azerbaijan marks 25th anniversary of its joining UN", March 03, 2017.

<https://www.azernews.az/nation/109754.html>.

APA News Agency, “Azerbaijan uses 80% of Loans borrowed from international financial organizations”, March 05, 2018. <http://en.apa.az/azerbaijan-economy/finance-news/azerbaijan-uses-83-of-loans-borrowed-from-international-financial-organizations.html>.

Azertag, “President Ilham Aliyev addressed the opening of 72nd Session of UN General Assembly”, September 20, 2017. Available on: [https://azertag.az/en/xeber/President Ilham Aliyev addressed opening of 72nd Session of UN General Assembly VIDEO-1095443](https://azertag.az/en/xeber/President%20Ilham%20Aliyev%20addressed%20opening%20of%2072nd%20Session%20of%20UN%20General%20Assembly%20VIDEO-1095443). Accessed April 11, 2018.

Council of Europe, “Committee of Ministers launches infringement proceedings against Azerbaijan”, December 05, 2017. Available on: https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan. Accessed March 03, 2018.

Denber, Rachel, “Hopes and Lessons 20 years after the Collapse of the Soviet Union World Report 2012: After the Fall”. *Human Rights Watch*. 2012. <https://www.hrw.org/world-report/2012/country-chapters/europe/central-asia-global>.

Dam, Phillippe. “Azerbaijan Faces Legal Action for Defying European Court”, *Human Rights Watch*, September 26, 2017. <https://www.hrw.org/news/2017/09/26/azerbaijan-faces-legal-action-defying-european-court>.

Institute for Reporters’ Freedom and Safety, “NGO crackdown continues-yet another NGO searched”, May 17, 2015. Available on: <https://www.irfs.org/news-feed/ngo-crackdown-continues-yet-another-ngo-searched/>. Accessed April 02, 2018.

Institute for Reporters’ Freedom and Safety, “Conversation with Ilham Aliyev about pressure on civil society”. October 12, 2015. Available on: <https://www.irfs.org/news-feed/conversation-with-ilham-aliyev-about-pressure-on-civil-society/>. Accessed April 11, 2018.

Meydan TV, "AFPF argues that Party members detained for protest". April 01, 2018. Available on: <https://www.meydan.tv/az/site/news/28038/>. Accessed April 02, 2018.

Meydan TV, “Islamic Games: Repression on Believers in Azerbaijan”, May 13, 2017. Available on: <https://www.meydan.tv/en/site/society/22910/>. Accessed April 11, 2018.

Meydan TV, “Musavat Party was warned about Congress”, December 14, 2017.

Available on: <https://d9mc3ts4czbpr.cloudfront.net/az/site/politics/26553/>. Accessed April 11, 2018.

Meydan TV, “Ordukan’s nephew was detained”, April 29, 2018. Available on: <https://www.meydan.tv/az/site/news/28501/>. Accessed May 01, 2018.

Meydan TV, “New Laws May Leave Azerbaijanis Without Legal Representation”, November 2, 2017. Available on: <https://www.meydan.tv/en/site/society/25986/>. Accessed May 04, 2018.

Radio Liberty, "President Aliyev: some people who called themselves the opposition or human rights activist", 2014. Available on: <https://www.azadliq.org/a/25448937.html>. Accessed April 11, 2018.

Renking News Agency, “SOFAZ has so far received over \$ 133 billion in oil and gas projects”, April 04, 2018. Available on: <http://renking.az/site/news?id=1303>. Accessed April 11, 2018.

Trend News Agency, “Some NGOs try to change Azerbaijan’s Constitutional through donor funding”, November 19, 2014. Available on: <https://en.trend.az/azerbaijan/politics/2334649.html>. Accessed May 03, 2018.

Vestnik Kavkaza, “Could a Euromaidan happen on Azadlig Square?”, 2014. Available on: <http://vestnikkavkaza.net/articles/politics/59569.html>. Accessed April 11, 2018.

3) Books

Rzayev, Yashar. *Azerbaycan Romani: Siyaset ve Milli Dusunce* (Azerbaijani Novel: Political and National Thought). Baku: Education Press, 2010.

Schabas, A. William. *The European Convention on Human Rights – A Commentary*. Oxford: Oxford University Press, 2015.

Valiyev, Adil. *Azərbaycan və Avropa Şurası* (Azerbaijan and Council of Europe). Baku; Eurasia Press, 2009.

4) Other Materials

Administrative Department of the President of the Republic of Azerbaijan Presidential Library, Azerbaijan in the International Arena, available on:

<http://files.preslib.az/projects/azerbaijan/eng/gl8.pdf>. Accessed February 25, 2018.

Council of Europe, Treaty list for a specific State, available on:

https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/AZE?p_auth=RKa5Q0VN. Accessed February 26, 2018.

Council of Europe, Reservation and Declarations for Treaty No.005- Convention for Protection of Human Rights and Fundamental Freedoms, available on:

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&NT=005&VL=1>. Accessed February 27, 2018.

Heydar Aliyev Heritage” International Library. The address of his Excellency Mr. Heydar Aliyev, President of the Republic of Azerbaijan at the session of the Parliamentary Assembly of the Council of Europe, available on: <http://lib.aliyev-heritage.org/en/3817043.html>. Accessed February 25, 2018.

Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, Establishment date of the institution, available on: <http://www.ombudsman.gov.az/az/view/pages/172>. Accessed February 26, 2018.

Intigam Aliyev, e-mail message to author, May 02, 2018.

Rasul Jafarov, e-mail message to author, May 03, 2018.

The Ministry of Foreign Affairs of Azerbaijan, “OSCE”, available on: <http://www.mfa.gov.az/en/content/840>. Accessed February 25, 2018.

Zohrab Ismayil, a Facebook message to author, May 02, 2018.