

THE CITIZENS' LABOUR RIGHTS PROTECTION LEAGUE (Azerbaijan)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**THE ALTERNATIVE REPORT
(ON THE ARTICLES 8,9,10,19,21,22 OF THE COVENANT)**

**TO THE FOURTH PERIODIC REPORT OF THE REPUBLIC OF AZERBAIJAN
SUBMITTED TO THE HUMAN RIGHTS COMMITTEE**

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Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

The 3rd paragraph of the Article 35 of the Constitution of the Republic of Azerbaijan stipulates that 'Nobody might be forced to work'.

According to the provisions of the Article 17 of the Labour Code, *'It shall be prohibited to oblige an employee to perform a job not included in his job description through any kind of duress or under the threat of termination of the employment contract. Offenders shall be held liable under legally established procedure'.*

Referring to the second paragraph of the same article, *'Forced Labour shall be permitted in connection with military and emergency situations if the work is performed under the supervision of relevant national authorities under the relevant law or court order'.*

The legislation prohibits any form of slavery. Illegal exploitation of human labour is being subjected to criminal and administrative liability. In this respect, depending on the nature of the application of forced labour it can lead to criminal or administrative liability.

In Article 144-2 of the Criminal Code *'forcing an individual to perform any job through intimidation, violence or through the threat of violence, as well as, except for special cases specified in the legislation, through restriction of his/her freedom'* is classified as a forced labour. This case belongs to the category of serious crimes.

In the event of such a crime, criminal prosecution is conducted by the Main Department on Combating Human Trafficking of the Ministry of Internal Affairs.

However, a serious problem of forced labour is connected with the cases of 'limiting the freedom of the person'. When there are all signs of forced labour and only the case of restriction on the freedom of the person is absent, it shall not be considered as a criminal offense and the mentioned Department takes no relevant action. Any forced labour which does not restrict

freedom is considered an administrative offense and only the State Labour Inspectorate Service can establish any administrative responsibility.

Despite the facts in national practice, bringing and exploitation of thousands of foreigners and stateless persons, no criminal prosecution is conducted in this regard. The reason is the freedom of movement of these people.

According to the official website of the Main Department on Combating Human Trafficking there were observed one and two cases of forced labour in 2010 and 2011 respectively. (Crime stipulated in Article 144-2 of CC).

The report submitted to the National Assembly (Parliament) by the National Coordinator on Combating Human Trafficking illustrates that the appeals related to forced labour have not been confirmed.

‘There have been made several applications in connection with engagement of citizens in forced labour in Azerbaijan. Mr. V.Eyvazov stated that it has not been confirmed during the investigations. It was noted that in the reporting period, State Labour Inspectorate, the State Migration Service, Azerbaijani National Confederation of Entrepreneurs and NGOs have, at different times, carried out monitoring to identify cases of exposure to forced labour in stone quarries and various construction companies. The cases of violation of construction safety and registration rules, as well as the labour law have been found out and appropriate measures have been taken against associated persons’¹.

The final report introduced to the Parliament by the National Coordinator shows that ‘However the facts of the forced labour crimes have not been found out in 2005, in 2014 there were 5 cases. The number of crimes of involvement in prostitution was 54 and 79 in 2005 and 2014 respectively, crimes of involvement in prostitution of minors in 2005, 2008, and 2014 years constituted 3, 10, and 3 respectively. 97, 180, and 86 cases have been recorded in respective 2005, 2008, and 2014 years with regard to keeping houses of prostitution. Five and six cases of forcible sexual acts were registered in 2005 and 2014 years, respectively. As regards the trade of human organs or tissues and their forcible gain for transplantation purposes, there have been recorded 2 cases in 2011, 1 case in 2014. Number of cases of illegal distribution of pornographic materials or items was 10 in 2008 and 1 in 2014’².

At the time of disclosure of monitoring findings and when it was noticed in that report that cases of forced labour went unregistered, several lawsuits on the cases of forced labour were on-going at different national courts.

The information provided by the National Coordinator and the Department on Combating Human Trafficking on lack of evidence of forced labour in the country shows that this Department identifies that the case of forced labour is not only the cases provided for in Article 144-2 of the Criminal Code (*any form of restriction of person’s freedom*). That is, the competent administration considers the forced labour associated only with restriction of freedom. The State Labour Inspectorate Service under the Ministry of Labour and Social Protection registers the cases of forced labour which is mentioned in the Labour Code and cause administrative responsibility as breaching the labour legislation.

The national criminal law specifies the forced labour (if restriction of person’s freedom exists) as a form of human trafficking. As mentioned above, Article 144-2 on forced labour has been

¹Source: <http://az.apa.az/news.php?id=239511>

² Source: http://musavat.com/news/olke/son-9-ilde-insan-alveri-ile-bagli-qeyde-alinan-cinayetlerin-sayi-achiqlanib_335577.html

included in the Criminal Code. There is also the Article 144-1 in the Criminal Code which regards the "human trafficking". According to this article, the circumstances of exploitation are considered as serious and particularly serious crimes. According to the Criminal Code *"human exploitation" means forced labour (service), sexual exploitation, slavery, practices similar to slavery and the conditions of servitude, unlawful removal of human organs and tissues, illegal medical research on a person, use of a woman as a surrogate mother, engagement in unlawful, including criminal activities"*.

National mechanisms of combat against human trafficking, prevention and assistance to victim have been arranged normally. There is a National Co-ordination Centre against Human Trafficking. Every year, the National Coordinator reports to the Parliament.

Although Azerbaijan is considered as a country of origin, destination and transit for human trafficking, the report principally entails those taken abroad and exploited there. Across the country, the cases of sexual exploitation are effectively prevented. However, the use of forced labour exists in production and, as noted above relevant agencies do not consider it as exploitation. The grounds are the non-restriction of freedom of those subjected to forced labour.

Those involved in forced labour in the country have limited legal opportunities to ensure their rights. The main reason for restriction is as follows:

- Legislation;
- Lack of real access to the court;
- Unawareness.

The concerns about judicial enforcement of rights of those involved in forced labour, insurance of right of effective use of legal protection.

Although the victims of forced labour have legal access to judicial bodies, in fact the exercise of this right is very complicated or impossible in many cases.

The organizations engaged in forced labour apply various methods to strip their employees of any evidences when they go to court.

Such employees are deprived of:

- registered labour relations in any form;
- documents proving their wages;
- props on their access documents to places of work;
- permission to take photos at the workplace (generally, which would enable to collect evidence to demonstrate his work at that organization).

Access to the court is usually more complicated and in many cases not possible for foreigners or stateless migrants working in the country. Pursuant to the Article 8 of the Law on Labour Migration *"In case of expiry of the work permit or breach of employment contract migrant workers should leave Azerbaijan Republic"*. Early termination of the employment contract for reasons not dependent on migrant workers, costs associated with deportation of migrant workers and their families shall be covered by individuals or legal entities recruiting them. If a migrant worker is engaged in paid labour in the Republic of Azerbaijan by violating the provisions of this law, he/she is evicted from the Republic of Azerbaijan and the costs associated with deportation of the migrant worker and his/her family members shall be incurred by the legal entity or natural person hiring him/her.

Thus, even if foreigners engaged in labour activity hold the work permit and work on legal basis, they should leave the country immediately after termination of their labour contracts. Moreover, this does not allow the migrant workers to apply to the court to launch a labour dispute. This point is abused by employers. Migrant workers are engaged in overtime work, they do not receive wages in full, and are obliged to fulfil works (services) not included in their job description. The lack of migrant workers' actual access to courts leads to forced labour even if they are hired on legal basis.

If the foreigner or a stateless person is engaged in illegal job, then his/her access to the court is generally very difficult or sometimes impossible. Such persons can be deported from the country. In this case, the factors complicating the access of foreigners and stateless persons engaged in forced labour and with terminated labour contracts upon violation of labour rights are the following:

- According to Article 8 of the Law on labour migration, termination of the employment contract leads to the cancellation of work permits issued to migrant workers. In this case, migrant workers should leave the country. He loses the opportunity to file a claim in the court by staying in the country of destination.
- As a rule, migrant workers who leave the country or deported loses the chance to sign a contract with lawyers in a short period of time. Even if a lawyer is contracted, they do not have the opportunity to return to the country again and to sign a new contract in the upcoming steps of the court. In order to ensure protection of rights in the court and the ability to grant power of attorney for appealing to the court becomes restricted as well.
- Foreigner or a stateless person who live illegally in the country does not have the ability to give the power of attorney at all. Because, in order the power of attorney to be attested, they should be holders of the identity card issued by relevant executive authority. Even in the availability of such identity cards, if they have expired, notary services shall not attest the power of attorneys.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Azerbaijan, along with International Pact on Civil and Political Rights, had joined the European Convention on Human Rights and Fundamental Freedoms³.

The national legislation had been complied with international norms to ensure ‘the right to liberty and security’ provided for in Article 9 of the Pact and Article 5 of the European Convention. However, in practice, there are still a number of problems.

Article 157.1 of the Criminal Procedure Code (CPC) stipulates that *‘in accordance with the principle of the presumption of innocence, if the connection of the person to committed offence is not proven, he may not be arrested or unnecessarily detained’*.

Although restrictive measures are concretely provided for in Article 155 of the Criminal Procedure Code, the practice of selection, by investigative and judicial authorities, of the arrest as a restrictive measure is widespread. General researches show that more than 97% of the reports by investigative authorities to the court on selection of arrest as a restrictive measure have been supported by the courts. In some national administrative-territorial units, the figure is close to 100%.

‘Resolution of November 3, 2009 of the Plenum of the Supreme Court of Azerbaijan Republic on the practice of application of legislation by courts in the process of revision of presentations pertaining selection of arrest as a measure of restriction for the accused’⁴ stipulates that *“while presenting the materials for choosing the arrest as a measure of restriction and extension of detention regarding the persons not posing a major public threat and accused of committing less serious criminal offense, the requirements of the criminal procedure law and practice of the European Court of Human Rights are not taken into account”*.

The issue of serious violations in choosing the arrest as a restrictive measure has also been raised in sessions of Judicial Council (Such meetings are also attended by the representatives of civil society).

Article 157.5 stipulates that *‘When examining the question of arrest as a restrictive measure, the court, if it decides that there is no need to isolate the accused from society by detaining him on remand, shall have the right to substitute house arrest for arrest. The court may simultaneously make its decision about arrest and resolve the matter of releasing the accused from arrest by granting bail, and if this release is considered possible, it shall determine the amount of bail. The court may review its decision about the inadmissibility of bail and the amount of bail at the request of the defence.*

As regards the application of this Article, a request for specific case has been filed to Constitutional Court, and on July 09, 2010, Plenum of Constitutional Court reached a decision on ‘Interpretation of Article 157.5 of the Criminal Procedure Code of the Republic of Azerbaijan’⁵. The decision of the Plenum of the Constitutional Court indicates that *‘while reviewing the arrest as a restricted measure, the court is righteous to substitute in the presence*

³http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/AZE?p_auth=1NavlJHq

⁴<http://supremecourt.gov.az/post/view/168>

⁵<http://www.constcourt.gov.az/decisions/181>

of solicitation of the defence side and the conclusion on the absence of necessity of isolating the accused person from society with house arrest’.

Although the procedural restrictive measures such as bail, personal guarantee, coercive measures, and house arrest are among the restrictive measures of the Criminal Procedure Code, in practice these restrictive measures are not referred to all appropriate conditions at all. Bail is not applied as a restrictive measure at all.

Article 68 of the Constitution of the Republic of Azerbaijan provides for that *‘Rights of the person suffered from crime and also from usurpation of power are protected by law. Suffered person has the right to take part in administration of justice and demand for compensation of losses. Everyone has the right for compensation by the state of losses borne as a result of illegal actions or non-action of state bodies or their officials.’*

Despite this provision, the acquittal is issued in the national court only in casual cases. Even when an accused person is found innocent, the courts in many cases inflict light (as a rule, conditional imprisonment) penalty and bypass the decision on acquittal.

In national practice, application of alternative penalty is at ground level. There is a need for adoption of a separate law on probation or amendments to existing legislation. Despite the adoption of a law on social adaptation of persons who have completed their service time its application in its entirety remains problematic.

Article 61 of the Constitution of the Republic of Azerbaijan stipulates that *‘Everyone has the right for obtaining qualified legal advice. In specific cases envisaged by legislation legal advice shall be rendered free, at the governmental expense’.*

In Azerbaijan, defence institution is in a deplorable condition. In order to obtain the right to provide professional legal assistance, membership to a professional organization called the Bar Association is a requirement. However, this self-managing body has toughened admission to the profession of barrister. The criteria for admission rest upon the discretion of the top management of the College of Barristers, not relevant knowledge and qualification. According to official government, there are 805 lawyers in the country. Given that national population is equal to 10 million, it means one lawyer per 12 500. However, the actual number of lawyers is less and they are distributed unequally across the country. In fact, about 20 administrative units do not have a lawyer. On top of that, there is a lawyer monopoly. According to the legislation, criminal defence can only be conducted by a lawyer who is a member of bar association. Simultaneously, during the proceedings, lawyer monopoly exists in civil cases of Supreme and Constitutional Courts. However the institute of representation is allowed to organize the defence in the first and appeal court’s execution, currently the bar association oppresses Representative Institute through the decisions restricting its activity. Contrary to the Civil Code, the presidium of Bar Association has reached a decision to ban the lawyers to sign a contract with a representative.

For the purpose of application of Article 61 of the Constitution, it is required to adopt the law on "Free legal assistance". Thus so far, it has not been done. Consequently, those with low-income, suspected or accused in criminal offense are almost deprived of defence. Since the pay for a state-appointed lawyer is lower than 2 USD per hour, the lawyers do not perform their best professional defence. As a result, Article 61 of the Constitution is breached seriously.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as soon as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Significant work has been done to harmonize the places of detention with the United Nation's minimum standard rules and European Prison Rules. The Remands and Correctional Facilities are separate. However, penitentiary facilities under construction may have remands and correctional facilities together. In this case, buildings and service areas, as well as walking areas, are separate. The persons deprived of their liberty have been provided with normal minimum conditions for protection of their dignity, normal nutrition, and access to medical service.

However, the technical conditions in Gobustan prison (for those sentenced to life imprisonment) and in several other prison institutions do not meet the minimum requirements.

National control mechanisms in detention centres are improved. There are several institutions which can access and pay visits without initial warning. These are:

International control mechanisms:

- European Committee for the Prevention of Torture
- The UN Sub-committee on Prevention of Torture
- Red Cross

National control mechanisms

- National Preventive Mechanism
- Ombudsman
- Public Committee on Public Control on Penitentiary Service and others.

Since 2006, there has been operating a Public Committee composed of human rights advocates. The Committee, composition of which is changed through elections, is entitled to, without warning, enter correctional facilities of Prison Service detention, hold monitoring, conduct visits, and hold confidential meetings with prisoners. In addition, members of the Public Committee carry out correctional work with inmates, and provision of legal and psychological assistance. However, the Public Committee members do not have the right to visit the remands. Simultaneously, there are no similar organizations which are in charge of social control in confinement facilities under other ministries and institutions (State Security Service, Ministry of Defence, Ministry of Health, etc.).

The Public Committee dealing with the public control keeps record of cases of torture or ill-treatment with the inmates and in no time, notifies the Ministry of Justice. They also keep the issues of feeding of inmates, provision with an accommodation meeting sanitary and hygienic

requirements, contact with the external environment, as well as phone calls and long- and short-term meetings with relatives, and access to medical care under control.

Prison Service has also a correctional institution for minors. However, the problems of those who have attained the age of 18 while serving the sentence have not been resolved in its entirety.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, either in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Law on Mass Media

Article 50 of the Constitution of the Republic of Azerbaijan adopted by referendum on 12 November 1995 concerns freedom of information and freedom of the media. First item thereof provides for that ‘Everyone is free to look for, acquire, transfer, prepare, and distribute information’, and the second item stipulates that ‘Freedom of mass media is guaranteed. State censorship in mass media, including press is prohibited’.

The same article of Constitution guarantees the freedom of mass media for seeking, obtaining, and sharing information with others, and prepare and distribute information which are among important functions of the mass media.

The Constitution stipulates the censorship as unacceptable saying ‘State censorship in mass media, including press is prohibited’.

In order to ensure the application of Article 50 of Constitution, several legislative acts were adopted. They are the Laws of the Republic of Azerbaijan "On mass media", ‘On Television and Radio Broadcasting’, ‘On receiving information’, and "On Public Television and Radio Broadcasting".

There are laws that partly concern the regulation of activities of the mass media as well. They are Laws of the Republic of Azerbaijan "On State secret", "On Copyright and Related Rights", "On Advertising" and other legislative acts on Electoral Code, Criminal Code, Administrative Offences Code, Civil Code and so forth.

Regulation of legal activity of the Mass Media Outlets

Article 14 of the Law "On Mass Media" stipulates that ‘Permission by state authorities for establishing a printed press is not required.

Legal or natural person who intends to start a printed press gives a 7 days' prior official notification to the relevant authority.

Thus, the establishment of newspapers and news agencies are not agreed with any government agency. There is only a notification to avoid duplicating the names.

At present, there are 4957 newspapers (print and on-line) and news agencies in Azerbaijan. Additionally, there are 8 TV channels, 14 regional TV channels, 12 cable TV channels, 11 radio stations, and numerous internet TVs across the country.

There is no restriction on the Internet.

- There is no regime of registration for mass media outlet. Any individual or legal person can establish a mass media outlet by giving electronic or written notification to relevant state authority.
- There is a foundation under the President which subsidizes the media outlets.
- 80% of the annual budgets of major media outlets criticizing the government is formed under public subsidies.
- Journalists receive state-funded housing.

Another type of media, namely television and radio broadcasting is regulated by another law. The law on "Television and Radio Broadcasting" provides for that "Broadcasting is free in Azerbaijan. The freedom of television and radio broadcasting builds on the state guarantee enabling citizens to legally seek, obtain, produce, transmit and distribute information. Censorship in broadcasting is unacceptable".

However, operation of a television and radio requires a special permission (license). Article 14 of the Law states that "Television and radio broadcasting in the territory of the Republic of Azerbaijan shall be carried out based on a special permission (license)".

There is not any state authority regulating the activity of press. In 2000, the Ministry of Press and Information who was controlling the work of mass media outlets was abolished, and in 2003, the Press Council was established as a mechanism of public control over relations between society, state authorities, and the media. This agency is a self-governing non-governmental organization.

Still, existing television and radio companies are not fully independent. There are internet television channels who can publicly and harshly criticize the government policy. In 2012-2015 criminal cases have been started against several journalists and they have been deprived of their freedom for various terms.

The authorities say that this punishment is not related to their journalistic activities. The criminal cases opened against journalists are principally related to massive tax evasion and activities which are not directly connected to journalistic activities. Human rights advocates claim that the punishments are the results of their professional activities. Such criminal cases have been currently terminated as a result of the dialogue of national human rights NGOs with state authorities.

Subsidies to support Mass Media Outlets

On July 31, 2008, 'Conception of *State Support to Mass Media Development in the Republic of Azerbaijan*' was adopted by the Presidential decree. The Concept envisaged creating a special fund in order to give a public support to mass media development. Upon adoption of the Concept, State Fund for Support of Media Development under the President of the Republic of Azerbaijan was established.

The Fund provides support to mass media in various directions. These directions include various supports, such as the development of freedom of thought, expression, and pluralism, upgrading the material-technical base of mass media outlets, and improvement of material and social conditions of journalists.

In excess of 80% of annual budgets of several national pro-opposition newspapers are formed via the support of the mentioned Fund. When establishing the Fund, European practice supporting the development of mass media outlets have also been studied.

The subsidies to media outlets are based on the principle of equality. In terms of the quantity of employees and the circulation, amount of subsidy may be slightly distinctive.

Internet freedom

There is no restriction on the Internet in Azerbaijan. In November 2012, in 7th Internet Governance Forum in Baku which was jointly organized by the United Nations and the Government of Azerbaijan, it was noted that internet is absolutely free in Azerbaijan. No cases of prohibition of Internet resources have been observed in the country. Social media is used widely.

However, in some reports there is demonstrated a biased approach regarding indexes of Internet freedom in Azerbaijan. Freedom on the Net 2011 report on global assessment of the Internet and digital media by the Freedom House, according to 'Internet freedom' Azerbaijan ranks among partly free countries in terms of internet.

Indicators of "Internet freedom" cover many countries across the globe and Azerbaijan ranks 20th (with 48 points).

Law on Defamation

The Law of Azerbaijan Republic "On defamation" has not been adopted. However, its draft has been developed as a result of joint work of civil society institutions and international organizations. The draft has been discussed for several times with the participation of MPs and representatives of other related government institutions. "Article 19" organization hails the development of the (Draft) Law of Azerbaijan Republic "On defamation" and the Draft Law aims at decriminalizing the defamation (not to count a criminal offense) and establishing clear and progressive norms of civil defamation. We understand that the records herein are the proposals of NGOs. In this Memorandum, the Draft Law is analysed in the light of international standards governing the freedom of expression (freedom of expressing the thoughts). Our comments are based on a translated version of the Draft Law which has been presented to us by the OSCE. "

Despite availability of criminal prosecution in the Criminal Code of Azerbaijan Republic because of the libel and humiliation, those articles are of preventive nature and applied rarely. When imposed, usually the lightest penalties, contained in articles, are chosen. This is the punishment by fine of hundred up to five hundred of the nominal financial unit, or by public works for the term of two hundred forty hours up to four hundred and eighty hours'. Most serious punishment is either the corrective works or imprisonment for the term of up to 3 years, application of which has not been recorded within the last few years.

As regards the cases of libel and humiliation by mass media outlets, majorly the civil claims-based judicial proceedings take place and courts apply compensation for material and moral damage to the sufferer.

On several occasions, mass media outlets have not been able to afford the payment of fines imposed by courts. Thus, it is considered as the violation of Article 10 of the European Convention.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

According to Article 49 of the Constitution, "Everyone has the right to assemble freely with others. Everyone is aware of the relevant government bodies, along with the peaceful, unarmed gatherings, rallies, demonstrations, street marches view, pickets together with others".

For the purpose of application of Article 49 of the Constitution on 13 November 1998, the "On freedom of assembly" The law was adopted.

Upon being admitted to the Council of Europe and ratifying European Convention for the Protection of Human Rights and Fundamental Freedoms, since some provisions of the law were incompatible with those of Convention, Parliament of Azerbaijan improved the legislation in cooperation with Council of Europe's Venice Commission. The major changes to the law came into force on 30 May 2008.

The opinion of Venice Commission was positive saying it meets international standards.

Until the major changes of May 30, 2008, there were a number of obstacles in effective Law "On Freedom of Assembly" regarding the freedom of peaceful assembly. Although the law provides for a procedure of notification for an assembly, later provisions required relevant executive authority to "sanction" the gathering.

At present, although this gap has been bridged, in practice, in fact a prior permission is required for organizing the gatherings.

According to previous version of the law, the organizers were entitled to lodge a complaint in case of prohibitions of gatherings. However, the complaint was handled long after the date of

appointment of the meeting. That restricted the right of effective use of legal means to ensure the right to freedom of assembly.

As a rule, the courts did not handle the complaints within procedural and reasonable provisions established by law. This gap in law allowed the misuse. The issues related to casual and spontaneous gatherings, meetings were not fully regulated by the law.

On the basis of recommendations by the Venice Commission of the Council of Europe, OSCE and national NGOs, amendments to the Law "On Freedom of Assembly" came into force on 30 May 2008. Amendments allow to effectively using the legal remedies (The Right to an effective remedy). In case of restriction to realization of the right to hold an assembly or in case of restriction in any form, the judicial bodies shall consider the appeal and make a decision until the time of gathering.

Although the procedures currently established by the legislation enable the courts to reach decisions before the time of assembly, its application is not successful and rights of effective protection of the means of legal protection are not provided in full. It is also due to the lack of skills of the event organizers to effectively use the right to remedies.

Paragraph 4.4. (a ban on mass events) in the "Guidelines for the preparation of legislation on freedom of assembly" (December 2004), Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE, it is recommended that "It is important that the case of refusal to be considered prior to the scheduled meeting and the court's decision to be reached. In case of cancellation of the decision for arranging the gathering by this court ruling, it enables the organizers to hold gatherings on scheduled time.

Thus, while amending the Law "On Freedom of Assembly" the guiding principles adopted by the OSCE ODIHR, as well as the decision of the European Court of Human Rights on the case of *Baczowski et al. v. Poland*. (Application no. 1543/06), the requirements were taken into consideration. Thus, requirements of Article 13 (The Right to an effective remedy) of the European Convention on the Protection of Human rights and fundamental freedoms have been fulfilled. Currently, after the warning on the implementation of gatherings in the country, the courts shall handle the complaints about the decision of local authorities on prohibiting such gatherings at least 3 days prior to the gathering and make a decision.

As we mentioned above, the practical application of the legislation is different.

According to the law, local authorities shall create appropriate conditions for holding meetings, rallies, pickets, and other public gatherings.

According to Article 9.6 of the Law, "Executive authority should appoint special venues for gatherings, meetings and demonstrations in each city and region. The list of proposed venues for gatherings, meetings and demonstrations shall be published on local press and communicated to the public by other means. The organizers can choose one of the venues considered for gatherings, meetings, and demonstration. The relevant executive authority can change the list of proposed venues of gatherings, meetings and demonstrations upon request"

Subject to the provisions of the law, in more than 70 cities and settlements of country, by the decisions of local authorities special places have been assigned for these purposes. Twelve venues have been assigned in the capital Baku. There is one venue per administrative-territorial

unit of Baku. In the past, some of the places assigned for these purposes were unsatisfactory and were criticized by political parties and public organizations. Later, number of places was increased and they were replaced with those of easier access for participants. A stadium located in the city's traditional part for organizing gatherings by political parties (in front of former "Galaba" cinema) has been allowed for such events. The area is densely populated and all public transport (including buses and subway) make a stop there.

At the moment, by written notice within a specified period, mass events are allowed to be held in one of such venues. Nevertheless, several times, attempts to hold mass events in front of or at the facilities considered, by the law, as objects of strategic importance, have been prevented by law enforcement authorities and violators of rules have been subjected to administrative penalties (monetary penalty or administrative arrest up to 15 days).

There are interventions by the authorities to sites of gatherings held outside the appointed places. When the warning letter is rejected, or spontaneous gatherings are organized in disallowed places, such gatherings are, as a rule, dispersed by security forces.

According to article 13.3 of the Law 'in accordance with the Constitution of Azerbaijan Republic the participants enjoy the freedom of spoken and written speech at the meeting. Enforcement of this freedom may be confined in accordance with the Constitution of the Republic of Azerbaijan and the international law adopted by the Republic of Azerbaijan".

There is no restriction for speeches during mass events. The mass gathering organized by the National Council composed of the opposition parties held on October 12, 2014 of the, several people who raised flags of Islamic State of Iraq (ISIS), a terrorist group, were removed from the meeting by the police. However, the action continued without other incident.

Restriction of mass public events

The legislation specifies some restrictions on gathering venues. The list of objects, around which the gatherings, meetings, demonstrations and rallies are banned within a radius of 200 meters, has been approved. It entails the facilities of strategic importance, including the military ones. The legislation provides for the other reasons for confining the public events. These include:

- to protect the interests of the public and state security;
- to prevent the breach of public order;
- to prevent the disorder or crime;
- to protect public health;
- to protect the norms of morality;
- to protect the rights and freedoms of others.

Regulation of spontaneous and contrary gatherings

Although there are spontaneous gatherings, the practice of counter-gatherings is not widely spread. The legislation governs spontaneous gatherings under general rules. Article 5.4 of the Law stipulates that 'the submission of a written notification for casual gatherings is not required'. The restriction or cessation of such meetings is regulated under general rules (under provisions governing the basis of restriction or suspension of gatherings). In this regard, there is

a need for specific regulation concerning spontaneous gatherings in the legislation. In practice, the disagreements between law enforcement authorities and participants of such spontaneous meetings have been the case.

Sanctions

Penalties for organizing and holding gatherings, participating in gatherings considered illegal, have been toughened. There are both administrative and criminal penalties for that.

Large-scale fines have been set for organizers (individuals and legal entities) in connection with violating the norms of organizing and holding gatherings. There are also penalties set for attending gatherings, protest actions, demonstrations, street rallies or pickets organized in the manner not prescribed by law. Administrative detention and criminal penalties have been established for failure to comply with these rules.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

According to Article 58 of the Constitution of the Republic of Azerbaijan, everyone has the right to establish any union, including political party, trade union and other public organization or enter existing organizations. Unrestricted activity of all unions is ensured.

There are relevant legislation on national political parties, trade unions, non-governmental organizations and normative legal acts adopted to ensure the activity of these organizations.

There are following organizations holding the status of a union in the Republic of Azerbaijan:

- Trade Unions;
- Political Parties;
- Non-governmental organizations;
- Religious organizations;
- Associations of creative work;

Professional associations with the exception of the Bar Association and the Chamber of Auditors (Judges Association, Association of banks, etc.) also operate as public associations. Whereas most of them are professional institutions by nature. However, because of the absence of a separate law on professional institutions, such organizations operate under the law governing the activity of public associations as well.

Trade Unions

The Law on Trade Unions was adopted on February 24, 1994. Other legislative acts later adopted, including the Labour Code made most of the provisions of that Law ineffective. Pursuant to Article 19 of the Labour Code 'In institutions, a trade union can be established purely on a voluntary basis without discrimination among workers and without prior permission of employers'.

According to Article 1 of the Law on Trade Unions 'Trade Union is an independent, public, and non-political organization functioning on the basis of relevant law and voluntarily joined statutes for the protection of labour, social and economic rights and interests of those working at production and non-production fields, as well as pensioners and studying persons on the principle of individual membership at republican level and on the basis of place of work and professions'. According to Article 3 of the Law, "... minimum seven people have the right to combine in a trade union and adopt its charter."

Confederation of Trade Unions of Azerbaijan was established based on traditional trade unions in 1993.

At present, there are 26-field trade unions under the umbrella of Confederation (Republican Committees of trade unions) combined. The number of trade union members is up to 1 600 000. 26 field trade unions encompass a total of 17 267 first (enterprise) organizations of trade union. Out of them, 3700 organizations represent the private sector, whereas 13567 units function within state agencies or state-owned commercial entities.

Azerbaijan Trade Unions Confederation very actively seeks to boost the rights of employees prescribed by Law. Therefore, at the initiative of the Confederation, significant changes have been included in the Labour Code for the benefit of the employees. Nevertheless, the trade unions, which are the members of Confederation, are principally the representatives of the state sector. Involvement of the private sector is very low.

In many companies, especially in foreign oil companies, there are serious obstacles to establishment of trade unions. Attempts by employees to unite encounter serious resistance, initiators become subject to persecution. Despite consideration, by national legislation, of serious penalties against joining at trade unions, these provisions are "dead" and do never apply.

Membership fees at enterprises are deducted from employees' income by managements of trade unions. Any recruited person is considered the member of a trade union. If employees refuse to become a member of a trade union they shall give a written notice to company's accountancy.

In accordance with currently effective law "On trade union" and the Labour Code, key responsibilities and duties of trade unions are to hold collective talks and conclude collective agreements and fulfil public control over the execution of these contracts. Trade unions are also entitled to launch collective disputes and organize strikes due to the default of contract by the employer.

Political parties

In Azerbaijan, activity of the political parties is governed by the law on "Political parties" adopted in 1992. Activities of political parties are also governed by the Election Code, the Law 'On State Registration and State Registry of Legal Entities' and other legislative acts. The 1995 Constitution provides for the participation of political parties in parliamentary elections under multi-mandate (proportional) and single-mandate (the majority) systems. However, after the amendments to the Constitution in 2002 only the majority electoral system was maintained.

At present, there are up to 65 registered political parties in the country. However, social base of most of the parties is weak and they do not take an active part in country's political life.

Some opposition parties do not even have the headquarters. According to law 'On political parties', the state has no such an obligation to provide political parties with office. Political parties must obtain the facilities by their own funds.

Law 'On Political Parties' stipulates a state funding for political parties. According to 17-1.1 in relevant Law "Each year for financing the activity of political parties, funds are allocated from the state budget. This amount is shown as a separate line in the state budget. " According to the article 17-1.2 of the same law "10 per cent of the funds allocated from the state budget are distributed proportionally among the political parties, according to the number of votes gained, whose candidates gained at least 3 per cent of the vote in the recent elections to the National Assembly of the Azerbaijan Republic, but are not represented in the National Assembly in. 40 per cent of funds is equally distributed among the political parties represented in the National Assembly of the Republic of Azerbaijan, while 50 percent is distributed in proportion to the number of elected deputies".

In accordance with the Law "On freedom of assembly", political parties may organize mass gatherings. At present, there are no serious obstacles to holding such meetings. More than 70 sites have been determined in order to hold public events in capital city of Baku and regions.

According to the Law "On mass media", political parties are able to establish a mass media outlet. There is no requirement to obtain a permission for establishment of a Mass media outlet (with the exception of broadcasted media, because such a media requires a license).

Non-governmental organizations (public associations and foundations)

The Law on non-governmental organizations (NGOs) consists of the Constitution, Civil Code, the Law 'On Non-Governmental Organizations (public unions and funds)', Law 'On State Registration and State Register of Legal Entities', the law 'On Grant', the law 'On voluntary activity', the Law 'On public participation', relevant decrees and orders of the President of the Republic of Azerbaijan, as well as other normative-legal acts governing this area.

Positive sides

In 2007, the 'Concept of the Republic of Azerbaijan on State Support to NGOs' was adopted and in 2008, the Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic was founded. The majority of members of this collegial body are civil society representatives.

At present, more than 4000 non-commercial organizations (NC) have been officially registered. Up to 3000 of them organizations the activity of which is governed by the Law "On Non-Governmental Organizations (public unions and funds)". 314 of the organizations are directly specialized in the protection of fundamental rights and freedoms. In addition, there are representative offices of 111 international NGOs and donor organizations the activities of which are regulated by the Law 'On Non-Governmental Organizations (public unions and funds)".

There are also some non-governmental organizations operating without state registration, because registration is voluntary, as well as NGOs are established for temporary period. NGO networks and coalitions set up by NGOs are also available among them.

One of key principles of the Law ‘On Non-governmental organizations (public associations and funds)’ is the voluntary principle in state registration of non-governmental organizations. According to this principle, state registration is not either a duty or an obligation. It is NGO’s right whether to be registered or not. By state registration, the NGOs obtain the status of a legal entity. Holding the status of a public union, the unregistered NGOs perform, as a voluntary association of individuals, under self-determined rules and principles, which do not contradict to the Constitution and laws.

- It is free to unite in non-governmental organizations. Every person can establish a public association with others without giving a prior notice to any public authority. State registration is voluntary. Registration is a right, not a duty.
- A public union, activity of which has been terminated under court ruling is stripped of only its legal entity status. An NGO with abolished legal entity status is allowed to proceed as a public association.
- Grants and financial aids are exempt from taxation.

The state recognizes as a party the NGOs and their unions who operate without obtaining a legal entity status. Representatives of unincorporated NGOs can be represented at various state-founded commissions, working groups, and standing institutions on behalf of their NGOs. In Multi-Stakeholder Group (MSG), which is the governing body of Extractive Industries Transparency Initiative⁶, the government, business sector, and unincorporated NGO coalition can participate on an equal basis.

While cooperating with NGOs on all major activities, the Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic does not discriminate against them due to their legal status. Such organizations use the bank details of operator organization only during rendering financial assistance.

A part of the NGOs included in the working group on issues of prisoners which operated between 2005 and 2008 and made up of the representatives of human rights organizations and three branches of government did not have state registration then.

The Law stipulates the liquidation of the NGO by a court decision is in fact considered as the liquidation of its legal status. The practice of court-ordered liquidation of the NGO is rare in national practice. That is, during the last 12 years there was only one case of NGO liquidation by a court ruling. It was the dispute between the founders and complaint of some of the founders of

⁶**Mineral Extractive Industries Transparency Initiative is the global standard adopted in the sphere of oil, gas and mining industry transparency.**

The Republic of Azerbaijan has taken an important step on November 24, 2004 with the aim of EITI implementation. The Committee on EITI has signed a Mutual Memorandum of Understanding (MOU) on implementation of mechanism for introduction of the EITI in Azerbaijan with the Coalition for Increasing Transparency in Extractive Industries of local and foreign companies and non-governmental organizations.

Pursuant to the Agreement on organizing a Multi-stakeholder Group and its activity for implementation of Mineral Extractive Industries Transparency Initiative in Azerbaijan, the governing body of the EITI takes part in multi-stakeholder group together with government, business and NGOs with equal rights and equal votes.

the organization led to its liquidation. However, even if a liquidated NGO loses its status as a legal entity it can still function.

Within the period of 2003-2015 (12 years), there was only one case of NGO liquidation by a court ruling. This is the lowest figure for Europe. Previously, decision on liquidation of NGOs could be made by the Constitutional Court. By 2003, one more NGO had been liquidated as a legal entity by a Constitutional Court's decision.

Legislation restricting the activities of NGOs

As of the end of 2012, serious changes were made to the legislation in order to adjust the work of NGOs. Such changes and amendments significantly curtailed the opportunities of NGOs to receive funding, including grants, orders, donations and to use them.

The restrictions can be grouped as follows:

- Affiliates and representative offices of international NGOs are banned to operate without being registered. There is an administrative penalty for unregistered operation;
- legal representative" of an international NGO shall be the person with the status of permanent residence in Azerbaijan;
- Agreement governing state registration of affiliates and representative offices of international NGOs shall contain its validity period;
- Changes to constituent documents of NGOs are effective after the state registration;
- Legal entities, as well as affiliates and representative offices of international legal entities cannot operate if removed from state registry;
- Documents relating to grants, the service agreements with foreign funds, and donation must be registered with the relevant authorities. Otherwise, any banking transactions are disallowed. Violation of the law leads to administrative penalties;
- There are specific guidelines for acquisition by foreign donors of a right to give grants in the Republic of Azerbaijan. Acquisition of the right to provide grant requires a letter by the Ministry of Finance certifying financial and economic expediency of the grant;
- and so on.

Restrictions are applied with reference to the UN Convention against Transnational Organized Crime. On the grounds of the report by Central Bank's Financial Monitoring Commission, General Prosecutor's Office has started a criminal case to investigate the involvement of some NGOs in money laundering. At present, all criminal cases were terminated. However, at various times, there have been cases of acquisition of 14 million USD, transfer of funds to personal bank accounts in foreign countries, large encashment and embezzlement thereafter, or directing to other activities by NGOs in the country.

NGO funding

During 2013, Ministry of Justice received 737 applications by 220 organizations for the registration of 1817 contracts (decisions) on the receipt of grant. The grants in amount of 67,217,026 AZN have been provided by 173 donor organizations under those contracts (decisions). 23,550,942 AZN of the total amount are grants provided by foreign donors (for education, enlightenment, youth, social issues, and development of civil society, human rights

and other projects). Twenty nine local donors (12 of them are public organizations) have provided 65% of the grant⁷.

Thus, in 2013, amount of funds allocated to NGOs by national donors (mainly public) has exceeded 43 666 000 AZN.

In 2013, the financial assistance provided to NGOs by Azerbaijani government and national donors, has been more than 43 666 000 AZN, i.e. constituted 65% of the total financial aid given to national NGOs. It includes direct subsidies from state budget and funds under social orders to some NGOs. Contributions of foreign country donors made up 35%, in other words 23 550 942 AZN.

In Azerbaijan, there are 3 forms of financing the NGOs by the State.

These include:

- Competitive grants and financial aid
- Direct subsidies
- Social Orders

The Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic, which has been functioning since 2008, acts as a major public donor who funds NGOs.

Eight more state bodies were granted the authority to provide grants to NGOs under the Presidential Decree No. 654 dated October 21, 2015. These authorities shall agree the conditions of competition on grant with the Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic.

Nevertheless, as of 2014, financing by foreign donors have been strictly confined. However, several NGOs and activists do reportedly obtain grants through third countries. Some donors from foreign countries report, via their websites, on grant allocations to Azerbaijani NGOs (without showing their names).

Public Participation

In 2013, the Law "On Public Participation" was adopted in order to ensure the participation of civil society institutions in decision-making at all levels, and this law is effective since June 1, 2014.

The draft law was proposed by the NGOs themselves and presented to the National Assembly (Parliament) by the Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic and was adopted.

The Law covers the issues such as establishment of public councils consisting of representatives of civil society at central and local executive bodies and local self-governing bodies,

⁷Source: <http://www.justice.gov.az/notariat.php?page=2015>

arrangement of public discussions for decisions of public importance, organization of public hearings on issues concerning draft legal acts and state and societal lives, study of public opinion, public discussion of draft legal acts, and holding written consultations to study opinions of civil society institutions on draft legal acts.

While the law is in force since June 2014, the Central Executive Authorities, local executive authorities, do not hurry to create public councils provided for in law. Several ministries and other Central Executive Authorities have set up and operate such councils (Ministry of Justice, State Migration Service, Ministry of Labour and Social Protection, State Agency for Public services and Innovations under the President of the Republic of Azerbaijan, etc.). Contrary to the requirements of the law, most of the Central Executive Authorities have not established such councils yet and generally do not apply other forms of public participation provided for in law.

Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic provides methodical and organizational assistance on creation of Public Councils and application of other forms of public engagement at central and local executive authorities. The Council, in collaboration with USAID, has organized training sessions for the creation of public councils at executive powers of 33 administrative districts. However, except for at a few executive powers, the public councils have not been established.

Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic has also signed memoranda with a number of central executive bodies and other public institutions (Ministry of Labour and Social Protection of Population, State Committee for Work with Religious Organizations, the National Assembly (Parliament)) and has developed a specific plan with non-governmental organizations to cooperate with those authorities.

Despite this, the central and local executive bodies (with a few exceptions) do not set up public councils and control by civil society over their activities becomes limited.

Opportunities for NGOs to participate in law making process

The representatives of national civil society have prepared and submitted several projects, serving to the interests of NGOs, to the national Parliament with financial and technical support by Council on State Support to NGOs under the auspices of the President of Azerbaijan Republic. Chairman of the Council, MP Azay Guliyev, using his right of legislative initiative submitted the draft laws to the Parliament.

These projects are as follows:

1. On Voluntary Activity - adopted in 2009 by the National Assembly. The President of the Republic of Azerbaijan has signed a decree in connection with the application of the law.
2. On Public Participation - adopted in 2013. The President of the Republic of Azerbaijan has signed a decree in connection with the application of the law.
3. On Social Orders - the draft has been submitted to the Parliament.
4. On Professional Organizations - the draft has been submitted to the Parliament.

Council on State Support to NGOs under the auspices of the President of Azerbaijan has achieved a number of changes made to the legislation on the basis of offers and requests made by the civil society.

The changes include the abolition of compulsory auditing at NGOs.

The Council has signed a memorandum of cooperation with the Parliament. NGOs are represented at various working groups of the National Assembly for the preparation of draft laws. Public Councils at the Central Executive Bodies are involved in the development of on-site normative legal acts adopted within them.

The study of the work of NGOs

One of the changes and additions of December 17, 2013 to the law of the Republic of Azerbaijan ‘On Non-governmental organizations (public associations and funds)’ is the study of activities of non-governmental organizations. Article 30-1 has been added to the law on this issue. *That article stipulates that "The rules on exploring the compliance of the activities of non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations with their charters (regulations) and the legislation of the Republic of Azerbaijan shall be determined by relevant executive authority.*

The relevant executive authority is entitled to engage relevant state bodies and representatives of other non-governmental organizations in the process of studying the compliance of activities of non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations with their charters (regulations) and with the legislation of the Republic of Azerbaijan.

Individuals and legal entities creating obstacles to studying the compliance of activities of non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations with their charters (regulations) and with the legislation of the Republic of Azerbaijan are liable under the Code of Administrative Offences of the Republic of Azerbaijan".

The report prepared by the Centre for non-commercial right regarding on the rules illustrates that **"When it comes to the rules of the Ministry of Justice, these rules are not on study (research) initially established by the law on NGOs; the rules create a procedure against the NGOs regarding inspections, there is no administrative restriction regarding government inspections and rights of inspected NGOs are not protected; before the Ministry of Justice, when, for how long, and in what order do the rules authorize an unrestricted inspection".**