

## **The Situation of the Right to Association in Post Soviet Countries: Experience in the Republic of Azerbaijan and the Russian Federation**

*Dashqin Ganberov\**

### **Abstract**

In our modern world building and developing civil society idea is one of the top priorities for the countries that have chosen the path of democratic development. Formation of civil society is primarily related to the right of association or freedom of association. In accordance with international legal standards, the Constitution of the Republic of Azerbaijan has also comprised a number of constitutional (legal) foundations that are new to our country. Among such foundations political diversity, multi-party system have occupied one of the central positions. It is possible to say that the same situation is typical for all other post-Soviet countries, and in general, it is true for other world states, which are relatively new in the democratic development path. It is known that the international community recognizes the right of association as a right which belongs to fundamental human rights category. International instruments comprise quite multiple aspects of the right of association, which is due to its central position and role in the principal human rights system. Here, the issue is approached within the framework of different associations.

The establishment and functioning of the most diverse public associations in the society is observed. Reflection of the different aspects of the right of association in various international instruments and conventions, in line with the nature of each of them, requires a more sensitive and serious approach to the problem. Thus, it would not be right to consider the existence of numerous international documents in which the separate aspects of the right of association have been expressed as a positive sign. However, it should be taken into account that such diversity often leads to uncertainty and contradictions. From this view point, conducting scientific research in the chosen research topic allows to find answers to practical questions along with many theoretical questions. It also makes certain recommendations. Thus, the more specific and precise reflection of the right of association within the framework of both national and international legislation can provide clearer and well-established ideas. For example, if we pay attention, we can see that in practice, the right to association has been expressed indirectly in Articles 18 and 20 of the Universal Declaration of Human Rights. Thus, Article 18 of the Declaration states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." [7] This is a means of realizing other civil, economic, political and social rights (A/HRC/20/27, p.5, Article 12). To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems as they are a channel

allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected (A/HRC/20/27, p.20, Article 84). [8] In Article 20 of the Universal Declaration of Human Rights, the right to association is defined more accurately and clearly. It is stated in paragraphs I and II of Article 20 of the Declaration: "Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association." [7] Religious freedom has been reflected in the Convention on Human Rights and Fundamental Freedoms. While this is stipulated in Article 10 of the Convention, Article 11 provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others. Also, according to the International Covenant on Civil and Political Rights adopted on 16 December 1966, everyone shall have the right to freedom of association with others. In general, our research has revealed that in the modern period, the right of association has been identified as a separate article in the constitutions of the most world countries. Such a situation is evident in the constitutions of European countries. For example, Article 9 of the Constitution of the Federal Republic of Germany states that all Germans have the right to form their own associations and societies. It should also be noted that, the same Article has a provision concerning the restriction of the right to association. Thus, the right of Germans to association is realized if such association does not contradict legislation and constitutional structure. Otherwise, it is forbidden to establish any unions or associations. [2] There are similar provisions in the constitutions of other European countries. In general, we have determined in our research that the right to association has been identified on the basis of not single, but several articles of international documents. The existence of common features in all of them appears as a result of research and analysis. From this point of view, the importance of scientific research in this direction is quite significant.

## **Methodology**

Analyse realization forms of the right to association in the Azerbaijan Republic and Russian Federation

While analysing the current state and perspectives of the right to association in the Republic of Azerbaijan, of course, it is necessary to analyse the state of the civil society again. Thus, progress in securing the right to association is directly related to formation of civil society. The establishment of civil society has been defined as an important aspect of development from the early years of Azerbaijan's independence. For Azerbaijan has demonstrated its commitment to selecting democratic development and tried to achieve all the necessary values for it. And an important element of a democratic society is the existence of civil society. There's no ground to speak about the existence of democratic values in the absence of civil society. Civil society serves, first and foremost, as an essential condition for the protection of social justice. For civil society is characterized by the emergence and activity of different public associations. Naturally, it is required to establish regulatory framework for ensuring the right of association as prerequisites for the establishment of such associations. At present,

there is an inseparable connection between the development trends of the establishment and functioning of public associations, i.e., non-governmental organizations and provision of the right to association in the Republic of Azerbaijan. Active civil society building is going on in Azerbaijan. The central pillar of the civil society is the different public organizations established on the basis of the right to association.

### **Non - Governmental Organizations**

The Law of the Republic of Azerbaijan on non-governmental organizations (public associations and foundations) [9], adopted on June 13, 2000, is the most comprehensive document in this regard. There are strong indications that the adopted law meets the relevant provisions of the international treaties and conventions. Thus, in Article 9, called "Founders of the non-governmental organizations", the right of association is applicable to all persons without any discrimination. The sub-paragraphs of the mentioned Article 9 are as follows:

9.1 Founders of public organizations can be legal entities (except for bodies of state power and institutions of local government) or physical persons who have reached 18 years of age (and 16 years of age for youth public organizations).

9.1-1. Foreigners having permanent residence in the Republic of Azerbaijan and people having no citizenship may be the founders and legal representative of a non-governmental organization on the territory of the Republic of Azerbaijan.

9.2 Founders of public organizations have equal rights.[9]

The current Law also contains specific provisions to ensure operational efficiency in the establishment of NGOs. Here, both the specific actions of parties have been particularly formulated and the responsibilities of the Ministry of Justice which registers NGOs have been stipulated in details. In order to justify my idea, I would like to point out Article 15 and Article 16 of the mentioned Law. Article 15, called "The notice on establishment of a non-governmental organization" states:

15.1 Notice on establishment of a non-governmental organization implemented by the written reference to the applicable executive body not later than 30 days after acceptance of the law on establishment. Reference signed by the leaders of a non-governmental organization must include the protocol of association/incorporation.

15.2 On the day of obtaining the notice about establishment of a public union by the applicable executive body, the document confirming the receipt of the notice is handed or mailed to the representative of public union.

The mentioned in Article 16 of the "State registration of non-governmental organizations":

16.1 state registration of non-governmental organizations is implemented by the applicable executive body according to the law of Azerbaijan Republic on State Registration of legal entities in Azerbaijan Republic.

16.2 Non-governmental organization receives the status of a legal entity only after state registration.

16.3. If it is discovered that there are inconsistencies between the legislation and articles of association of non-governmental organizations and branches or representations of foreign non-governmental organizations, respective executive authority body requires those organizations to adjust articles of association to the legislation.

16.4. Non-governmental organizations and branches or representations of foreign non-governmental organizations can apply for temporary suspension of their activities to relevant executive authority body.

The mentioned law also reflects the grounds for refusing the registration of NGOs. Article 17 of the law is dedicated to this issue. The Article titled "Refusal of State Registration" contains the following:

17.1 State registration is refused in case if there is a non-governmental organization with similar name; if submitted documents contradict the Constitution of Azerbaijan Republic, this and other laws of Azerbaijan Republic.

17.2 Decision on refusal in state registration containing the reasons for refusal, violation of regulations and articles of the law made upon submission of association documents is presented to the representative of a non-governmental organization in writing.

17.3 Refusal in state registration, after all deficiencies have been removed, cannot prevent repeated submission of documents for state registration.

17.4 Refusal in state registration of a non-governmental organization can be appealed to court.

I would also like to emphasize that the complaint from the administrative decision to the courts is free of any charge in the Republic of Azerbaijan.[11]

At present, the number of NGOs in Azerbaijan Republic with about 10 million (9 million 850.1 thousand) population [12] is more than 4,300 NGOs [13]. Certainly, this process requires certain coordination in the area we mentioned. Due to this necessity, the National NGO Forum of Azerbaijan (NNF) was established in Azerbaijan in 1999. In general, the development of the NGO sector has led to serious quality changes in terms of ensuring the right to association. Additionally, we believe that it is necessary to pay close attention to the issue of a more comprehensive and accurate definition of the right to association in the national legislation. In some cases, bureaucratic obstacles are also encountered to realize the right of people to associate. For example, Article 15.2 of the Law on Non-Governmental Organizations (Public Associations and Funds) states that, " On a day of receipt of the notice, the relevant body of the executive power shall issue to the public association representative a document confirming the notice receipt, or shall send such document by mail." However, as a result of our observations and investigations, we have found that the requirements of the Law have been violated by the structures of the Ministry of Justice responsible for this issue (The

Main Department for Registration and Notary). There, documents are received from citizens, but not registered. At the entrance to the mentioned office, a "box" is hung on the wall and people who are bringing documents are instructed to put their documents in the box. Due to the fact that the registration is not carried out in accordance with the legal requirements, documents are lost in some cases. Another gap that we found out is the violation of the Article 8.3 of the Law of the Republic of Azerbaijan "On State Registration and State Registry of Legal Entities" by the Main Department for Registration and Notary of the Ministry of Justice. Thus, the mentioned Article of the Law states: "In the event of findings of deficiencies in documents, which do not form basis for refusal in state registration, the relevant executive authority of the Azerbaijan Republic returns these documents to the applicant and sets the period of additional 20 days for resolution of these deficiencies. All deficiencies not providing basis for refusal shall be identified at once and submitted to the applicant for resolution." The similar requirement is also stipulated in Article 13 of the Federal Law of the Russian Federation on Non-Commercial Organizations.[14] However, as a result of our research, we have determined that the registration office - the Main Department for Registration and Notary of the Ministry of Justice does not explain to the citizens the gaps and shortcomings in their documents at ones, as required by law. Citizens cannot get registration in some cases after submitting documents of an organization they want to establish to the Head Department. The Head Department indicates as the main reason the mistakes, shortcomings in the documents. Under the law, these shortcomings should be reported to the citizen in the first instance. Our study shows that this kind of violation by the Main Department for Registration and Notary of the Ministry of Justice causes reasonable dissatisfaction of citizens. Therefore, these disputes in some cases go to the European Court of Human Rights. As an example, the case of Ramazanova and others v. Azerbaijan at the European Court of Human Rights in 2007 can be indicated. In the case of Ramazanova and others against Azerbaijan, the court ruled out that Article 11 was infringed. The applicants founded a public association named "Assistance to the Human Rights Protection of the Homeless and Vulnerable Residents of Baku" and repeatedly applied to state bodies to register the organization. The Court stated that the major delays in the registration of the Association were due to the violation of the right of freedom to association by the applicant.[15] In order to avoid recurrence of such cases, it is advised to carry out the registration of public associations online, in a more simplified form.

### **Political Parties**

One of the targeted associations of citizens in the Republic of Azerbaijan is Political Parties. At present, 55 political parties are registered in Azerbaijan and they participate in the political life of the country. The Law of the Republic of Azerbaijan on Political Parties [4] was adopted on June 3, 1996. Analysis of the Law of the Republic of Azerbaijan on Political Parties shows that it also is aimed at securing the right to association, which belongs to a kind of basic human rights category. Thus, in Article I of the Law, the following is stated by explaining the political party concept: "For the purposes of this Law, political party shall mean an association of citizens of the Republic of Azerbaijan pursuing common political

ideas and aims, and participating in the political life of the country." [4. Article I.] As it's obvious, political parties also serve as a public union established on the basis of the realization of citizens' right to association. Here also the principle of volunteerism serves as the main principle. This point is clearly stated in Article III of the Law. Thus, this article states: "Political parties shall be established and function on the basis of the principles of freedom of association, voluntariness, an equality of rights of their members, self-government, legality and publicity. Activities of political parties cannot be directed to restriction of the basic human and civil rights and freedoms of their members which were determined in the Constitution of the Republic of Azerbaijan, international treaties to which the Republic of Azerbaijan is a party, and other legislative acts of the Republic of Azerbaijan." [4. Article III.] As it's seen, the right to freedom of association is promoted in the creation of political parties. The law prohibits the limitation of participation in the work of political parties. Thus, it is forbidden to limit the membership of citizens to political parties for any indication. This can also be regarded as a guarantee of the right to freedom of association. If review the Law of the Republic of Azerbaijan on Political Parties, it also stipulates the possibility of limiting the right to association. Naturally, it also stipulates the possibility of limiting the activities of political parties in specific cases on grounds of the national security and interests, and the motives for ensuring sustainable development of the society. In other words, it can be considered somehow as limitation of the right to association. As we already know, international normative-legal acts also justify limitations of the right to association within certain conditions. The possibilities of restrictions in this regard are stated in Article IV of the Law of the Republic of Azerbaijan on Political Parties. Thus, Article IV of the Law states: "The establishment and functioning of the political parties whose purpose or the method of operation is to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations shall be prohibited. The establishment and functioning of political parties of foreign States, as well as their branches and subsidiaries in the territory of the Republic of Azerbaijan shall not be allowed." [4. Article IV] The similar standard exists in legislative acts of all states. For example, Article 9 of the Federal Law of the Russian Federation on Political Parties is about the restrictions on the establishment and functioning of political parties. Article 9.1 of this Law states: "It is prohibited the formation and activity of political parties whose aims or actions are directed toward carrying out extremist activities." [16] This restriction was also reflected in paragraph 2 of Article 11 of the European Convention on Human Rights, which was adopted in 1950. Article 11.2 of the Convention states that, "No restrictions shall be placed on the exercise of these rights 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State." [17]

Article 14 of the Law of the Republic of Azerbaijan on Political Parties does not contain the rules of registration of political parties. The article points out that, "A political party shall be subject to state registration by the relevant body of executive authority in accordance with the Law of the Republic of Azerbaijan "on state registration and state registry of legal entities."

14.2. "A political party which has not undergone state registration may not act and operate as a political party which has undergone state registration."

I believe that, it is necessary to clarify the requirement of Article 14.2. For it generally restricts the right of people to association. In this regard, the law should specify the legal relations and areas in terms of differentiation of the registration and non-registration.

Another point to be considered is Article 4, paragraph 3 of the Law of The Republic of Azerbaijan on Political Parties, which states that "In order to get registered, at least the membership of 1000 citizens of the Republic of Azerbaijan in a political party shall be required." I think such a requirement for registration, i.e., the membership of at least 1000 citizens restricts the activity and registration of newly emerging political groups. Because experience shows that most political parties have been founded with the idea of 10-15 people, and the number of their members and supporters has increased in their subsequent activities. There is also incompatibility between the mentioned article (4.3) and Article 14.2. On the one hand, Article 14.2 requires 1,000 members for registration as a prerequisite, while on the other hand, the activity necessary to gather so many people is restricted by the requirement of Article 4.3. I think that the contradiction between the norms that I mentioned should be eliminated.

#### Religious associations

Another type of association is religious associations. Throughout history, people who believe in different religions and sects have been united in religious organizations in order to share their religious feelings, accomplish religious rituals, solve problems that believers facing, and so on. Currently, religious associations representing widespread religions such as Islam, Christianity, Buddhism, as well as less spread religions such as, Judaism, Shintoism, and etc. have had a major impact on the political processes in society, the formation of political and legal culture, and the position of personality in society and state. The activities of religious organizations in the Republic of Azerbaijan are regulated specifically by the Law of the Republic of Azerbaijan "On Religious Freedom", dated August 20, 1992.[22] According to the Law, all religious organizations can function only after being registered in the relevant executive body, i.e. the State Committee for Work with Religious Organizations, and being included in the State Register of Religious Organizations.

783 religious institutions have been registered since the start of the process of re-registration of religious organizations (01.09.2017). From confessional point of view, 755 of them have been Islamic, 28 non-Islamic (Christian - 17, Jewish - 8, Krishna - 1, Bahai - 2). 10 religious education institutions have been registered in the country since the beginning of state registration of religious education institutions (colleges) in 2017. There are 2246 mosques in

the country, 136 of which are located in Baku. There are 14 churches and 7 synagogues in the country. Also there are 748 sacred places and sanctuaries in the country, 25 of which are in the Baku-Absheron region.[23]

## Trade Unions

## Results

Based on our analysis, it can be noted that the real formation and development of the civil society directly depends on the right to association;

In addition to the following the human and civil rights and freedoms, it is essential to have well-developed civil society institutions in a legal state;

Traditionally, there are the following association forms concerning the civil society institutions in the Republic of Azerbaijan according to international standards:

- political parties;
- trade unions;
- public associations;
- mass media;
- family;
- religious;
- business, etc.

Restriction of the right to association in the Republic of Azerbaijan is legally admissible by Article 11 of the European Convention on Human Rights. Such restrictions may generally apply to certain categories of people. For example:- Military; [1]

- Police;
- Administrative bodies' staff;

Based on the analysis of the current situation and prospects for the right to association in the Republic of Azerbaijan, it can be said that the Republic of Azerbaijan is fulfilling its commitments arising out of the international conventions, which were ratified by the Republic of Azerbaijan concerning the right to association. Thus, all the necessary steps have been taken to form the regulatory framework for the protection of the right to association. Also, practical measures in this regard are in the focus of attention. The success made in the civil society development also indicates a good level of the right to association. Efforts to study the best international practice in the field of the right to association, the seminars and conferences

organized provide a better prospect for ensuring the right to association in the Republic of Azerbaijan.

During the study, it was reaffirmed that the regulatory framework of the right to association in all former Soviet countries is very similar with very small differences.

#### Recommendations

1. The practice for restriction of the right to association in the Republic of Azerbaijan is consistent with the relevant provisions of the international conventions. Based on the results of our research, it can be said that, there is a need to define more precisely the principles and mechanisms of restricting the right to association in Azerbaijan.
2. Legislation for legal regulation of the right to association in the Republic of Azerbaijan, as well as in most countries of the world, is not systematic enough. Thus, the right to association has been expressed both in the Constitution and in many other legislative acts. This can sometimes lead to certain contradictions. There is a need to create a universal database that will be applied to all aspects of regulating the right to association legally. It would be more expedient to regulate the establishment and operation of all public associations on the basis of a single legislative act.
3. I believe that the existence of a single system of classification of public associations and non-profit organizations can have a positive impact on the development of the civil society in the country.
4. I believe that electronic mechanisms of the state registration of public associations should be developed. In this case, the relationship between the founders and the registering government agency may be more transparent and procedure can be simpler.

#### References:

1. The Constitution of the Republic of Azerbaijan. (2014) Baku, "Qanun" Publishing House, Page 13. (line 64)
2. The constitutions of foreign states: (2009) Great Britain, France, Germany, Italy, United States of America, Japan, Brazil: Study Guide / Collection of works, Author. V.V. Maklakov. 6th ed., Revised. Moscow: Volters Kluver, p. 116.
3. Law of the Republic of Azerbaijan "On Non-Governmental organizations (public associations and foundations)" <<http://e-qanun.gov.az/framework/511>>
4. Law of the Republic of Azerbaijan "On Political Parties." <<http://www.e-qanun.az/framework/7090>>
5. Law of the Republic of Azerbaijan "On Trade Unions" <<http://www.e-qanun.az/framework/8987>>
6. Central Election Commission of the Republic of Azerbaijan, Information on political parties registered in the Republic of Azerbaijan <<http://www.msk.gov.az/uploads/partiyalar/2015/UmumiMelumat.php>>

7. United Nation (UN), The Universal Declaration of Human Rights <<http://www.un.org/en/universal-declaration-human-rights/index.html>>
8. Human Rights Council, Twentieth session Agenda, item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai <<https://undocs.org/A/HRC/20/27>>
9. Law of the Republic of Azerbaijan "On non-governmental organizations (public associations and foundations)" <<http://law.org.az/?p=730&lang=az>>
10. List of political parties in Azerbaijan <[https://az.wikipedia.org/wiki/Az%C9%99rbaycan\\_siyasi\\_partiyalar%C4%B1n%C4%B1n\\_siyah%C4%B1s%C4%B1](https://az.wikipedia.org/wiki/Az%C9%99rbaycan_siyasi_partiyalar%C4%B1n%C4%B1n_siyah%C4%B1s%C4%B1)>
11. Courts of the Republic of Azerbaijan, appeal to courts, terms and state fees <[http://www.transparency.az/know-how/courts\\_apply\\_period\\_tariffs.pdf](http://www.transparency.az/know-how/courts_apply_period_tariffs.pdf)>
12. The population of Azerbaijan has been announced <[https://apa.az/sosial\\_xeberler/azerbaycan-ehalisinin-sayi-aciqlanib-6422.html](https://apa.az/sosial_xeberler/azerbaycan-ehalisinin-sayi-aciqlanib-6422.html)>
13. Report of the Ministry of Justice of the Republic of Azerbaijan <<https://novator.az/2017/02/01/qht-l%C9%99rin-sayi-4300-u-kiv-l%C9%99rin-sayi-5100-u-otub/>>
14. Federal Law of the Russian Federation, No. 7-FZ of 12 January 1996 "On non-profit organizations" (with amendments and additions, effective from <[http://www.consultant.ru/document/cons\\_doc\\_LAW\\_8824/c59f84005a66a25f8fd3a50d2edba052ec705771/](http://www.consultant.ru/document/cons_doc_LAW_8824/c59f84005a66a25f8fd3a50d2edba052ec705771/)>
15. Legislation and freedoms in practice <[http://www.echr.coe.int/Documents/Pub\\_coe\\_Teaching\\_resources\\_AZE.pdf](http://www.echr.coe.int/Documents/Pub_coe_Teaching_resources_AZE.pdf)>
16. Federal Law of the Russian Federation N 95-FZ, 11.07.2001 (as amended on December 28, 2016) "On political parties" <[http://www.consultant.ru/document/cons\\_doc\\_LAW\\_32459/44c2a6e6715de265e1b3fbc0c1fc58f30cb9f378/](http://www.consultant.ru/document/cons_doc_LAW_32459/44c2a6e6715de265e1b3fbc0c1fc58f30cb9f378/)>
17. United Nations (2015), Universal Declaration of Human Rights (UDHR) is published by the United Nations in Arabic, Chinese, English, French, Russian, and Spanish. <[http://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)>
18. Labor Code of the Republic of Azerbaijan <<http://www.e-qanun.az/code/7>>
19. Brief information about the Confederation of Trade Unions of Azerbaijan <<http://ahik.org/page/view/ahik-haqqinda-qisa-melumat>>
20. Confederation of Trade Unions of Azerbaijan <[http://www.azerbajians.com/content\\_1583\\_az.html](http://www.azerbajians.com/content_1583_az.html)>
21. The jubilee ceremony was held on the occasion of the 110th anniversary of the establishment of trade unions of Azerbaijan, On November 25, 2016. <<https://atiah.org/index.php?preview/az/news/view/164/>>
22. Law of the Republic of Azerbaijan "On Religious Freedom" <<http://www.e-qanun.az/framework/7649>>
23. Statistical Figures on Religious Fields in Azerbaijan <<http://scwra.gov.az/pages/32/>>
24. Council for State Support to Non-Governmental Organizations under the

President of the Republic of Azerbaijan  
<<http://qhtxeber.az/news.php?id=4610&lang=az>>

25. Referendum Act of the Republic of Azerbaijan: Improve Public Administration – ANALYSIS <<https://report.az/analitika/referendum-akti/>>
26. European Convention on Human Rights, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13 <[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)>