

## LEGAL STATUS OF NON-GOVERNMENTAL ORGANIZATIONS IN THE LEGISLATION OF THE REPUBLIC OF AZERBAIJAN

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### Abstract

*In the article, the issues of the legal status of non-governmental organizations in the legislation of the Republic of Azerbaijan are widely analyzed based on the diversity of opinions in the legal literature and international practice. A detailed analysis of the mentioned directions fully reveals the main features of national legislations related to international non-governmental organizations. These characteristics differ from state to state, and the main differences are determined according to international law. Most studies agree that NGOs are voluntary, non-profit, self-governing institutions independent of the state, created to achieve common goals for all participants. This concept is a common character for the legislation of the Republic of Azerbaijan and other democratic, legal states.*

**Keywords:** *non-governmental organizations, legal status, national legislation, international legal norms, human rights, right to association.*

The analysis of issues related to international non-governmental organizations requires the review of national legislation in this sphere, which also determines a number of issues: the characteristics of international legal norms (their "hard" and "soft" legal character); the characteristics and directions of national legal realization; the current state of national legislation in this sphere; comparative analysis of national legislations of different states; the main features of the activities of international non-governmental organizations.

A detailed analysis of the mentioned directions fully reveals the main features of national legislations related to international non-governmental organizations. These characteristics differ from state to state, and the main differences are defined according to international law. During the analysis of issues related to the legal status of non-governmental organizations in the Republic of Azerbaijan, first of all, a number of important terms should be explained. Thus, different terms and expressions are used in the legislation of the states regarding the name of non-governmental organizations. For example, in the US legislation "non-government", "non-profit" organizations, in Great Britain the expression "non-profit organizations" is used more often [1], and in the legislation of the Republic of Azerbaijan, the expressions "public associations", "funds" are used.

Article 58 of the Constitution of the Republic of Azerbaijan forms the legal basis for the activity of non-governmental organizations in our republic. Thus, Article 58 of the Constitution of the Republic of Azerbaijan guarantees the rights of citizens to form public associations and freedom of action. In that article, it is mentioned that everyone has the right to unite with others. Everyone has the right to form or join any association, including a political party, trade union and other public association. Free activity of all associations is guaranteed. [2] In addition, the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations) regulates the relations related to the creation and operation of branches and representative offices of public associations and foundations, as well as foreign non-governmental organizations, and here the relevant norms related to the regulation of those relations exist. [3]

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It should be noted that the right to association mentioned in Article 58 of the Constitution of the Republic of Azerbaijan, including Article 25, which prohibits discrimination, fully corresponds to the right to freedom of association stipulated in the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms. The mentioned article of the Constitution also found its international determination in the 20th article of the Universal Declaration of Human Rights dated 1948 (4), which provides for the right to peaceful assembly and association.

Taking into account world experience, the state has no right to limit the goals and tasks of non-governmental organizations and interfere in their internal affairs. Non-governmental organizations are created without the prior permission of state bodies, they adopt their charters independently, and accordingly define the goals and tasks of their activities. The state's participation in the formation of non-governmental organizations, the task of verifying the legality of the goals and tasks of the non-governmental organizations of the charter arises from the moment of registration in the Ministry of Justice of the Republic of Azerbaijan. Fiscal authorities of the state carry out the audit of financial activities.

A non-governmental organization can be dissolved only on the basis of a court decision. According to the Constitution and laws of the Republic of Azerbaijan, it is prohibited to create or operate organizations that serve the purposes of violently changing the constitutional structure of the country, violating the territorial integrity of the country, undermining the security of the state, creating armed groups, inciting social, racial, national and religious hatred. According to Article 2.3 of the Law of the Republic of Azerbaijan dated June 13, 2000 on Non-Governmental Organizations (Public Unions and Foundations), the creation and activity of non-governmental organizations the purpose or activity of which is to violently change the constitutional structure and secular character of the Republic of Azerbaijan, violate territorial integrity, promote war, violence and cruelty, incitement of racial, national and religious enmity is not allowed. [5] In addition, according to Article 47.2 of the Civil Code of the Republic of Azerbaijan, the charter of a non-commercial legal entity defines the subject and goals of its activity. In the charters of non-governmental organizations, it is not allowed to usurp the powers of state and local self-government bodies, as well as to provide for state control and inspection functions. [6]

The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Unions and Foundations) regulates almost in detail the relations arising in connection with the exercise of the right of citizens to unite or form public association. At the same time, this Law applies not only to citizens of the Republic of Azerbaijan, but also to foreigners and stateless persons. According to the aforementioned Law, foreigners and stateless persons have equal rights with the citizens of the Republic of Azerbaijan in the field of relations regulated by the aforementioned Law, except for cases determined by law and international agreements.

This Law, which confirms the rights of the Republic of Azerbaijan and foreign citizens to associate, legitimizes the activity of structural divisions, branches or branches and representative offices of non-commercial associations of foreign countries on the territory of the Republic of Azerbaijan. This provision of the law has a very progressive character and contributes to the activation and development of the cooperation of non-governmental organizations of the Republic of Azerbaijan with foreign non-governmental organizations, and at the same time has a constructive effect on the development

of the non-governmental organization institution as a whole. The mentioned provision is fully consistent with the practice of developed countries.

Non-governmental organizations are not specifically defined in the law. However, the Law defines the terms "public association" and "foundation", defines the organizational and legal forms of creating organizations that can be considered non-governmental organizations according to their nature and activity, defines the principles of their creation, and also sets certain restrictions on the activities of these organizations. Specifically, Article 2.1 of the Law states that a public association is a voluntary, self-governing entity created on the initiative of several physical persons and (or) legal entities united on the basis of common interests with the goals defined in the founding documents, with income as the main goal of its activity. It is a non-governmental organization that does not collect and does not divide the obtained income among its members. A foundation is a non-governmental organization without members, founded by one or more individuals and (or) legal entities on the basis of property rights, and having social, charitable, cultural, educational or other socially beneficial goals (Article 2.2) [7].

At the same time, international non-governmental organizations are defined in this Law and it is noted that international non-governmental organizations are public associations whose sphere of activity covers the territories of the Republic of Azerbaijan and at least one other foreign state (Article 6.3). [8] Some studies note that NGOs are independent from governments and can be defined as two types: advocacy NGOs that aim to influence governments with a specific goal, and operational NGOs that provide services. [9]

Definitions of non-governmental organizations (public associations and foundations) defined in the Law include a number of criteria specific to non-governmental organizations, in particular, the association of citizens based on common interests, the non-profit nature of the organization, and the existence of common statutory goals. According to the Law, public organizations can be established in any organizational and legal form. Non-governmental organizations can be established on a permanent basis or to achieve specific goals (Article 5). The general norm in the civil legislation regarding the organizational legal forms of non-governmental organizations is that legal entities that are non-commercial organizations can be created in the form of public associations, foundations, unions of legal entities, as well as in other forms provided for by legislation. Non-commercial legal entities may create or participate in economic societies. [10] In order to democratize and facilitate the registration procedure of non-governmental organizations, the latter have the right not to register by the judicial authorities. However, in this case, it is determined that such non-governmental organizations do not have the status of a legal entity and therefore do not have legal capacity. The decision on state registration of local or international non-governmental organizations is made by the judiciary. In this regard, it is noted in the researches that the registration of non-governmental organizations is essentially a national process. A group can be established as a legal entity – a non-governmental organization only within the country in which it is located. National NGO laws typically designate local government departments or agencies for this process, as opposed to entities that are required to obtain a license to operate. [11]

The legislation of the Republic of Azerbaijan defines the principles of creation and operation of public associations. Public associations of all organizational and legal forms are equal before the law and their activity must be based on the principles of voluntarism, equality, self-management and legality. The activities of public associa-

tions should be open, information about their founding and program documents should be open to the public. Interference of state bodies and their officials in the activities of public associations, as well as interference of public associations in the activities of state authorities and their officials, is prohibited.

In order to implement the goals of the charter, public associations are given many rights and duties, the main ones of which can be distinguished. So, in this case, the right to freely disseminate information about their activities; holding meetings; to represent and defend their rights and legal interests in state bodies, local self-government bodies, public associations; to put forward initiatives related to various issues of public life, to make proposals to government bodies, etc. can be distinguished. Non-governmental organizations operating within the territory of our Republic have duties to comply with the legislation of the Republic of Azerbaijan, to publish reports on their activities, to submit to the authority that made a decision to register information on their financial activities, etc. The possibility of representatives of the registration body to participate in meetings held by public associations is not excluded.

The fact that non-governmental organizations have different rights is also the main component of international and national legislation. One of the main rights of non-governmental organizations established by law is to enter into international public relations by obtaining and taking obligations according to international status, to maintain direct international relations and communication with various organizations, and to conclude agreements with foreign non-profit organizations, if provided for in the charter. In addition, local public associations may establish their own organizations, branches or departments in foreign countries based on the generally recognized principles and norms of international law, international agreements of the Republic of Azerbaijan and the legislation of these countries. According to the essence of this provision, any non-governmental organization can be international and participate in the system of international relations on equal terms with other international non-governmental organizations.

In accordance with Articles 6 (6.3) and 7 (7.2. and 7.5) of that Law, a public association established in the territory of the Republic of Azerbaijan is recognized as an international organization if at least one of its structural units is established and operates in foreign countries in accordance with its charter. [12]

Thus, by analyzing the provisions of the mentioned normative act, it can be concluded that a favorable regulatory framework has been created for the organization and activity of both local non-governmental organizations and international non-governmental organizations with equal rights and obligations in the territory of the Republic of Azerbaijan. National legislation allows local non-governmental organizations to acquire international status. In our opinion, the most important direction of the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations) regarding the determination of the status of non-governmental organizations in general is that the legislator distinguishes local, foreign and international non-governmental organizations. This provision shows that the aforementioned Law does not consider non-governmental organizations as international organizations, but defines their status as national non-governmental organizations that open a representative office or branch in the territory of other states. At the same time, it defines a foreign non-governmental organization as an organization established in the territory of another state and having a branch or representative office in the territory of the Republic of Azerbaijan.

In our opinion, this provision is incorrect and does not correspond to the current situation regarding the recognition of international non-governmental organizations as subjects (or special subjects) of international relations and, in particular, of international law. The current situation refers to international legal acts and other international documents and judicial practice currently in force regarding the legal status of international non-governmental organizations. It is rightly noted in the literature that international organizations must have international legal subjectivity in some degree in order to fulfill their statutory goals and tasks. [13]

The term "non-commercial" organizations is widely used in the legislation of the Republic of Azerbaijan. First of all, let's note that according to Article 43.5 and 6 of the Civil Code of the Republic of Azerbaijan, legal entities whose main purpose of activity is not profit-making and distributing the profit among their participants are non-commercial legal entities. Non-commercial legal entities can engage in entrepreneurial activity only in cases where this activity serves to achieve the goals set at the time of their creation and corresponds to these goals. In order to carry out entrepreneurial activities, non-commercial legal entities can create or participate in economic societies. [14]

In general, paragraph 3 of Chapter IV, which covers Articles 114-119 of the Civil Code of the Republic of Azerbaijan, is called "Non-commercial organizations". As it can be seen, in the civil legislation of the Republic of Azerbaijan, the concept of non-commercial organizations was mainly used from the terminological point of view regarding the legal regulation of the activities of non-governmental organizations. The nature of the legal entity's activity must be indicated in the name of the non-commercial organization. Non-commercial organizations can create alliances for the purpose of coordinating their activities, as well as representing and defending their common interests.

As we have already mentioned, issues related to the creation of non-governmental organizations are implemented by the Ministry of Justice of the Republic of Azerbaijan. In this sphere, the decisions of the Ministry of Justice of the Republic of Azerbaijan are also of great importance. Among those decisions, dated March 19, 2012 on the Approval of the Rules for State Registration of Non-Commercial Institutions and decisions dated August 29, 2013 on the Approval of the Administrative Regulation on the Registration Procedure of Non-Commercial Legal Entities should be especially noted. [15] The Rules dated March 19, 2012 on the Approval of the Rules for State Registration of Non-Commercial Institutions determines legal and organizational basis of state registry of representative offices and branches of non-commercial institutions (except religious institutions), foreign non-commercial legal entities, and the state registry of non-commercial institutions. [16]

In addition to the above-mentioned laws and other acts, Law on Public Participation, on Voluntary Activity, on Obtaining Information, on Electronic Signatures and Electronic Documents, on Grants, on Copyright and Related Rights, and other laws of the Republic of Azerbaijan legally regulates the activities of non-governmental organizations. A comparative analysis of the listed laws makes it possible to note that non-governmental organizations (public associations and foundations) are institutions of civil society [17], and at the same time, they can ensure the organization and implementation of voluntary activities [18].

One of the issues of particular importance is related to the financing of non-governmental organizations. The main legal regulator in this matter is the Law of the Republic of Azerbaijan on Non-Governmental Organizations (public associations and foundations), as well as the Law of the Republic of Azerbaijan on Grants dated April 17, 1998. According to the Law of the Republic of Azerbaijan on Grants, non-governmental

organizations operating in the Republic of Azerbaijan, including branches and representative offices of non-governmental organizations of foreign countries, cannot receive assistance in the form of financial resources and (or) other material forms without a grant agreement (decision). However, some organizations support the activities of non-governmental organizations at the local and international level. Here too, it is necessary to follow the requirements of the national legislation unconditionally. For example, USAID provides a Package of Grants for NGO-led development trends, health, market systems, food security, education, governance, human rights, climate action, and science and technology. [19]

State-registered branches and representative offices of foreign legal entities in the Republic of Azerbaijan (branches or representative offices of non-governmental organizations of foreign countries that have concluded the agreement provided for in the Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Associations and Foundations)) after obtaining the right to issue grants in the territory of the Republic of Azerbaijan can act as a donor. [20]

Thus, sufficient democratic conditions have been provided for the creation and operation of non-governmental organizations in our Republic, and the possibility of registration and operation of international non-governmental organizations has been ensured from a legal point of view. In the Republic of Azerbaijan, there is no separate normative-legal act regulating the activities of international non-governmental organizations. Accordingly, this situation is also typical for the legal status of foreign non-governmental organizations. Nevertheless, it can be considered that if a national normative-legal act (in the form of a law) is adopted that will regulate the activities of international non-governmental organizations and take into account the experience of developed countries, including the provisions of international documents, this will be positive for the development of international non-governmental organizations and will affect the implementation of their goals and tasks, and in general, by bringing the various directions of their activities into the framework of certain standards, it can increase the benefits that can be given to the civil society in terms of quantity and quality, and it can lead to the development of other legislations of the state in this field.

A number of features can be noted as general provisions of the currently existing legal norms that determine the legal status of non-governmental organizations in the Republic of Azerbaijan. First of all, it should be noted that the legal independence of non-governmental organizations, especially their independence from the government, is ensured by law, and non-governmental organizations are created freely, without obstacles, without interference. After registration, the relevant non-governmental organization receives the special legal status of a legal entity, on the basis of which all subsequent activities are based. The state affects the activities of non-governmental organizations by limiting their activities, as well as establishing a certain control mechanism in their work, which mainly interferes with legal regulation.

Unfortunately, at present, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations has not been ratified by the Republic of Azerbaijan, which makes it difficult for national non-governmental organizations to be recognized abroad, at the same time, does not allow to fully reveal potential of international non-governmental organizations operating in the Republic of Azerbaijan and opportunities to fully benefit from the system of international

non-governmental organizations are almost reduced. At the same time, the lack of national legislation in this area harms unanimity and completeness in this area.

Thus, most studies agree that non-governmental organizations are voluntary, non-profit-making, self-governing organizations created to achieve common goals for all of their participants, independent of the state. This concept is a common character for the legislation of the Republic of Azerbaijan and other democratic, legal states. Factors such as subject composition of non-governmental organizations, specific goals of their activity, level of activity are additional features that allow determining what type a certain non-governmental organization should be classified as.

As for the legal essence, this, in our opinion, originates from the concept itself, and it is of particular importance that its founder is not the state, but other subjects. The activities of non-governmental organizations can sometimes coincide with the work of state-oriented bodies in solving certain issues, but these organizations are completely different. For example, if we compare non-governmental human rights organizations with ombudsmen, it is clear that although they have similar goals, their functions are of a different nature. Ombudsmen are created as or under state bodies, exercise control over the latter's activities and depend on them to some extent, while non-governmental organizations are public institutions that are not part of the state apparatus and operate completely independently. Although there is independence in making decisions, ombudsmen show the existence of these relationships by presenting certain reports, while non-governmental organizations do not have any mutual obligations in this sphere. If the creation of non-governmental organizations is done by individuals on the basis of applications to state bodies, then in the case of the ombudsman institution, decisions on the creation of such institutions come directly from the state in the form of state bodies.

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