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Main Models of Realisation of the Right of Association in the Azerbaijan Republic

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Abstract

Establishment and development of civil society is possible under conditions ensured by a legal state. It indicates that legal state and civil society can also be viewed as the embodiment of human rights and freedoms and specifically the right to associate. This is explained by movement of various factors. Features of the historical and cultural development, democratic, political and legal traditions, specificity of the political and legal system, differences in the perception of law as the universal social regulator of public relations. Establishment and ultimately completion of establishment of the legal state is associated with maximum guarantee for human rights and freedoms, responsibility of the government before the citizens and the state, raising the credibility of law and strict observance to it by all state bodies, public organisations, communities and citizens as well as the effective functioning of the law-enforcement bodies. While analysing the current state and perspectives of the right to association in the Republic of Azerbaijan, it is necessary to evaluate the state of the civil society again.

Keywords: freedom of association, human rights, non-governmental organisations, political parties, Republic of Azerbaijan, trade unions.

Introduction

As shown by the analysis in the previous research of the author, establishment of a union is a means of achieving common goals. In this case, the basic principle is voluntariness. In other words, it means that no one can be forced to join a union. People realise their common interests and decide on joint action in order to protect them. At this point, they establish trade unions to function more efficiently. Both, in countries around the World and in the Republic of Azerbaijan the most common type of such associations are trade unions. Article 11 of the **European Convention on Human Rights**

specifies possibilities for establishing public associations. It also establishes the right to be a member of public associations. Yet, establishment of relationships between public associations and government, which has not been reflected, is worth the emphasis. It must be acknowledged that this, however, often leads to formation of certain controversies. Thus, necessity of working towards further improvement of the right to associate remains relevant. According to the European Convention on Human Rights, activity aimed at establishing a union and protecting common interests is allowed, unless the terms of Article 11 are violated. Also, it should be noted that the strike of employees intending to protect their joint interests is deemed to be a right of the same category. 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, police, administrative bodies' staff.

Topicality of the research topic at this stage is determined by the fact that building of civil society or developing civil society ideas is a priority for any state that has taken the path of democratic development. The ideas of civil society based on the realisation of the right to association, the research on the normative-legal and practical bases of the realisation of these ideas are of great importance not only for individual countries, but also globally. This is due to such studies creating a complete picture of strengths of civil society, thus fully confirming the crucial role of the right to association in the human rights system.

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Constitution of the Republic of Azerbaijan specifies both the right to associate and the right to strike. It is guided by provisions of effective international conventions, i.e., Article 58 of the Constitution indicates that everyone has the right to establish and join a union (Constitution of the Republic of Azerbaijan, 2013, 12). The Article provides for political parties, trade unions and other public associations. Their common feature is that they all are established to protect common interests and achieve common objectives. The Constitution of the Republic of Azerbaijan also contains a provision guaranteeing free activity of all unions. Paragraph 3 of Article 58 of the Constitution states: "No one can be forced to join a union or remain a member thereof." This is also consistent with the standards of the European Convention on Human Rights.

It should be noted that despite joining international conventions and undertaking of specific obligations, certain limitations exist in relation to realisation of the right to associate. In accordance with international instruments, the right of association can be restricted in a reasonable manner and in special cases. Thus, international conventions envisage preventing establishment of associations posing threat to public order and capable of violating the rights of others. In other words, the possibility of restriction of the right to associate is set forth. This is expressed in paragraph 4 of Article 58 of the Constitution of the Republic of Azerbaijan (2013, 12) as follows: "Activity of

unions intended for forcible overthrow of legal state power on the whole territory of the Azerbaijan Republic or on a part thereof is prohibited. Activity of unions which violates the Constitution and laws can be terminated by courts only.”

It should be mentioned that the Constitution of the Republic of Azerbaijan contains a provision on the right to strike as well. The right to strike is enshrined in Article 36 of the Constitution of the Republic of Azerbaijan, i.e., paragraph 1 of Article 36 of the Constitution states: “Everyone has the right to strike alone or together with others.” Also, relevant article of the Constitution clarifies the issue of restriction of the right to strike. Paragraph 2 of Article 36 of the Constitution reads as follows: “The right to strike for those working based on labour agreements might be restricted only in cases stipulated by law.” Soldiers and civilians employed in the Army and other military formations of the Republic of Azerbaijan have no right to go on strike. Thus, it should be noted that currently the issue of the removal of restrictions in relation to the rights of association of certain categories of employees is being widely discussed.

Establishment of the rights to associate and strike in the Constitution of the Republic of Azerbaijan is not the final act. In other words, numerous documents governing realisation of the related rights are drafted and adopted in Azerbaijan.

The following documents directly related to realisation of the right to associate can be mentioned:

- Law of the Republic of Azerbaijan on Political Parties which was adopted on June 3, 1996;
- Law of the Republic of Azerbaijan on Trade Unions which was adopted on February 24, 1994;
- Law of the Republic of Azerbaijan on Non-Governmental Organisations which was adopted on June 13, 2000.

Analysis of the **Law of the Republic of Azerbaijan on Political Parties** shows that this law is intended for realisation of the right to associate, which pertains to the category of fundamental human rights, i.e., Article 1 of the law clarifies the concept of a political party: “A political party is a non-commercial legal entity established by the citizens of the Republic of Azerbaijan for the purpose of participating in the political life of the country, forming and expressing the political will of the citizens.”

As seen, political parties are also public associations established to realise citizens’ rights to associate. Here, the basic principle is again the one of voluntariness. This has been expressed more clearly in Article 3 of the Law. This Article reads as follows: “Political parties shall be established and function on the basis of the principles of freedom of association, voluntariness, equality of rights of their members, self-government, legality and publicity. Within their activities political parties may not restrict the fundamental rights and freedoms of human and citizens, enshrined in the Constitution of the Republic of Azerbaijan, in international agreements which the Republic of Azerbaijan is a party to and in other legislative acts of the Republic of Azerbaijan.” (Law of the Republic of Azerbaijan on Political Parties, 1996)

As noted, the right to (freedom of association) associate to establish political parties is underlined. Inadmissibility of restricting participation in political parties is enshrined in the law. Thus, restriction of citizens' membership in political parties on any ground is not allowed. It can be viewed as a guarantee of the right of association. Reviewing the Law of the Republic of Azerbaijan on Political Parties, possibilities restricting the right to associate can be identified. Nevertheless, it has provided for possibility of restriction of the activity of political parties in certain cases considering the objective such as ensuring stable development of society, as well as national security and interests. In other words, to some extent it can be reviewed as a restriction of the right of association. International regulatory acts also justify restriction of the right to associate under certain conditions. Such possibility of restriction is expressed in Article 4 of the Law of the Republic of Azerbaijan on Political Parties. Article 4 of the Law states: "Establishment and functioning of political parties aiming or seeking to change the constitutional order and secular nature of the Republic of Azerbaijan, to violate territorial integrity, to promote war, violence and brutality, to instigate racial, national and religious hatred, shall be prohibited. 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".

The **Law of the Republic of Azerbaijan on Non-Governmental Organisations** regulates the issues related to establishment and functioning of public associations and foundations. A number of important provisions related to the right to associate are also reflected in the Law of the Republic of Azerbaijan on Non-Governmental Organisations. The law also clarifies the essence of the concept of non-governmental organisations. Paragraph 1.3 of Article 1 of the Law of the Republic of Azerbaijan on Non-Governmental Organisations reads: "This Law establishes rules for establishment, functioning reorganisation and liquidation of non-governmental organisations as legal entities, as well as activities of non-governmental organisations, their management and relations with public authorities". Therefore, the Law of the Republic of Azerbaijan on Non-Governmental Organisations can be reviewed as a form of state guarantee for the right to associate. As stated above, existence of public associations, i.e. non-governmental organisations, are assessed as the embodiment of the right to associate within society. Non-governmental organisations are a key component of civil society. Also, the issues such as establishment, functioning and termination of non-governmental organisations in the process of civil society building in the Republic of Azerbaijan are also governed by related legislation.

Provisions allowing restriction of the right to associate of the Law of the Republic of Azerbaijan on Non-Governmental Organisations can also be specified. Paragraph 2.3 of Article 1 of the Law reads: "Non-governmental organisations can be established and function with the purposes not forbidden by the Constitution and laws of the Republic of Azerbaijan." Establishment and functioning of non-governmental organisations, as well as branches or representative offices of non-governmental organisations of foreign countries

in the Republic of Azerbaijan, the purpose or activity of which is aimed at changing the constitutional order and secular nature of the Republic of Azerbaijan, violation of its territorial integrity, propaganda of war, violence and cruelty, provoking racial, national and religious hostility is prohibited. Upon closer scrutiny, those provisions of the Law that deal with the restriction of the right to associate are similar to the provisions specified in the Conventions of International Labour Organisation and other international regulatory acts. In other words, it is also noted in these documents that restriction of the right to associate is possible under special conditions. This once again proves that corresponding provisions of international regulatory acts are referred to upon development of the legal framework in the relevant fields in the Republic of Azerbaijan.

In 1999, National NGO Forum was established in Azerbaijan. Development of NGO sector has stipulated serious changes in the area of realisation of the right to associate. Thus, various laws and programmes have been adopted for efficient organisation of protection of human rights and freedoms in general. Legal framework for realisation of almost all rights and freedoms of people from all layers of the society is in place and improve continuously. For example, in addition to the documents already considered, the Law on Child Rights is adopted. Alongside with other child rights, the law also establishes children's rights to associate. Article 19 of the **Law of the Republic of Azerbaijan on Child Rights** adopted on May 19, 1998 states: "Children have the right in the order established by the legislation of the Republic of Azerbaijan, to create in their place of study or residence public associations or public bodies of independent action and associate within them. It is not allowed to involve children in political acts of public associations and public bodies of independent action.

Law of the Republic of Azerbaijan on Trade Unions serves as an important regulatory framework for realisation of the right to associate. Mechanisms and principles for employees to establish basis their own unions on voluntary to protect their common interests and achieve common objectives and involve in the activity of these unions are expressed in the law. It should be noted that Preamble of the Law of the Republic of Azerbaijan on Trade Unions establishes the guarantee for activity seeking to protect employee interests and benefits in accordance with Universal Declaration of Human Rights, Conventions of International Labour Organisations and European Social Charter. Paragraph 1 of Chapter 1 of the Law of the Republic of Azerbaijan on Trade Union entitled General Provisions of the Law of the Republic of Azerbaijan on Trade Unions clarifies the nature of trade union organisation. Article 1 of this chapter shows that trade unions constitute the appropriate platform in realisation of the right to associate. Article 1 of the Law of the Republic of Azerbaijan on Trade Union reads: "Trade union represents independent public non-political organisation that joins employees, engaged in production and non-production sphere, as well as pensioners and persons, being educated, on a voluntary individual membership principle for the protection of their labour, social, economic rights and legal interests at working places, professions, branches and on the general republican level." Establishment of trade unions is directly linked to the right

to associate. In circumstances of failure to realise the right to associate, the possibility of establishing a trade union cannot be discussed at all. As stated, the principles of establishment and functioning of trade unions in the Republic of Azerbaijan are directly harmonised with the Conventions of International Labour Organisation and refer to the relevant international laws in the field.

Article 3 of Chapter 1 of the Law on Trade Unions deals with the right of association. Article 3 is entitled The Right to Organise in Trade Unions. Article 5 of the Law reads: “Employees, pensioners, studying persons, without any distinction, have the right to voluntarily establish trade unions at their choice without preliminary permission, to join trade unions to protect their legitimate interests, labour, socio-economic rights and engage in trade union activity.” Analysis of this Article shows that the provisions contained in the Charter of International Labour Organisation are reflected here. It also testifies to the fact that in accordance with the preamble of the law, mechanisms and principles for establishing, functioning and engaging in the activity of trade unions are based on international conventions. It should be noted that in the Conventions of International Labour Organisation, the right to associate is presented as an employee’s possibility to voluntarily associate with others to protect common interests. Accordingly, Article 3 of the Law on Trade Unions of the Republic of Azerbaijan states: “Trade unions may on voluntary basis establish sectoral, regional and other associations (councils, federations, confederations) to fulfil the tasks specified in their charter.”

Thus, establishment and activity of trade unions in the Republic of Azerbaijan is governed by Article 58 of the **Constitution of the Republic of Azerbaijan**. The second part of this Article establishes the right owned by everyone to organise and engage in activity of any association including trade unions. In addition to the Constitution of the Republic of Azerbaijan, the right to organise in a trade union is clearly stated in the **Labour Code of the Republic of Azerbaijan**. Article 19 of the Labour Code of the Republic of Azerbaijan is titled as Trade Union. The first paragraph of Article 19 of the Labour Code of the Republic clearly expresses the right to associate. Paragraph 1 of Article 19 states: “A trade union may be established on a voluntary basis without discrimination among employees or without prior permission from employers. Employees may join the appropriate trade union and engage in trade union activity in order to protect their labour and socioeconomic rights and legal interests.”

Nevertheless, a broader definition of the right to associate in the Labour Code of the Republic of Azerbaijan would be more appropriate. As mentioned, only one Article in the Labour Code deals with trade unions. Accordingly, the right to associate is only reflected in Article 19. Thus, a separate chapter in the Labour Code about trade unions also stipulates expression of the right to associate in more detail. The Law on Trade Unions of the Republic of Azerbaijan can be deemed to be a quite important document in this regard. The document expressly specifies the possibility for employees to associate for their common interests and objectives. In this regard, in particular the Labour Code should be noted.

Articles 19 and 20 of the Labour Code of the Republic of Azerbaijan deal with relevant unions of employees and employers. It should be noted that, alongside with points related to establishment of corresponding associations and their activity, possibilities for restricting their activity are also set forth in these documents. Similar principles are noticeable in almost all laws containing points related to realisation of the right of association and in general establishment of public associations. For example, as in all relevant international documents, receipt of additional authorisation and the principle of voluntariness is highlighted in corresponding domestic legislation of the Republic of Azerbaijan in relation to realisation of the right to associate or establishment of public associations. Thus, currently the right to associate in the Republic of Azerbaijan is based on the principles set forth in international instruments. In general, joining almost all effective international agreements and conventions, the Republic of Azerbaijan has undertaken obligations in protection of human rights and freedoms and specifically, realisation of the right to associate. With the establishment of the legal framework for realisation of the right to associate, development of an effective mechanism to this effect is also in the centre of attention and contributions of international cooperation is used in this area as well.

In general, a new era has begun in the Republic of Azerbaijan in implementation of reforms in legal system. It can be noted that the recent years in Azerbaijan can be characterised as a period of large-scale reforms in the legal system.

Examining the current status and prospects of the right to associate in the Republic of Azerbaijan, undoubtedly the state of civil society has to be re-analysed. The progress in realisation of the right to associate is directly linked with the civil society building. Currently, building an active civil society is in progress in the Republic of Azerbaijan. The central pillar of civil society is various non-governmental organisations built on the right to associate. As can be indicated from the above stated, the necessary legal framework to ensure the free functioning of trade unions in the Republic of Azerbaijan is in place. There are reasonable grounds to say that the situation in this area complies with the provisions of the international conventions and agreements. To substantiate this, it is enough to look at the current activity of Azerbaijan Trade Unions Confederation (ATUC). It should be noted that the Trade Unions Confederation was established in February 1993. This gives a good cause to review the Trade Unions Confederation as an arena where realisation of the right to associate is most effective.

Trade Unions Confederation includes 18,610 trade union organisations and coordinates their activity. Existence of a community of this scale indicates on the better prospects for protection of human rights and specifically the right to associate. Existence of such a confederation enables easier coordination of the efforts aimed at protection of the interests and rights of employees engaged in various areas of activity. It should be noted that 26 branch trade unions existing in the Republic of Azerbaijan are gathered namely in Trade Unions Confederation and a total number of members is 1,600,000 people.

Azerbaijan Trade Unions Confederation (ATUC) takes an active part in the large system of international cooperation in the field of effective protection of workers' rights. ATUC became a member to the International Confederation of Free Trade Unions already in 2000. The most important point to be noted is that ATUC has been represented in International Labour Organisation since 1992. Boundaries of ATUC activities are not limited to what has been already mentioned. Having all these in mind, further substantiation is needed that current scope of ATUC activities generates a good understanding about the status of the right to associate in the Republic of Azerbaijan. Currently, in the Republic of Azerbaijan the right to associate is realised in accordance with principles and requirements expressed in international agreements and Conventions of International Labour Organisation. As already mentioned, by joining international conventions, the Republic of Azerbaijan has undertaken to realise human rights and freedoms including the right to associate. These obligations are related to both establishments of the legal framework and implementation of necessary practical measures. Thus, the situation in the stated fields is satisfactory and the necessary conditions are met for carrying out further measures.

The above provides evidence that the legal framework for realisation of the right to associate in the Republic of Azerbaijan is guided by certain international legislative acts. The Parliament of the Republic of Azerbaijan ratified two important Conventions (No. 87 and 98) of International Labour Organisation on July 3, 1993 (Gasimov, 2016, 827–828). It should be noted that Convention No. 87 of International Labour Organisation is entitled Freedom of Association and Protection of the Right to Organise and was adopted on July 9, 1948. Another important Convention No. 98 on the Right to Organise and Collective Bargaining was adopted in 1949. Ratification of both Conventions by the Republic of Azerbaijan had a forceful impact on establishment of the basis of national legislation in the field of realisation of the right to associate. Ratification of these Conventions also implies undertaking by the Republic of Azerbaijan of certain obligations related to realisation of the right to associate. It enables a more efficient and reliable realisation of the right to associate in the country.

Conclusions

Existence and establishment of the civil society is not possible without new social-individual institutions reflecting equal civil rights and independence of individuals. A person can become a citizen only by having high moral values based on democratic principles, personal dignity, independence, sense of individuality, as well as the high merits such as respecting the rights and freedoms of others and following universal laws and regulations in full obedience. This new type of person is created in different type of relationship with public associations and institutions. New social individuals do not dissolve in collectives, on the contrary they gain social importance, have high moral values and establish their relations with others as honest true citizens.

To this effect, people's psychology, outlook, economic and social status has to change fundamentally.

To have such citizens, society should strive for following principles:

- 1) equality of rights and freedoms of all people in the political arena;
- 2) protection of citizens' rights and freedoms in accordance with international legal norms;
- 3) economic independence of individuals based on the right of everyone to own property or equitable remuneration for honest work;
- 4) guaranteeing by law the possibility for citizens to associate in unions in accordance with interests and professional status, regardless of state and parties;
- 5) freedom of citizens in formation of political parties and civic movements;
- 6) creation of necessary material, technical, psychological and moral conditions for the development of science, culture, education and upbringing institutions for forming free, polite, morally justified and socially active citizens who are responsible before society;
- 7) existence of a mechanism that governs and stabilises the relationship between the state and civil society and ensuring security of the latter. This mechanism, formal or informal, includes statutes, democratic elections of people's representatives to various authorities, self-governing institutions, etc.

Recommendations

Society acting based on the principles listed above can stay up in unity with the democratic and legal state that has replaced a totalitarian regime.

Such a state should have the following key features:

- 1) the main feature of such a state is the rule of law; observance of those laws by all members of the society without exception;
- 2) separation of powers and functions between structures; building civil relations between government and opposition for regulating functioning of the state mechanism;
- 3) accurate identification of the place of parties and movements in the political system and determination of their area of activity different from duties of the state. This primarily refers to representatives of the ruling party, which are in the office. Complementarity of the party and state mechanism strengthen the backing of society within the political system and leads its property into a controllable channel (Ganberov, 2020);
- 4) establishing tried-and-true and reliable mechanism of relations between central government agencies and lower structures of federation (or unitary state);
- 5) thinking of a practical system that will ensure control over state administrative apparatus by civil society; regular study and timely elimination of the causes

leading to the formation of bureaucracy that has obtained chronic form in the political system (Gasimov, 2016);

- 6) a stable legal state is hard to imagine without and accurate, constructive settlement of the relations between the individual, society and state trio. The point in question is not supremacy of civil society over state and dissolution of the latter, but establishment of the necessary social environment – the basis capable of ensuring balanced prosperity of human society.

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