

Submission by International Partnership for Human Rights pursuant to Rule 9(2) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments

Comments on the implementation of the Ramazanova group of cases (application no. 44363/02)

A. Introduction

1. International Partnership for Human Rights (IPHR) is an independent, non-governmental organization founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities. IPHR is committed to promoting human rights worldwide but has a special focus on countries in Central Asia and the South Caucasus as well as Russia and the Ukraine. It acts to empower local civil society groups who are working to advance the protection of human rights in their respective countries and assists them with raising human rights concerns at the international level. In cooperation with partner organizations, IPHR advocates on behalf of individuals and communities who are among those most vulnerable to discrimination, injustice and human rights violations.
2. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, IPHR hereby presents a communication regarding the proceedings in *Ramazanova and others v. Azerbaijan*, application no. 44363/02 and its six repetitive cases¹ ("**Ramazanova Group of Cases**"). This submission argues that, in view of the requirements set by the European Court of Human Rights ("**the Court**" or "**ECtHR**") and international standards and notwithstanding some amendments of the domestic law after 2004, it would be premature to close supervision of this judgment. To the contrary, the Committee of Ministers ("**CM**") should increase its emphasis on this group of cases and **examine it under enhanced supervision**. In the following, IPHR will assess the infringements at issue in the Ramazanova Group of Cases and outline the general measures that must be taken given the precarious situation for the civil society in Azerbaijan. For that purpose, the submission will not only address the issue of NGO registration but also other aspects of NGO regulation, forming part of a wider pattern of repressive policies. In that regard, the Court itself has observed that Azerbaijan's legal framework on the operation of NGOs, in particular on their funding, is "*increasingly harsh and restrictive*",² in effect criminalizing NGO work. IPHR invites the CM to also take into consideration these aspects when examining this group of cases.

1 *Aliyev and others v. Azerbaijan*, application no. 28736/05; *Ismayilov v. Azerbaijan*, application no. 4439/04; *Nasibova v. Azerbaijan*, application no. 4307/04; *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03 and *Islam-Ittihad Association and others v. Azerbaijan*, application no. 5548/05; *Jafarov and others v. Azerbaijan*, application no. 27309/14.

2 *Aliyev v. Azerbaijan*, application no. 68762/14, para. 212; *Yunusova and Yunusov v. Azerbaijan*, application no. 68817/14, para. 192.

B. Case Summary and Findings of the Court

3. The cases in question all concern interferences by the Ministry of Justice of Azerbaijan (“Moj”) with the freedom of association enshrined in Article 11 of the European Convention on Human Rights (“ECHR”) by significantly impeding the activities of non-governmental organizations (“NGOs”) or even outright dissolving them. The cases follow two distinct patterns.
4. In a number of cases,³ the Moj delayed the registration of new associations, which is a requirement to recognition as a legal entity and a prerequisite to open bank accounts, receive funds, employ staff, or pay taxes, leading to a *de facto* refusal of registration. The Moj ignored statutory time limits for the decision on registration and/or returned applications to the founders for alleged and often pretextual deficiencies in the applications without taking any actions for months and even years. This regularly occurred despite a statute in force at the time obliging the Moj to comment on all deficiencies in its first response. The ECtHR identified several measures to mitigate the infringements:

- **Remedy to unreasonably long delays.** The Court found that it is the duty of the Government of Azerbaijan to take remedial measures to allow the Moj’s practices to be brought into compliance with the time-limits imposed by the State’s own law, for which the Court found no evidence in the relevant cases.⁴ It did not consider the allegedly heavy workload an excuse for the infringements of procedural requirements of the domestic law.
- **Legal protection against the Moj’s arbitrary delays and failure to issue a definitive decision.** The Court also observed that the applicable law on the registration of associations did not establish with sufficient precision the consequences of the Moj’s failure to take action within the statutory time limits.⁵ As possible remedies, it named an automatic registration of a legal entity as consequence to a failure to take action within the prescribed time limits or the specification of a limit on the number of times the Ministry could return documents to the organization with no action taken.⁶

5. In a second group of cases,⁷ the interference by the Moj occurred after the associations in question had already been registered. Specifically, the Moj made use of a provision of the Law on Non-Profit Organizations (Public Unions and Funds) (“NGO Act”) that allowed it, after issuing a number of warnings, to seek the dissolution of the associations in question. In that respect, the ECtHR found that the law in question was open to extensive interpretation (for example allowing for the dissolution for activities “incompatible with the objectives” of the NGO Act), allowing the Moj to achieve the dissolution of an association after issuing multiple

3 See the cases of *Aliyev and others v. Azerbaijan*, application no. 28736/05; *Ismayilov v. Azerbaijan*, application no. 4439/04; *Nasibova v. Azerbaijan*, application no. 4307/04; *Ramazanova and others v. Azerbaijan*, application no. 44363/02; *Jafarov and others v. Azerbaijan*, application no. 27309/14.

4 *Aliyev and others v. Azerbaijan*, application no. 28736/05, para. 41; *Ramazanova and others v. Azerbaijan*, application no. 44363/02, para. 64 and 65; *Ismayilov v. Azerbaijan*, application no. 4439/04, para. 52; *Nasibova v. Azerbaijan*, application no. 4307/04, para. 32-33.

5 *Aliyev and others v. Azerbaijan*, application no. 28736/05, para. 42; *Ramazanova and others v. Azerbaijan*, application no. 44363/02, para. 66; *Ismayilov v. Azerbaijan*, application no. 4439/04, para. 53; *Nasibova v. Azerbaijan*, application no. 4307/04, para. 34.

6 *Aliyev and others v. Azerbaijan*, application no. 28736/05, para. 42; *Ramazanova and others v. Azerbaijan*, application no. 44363/02, para. 66; *Ismayilov v. Azerbaijan*, application no. 4439/04, para. 53; *Nasibova v. Azerbaijan*, application no. 4307/04, para. 34.

7 See the cases of *Islam-Ittihad Association and others v. Azerbaijan*, application no. 5548/05; *Tebieti Mühafizə Cəmiyyəti and İsrailov v. Azerbaijan*, application no. 37083/03.

warnings in a short period of time without giving the association sufficient time to cure the alleged deficiencies.⁸ Again, the Court identified some potential remedies:

- **Foreseeability and legal certainty of reasons for dissolution.** The Court found that the domestic law should delimit more precisely the circumstances in which this sanction could be applied.⁹ It criticized that there existed no closed catalogue of certain grave infringements of the law that enabled a dissolution so that even inherently internal organizational processes were used as grounds for warnings and dissolution.¹⁰
- **Scaled system of proportionate sanctions.** The Court observed that the unsatisfying legal situation of uncertainty was aggravated by the fact that involuntary dissolution was the only sanction available under the domestic law.¹¹ It thus proposed the introduction of less radical alternative sanctions, such as a fine or withdrawal of tax benefits.¹²
- **Detailed rules governing scope and extent of the Moj's power to intervene.** The Court recognized that the NGO Act does not provide for minimum procedural safeguards against the risk of abuse and arbitrariness. It indicated that, inter alia, the procedure for conducting inspections by the Moj of the period of time granted to associations to eliminate any shortcomings detected should be prescribed by law.¹³

C. Continuation of Infringements Established in the Ramazanova Group of Cases

6. IPHR notes that the Government of Azerbaijan has not provided an action plan for the Ramazanova Group of Cases. Instead, it has stated in an action report that it considers no action necessary after the entry into force of the Law on State Registration and State Register of Legal Entities¹⁴ ("**Registration Act**") in 2004 as well as certain amendments introduced thereto.¹⁵ The action report points to Article 8 of the Registration Act, which provides for time limits on the overall examination period (up to 60 days) and requires the Moj to identify all deficiencies in one review. The association shall be considered to have been granted registration if no response is given within the period prescribed by law. Also, the action report highlights that the NGO Act specifies the powers of the competent authorities concerning the supervision of associations and introduces the suspension of NGO activities as alternative sanction to dissolution.¹⁶
7. IPHR disagrees with the Government's position in the action report and considers the infringements as ongoing. First and foremost, the measures described in the action report are ineffective, as the Moj circumvents or disregards the requirements laid down in law (see below

8 See for example *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 61 et seq., 77

9 *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 63; *Islam-Ittihad Association and others v. Azerbaijan*, application no. 5548/05, para. 50.

10 *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 78.

11 *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 63; *Islam-Ittihad Association and others v. Azerbaijan*, application no. 5548/05, para. 50.

12 *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 82.

13 *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, application no. 37083/03, para. 64.

14 Of 12 December 2003, effective from 9 January 2004.

15 Action report, submitted in response to a communication from seven NGOs in the Ramazanova Group of Cases of 17 September 2014, DH-DD(2014)1163, available at: [https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD\(2014\)1163E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXEIdentifier%22:%5B%22DH-DD(2014)1163E%22%5D%7D)

16 Articles 31 and 32 NGO Act.

under I.). Second, the measures are also insufficient, as they do not address all legal and factual deficiencies. As to the legal framework, even considering the abovementioned alleviations, the registration process remains unreasonably burdensome. Further, while introducing the amendments, Azerbaijan has at the same time tightened its regulations on numerous aspects of NGO operation, overall only shifting the focus of repressive policies to the operational level (see below under II.). As to the practice, state authorities continue to impede the activities of NGOs beyond the already restrictive laws through unofficial permit practices and harassment of NGO activists by prosecution and smear campaigns (see below under III.).

I. INEFFECTIVENESS OF THE MEASURES DESCRIBED IN THE ACTION REPORT

8. The measures referred to in the action report have proven to be ineffective.
9. The introduced amendments contain **loopholes that allow their circumvention** by the Moj. The main concern is the procedure for “returning documents due to deficiencies” [çatışmazlıqlar]. While Article 8(3) of the Registration Act provides that the Moj shall identify all deficiencies in one review, it does not prohibit the Moj to return the documents more than one time. This possibility is extensively used in practice.¹⁷
10. Further, the Court itself observed in the repetitive case of *Jafarov and others v. Azerbaijan*, which involved conduct after the entry into force of the Registration Act, that the Government of Azerbaijan did not adhere to the amended laws. Despite the clear statutory duty, the Moj **did not indicate a time period for rectification** and created uncertainty as to the content of the decisions issued by it, thereby defeating the purpose of Article 8 of the Registration Act.¹⁸ Also, cases newly communicated to the ECtHR report events where the Moj returned the documents submitted by the NGOs without taking a formal decision rejecting or granting the request for state registration.¹⁹ The lack of implementation of the legislation has also been subject to criticism by the Venice Commission additionally finding that deadlines are not respected and the automatic registration, in case the Moj does not respond to the applicants within the statutory time-limit pursuant to Article 8(5) of the Registration Act, does not seem to be respected.²⁰

17 The continuance of the infringements is illustrated by the increasing number of complaints to the ECHR based on the repeated return of registration documents over the last decade, see *Talishkhanli and others v. Azerbaijan*, application no. 36868/18 (communicated on 3 March 2021); *Agayev and others v. Azerbaijan*, application no. 4300/18 and two other applicants (communicated on 15 February 2021); *Nasirli and Ahmadov v. Azerbaijan*, application no. 56899/16 and 13 other applications (communicated on 19 October 2020); *Mammad and others v. Azerbaijan*, application no. 11612/10 and eight other applications (communicated on 26 January 2017); *Izzat Oglo and others v. Azerbaijan*, application no. 24504/11 and 14 other applications (communicated on 11 October 2016); *Khalilov v. Azerbaijan*, application no. 11923/15 and 15 other applications (communicated on 11 October 2016); *Rzayev and others v. Azerbaijan*, application no. 8954/09 and four other applications (communicated on 11 October 2016); *Valiyev and others v. Azerbaijan*, application no. 12982/14 and nine other applications (communicated on 11 October 2016); *Election Monitoring and Democracy Education Centre and others v. Azerbaijan*, application no. 64733/09 (communicated on 16 March 2016).

18 *Jafarov and others v. Azerbaijan*, application no. 27309/14, para. 91-92.

19 *Mammad and others against Azerbaijan*, application no. 11612/10; *Election Monitoring and Democracy Education Centre and others against Azerbaijan*, application no. 64733/09.

20 European Commission for Democracy Through Law (Venice Commission), Opinion no. 787/2014 on the Law on non-governmental Organisations (*Public Associations and Funds*) as amended of the Republic of Azerbaijan, CDL-AD (2014)043, adopted at its 101st Plenary Session (Venice, 12-13 December 2014) (“**Venice Commission Opinion no 787/2014**”), para. 46.

II. INSUFFICIENCY OF THE MEASURES DESCRIBED IN THE ACTION REPORT

The measures referred to in the action report are also insufficient to cure the infringements of Article 11 ECHR. The Government of Azerbaijan maintains, and in some respects even tightens, strict restrictions of registration and operation of NGOs, designed to grant state authorities a great amount of control over NGO activities and create a chilling effect and shrinking space for civil society.²¹ Further, the State of Azerbaijan creates practical obstacles to NGO activities in Azerbaijan that even go beyond the already restrictive laws.

1. Registration

11. Even with the introduced amendments, the **registration process remains unreasonably burdensome** for local NGOs and excessively strict and arbitrary for foreign NGOs.
12. Notably, the Venice Commission has found that several amendments introduced in 2013 have failed to address most of the shortcomings found in the Ramazanova Group of Cases.²² To the contrary, **parts of the law and practice relating to NGO registration have been further tightened** with the amendments adopted after 2004, which the Venice Commission found to be incompliant with European standards.²³ Instead of addressing the problematic aspects of the registration in the legislation, the Government tightened the registration rules for NGOs with the amendments made to the Registration Act e.g. in 2005.²⁴ Moreover, since January 2012, NGO registration applicants are subject to a penalty for providing false information during the registration process, whereas the term “false information” is not defined by law, which may lead to arbitrary or selective application of such fines to NGOs.²⁵
13. As to local NGOs, the **criteria for refusal** of registration laid down in Article 11 of the Registration Act are both **wide and vague**, leaving ample room for opportune interpretation.²⁶ For example, registration can be refused if the constituent documents or the purposes, tasks or forms of activity of the organization contradict the Constitution and/or other legislation.²⁷

21 This conclusion was also drawn by the Court itself, see *Mammadli v. Azerbaijan*, application no. 47145/14, para. 54 and *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, para. 120.

22 Venice Commission Opinion no 787/2014, para. 46.

23 European Commission for Democracy Through Law (Venice Commission) - Opinion no. 636/2011 on the compatibility of with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, CDL-AD(2011)035, adopted at its 88th Plenary Session (Venice, 14-15 October 2011) (“**Venice Commission Opinion no. 636/2011**”) and Venice Commission Opinion no 787/2014.

24 Under No. 970-IIQD of 28 June 2005 on amendments to the Registration Act, the government separated the registration system for commercial and non-commercial entities, and from that date introduced a simpler and shorter registration system for commercial organisations (local and foreign) failing to address the registration system for NGOs.

25 Venice Commission Opinion no 787/2014, para. 53.

26 Article 11(3) Registration Act provides for grounds for refusal, in particular: incompatibility of the documents submitted to the Constitution of the Republic of Azerbaijan and to other legislative acts; unreliable information provided in the application; conflict of goals, objective and forms of activities with legislation; charters of NGOs stipulate appropriation of powers of governmental and local self-governing organizations, state control and inspection. For the criticism on these criteria see Venice Commission Opinion no 787/2014, para. 52.

27 Article 11(3) Registration Act. This provision is contrary to the recommendations by the Venice Commission and OSCE, which demand that national provisions limiting an association's objective may not be interpreted narrowly, see Joint Guidelines on Freedom of Association, 17 December 2014, CDL-AD(2014)046 (“**Joint Guidelines**”), para. 87. Para. 88 names as examples for lawful restrictions the prohibition of “organizations promoting propaganda for war or inciting national, racial or religious hatred [...] if this constitutes incitement to discrimination, hostility or violence”.

Additionally, the requirements remain strict and inflexible in comparison to the registration of commercial entities. While the Registration Act, which regulates the state registration of both commercial and non-commercial legal entities, has visibly simplified registration procedures for local and international commercial entities over the past ten years, such improvements have not been applied to NGOs.²⁸ The registration of a local or foreign business takes one to three days,²⁹ compared to the time limit of a maximum of 60 days for the registration of NGOs.³⁰

14. For **foreign entities**, the situation is particularly precarious, because Article 6 of the Registration Act sets out **additional requirements**. In particular, foreign associations need to enter into an agreement of limited duration with the MoJ, the conclusion of which is – contrary to international standards – subject to the MoJ’s discretion.³¹ Additionally, they need to obtain an approval of compliance with certain criteria, *inter alia*, “respect for national and moral values of the Azerbaijani nation” and noninvolvement in political and religious propaganda.³² This requirement evidently targets associations working in the field of human rights, having ties to opposition members or otherwise being critical of the government.

2. Operation

15. Once registered, virtually all aspects of NGO work are tightly regulated in Azerbaijan, allowing State authorities to control every aspect of NGO activity and intervene in an arbitrary manner.
16. The core concerns in this area are the **harsh restrictions on access to funding**. NGOs and branches and representations of foreign NGOs in Azerbaijan are required to register the grant agreements for all grants received.³³ Funds from foreign organizations, including branches or representatives of foreign organizations in Azerbaijan, are only allowed after the foreign donor obtained permission from the Ministry of Finance, for which it needs to prove, *inter alia*, the financial and economic rationality of grants.³⁴ Additionally, NGOs are not allowed to receive donations by foreigners or anonymous donations. The passport details of each donor must be registered, and NGOs need to report the amount of received donations as well as the identity of the donor to the Ministry of Finance. The strict reporting obligations further

28 For example, online application for registration is available at <https://www.e-taxes.gov.az/> as of February 2012 (Article 5(1) Registration Act). It is exempted from state fees and thus completely free (Article 20(1.3) of the Law on State Fees). Furthermore, with the amendment No. 820-IVQD to Article 7(1) Registration Act, dated November 22, 2013, the state registration of commercial entities, including the representative offices and branches of foreign commercial entities, was reduced from three to two days. The online registration is usually completed within one to two days.

29 Article 7(1) and 7(2) Registration Act.

30 Article 8 Registration Act. The regular use of this comparatively extensive deadline is also criticized by the Venice Commission Opinion no. 636/2011, para. 62.

31 Contrary to Committee of Ministers, Recommendation 2007 (14), CM/Rec(2007)14 (“**Recommendation 2007 (14)**”), para. 28; Council of Europe, Fundamental Principles on the Status of Non-governmental Organisations in Europe, 2002, para. 26. For foreign NGOs, in fact automatic registration would be the standard, see Venice Commission, Opinion no. 636/2011 on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, 19 October 2011, CDL-AD(2011)035-e, para. 51.

32 Article 3 of the Cabinet of Ministers’ Decision No. 43 of 16 March 2011 on the approval of rules for state registration and rules related to the preparation for negotiations with foreign non-governmental organisations and representations in Azerbaijan Republic.

33 Article 4 (4) Law on Grants.

34 Article 2(5) Law on Grants.

include the reporting of grant agreements and service contracts to the Ministry of Finance.³⁵ It goes without saying that funding is the key prerequisite for NGOs to effectively pursue their aims and carry out activities.³⁶ The described legislation, however, is clearly designed to, if not discourage completely, at least rigorously control and limit the funding of NGOs.

17. Further, NGOs are subject to **strict reporting requirements**. In addition to financial and transparency reporting,³⁷ **every change** in the constituent documents and facts registered in the state register, including a change of its factual (not legal) address, or change of the phone number of one of the chairpersons, and other information envisaged in Article 14 of the Registration Act **needs to be registered**.³⁸ Non-compliance warrants an automatic fine.³⁹ Moreover, pursuant to amendments introduced in 2013,⁴⁰ NGOs are not allowed to operate on the basis of any subsequent changes made to the founding documents or factual prerequisites (for example, changes of address or phone) unless these changes are registered.
18. The restrictive legal framework is **supplemented by unofficial practices** that set requirements beyond the law. For example, although there are no legal requirements for NGOs to notify meetings and events in Azerbaijan, for many years an **unofficial authorization practice** for the organization of events and meetings has emerged. Without a legal basis, a written permission from the presidential administration is required as a prerequisite for holding meetings. This particularly applies to events outside Baku. These unlawful practices persist to this day, as a recent investigation confirmed.⁴¹ Around 24 percent of applications have been turned down and administrative delays often mean that even registered meetings cannot take place because the permits are processed too late.⁴² The situation is exacerbated by the fact that NGOs specializing in human rights (*nota bene*: primarily those that openly criticize and document human rights violations) irrespective of the abovementioned restrictions are effectively and generally banned from organizing national and international events in Baku.⁴³
19. Finally, the situation is aggravated by the **enforcement mechanisms** that allow authorities to arbitrarily take action against undesirable associations.

35 Article 29(4) NGO Act. This is contrary to international standards, see Joint Guidelines, para. 102; Council of Europe, Fundamental Principles on the Status of Non-governmental Organisations in Europe, 2002, para. 63. See in detail the International Standards on Reporting Requirements.

36 See in this regard Venice Commission Opinion no. 636/2011, para. 58.

37 Article 29(5) NGO Act. According to this provision, NGOs, as well as branches and representative offices of foreign NGOs must “ensure the transparency of their activities”. The legislation lacks an indication as to how NGOs can ensure transparency of their activity.

38 Article 9(3) and (4) Registration Act.

39 Article 579 of the Code of Administrative Offences an NGO functioning on the basis of changes not reported to the registry can lead to fines of from 1000 up to 2,000 AZN for officials and 2,500-3,000 AZN for legal entities.

40 No. 849-IVQD of December 17, 2013, added new provisions (9.3 and 9.4) to the Registration Act providing that NGOs cannot operate based on any subsequent changes in the constituent documents or facts without their respective registration.

41 Guluzade/Safaraliyeva/Rzayev, CSO Meter Azerbaijan, Baku, 2019, available at: <https://csometer.info/sites/default/files/2020-11/CSO-Meter-Country-Report-Azerbaijan-ENG.pdf>, p.11.

42 Guluzade/Safaraliyeva/Rzayev, CSO Meter Azerbaijan, Baku, 2019, p. 19-20.

43 See End of mission statement by Special Rapporteur on the situation of human rights defenders by United Nations Special Rapporteur Mr. Michel Forst appointed by the Human Rights Council on the occasion of his visit to Azerbaijan from 14 to 22 September 2016, who, *inter alia*, concluded that “Requests for public assemblies especially by critical civil society or in the regions have reportedly been most of the time denied, delayed or approved in areas that are remote or uncondusive to public meetings. [...] Private companies, including hotels, have sometimes denied their services to oppositional activists to hold meetings in their premises, lest they receive a negative reaction from the Government.”, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E>.

20. NGOs can expect **high fines** for any breach of the operational requirements. The fines set out by law are punitive in character, because even minor breaches of the NGO Act or Registration Act can lead to high fines.⁴⁴ For example, the failure of NGOs to register a grant is punishable with a fine of up to 5,000-7,000 AZN (approximately 2,500-3,500 EUR) and a failure to include information about the amount of the donation and the donation's source in financial reports submitted to the Ministry of Finance is punishable with a fine of 5,000-8,000 AZN (approximately 2,500-4,000 EUR).⁴⁵ This conclusion is underscored by a comparison to fines for comparable breaches committed by commercial entities. Where similar requirements apply, fines for NGOs are substantially larger (about ten times higher).⁴⁶ Moreover, for NGOs there is no warning mechanisms prior to imposing these sanctions, while commercial entities receive a rectification request.⁴⁷
21. The supervision of NGOs lies in the competence of the Moj. After an extension in 2013, Article 31 of the NGO Act now entrusts the Moj with **broad powers to supervise** and issue warning letters for any violation of the law, irrespective of the gravity of the infringements or a culpable breach of duty. This contradicts the standards prescribed by the Committee of Ministers itself.⁴⁸ Additional rules on the review of NGO activities⁴⁹ ("**Supervisory Rules**") empower the Moj, contrary to the Court's jurisprudence,⁵⁰ to examine the conformity of NGO activities not only with the legislation but also with their statutes. Further, the Supervisory Rules enable the Moj to carry out on-site examinations in the offices of the inspected NGOs, to interview its representatives and to question NGO representatives without a court order.⁵¹
22. Lastly, the **prerequisites for the suspension and dissolution** of entities are both **low and vague**. There still exists no closed catalogue of infringements that allow for the suspension or dissolution of an association. Rather, even the non-compliance with mere formalities could result in the suspension of activities after one warning letter and dissolution after two warning letters by the Moj.⁵²

3. Criminalization of NGO Work

23. The restrictive legal framework effectively leads to a criminalization of NGO work. The current state of the NGO legislation, in particular its rules for registration and access to finance, puts the activities of NGOs at risk of criminal prosecution as is particularly evidenced by cases from 2013 and 2014.
24. First, the Moj's failure to comply with procedural requirements, resulting in a *de facto* refusal of registration (including registration of subsequent changes) without justification, weighs

44 The sanctions have been toughened by the amendments of 15 February 2013 (563-IVQD) and 17 December 2013 (850-IVQD) to the Code of Administrative Offences.

45 Articles 432 and 466 Code of Administrative Offences.

46 For example, failure to submit an income report by an NGO will be fined between 8,000 and 15,000 AZN (approximately 4,000 to 7,500 EUR), while a commercial legal entity would only be fined 40 AZN (approximately 20 EUR).

47 Article 34(7.2) Tax Code.

48 Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, 10 October 2007, para. 44-45, 74.

49 Adopted by the Collegium of the Moj on 28 December 2015, made public on 13 February 2016.

50 See above, para. 8, 11.

51 Article 5 of the Rules established by the Collegium Decision of 28 December 2015.

52 Article 31(4) and (5) NGO Act. This is contrary to the Court's jurisprudence, see e.g. *Croatian Golf Federation v. Croatia*, application no. 66994/14, para. 95. See also Joint Guidelines, para. 68.

particularly heavily given the strict control and prosecution of activities without a state registration of the applicants faces. As an example, the applicant in the case of *Jafarov and others v. Azerbaijan*, Mr. Rasul Jafarov, as well as the applicant in the case of *Mammadli v. Azerbaijan*, Mr. Anar Mammadli, had been arrested in the years 2013 and 2014, respectively, and subsequently convicted and sentenced to imprisonment on **charges of illegal entrepreneurship, tax evasion and abuse of power**, for, *inter alia*, allegedly illegally receiving funding for their human rights work in the absence of their organizations' state registration.⁵³ Similarly, in the *Yunusova and Yunusov v. Azerbaijan* and *Aliyev v. Azerbaijan* judgments, the Court observed how the applicants' alleged failure to comply with legal requirements relating to the registration and operation of NGOs, e.g. to duly inform the authorities about the subsequent changes in founding documents and failure to register grant agreements, led to similar criminal charges, sentencing and imprisonment.

In these cases, the Court considered the **impact of the increasingly harsh and restrictive legislative regulation of NGO activity and funding** and the difficult situation for NGOs as relevant circumstances and context of these cases. In this regard, the Court noted that in recent years, the legislative environment regarding the operation of NGOs, including “*the regulation of matters relating to their State registration, their funding and their reporting requirements, has, according to the submissions of the third parties, deteriorated*”.⁵⁴ It established that ‘the new onerous regulations, coupled with the reportedly intransigent and arbitrary manner in which they were applied by the authorities, made it increasingly difficult for NGOs to operate’ and that ‘the above circumstances drove a number of NGOs to operate on the fringes of the law in order to continue securing funding for their activities’.⁵⁵ The Court also noted that it has “*continued to receive new applications concerning allegedly arbitrary delays in State registration of NGOs*” including from NGOs founded by the applicants.⁵⁶ Finally, the Court considered that all the misconduct attributed to the applicants essentially stemmed from the fact that they had failed to comply with legal formalities relating to the registration or operation of NGOs (e.g. NGOs had operated lacking State registration or received grants), whereas pursuant to the totality of the facts and circumstances of the case, the Court concluded that the **actual purpose of the impugned measures was to silence and punish the applicants** for their activities as civil society activists or in the area of human rights as well as to prevent them from continuing those activities. This constituted the basis for a violation of Article 18 ECHR, taken in conjunction with Article 5 ECHR.⁵⁷

25. Thus, despite the fact that domestic legislation does not prohibit the activities of NGOs in the absence of state registration, the government had used wide **discretion to consider** the activities of unregistered NGOs as **entrepreneurial activities** when such NGOs engaged with any financial activity. This led to the serious and grave criminal charges of illegal entrepreneurship, abuse of power and tax evasion.

53 See *Jafarov and others v. Azerbaijan*, application no. 27309/14, para. 16 and for more details *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, and *Mammadli v. Azerbaijan*, application no. 47145/14, para. 16.

54 *Mammadli v. Azerbaijan*, application no. 47145/14, para. 54, 99.

55 See *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, para 120.

56 See *Mammadli v. Azerbaijan*, application no. 47145/14, para. 54 – two of these applications were lodged by NGOs founded by Mr. Mammadli. See *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, para. 120 – one of these applications was lodged by an NGO founded by Mr. Jafarov.

57 See *Mammadli v. Azerbaijan*, application no. 47145/14, para. 99, 104, 105; *Rasul Jafarov v. Azerbaijan*, application no. 69981/14, para. 122, 159 to 163; *Aliyev v. Azerbaijan*, applications no. 68762/14 and 71200/14, para. 154 to 159, 161 to 163, 212 to 216; and *Yunusova and Yunusov v. Azerbaijan*, application no. 59620/14, para. 108, 192 to 195.

26. The continuous and persistent intimidation and negative attitude toward NGOs through *warnings* and *ongoing criminal prosecution*⁵⁸ does not only create material obstacles, but also an atmosphere of fear and insecurity, which naturally has an additional negative effect on the work of NGOs. In this regard, the Committee of Ministers has recently called for the quashing and elimination of convictions and restoration of civil and political rights of the applicants in the cases of *Aliyev v. Azerbaijan* and *Mammadli v. Azerbaijan*, whose criminal convictions still stand and who continue to suffer serious consequences of the abusive criminal proceedings for an alleged breach of the NGO legislation.⁵⁹

27. NGOs and NGO activists also face further repercussions from ongoing criminalization or prosecution:

- When crossing border checkpoints, NGO leaders and staff suffer from additional searches and are required to provide information on the amount of money they carry by signing a separate custom declaration.⁶⁰ In practice, NGO leaders and human rights activists accordingly are often investigated, summoned and warned by law enforcement agencies in the course of their professional or civil society works.
- NGO activists face criminalization through smear campaigns by the Government. To name just one example, on 19 April 2019, the government-run website <https://azvision.az/> published an article discrediting *Akif Gurbanov*, the chair of the Institute for Democratic Initiatives. The article accused him of embezzling grants and deceiving international donor organizations that support his NGO.⁶¹
- Finally, there are many cases currently pending at the Court, in which NGOs are neither compensated nor returned their seized property after the tax authority's sanctions.⁶² Six cases by more than fifteen organizations have been communicated to the ECtHR concerning the search of their offices

58 On 22 April 2014, the Prosecutor General's Office instituted criminal proceedings under Articles 308.1 (abuse of power) and 313 (forgery by an official) of the Criminal Code in connection with alleged irregularities in the financial activities of a number of NGOs. The criminal case has not yet been completed by the Prosecutor General's Office and is not being actively pursued, which constitutes a constant and high risk for all those involved on the part of the NGOs, including activists cooperating with the accused NGOs.

59 See Interim Resolution CM/ResDH(2021)41 adopted by the Committee of Ministers on 11 March 2021 at the 1398th meeting of the Ministers' Deputies and communication by the Council of Europe, Réf. DC 023(2021), available at https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=0900001680a1c042; EHRAC urges Committee of Ministers to call for end to fresh travel ban imposed on Azerbaijani human rights lawyer Intigam Aliyev, published on 10 February 2020, available at <https://ehrac.org.uk/news/ehrac-urges-committee-of-ministers-to-call-for-end-to-fresh-travel-ban-imposed-on-azerbaijani-human-rights-lawyer-intigam-aliyev/>.

60 In 2018, a number of NGOs, a member of the Azerbaijani National Platform of the Eastern Partnership Civil Society Forum appealed to the Council of State Support to NGOs regarding unlawful inspection practices toward NGO leaders at the border checkpoints. Although it called for an end to this illegal practice by providing a list of those subjected to such illegal inspections, the issue has not yet been resolved.

Up to date, a number of NGO leaders, activists and lawyers are subject to the *additional border check which began to be applied after a criminal case launched in 2014, is still being applied to NGO leaders, activists and lawyers. In 2020, Human Rights Defender Mr. Samir Kazimli, lawyer Mr. Elchin Sadigli, lawyer Mr. Javad Javadov and NGO leader, Mr. Natig Jafarli have submitted applications to the ECtHR concerning these unlawful additional border check.*

61 IPHR/EHRAC/HRC, *Key concerns and recommendations on the protection of fundamental rights in Azerbaijan*, Baku, February 2020, available at: <https://www.iphronline.org/wp-content/uploads/2020/02/final-Key-Human-Rights-Concerns-in-Azerbaijan.pdf>.

62 *Ismayil/Remezaita, Shrinking Space for Civil Society in Azerbaijan*, 2016, available at: <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>.

and seizure of documents and IT equipment by the national authorities, including seizure of bank accounts within the framework of criminal proceedings initiated by the Prosecutor General's Office on 22 April 2014.⁶³

D. Proposed Recommendations to Fully and Effectively Implement the Judgment

28. Considering the aforementioned issues, we call upon the Committee of Ministers to review the Ramazanova Group of Cases under enhanced supervision and to recommend that the Azeri Government:

- with respect to the **registration system**, repeals the additional and discretionary requirements for the registration of branches of foreign NGOs; remedy unreasonably long delays, multiple return of documents due to deficiencies and uncertainties regarding the refusal or acceptance of registration; and eliminate unjustified unequal treatment of non-commercial entities and commercial entities, ideally extend the registration process for commercial entities to non-commercial entities (public associations, foundations, unions of legal entities, religious organizations);
- facilitates **access to funding for NGOs**, in particular repeal registration and permit requirements for grants, donations and other material support, including income from entrepreneurial activities – control over grants, donations and other financial assistance received by non-commercial legal entities can be effectively regulated by the tax authority's current income reporting system; and repeal the reporting requirements with respect to the amount of donations and identity of donors;
- repeals excessively burdensome **reporting requirements** of NGOs, in particular with respect to changes in factual circumstances;
- with respect to the system of **administrative penalties**, eliminates punitive sanctions and unjustified unequal treatment of non-commercial entities and commercial entities, in particular repeal Articles 432, 465, 466, 579, 580, 581 and 582 of the Code of Administrative Offenses and instead introduce a new article on the violation of the NGO Law providing for reasonable and scaled sanctions for a limited number of illegal actions;
- with respect to the MoJ's **supervisory powers**, clarifies the infringements that warrant a warning letter by the MoJ and restrict the use of warning letters to voluntary acts and certain serious breaches; implement safeguards to prevent arbitrary use of supervisory powers, in particular subject on-site examinations to a court order; and restrict the dissolution of NGOs to a closed catalogue of grave infringements, excluding infringements of merely internal organizational provisions; and
- safeguards the **freedom of expression and assembly of NGOs**, in particular end the practice of informal permits required for NGOs to gather and organize events (especially in the regions); terminate the criminal case opened against NGOs in 2014 and remedy its negative repercussions; and refrain from harassment and smear campaigns against activists.

⁶³ *International Research and Exchange Council v. Azerbaijan*, application no. 7668/15 (communicated on 11 October 2019); *Institute for Reporters Freedom and Safety Public Union v. Azerbaijan*, application no. 23503/15 (communicated on 3 October 2019); *Elchin Abdullayev v. Azerbaijan*, application no. 74363/14. and 7 other applications (communicated on 28 August 2018); *Economic Research Centre v. Azerbaijan*, application no. 74254/14 and 5 other applications (communicated on 27 August 2018); *Adil Ismayilov ve Partnyorlari v. Azerbaijan*, application no. 60090/15 (communicated on 5 July 2018); *Democracy and Human Rights Resource Centre v. Azerbaijan and Mustafayev and Democracy and Human Rights Resource Centre v. Azerbaijan*, applications no. 74288/14 and 64568/16 (communicated on 29 May 2018).

Given broader implications, that the implementation of general measures in the given group of cases could have on the operation of civil society in Azerbaijan, we encourage Committee of Ministers to examine Ramazanova group under enhanced supervision.