

## **The Republic of Azerbaijan: Submission to the UN Universal Periodic Review**

### **Fourth Session of the UPR working Group**

*Submitted by the Citizens`Labour Rights Protection League (NGO)*

**Topic: Freedom of Assembly in the Republic of Azerbaijan**

*(According to point "c" of resolution 5\1 by 18<sup>th</sup> of June 2007 of Human Rights Council)*

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**The report is consisted of Article 20 of Universal Declaration on Human Rights, Article 21 of International Covenant on Civil and Political Rights, Article 11 of Convention for the Protection of Human Rights and Fundamental Freedoms, also condition of protection of right for freedom of assembly in Azerbaijan represented on the Article 49 of the Constitution of Azerbaijan Republic. Despite existence of provision of freedom of assembly on Constitutional and International levels, this freedom cannot be fully provided in the country. The law of Azerbaijan Republic on "Freedom of assembly" adopted on 13<sup>th</sup> November of 1998 with the purpose to provide the right of freedom of peaceful assembly represented in the Constitution of the country and International Norms does not settle problems of provision of freedom of peaceful assembly, but problems of prohibition and restriction of it.**

**On 30<sup>th</sup> May of 2008 as a result of efforts of National institutions and international organizations (mainly OSCE and Venice Commission of Council of Europe) after many years lasting negotiations serious changes were made to the law on "Freedom of assembly". These changes grant the right to fulfill the right of freedom of assembly and the right to an effective remedy in case of violation of these rights. However, serious shortcomings existing in the practice of previous period have not been changed. Serious amendments made on the law do not affect the reality. All notification letters on carrying out of assembly sent to local authorities were rejected and decisions on prohibition and inconvenience of meetings were made. All efforts to conduct assembly were prevented by using force. At present a very important political process – Presidential elections campaign had started. But there is no guarantee of provision of freedom of assembly rights.**

#### **I. Condition on provision of freedom of assembly**

Article 49 of the Constitution of Republic of Azerbaijan adopted on November 12, 1995 stipulates that everybody has the right for freedom of assembly with others.

Pursuant to the Article of the Constitution no permission is required from the authorities to conduct peaceful assemblies, meetings, demonstrations and etc. According to the Constitution the organizers have to notify the relevant body of executive power within the period of time as determined by legislation.

**The Law of the Republic of Azerbaijan on "Freedom of Assembly"** was enacted in 1998 year, several years after the adoption of the Constitution. Ensuring the right for freedom of assembly of people and sanctions for preventing exercising of this freedom are prescribed by the Criminal Code and Code of Administrative Torts of the Republic as well as rules and procedures are determined for exercising of this freedom.

Relevant parts of the International Covenant on Civil and Political Rights, and Convention for the Protection of Human Rights and Fundamental Freedoms to which Republic of Azerbaijan is a party has placed certain obligations on the state to ensure this fundamental freedom. However there are still serious problems existing in the country in ensuring of this freedom. The political

parties, public unions, trade unions and group of people existing in the country encounter serious problems while attempting to use the right for freedom of assembly or when use this right. Exercising of this freedom is de facto of permission character in Azerbaijan while according to the requirements of the Constitution of the Republic of Azerbaijan and the International Standards to which Republic of Azerbaijan is a party, the only condition for realization of the freedom of assembly (or peaceful assembly) is to notify the relevant bodies of executive power ahead of time. Every institution or a group of people has to get permission from the relevant bodies when they want to use the right for freedom of assembly, otherwise any gathering will be considered as “unauthorized assembly”.

The government’s pressure on the right for freedom of assembly during the recent serious political developments which took place in the country as well as Presidential elections in 2003 and on the eve of Parliamentary elections in 2005 year and aftermath have concerned not only the public but also the international community. OSCE and the Council of Europe are making efforts to ensure the realization of the right for freedom of assembly in the country. International organizations, relevant bodies of foreign countries and International Non-Governmental Organizations defending the Human Rights have several times pointed out in their periodical reports the restrictions of the right for freedom of assembly in Azerbaijan.

On 2007 the Citizens’ Labor Rights Protection League carried out monitoring on condition of provision of freedom of assembly in the country.

According to legislation the organization intended to carry out an assemblage has to inform corresponding executive power authority in written form 5 days in advance.

70 notification letters sent mainly by Alliance of Political Parties “Azadlig”, different political parties entered this alliance, National Independence Party and Journalist organizations and responses of corresponding executive power authorities were analyzed.

The notification letters that sent were prepared according to legislation requirements and rendered within the time limits considered.

But in most cases the response of the corresponding executive power authorities to the notification letters was made a day before the planned assemblage. (This makes complaint to court useless. According to Article 11 of “Freedom of Assembly” Law, courts should review the case within 3 days. But review of complaints during estimated procedural time never took place). The response and decisions made to the more than 70 notification letters rendered to corresponding executive power authorities were analyzed and systemized within 3 main groups.

1. Executive Power Authorities basing no legislative norms prohibit all assemblies. In all responses made to the letters expression “carrying out of assemblage is irrelevant and is prohibited” is used.
2. Executive Power Authorities reject all notifications in uncertain form using the expression “irrelevant”.

For example, on 30<sup>th</sup> May of 2007 the Executive Power Authority responded to the notification letter submitted on 23<sup>rd</sup> May of 2007 by Citizens’ Labor Rights Protection League on carrying out piquet for protection of freedom of speech in “Sabir” Park located on Istiglaliyyat street of Baku city saying “...*we think it would be beneficial not to convene an event but to express your position in a civilized way regarding this issue* The Executive Power accepted as irrelevant conducting piquet considering peaceful assembly not civil.

«Everybody» himself decides the expediency of realization of the right of freedom of assembly and freedom of speech and opinion. Everybody or every organization himself determine the right of freedom of assembly using the freedom of speech and opinion basing on own view. No one and no authority have the right to reason the importance of the actions to be held.

3. Executive Power Authorities as response to the appeals to assembly violate rudely principles of proportionality and assign worthless places for carrying out the meetings and assemblages.

After 2005 October Parliamentary elections meetings and assemblies were prohibited de-facto in general.

Only after claims of social and political forces of the country and international communities on 27<sup>th</sup> of October 2006 the head of the Baku City Executive Power in order No 318 basing on point IV of Article 9 of Law of “Freedom of assembly” assigned places for carrying out the assemblies and meetings. But these places are situated 20-25 km far from the city centre and housing areas, there is no public transport going there and these are the useless stadiums and areas. Assemblage in such areas loses the significance and importance of such events.

By the order of the President of Azerbaijan Republic the largest square of Baku “Azadlig” Square is intended for the special governmental events and carrying out any other meetings and assemblies here is prohibited. The prohibition of right of freedom of assembly in this square where usually all massive actions are conducted is not understandable. This square is quite suitable from the points of territory, certain distance from the housing area and not interrupting road traffic. In this square the governmental events take place very rare (may be 1 or 2 times a year). This Act of the President limits the right of freedom of assembly stated in the Article 49 of the Constitution.

The situation is analogical in the other cities and regions of the country. Local authorities do not allow any assemblies and meetings. Only in few cities and regions special places were assigned for pre election campaigns. These places as a rule are situated far from the housing areas, there is no public transport going there and there is no necessary infrastructure and communication means for implementation of such events.

## II. Legislation

Before 30<sup>th</sup> of May 2008 amendments were made to the law of “Freedom of Assembly”, the law in force contradicted Constitution and International norms by creating barriers in implementation of freedom of assembly. Despite intention of procedure of notification for carrying out the assembly, later provisions requested “**approval**” by the corresponding executive power. The assembly organizers had to confirm the place, time, approximate number of participants and approximate topic (even slogans written and the ones to be sounded).

The reality was more defected. The responds to the notification letters concerning the conducting assembly consisted of the standard answers. (For example: for realization of freedom of speech and assembly the Party “Musavat” appealed to the Baku Executive Power for carrying out a meeting, and the Executive Power’s respond was: *the implementation of meeting is considered inexpedient, because, the President Ilham Aliyev works as hard as possible to improve the well-being of people, income of oil is increasing year-by-year, the government is fighting corruption, and anticorruption committee is being set under the public prosecutor’s office. ...»* )

In case of prohibition the participants have right to appeal to the court. Even though the cases were reviewed after the date appointed for the assembly. This limited the right of effective use of legal means for provision of right of freedom of assembly. Since 13<sup>th</sup> of November 1998 when the law came into force till now none of the assembly participants’ appeals was satisfied in the national courts. The courts as usual did not review the cases according to the time limit stated in the legislation and most of the decisions made were about rejection of the appeals.

As there was nothing mentioned in the legislation about coincident, spontaneous and contrary meetings, all of them were considered illegal and prohibited. All efforts of carrying out such assemblies were repulsed by force and administrative (fines or short-term administrative arrests) or even criminal punishments against participants and organizers were applied.

## III. Situation after the substantial amendments to the Law

Amendments made on the basis of recommendations of Venice Commission of the Council of Europe, OSCE and national NGOs to the law of “**Freedom of Assembly**” came into force on 30<sup>th</sup> of May 2008. Amendments guarantee the right to an effective remedy. In case of prohibition or any impediment of carrying out the right of freedom of assembly the judicial power should review the case and make a decision till date of assembly.

Some imperative norms on law were lightened. For example the time scheduled for the implementation of the assembly are appointed not on the law requirement but basing on consideration of local executive power. Rights of children of being an organizer of assembly were provided. Considerations on contrary meetings were added and etc.

But according to Law the local authorities are again the ones who appoint the place of assemblies. Local authorities use this consideration (appointment of appropriate places for assemblies) as rights given to them and even after the amendments the places appointed for the assemblies are again useless for carrying them out.

On the eve during the important governmental events any kind of mass events in these administrative areas (cities) are prohibited. This contradicts Constitution and International Norms supported by government.

Relatively positive changes after the amendments to the legislation have not eradicated shortcomings in practice. After the amendments made to the legislation till the 1<sup>st</sup> of August 2008 no approved assembly took place on the territory of the country, in spite of presentation of notification letters and appeals for carrying out the assemblies made to the corresponding executive authorities.

For example: an answer of prohibition was given to the notification letter dating 11<sup>th</sup> of July 2008 piquet planned to be held in front of the executive power by the “Musavat” Party. The grounds for the response were shown as contradicting the law. But which law contradicted piquet was not shown. According to the point VIII of Article 9 of the law on freedom of assembly the requirement for the carrying out a piquet is:

*“the participants of piquet should not be more than 50 persons, they should not get closer than 10 meters from the entrance of the object of piquet, should not hinder the entrances or exits of the object of piquet, and should not use voice enhancers more than 10 watts.”*

The requirements for implementation of piquet show us that by observing all these requirements it is possible to organize a piquet in front of any governmental authority. But, before and after the amendments made to the legislation governmental authorities seriously limit right of freedom of assembly.

As it is seen, amendments made to the legislation did not lead to the positive changes in practice. Corresponding executive authorities as before continue on prohibiting meetings and they base not on the law, but on their subjective and contradicting the law considerations.

#### **IV. Recommendations**

In order to limit, cease or prohibit an assembly the requirements for authorities of well-founded reasons for limitation, cessation or prohibition of an assembly should be made. The deciding authority should show well-founded reasons in order to limit, cease or prohibit the assembly. The requirement of decision making dealing with implementation of assembly and signing it by proper authority and official should be made.

Any resistance made during breaking up peaceful but unauthorized meeting by police should be valued by government as mass collision. This seeks two goals. These are: to use inadequate force to the participants and to organize anti propaganda campaigns against organizers and

participants. In connection with this there is a need for the interpretation by Constitutional Court of the Article 220 (mass collision) of the Criminal Code.

Plenum of Supreme Court of Azerbaijan Republic should prepare special instructions for the courts with general jurisdiction and courts of appeal on the perfection of studying cases on violation of rights of freedom of assembly. Organization of special trainings for judges is necessary.

Measures on strengthening international control for ensuring the right of freedom of assembly stated in the Article 21 of International Covenant on Civil and Political Rights in the country should be taken.

**Report was prepared by Sahib Mammadov**