

MONITORING OF OBSERVANCE OF THE FREEDOM OF ASSEMBLY IN THE REPUBLIC OF AZERBAIJAN

**LEGISLATION AND PRACTICE
MONITORING REPORT**





**Citizens' Labor Rights
Protection League**



**Open Society Institute-Assistance Foundation
Human Rights and Governance
Grants Program (Budapest)**

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Baku – 2007

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This publication reflecting the results of the monitoring on status of ensuring the freedom of peaceful assembly in Republic of Azerbaijan is developed and published within the "Monitoring of Observance of the Freedom of Assembly in the Republic of Azerbaijan" Project implemented by the Citizens' Labor Rights Protection League and financed by the Open Society Institute-Assistance Foundation Human Rights and Governance Grants Program (Budapest).

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ISBN - 978-9952-25-070-1

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I N D U C T I O N

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.

Citizens' Labour Rights Protection League conducted monitoring in the country to analyze the real status of exercising the right for

freedom of assembly in the country through applying objective indicators. The project is financed by Open Society Institute's Human Rights and Governance Grants Program (Budapest).

The following monitoring tools are applied while carrying out the monitoring process.

Analysis of Legislation

The Law of the Republic of Azerbaijan on "Freedom of Assembly" and the existing law effective acts related with exercising of this law were analyzed. "Guidelines on Freedom of Peaceful Assembly" prepared by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE and the corresponding judicial precedents of the European Court of Human Rights were compared while analyzing the legislation.

Organization of Surveys Among Activists of Public Organizations and Political Parties

The professional sociologist conducted surveys among the activists of leading political parties and social organizations of the country and developed final reference based on the results. The anonymous questionnaire surveys were mainly conducted in Baku, Ganja, Ali-Bayramli and Sumgayit cities. 110 people participated in the

surveys and the reference is developed based on results.

Analysis of Answers by Relevant Bodies of Executive Power in Response to Notifications on Conducting an Assembly

Mainly the notification letters addressed by various political parties and social institutions to the Executive Power of Baku City in different periods and letters of response by the Executive Power of Baku City are analyzed and developed report. The substantiation of the prohibitions imposed by the executive power of the city on conduct of an assembly are evaluated both in the context of National legislation and relevant parts of the Constitution as well as international norms.

Organization of Non-Structured Interviews with Persons Subject to Physical Violation While Dispersal of Mass Events by the Authorities and Brought To Responsibility

Non-structured interviews are conducted with 20 people who were subject to physical violation by the forces of power and punished for participation in mass events at various periods.

The persons representing different political forces, social institutions and non-partisans answered the questions, and described the

incidents which had taken place in the gathering they faced violation.

Observation of the Behavior of Participants, Organizers and the Forces Ensuring Public Order During the Assemblies

We observed two assemblies organized in Baku city. One of them was street-procession and the other one a picket. The street-procession was organized by "Musavat" Party on March 18, 2007 year and "Azadlig", "Yeni Musavat", "Bizim Yol", "Gundalik Azerbaijan", "Realniy Azerbaijan" newspapers, "Qanun" journal and "Turan" information agency organized the picket on May 15, 2007 year. The first event was authorized by the bodies of executive power and the latter was prohibited. Corresponding notes were made on "observation map" and photos taken during the observation process.

Analysis of Press

We followed up the articles dedicated to the right for freedom of assembly issued by 3 popular newspapers including "Azadlig", "525th Newspaper" and "Zerkalo" during 3 months period. The reference is developed based on the results.

The references are developed on each monitoring tool separately,

and included to the monitoring report. The final monitoring report and recommendations are prepared based on these results. We sent information inquiries to both political parties and social institutions as well as to relevant bodies of executive power aiming to get data and statistical indicators during the monitoring process. The political parties and social institutions responded to the inquiry in timely manner and provided required data. However the Executive Power of Baku City and Executive Power of Ali-Bayramli town roughly violated the requirements of the Law on "Obtaining Information" by not responding to the inquiry. Only the Executive Power of Ganja city responded to the submitted inquiry.

Comprehensiveness of the Monitoring

The monitoring carried out within the project mainly was held in Baku city which is the center for socio-political process. At the same time certain monitoring tools were also applied in Ganja and Ali-Bayramli cities.

Gratitude

We express our deep gratitude to Open Society Institute's Human Rights and Governance Grants Program (Budapest), Open Society

Institute Assistance Foundation (Azerbaijan) for provided financial assistance to carry out the monitoring as well as to the Experts of Helsinki Foundation for Human Rights- Poland for their valuable advices to conduct the monitoring and to the personnel for realization of this Project.

Responsibility

The staff members and experts attracted to realization of the Project have made every effort to carry out the monitoring and develop the report, and this activity is the fruit of joint efforts. However the project management will be responsible for any mistake made in the process of monitoring and developing the report.



Sahib Mammadov

ANALYSIS OF THE LEGISLATION

Constitutional Grounds for the Freedom of Assembly in the Republic of Azerbaijan

The Constitution of the Republic of Azerbaijan was adopted on November 12, 1995 year by the national referendum. Changes and amendments to the Constitution were made on August 24, 2002 year and those changes were adopted by referendum and became effective on September 19, 2002 year.

The third Chapter of the second Section or 48 Articles (24-71) of the Constitution of the Republic of Azerbaijan dedicated to "Principal Human and Civil Rights and Freedoms".

The complex socio-political situation existing in the country, problems related with the transition period did not serve as obstacles to prescribe human rights and freedoms in conformity with international standards and fully to the Constitution.

Instead, ensuring human rights

and freedoms is described as the supreme aim of the state in the Article 12 of the Constitution. Pursuant to this article, "*...The human and civil rights and freedoms enumerated in this Constitution shall be exercised in accordance with international Agreements to which the Republic of Azerbaijan is a party*".

Proclamation of the principles on human rights and freedoms and prescription by the Constitution was of great importance. However, it does not mean translation of those rights and freedoms into real life.

Ensuring human rights and freedoms in the country has been the outstanding problem since declaration of the human rights and freedoms by the Constitution. It indicates that guaranteeing human rights and freedoms by the supreme law has not led to exercising those rights and freedoms fully in reality.

Reflecting the right for freedom of assembly among the principle freedoms prescribed by the

Constitution was essential and it is impossible to imagine a democratic society without the right for freedom of peaceful assembly.

The Article 49 of the Constitution has affirmed that every person shall have the right to freely gather with others.

Despite of the fact that this freedom prescribed by the Constitution is blanket, a separate law regulates exercising and restriction of this freedom.

Protection of the Freedom of Assembly in the Republic of Azerbaijan by International Covenants

According to Article 21 of the **"International Covenant on Civil and Political Rights"** of which Azerbaijan was party in August of 1992 year

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than imposed in conformity with the law and which are necessary in a democratic society in the interests of

- national security or public safety;
- public order (ordre public);
- the protection of public health or morals;
- or the protection of the rights and freedoms of others.

According to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms also known as the European Convention on Human Rights (ECHR)

Everybody has the right to freedom of assembly.... No restrictions may be placed on the exercise of this right other subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society" in the interests of

- national security or public safety;
- public order (ordre public);
- the protection of public health or morals;
- or the protection of the rights and freedoms of others.

This Article does not prevent the armed forces, police and members of the administrative bodies of state to put lawful restrictions on exercising of these rights.

The Law of the Republic of Azerbaijan on Freedom of Assembly

Basic Definitions and Notions

The Law of the Republic of Azerbaijan on "Freedom of Assembly" was enacted on November 13, 1998 year with an aim to exercise freedom of assembly as reflected in Article 49 of the Constitution of the Republic of

Azerbaijan and its restriction in conformity with the Constitution and other international covenants to which Azerbaijan is a party. The changes and amendments to the Law were made on March 4, 2005 year. Besides this Law, there are a number of statutory acts that certain provisions of those acts regulate ensuring the freedom of assembly and holding liable the persons who put obstacles in exercising this freedom or abuse their power.

The 5th provision of the executive order on "Urgent Measures in Connection with the Preparation and Conducting of the Elections to the Milli Majlis of the Republic of Azerbaijan," adopted by the President of Azerbaijan Republic, the decree# 318 of the head of executive power of Baku on securing places to conduct gatherings, meetings and street processions in Baku city dating October 27, 2006 as well as orders adopted by the heads of executive power of other districts and towns of the Republic are also among the effective documents regulating the freedom of assembly.

The basic definitions reflected in Article 2 of the Law on "Freedom of Assembly" classify the mass events as following:

"Gathering" - it is an assembly of persons for a joint discussion of any question and for making decision on the issue;

"Meeting" - a massive event conducted for expressing common opinion of the assembled persons

and/or make common calls and demands;

"Demonstration" - it is an expression of an opinion of a group of persons on issues related with social and public life;

"Street procession" - it is an expression of an opinion of a group of persons moving on a certain route on issues related with social and public life;

"Picket" - gathering in a certain place of a small group of persons participating in a demonstration expressing their opinion on issues related with social and public life.

The restricted classification of the mass events in the Law creates problems in practice. That is conducting any actions other than the types classified by the Law is not allowed. However, there are many other types of the mass events applied in practice of other countries. The difference between the definitions of "gathering" and "meeting" as prescribed by the Law is not clear. The Law does not regulate a number of other forms of assembly. The gatherings held in the places which are in private ownership of persons, under rent or in other form of lawful usage by persons are not regulated by the Law on Freedom of Assembly.

For instance, the Law does not regulate a meeting held at a private stadium while the same form of a meeting falls under the Law if held at the stadium owned by state organization or municipality.

Meanwhile the gatherings held at the places in question are also considered as mass events and fall under the influence of the law in many countries.

Wedding and funeral ceremonies, holiday and mourning events, religious ceremonies, public events held in enclosed spaces do not fall under the Law either.

The definition of fortuitous assembly reflected in part IV of Article 5 of the Law is not interpreted thoroughly. In this case, the gathering of fans or spectators after a sport event or a big concert in order to conduct discussions also falls under the influence of the Law. Although such kind of events are different from the features of freedom of assembly as reflected in the Article 11 of the European Convention. The mass events falling under the protection of Article 11 of the Convention are first of all those actions aimed at ensuring self-expression, freedom of faith, freedom of thought as well as mass actions held in the form of meeting, street procession, picket and etc.

Generally, in legislation, the notion of fortuitous assemblies is reminded only in the part IV of Article 5 of the Law and it is not interpreted thoroughly. However, from the content of the Law it is possible to conclude that the fortuitous assembly is the analogue of the spontaneous assembly existing in international practice. But the existing practice in the country lies on the grounds that gathering unex-

pectedly and without prior notification for the purposes stipulated in the Law on "Freedom of Assembly" is assessed as a gathering not sanctioned by the authorities. The people who gathered in front of the "Musavat" Party immediately after the October 15, 2003 Presidential elections aiming to protest against the preliminary results of the elections were subject to violation by police due to assessment of this gathering as unauthorized. Although this gathering was spontaneous according to its character, taking into account that the voters relying on their internal demand started to gather in front of the election headquarter of the main opposition candidate, aiming to protest against the results of the elections.

The recommendations reflected in the 4.3 part of the "Guidelines on Freedom of Peaceful Assembly" (December, 1994) prepared by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE notes that "*spontaneous actions can continue peacefully so long as it is lawful in nature*". In this case, dispersal of this gathering is the violation of the freedom of assembly.

Organization of Assembly and Organizers

Written notification must be sent to the relevant body of executive power to organize an assembly. Pursuant to the Article 5 of the Law

on "Freedom of Assembly", this notification has to be submitted at least 5 days prior to the day of convening intended assembly. The written notification must include name of an intended assembly, purpose, place and time of convening an assembly, approximate number of participants, if it is a street procession, a proposed route (a place of beginning, distance and place of ending the procession), full name and address of organizers of an assembly, date of submission of a written notification, contact phones or if not available contact addresses. All organizers of an assembly have to sign the written notification.

The Article 5 of the Law does not consider giving notifications for fortuitous assemblies. At the same time, fortuitous assemblies can be restricted or suspended in cases imposed in conformity with law. As is seen, the Law stipulates too many requirements regarding the content of the notification letter. In fact, a notification should be about the intention of a political, social organization or a group of persons to conduct mass event. Here the requirement about the approximate number of participants can be important to determine the number of the forces adequately who will ensure public order, while the requirement of detailed information about the purpose of an assembly is irrelevant. In practice, there are such cases that bodies of executive power even put demands to submit written notification about the verbal and written

slogans that would be sounded or demonstrated at the mass event. Pursuant to the Article 6 of the Law, organizer of a gathering is a person whose name is mentioned in a written notification submitted to the relevant body of executive power. According to the Law, persons under 18 or persons whose capability is restricted by the court decision that entered into legal force cannot be organizers of a peaceful assembly.

At the same time, foreigners and non-nationals cannot be organizers of a peaceful assembly pursuing political goals. However, the freedom of assembly mentioned in the Article 49 of the Constitution of Republic of Azerbaijan as well as participation in and organization of such assemblies is not referred only to citizens but also to foreigners and non-nationals. The expression of "everyone" reflected in the article of the Constitution refers both to the citizens and to foreigners having no citizenship. The Law only prohibits foreigners and non-nationals to be organizers of a peaceful assembly pursuing political goals, which is in conformity with the Constitution and relevant international covenants to which Republic of Azerbaijan is a party.

Grounds and Order of Restricting or Prohibiting Peaceful Assemblies

The "freedom of assembly" prescribed by the Article 49 of the Constitution of Republic of

Azerbaijan can be restricted in conformity with the cases determined by the Constitution and International Covenants to which Republic of Azerbaijan is a party. According to Article 3 of the Constitutional Law on "Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan", freedom of peaceful assembly may be restricted or prohibited for the purposes of preventing legal disorder and protection of public order.

Both pursuant to the Constitution of the Republic of Azerbaijan and the international covenants to which Republic of Azerbaijan is a party, the freedom of peaceful assembly is classified as fundamental freedom and restriction or prohibition of this right shall be used as exceptional case or measure of last resort.

The Law on "Freedom of Assembly" stipulates broader restrictions and prohibition than the cases determined as grounds for restrictions and prohibition defined by the Constitution and international covenants. The majority of these restrictions and prohibitions exceed the limit "as prescribed by law and are necessary in a democratic society".

That's why we think that restriction or prohibition of the freedom of assembly by this Law was considered not as an exceptional case but as a rule. The essence of the Law does not serve for ensuring this right but to preventing it.

According to part I of the Article 7 of the Law, restrictions shall be imposed on following cases:

- protection of public interests and interests of a national security;
- prevention of violation of a public order;
- prevention of disorder or crime;
- protection of health of a population;
- protection of morals;
- protection of rights and freedoms of others.

In the abovementioned cases the freedom of assembly can be restricted in any forms including change of time and place of an assembly.

The Part III of the Article indicates that while imposing restrictions on freedom of assembly in the abovementioned cases proportionality must be taken into consideration. However, the proportionality is not taken into account while imposing restrictions in practice and as a result the imposed restriction turns out to be inadequate. The necessity for applying restriction or prohibition contrary to the requirements of Law is not substantiated.

The Article 8 of the Law stipulates the cases for prohibiting or suspending of assemblies. The following assemblies shall be prohibited by law:

- assemblies accompanied by calls to discrimination, hostility, violence, propagandizing national, racial or religious discord;

☑ assemblies propagandizing war;

Holding peaceful assemblies pursuing political goals shall be prohibited by law in the following cases:

☑ 24 hours prior to the day of elections of President of the Republic of Azerbaijan (on state territory), elections of deputies to Milli Mejlis (Parliament) of the Republic of Azerbaijan (on state territory), elections of deputies to Ali Mejlis (Parliament) of Nakhchivan Autonomous Republic (on the territory of Nakhchivan Autonomous Republic), municipal elections (on the territory of respective city and region) and till closure of constituencies on a day of elections;

☑ 24 hours prior to the day of referendum and till closure of constituencies;

☑ during the period of preparation for international events of state importance determined by the decision of the relevant body of executive power and on days of holding them on the territory of cities and regions where they are conducted.

Except the last case, the prohibition of the peaceful assemblies by Law in the abovementioned cases does not contradict the principles reflected in the Constitution of Republic of Azerbaijan and International covenants to which Azerbaijan is a party. But the prohibition of the assemblies "during the period of preparation for interna-

tional events of state importance and on days of holding them" violates the right for freedom of peaceful assemblies. At the same time, it is not clear by the Law that what kind of events are stipulated by "international events of state importance". Holding mass protest actions by anti-globalists during the day of economic forums or summits attended by the heads of the big countries in many other states is a common case. Despite of the fact that in many cases such kind of assemblies are not peaceful, this kind of assemblies are accepted as necessary event in a democratic society and they are not prohibited.

Since there is no interpretation by the Law, relevant bodies of the executive power may refer a forum attended by representatives of several countries, an international film festival, or an exhibition as "international events of state importance" and indeed, there are such cases, which have taken place in practice.

The relevant bodies of executive power adopt order on prohibition in the abovementioned cases.

An assembly can be suspended by an order of the relevant body of executive power observing restrictions provided for in part 1 of Article 7 of the Law. Though the prohibition and suspension of the assemblies are considered as a measure of last resort in Article 8 of the Law, it is not exercised as a rule in practice. The relevant bodies use the prohibitions and restrictions prescribed by the Law as the main

argument for not allowing to hold assemblies and as mentioned above they do not provide any serious substantiation for such a necessity.

The Article 8 of the Law also stipulates restriction and prohibition of the assemblies during the period of effective state of emergency and on the territories where it is applied. This part is also reflected in the Constitutional Law on "Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan".

The Place and Time of Assemblies and Restrictions

The Article 9 of the Law on "Freedom of Assembly" determines restrictions related with the place and time of conducting assemblies. Restrictions imposed on place and time of conducting a peaceful assembly shall be made in accordance with the criteria determined in Article 7 of the Law as well as in following cases:

- if another event is arranged at the place and time stipulated in a written notification of organizers of an assembly.

In this case, a relevant body of executive power shall provide a possibility for organizers to determine another place and time. A written notification about the changed time and place shall be submitted to the relevant body of executive power no later than 3 days prior to a new date of an event.

In general the Law determines

the places where conducting of assemblies is prohibited. According to part III of Article 9 of the Law on "Freedom of Assembly" conducting of gatherings, meetings and demonstrations in the following places shall be prohibited.

- in a radius of 300 meters around buildings of legislative, executive and judicial powers of the Republic of Azerbaijan;

- on the territory where railway, oil and gas pipelines and electric wires of high tension pass;

- in places allocated by relevant body of executive power for conducting special state events;

- on the territory used for military purposes and in places located closer than 300 meters to the boundaries of these territories;

- in institutions of confinement, on the territory of psychiatric medical institutions and in places located closer than 300 meters to the boundaries of these territories.

It would be normal to accept restrictions on conducting of assemblies at certain places as stipulated by the Law. But prohibition of assemblies at the places allocated for special state events all the time by Law is nothing more than unnecessary restriction of the freedom of assembly. For instance, if a square is allocated for special state event then conducting of other events can be restricted on the eve and time of holding such special state event. But it is needless to impose such restrictions in other times.

The biggest square of Baku city

"Azadlig" Square is allocated for conducting of special state events in accordance with order of the President of Azerbaijan Republic and holding any assembly here is prohibited. Prohibition of this square for exercising of freedom of assembly is not clear while traditionally all mass events are conducted in this place. This square is very suitable place due to its space, location in a certain distance from the dwelling houses and does not create any obstacles for public transport. State events are conducted in this square (one or two times during a year at best) very rarely. In fact, this order by the President leads to restriction of the freedom of assembly prescribed by the Article 49 of the Constitution.

Restriction of conducting gatherings, meetings and demonstrations in a radius of 300 meters around buildings of legislative, executive and judicial powers means that such kind of events cannot be held in the central part of capital Baku city at all. Since the points of location of these bodies do not allow that. Any central part of the city falls within the 300 meter radius of one of the mentioned bodies. We can consider that this part of the Law also restricts the freedom of assembly without any grounds.

The Law also prohibits conducting of assemblies of political content in places of worship, chapels and cemeteries.

There are also restrictions for holding pickets. In general, it is not

expedient to put demands for submission of written notification for holding pickets within the same terms as for conducting other mass events. In practice of many countries, there is no such demand for submitting notification to a relevant body of executive power for holding pickets or they have more simplified form of notification. According to the Law, the number of picketers shall not be more than 50 persons and they shall not be located closer than 10 meters to the entrance of a picketed object, shall not make obstacles for entry and exit into the picketed object. Picketers cannot use amplifiers above 10 watt.

One of the parts, which provide unnecessary grounds for imposing restrictions on places for conducting assemblies on the level of legislation, is, reflected in part IV of the Article 9 of the Law. According to this part, relevant bodies of executive power shall provide a special area for conducting gatherings, meetings and demonstrations in each city and region. Organizers of an assembly can choose only one of the places designed for gatherings, meetings and demonstrations and conduct the assembly in that place.

This part of the Law leads to serious Constitutional abuses in practice. The relevant bodies of executive power of city and regions determine such places which in many cases results in losing importance of an assembly and turn to be unattainable for most of the participants.

For instance, limited places are provided for conducting mass events in capital Baku city. As a rule, these places are located in tens of kilometers away from the center of the city where there is no public traffic and those places do not meet sanitary and hygienic requirements necessary to conduct an assembly.

Following the elections to the Parliament, which took place at the end of 2005 year, conducting of any assembly was de facto prohibited. Only after the demands of the social and political forces existing in the country as well as the international community, the Head of the Executive Power of Baku city allocated places for conducting gatherings, meetings, demonstrations and street processions by the order #318 adopted on October 27, 2006 year, referring to the part IV of Article 9 of the Law on "Freedom of Assembly". These places are as following:

☑ Sabayil district- the stadium of "Neftchi" Sport and Health Center located in Bibiheybat;

☑ Nizami district - the square located on the way from Rustam Rustamov street to Baku Oil Refinery named after Heydar Aliyev;

☑ Khatai district - Ukraine square;

☑ Surakhani district - the stadium of "Neftchi" Sport and Health Center named after Tofiq Ismayilov

The routes for holding street processions have been determined in

the allocated places too. They are:

☑ Nizami district - starts near the "Neftchiler" metro station (Dakar square), passes through Rustam Rustamov street and up to the square located near the Baku Oil Refinery named after Heydar Aliyev (distance - about 1, 600 meters);

☑ Khatai district - starts near "Hazi Aslanov" metro station, passes through Mahammad Hadi street and up to Ukraine square (distance -1,200 meters);

☑ Surakhani district - passes through the square named after Sattar Bahlulzadeh and up to the stadium of "Neftchi" Sport and Health Center named after Tofiq Ismayilov (distance - 1,000 meters).

The order stipulates that time for conducting of a gathering or time and route for holding street procession shall be agreed with the Executive Power of Baku city.

The Head of Executive Power of Ganja city, the second biggest city of the Republic has adopted order #171 on May 11, 2005 year on conducting gatherings by referring to the Law on "Freedom of Assembly". According to the order "Spartak" stadium (59 Aziz Aliyev Street, Ganja city) is provided for conducting meetings and gatherings.

Thus, all mass gatherings irrespective of number of participants and the form of the assembly can be conducted in one of the places allocated by the bodies of executive

power (the places have been determined in other cities and regions of the country in the same way) and plus by coordinating with the executive power (not by submitting notification!). Even in these places, it is possible to prohibit conducting of an assembly at any time by referring to Article 7 of the Law.

The places allocated in Baku city are located in 15-25 km distance from the center. These places neither heavily populated nor have any amenities.

Thus, application of part IV of the Article 9 of the Law on "Freedom of Assembly" restricts the freedom of assembly reflected in the Article 49 of the Constitution. The orders of the bodies of executive power almost prohibit to conduct gatherings in all other places except in the several areas that had been determined. The bodies of executive power do not provide any grounds to justify allocating the places which are located far away from the city center and which in many cases do not meet sanitary and hygienic requirements as well as while prohibiting conducting of gatherings in other places. The defect that this part of the Law creates in practice results in violation of the fundamental rights - right for freedom of assembly. The gatherings conducted in all of other places are dispersed by police forces with special cruelty.

As mentioned above, in fact conducting mass events in the places determined in Baku city results in reducing their importance to zero,

because the main objective of a mass event is to direct the interest of population and state bodies to settlement of a problem, conduct discussion of that problem with broad masses of population and make demands. Obvious, that it is not possible to direct attention of broad masses of population or a relevant state body to the raised problem while conducting such events at the places with weak public transport, far from settlements and at enclosed stadiums.

According to part VIII of Article 9 of the Law on "Freedom of Assembly" in summer time an assembly can be held from 8.00 till 19.00 and in other periods of a year from 9.00 till 17.00. So the assemblies are regulated with timeframe through the Legislation. It means that according to the Law it is not possible to conduct continuing assemblies. Although conducting of consistent mass events has become a tradition in the country by the 90th of last century.

We think that there should be a legislative guarantee for the participants of a peaceful assembly to continue their assembly for long period in the place where they gathered. If an assembly is peaceful then the participants should have the rights to stay overnight at the squares, put up tents and conduct continuing actions like in many other countries. Since a peaceful assembly is also a form of direct pressure then conducting an assembly at intervals in many cases restricts the power of

pressure of the participants and the assembly cannot play the role of direct tool of pressure.

Appeal Procedure

Pursuant to Article 11 of the Law on "Freedom of Assembly" all the decisions provided for in Article 7-9 of the present Law can be appealed in a relevant court. A complaint shall be considered by court within 3 days. Court decisions on these complaints can be appealed before superior courts. Although there is an access provided by the Law to appeal to a court related with restriction, suspension or prohibition of the freedom of assembly, the existing gaps in the legislation make such an appeal ineffective. That is the Law stipulates 3 days for consideration of a complaint by the courts. The practice in the country shows that the bodies of executive power announce the decision on prohibition of conducting a mass event one day ahead of the time planned. In best case, an organizer of mass event can present complaint to a relevant court on the day when planned to conduct the mass event. It means that the planned mass event cannot be conducted any more, even if a court reverses the decision of the body of executive power on prohibition of mass event on the third day of considered period.

The 4.4 part (*Prohibition of Mass Event*) of the "Guidelines on Freedom of Peaceful Assembly"

(December, 1994) prepared by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE recommends that "*it is important to consider before the time planned for conduct of an assembly. This will allow the organizers of an assembly to conduct the assembly in case of reversal of the decision on prohibition by the court*". As is seen the Article 11 of the Law on "Freedom of Assembly" does not correspond with the Guidelines of OSCE. This Article also violates the requirements of the Article 11 along with Article 13 (*The Right to an Effective Remedy*) of the European Convention. (see: B?czkowski and others v. Poland. Application no. 1543/06).

The Law should have a part obliging the bodies of executive power to notify organizers beforehand when prohibit a mass event so that the organizers could achieve consideration of their complaints by court within 3 days according to Article 11 of the Law and if court turns decision for conducting mass event they can conduct the event in planned time.

Orders for Conducting Assemblies and Accountability for Breaching These Orders

The IV Chapter of the Law on "Freedom of Assembly" regulates the order of convening Assembly.

The Article 12 of the Law determines the rights and duties of organizers of assembly. The stan-

dard principles related with the rights of the organizers are reflected in the Article. According to the Article of the Law organizers of an assembly shall use all available means for ensuring that an event is conducted peacefully and in accordance with the law, pursuant to conditions stipulated in a written notification and applicable to an assembly. Organizers of an assembly must have clearly visible signs distinguishing them from other participants. The organizers are prohibited to carry on them spitfire and cold steel, as well as articles that can create a danger for life and health of people. In case of prohibition the organizers must use all available means to inform its participants about prohibition of the assembly. The organizers of an assembly which was suspended by the order under part V of Article 8 of the present Law must also use all available means to inform participants about prohibition of the assembly.

The organizers who fail to fulfill the duties reflected in the Article 12 of the Law on "Freedom of Assembly" are subject to administrative and criminal liability. Pursuant to the Article 298 of the Code of Administrative Torts of the Republic of Azerbaijan, violation of the established procedure for organization and conduct of assemblies, meetings, demonstrations, rallies and pickets -is punishable by a warning or fine. The Article 301 of the Code of Administrative Torts stipulates more serious administra-

tive punishments especially in cases of breach of prohibition on conduct of mass events. Here the amount of penalties is high and restriction of freedom considers imprisonment for the term of up to 15 days.

In practice, application of more severe administrative punishments as well as administrative imprisonment is widespread even in routine cases for convening and participating in the gatherings not authorized by the bodies of executive committee. The practice of applying administrative fines and administrative imprisonment under the name of deliberately refusing to obey lawful demands of a police officer or a military official, resistance to police and etc. is also widespread. Criminal liability is also considered for breaching the order of conducting an assembly. The Article 169 of the Criminal Code of the Republic of Azerbaijan considers criminal punishment for the breach of the orders for conducting an assembly. The Article 169.1 states that "The organization, implementation or participation in assemblies, in the cases forbidden by the law, which brought to essential infringement of rights and legitimate interests of citizens - is punished by the penalty at a rate of up to 300 of nominal financial unit (about USD\$ 380- MG) or restriction of freedom for the term up to one year, or corrective works for the term up to two years, or Imprisonment for the term up to two years". Pursuant to the Article 169.2 "Carrying by participants of

assembly during its implementation fire or a cold steel or explosives and devices, as well as other substances and subjects representing danger to life and health of associates - is punished by the penalty at a rate from 100 up to 500 of nominal financial unit (about USD\$ 126- 633 -MG), or restriction of freedom for the term up to one year, or corrective works for the term up to one year, or imprisonment for the term up to three years".

In the national practice, the most applied types of punishment for participation in the meetings not authorized or prohibited by the bodies of executive power are administrative imprisonment for up to 15 days, imposing fine and institution of criminal proceedings under article stipulated for breaching the orders established for conducting an assembly, resistance to authority or use of force. Those prosecuted to administrative and criminal liabilities are usually the organizers, participants and accidental bystanders of an assembly who are detained while dispersal of the mass events considered as illegal from the point view of the authorities.

At the same time, there is a practice of applying more severe punishments against the organizers and participants of an assembly. Most of the participants and organizers of the assemblies held to protest against falsification of results of October 2003 presidential elections were subject to criminal proceedings

under the Article 220 of Criminal Code - mass disorder and prosecution and court proceedings were held. The gravest punishment in the sanction part of this Article considers imprisonment from 4 to 12 year period. There are also cases in the national practice when criminal proceedings were instituted under the most severe articles against the organizers and participants of the assemblies being of exceptionally peaceful character and application of imprisonment before trial. Administrative imprisonment and attracting to criminal liability of the participants of an assembly conducted peacefully but whose peaceful character changed after intervention of police (just after police violation) is a routine case.

Rights and Duties of Participants

Although the Article 13 of the Law on "Freedom of Assembly" dedicated to the rights and duties of a peaceful assembly, the Article starts with duties not rights. The Article states that participants of an assembly must observe restrictions specified in accordance with Articles 7 and 8 of the present Law. Participation in an assembly is voluntary and no one can be forced to participate in an assembly. Those who force someone to participate in assemblies shall bear responsibility in accordance with the legislation. Participants of an assembly shall enjoy the right of freedom of thought and speech orally and in

written during assemblies. However, realization of this freedom can be restricted in accordance with the Constitution of the Republic of Azerbaijan and international covenants to which the Republic of Azerbaijan is a party. According to the duties placed on participants of an assembly, they must assist in protection of public order and use all available means for observing lawful requirements of organizers as well as representatives of the relevant bodies of executive power.

The Article states that a participant of a lawful assembly cannot be later brought to responsibility for participation in such an assembly. Only the participants of a lawful assembly who violate the law can be brought to responsibility.

This part allows the authorities to bring before responsibility the participants of any assembly which is not authorized by a relevant body of executive power - even if the participants of that assembly do not violate the law. Mere participation in an assembly which is considered unlawful by the authorities already creates liability. In the national practice, administrative punishment and administrative imprisonment for the participation (only for participation!) in the assembly not authorized by a relevant body of executive power is widely applied.

The Law prohibits the participants of an assembly to carry on them spitfire and cold steel, as well as articles that can create a danger for life and health of people. (These

articles are enumerated in the Law - MG).

In case if an assembly suspended by a relevant body of executive power in accordance with the cases as determined by legislation then the participants of an assembly must disperse.

The Article 13 of the Law does not define a participant of an assembly. That is there is no difference between the people who attend an assembly intentionally and the people who turn to be a participant of an assembly accidentally. In practice, there are many cases when accidental participants and observers of an assembly also find themselves among the people who suffer of dispersal or brought to administrative liability. The observers and human rights defenders have many times registered the cases when the people who accidentally pass through the place of assembly and bystanders of an assembly were brought to administrative liability and subject to violation by police along with the participants of an assembly considered as unlawful by the authorities.

Authorities of Police and Use of Force

The most comprehensive Article of the Law on "Freedom of Assembly" is the Article 14. This Article determines powers of bodies of police in regards with conducting an assembly. It should be taken into consideration that the "Law on Police" and Law on "Status of

Internal Troops" also have certain parts dealing with an assembly.

Pursuant to the Article 14 of the Law on "Freedom of Assembly" the bodies of police have the power to check the place of convening an assembly a day before the event.

The bodies of police also have the rights to

☑ suspend when necessary an assembly which did not have a written notification except assemblies provided for the present Law;

☑ suspend when necessary an assembly if holding of this assembly does not meet the conditions stipulated in a written notification;

☑ detain individuals who came to an assembly with spitfire and cold steel, with articles that can create a danger for life and health of people and to send them away from the place of holding an event or conduct personal examination of individuals who are seriously suspected in carrying such articles.

The expression that "an assembly holding of which does not meet the conditions stipulated in a written notification" is abstract and creates conditions for willful acts by police in practice. There were many cases that the police warned to suspend the mass event when there were deviations from the topics stipulated in a written notification or sharp criticism sounded against the address of the political power of the country. We think that this part restricts freedom of assembly, thought and speech and does not

correspond to the international standards.

Confiscation of the wooden handles of the transparencies brought by the participants of an assembly and broad application of conduct of personal examination of individuals without any grounds for suspicion are the methods used by the police forces in many cases to reduce the number of the participants of an assembly.

Bodies of police enjoy large powers with regard to ensuring prohibitions provided for in parts I-III of Article 8 and Article 7 as well as orders provided for in parts IV and V of Article 8 of the Law on "Freedom of Assembly". The granted powers also include informing organizers and participants about the suspension of an assembly and its dispersal, ordering organizers and participants of an assembly to use all available means for suspension of an assembly and for participants to disperse, as well as warn organizer and participants that a force will be used against them in case of refusal to observe the order on suspension.

The police also have the powers to use relevant force for the suspension of an assembly and dispersal of its participants and detain individuals who refuse to follow the order on dispersal.

Prohibition of conduct of an assembly with the order of relevant body of executive power or refusal to authorize an assembly by the relevant body of executive power in

reply to written notification submitted about conduct of an assembly or sounding the slogans at an assembly which are not agreed beforehand are enough for the police forces to disperse an assembly by using force and detain organizers and participants of an assembly. The suspension and dispersal of the assemblies are indicated as the measure of last resort by the Law. However, the Law does not interpret the notion of the measure of last resort and what are the other existing measures before the measure of last resort. It creates some problems in application of the Law.

The Article 27 of the "Law on Police" stipulates "to use physical force, special means and firearms only as a means of last resort and for purposes of necessary defense, should all other means of influence fail to procure desired outcome, as well as to the degree proportionate to the gravity of the offence and personality of the offender". The Articles of 19, 20 and 21 of the Law on "Status of Internal Troops" of the Republic of Azerbaijan also defines the terms and limits for use of physical force, special means, firearms, weapons and equipment as well as rules for application of physical force and special means.

Use of physical force, special measures and arm fire against the participants of an assembly should be adequate. Otherwise, "use of physical force, special means, arms, weapons and equipments by the military officials through abuse of

authorities can lead to liabilities as defined by legislation".

Issues Not Regulated By Law

There are a number of issues not regulated by the Law on "Freedom of Assembly" which create obstacles in ensuring the freedom of peaceful assembly. Though the part IV of Article 5 of the Law includes the expression of "fortuitous assembly", there is no any part explaining the definition of and orders for conducting such an assembly. According to the same part, restrictions specified in accordance with Article 7 and 8 of the Law can be applied to such assemblies. Absence of the parts related with conducting of counter-meetings, spontaneous meetings and demonstrations as well as other types of mass events also impedes ensuring the rights for freedom of assembly.



RESULTS OF SOCIOLOGICAL INTERVIEW CONDUCTED AMONG POLITICAL PARTY AND PUBLIC ORGANIZATION ACTIVISTS

Within the project 'Monitoring of Observance of the Freedom of Assembly in the Republic of Azerbaijan' Citizens' Labor Rights Protection League conducted public opinion poll on protection of the right to peaceful assembly in the Republic of Azerbaijan. Opinion poll was targeting primarily activists of the political parties and public unions. Respondents were selected by the "snow ball" method, when identification of the respondents was conducted through informal networks created on the basis of political parties and public unions. However, affiliation with party or organization was not an ultimate criteria and non-party men and women, who ever participated in peaceful assemblies had been also encompassed during the poll.

Hence, the major criterion for selection of the respondents was information about their participation in various assemblies of different scope to express their political positions or preferences. The interview was carried out mainly in Baku as well as other towns of Azerbaijan such as Ganja, Sumgait and Ali-Bayramly.

In total survey was conducted among 110 people. The largest age group represented was people of the middle age - from 35 to 54 years old (Diagram 1). The majority of the respondents are men -82% and only 18% are women (Diagram 2).

Diagram 1: Age groups of the respondents

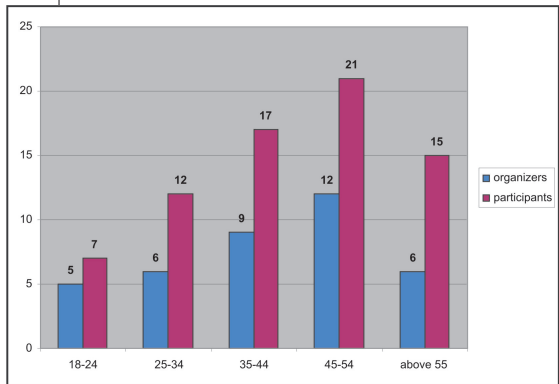
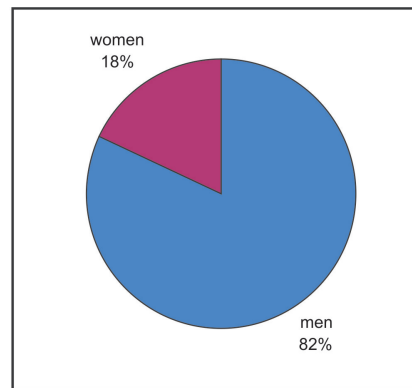


Diagram 2: Gender of respondents

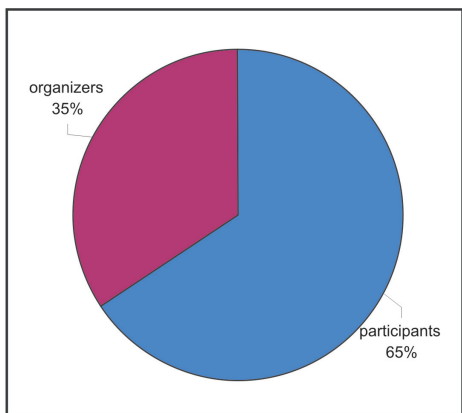


One of the key moments of the survey was identification of the major groups of respondents based on their involvement in preparation, organization and conduct of the mass events.

While responding to the question: "In what capacity have you been involved in the assemblies most often?" the majority of the respondents (65%) defined their status as participants or invitees to the events, who are not actively engaged in preparations and organization of the events (further we will refer to this group only as 'participants'). The rest (35%) defined their status as organizers of the mass event who were engaged in planning, arrangement and conduct of the event (further we will refer to this group as 'organizers').

Diagram 3: Type of participation in assembly

The majority of respondents indicated their membership in political parties (80 people), the next groups are non-partisans (23 people) and activists of the public unions and organizations (7 people). The detailed depiction of the respondents based on their membership in political parties and public unions is given in Diagram 5. Thus, 41% of the survey participants indicated their affiliation with the Azerbaijan Popular Front Party, 8% with "Yeni Azerbaijan Party", 5% with



"Azerbaijan Social Democratic Party", 38% with "Musavat" Party and 8% pointed to the membership in different public unions and organizations.

Diagram 4: Political affiliations of respondents

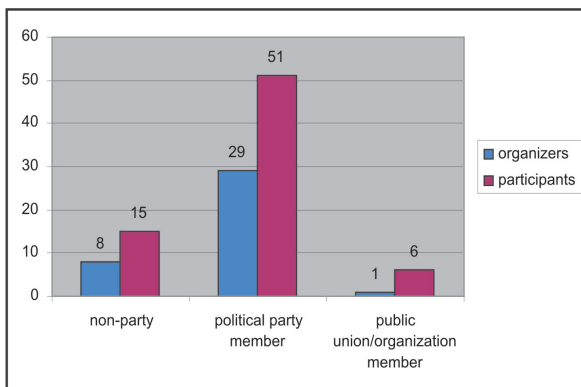
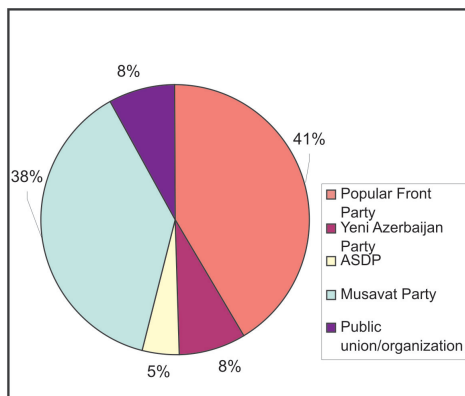


Diagram 5: Membership in political parties and public unions

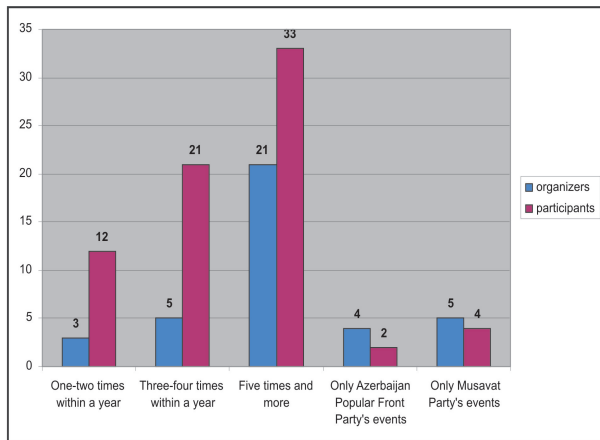
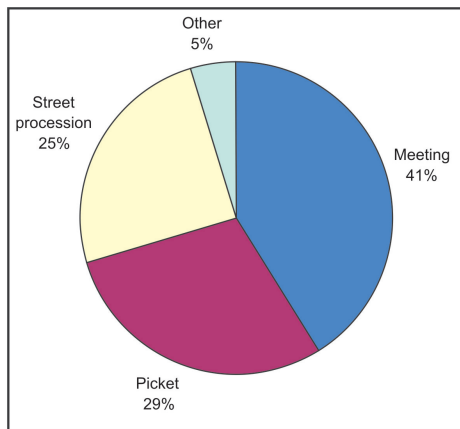


Political activity among both participants and organizers of the events is very high. The majority of respondents indicated that they participated in assemblies not less than five times a year (Diagram 6). Some of the members of "Musavat" and Popular Front political parties, especially the organizers participate in the assemblies organized solely by their political parties.

Diagram 6: Political activity of respondents

Another interesting fact to note is depiction of the types of assemblies, in which respondents participated most often (multiple answers to this question were possible). Thus the majority of the respondents ticked off all types of assemblies indicated in the form. As follows from Diagram 7, most often respondents participated in meetings (41%), pickets (29%), and street processions (25%). However, some respondents added to the list round tables and conferences (5%). The rea-

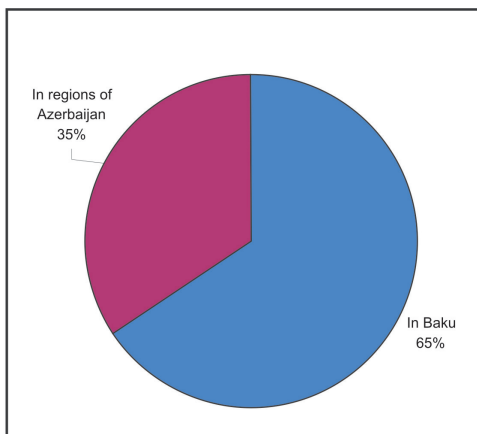
Diagram 7: Types of assemblies



The majority of respondents participated in events organized in the capital Baku city (65%), however the geographical scope of assemblies encompassed also other towns of Azerbaijan such as Ganja, Sumgait, Ali-Bayramli and Shamkir (Diagram 8).

Diagram 8: Place of assemblies

son for enlargement of the given list by respondents was explained further in the answers to the next questions, when they revealed picture of constraints for organization and conducting of such event. Respondents considered it important to note this fact, even peaceful assemblies held at places of private ownership or rented, such as round tables or conferences are not regulated by the Law on "Peaceful Assembly" of the Republic of Azerbaijan".

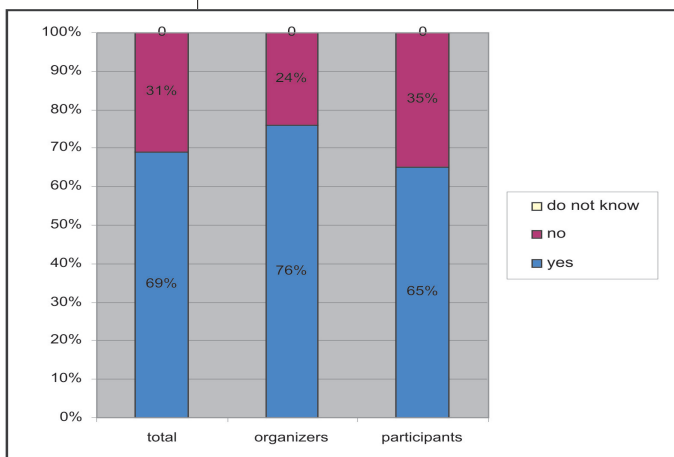


While answering the question whether respondents faced any difficulties while preparations for the assemblies, the majority of interviewed organizers replied positively (76%), whereas about every of four organizers noted that did not encounter any difficulties. Among participants of the assemblies 65% assume that challenges connected with organization and preparation for the event exist, while one third of the interviewees think that there are no any special hindrances at all.

To the question that whether respondents faced any problems directly while conduct and participation in the assemblies, the overwhelming majority replied positively (80%). It is important to note that differently from the previous question, the percentage of organizers and participants giving positive replies are almost the same (82 % of participants and 80% of organizers). Meanwhile percentage of organizers and participants, who did not agree that problems connected with conducting of the events exist,

Diagram 9:
Challenges related to organization and conduct of the assemblies

All of the organizers and participants of the assemblies, who gave positive response to the previous question, were supposed to provide brief explanation of what types of challenges they can indicate based on their experience:



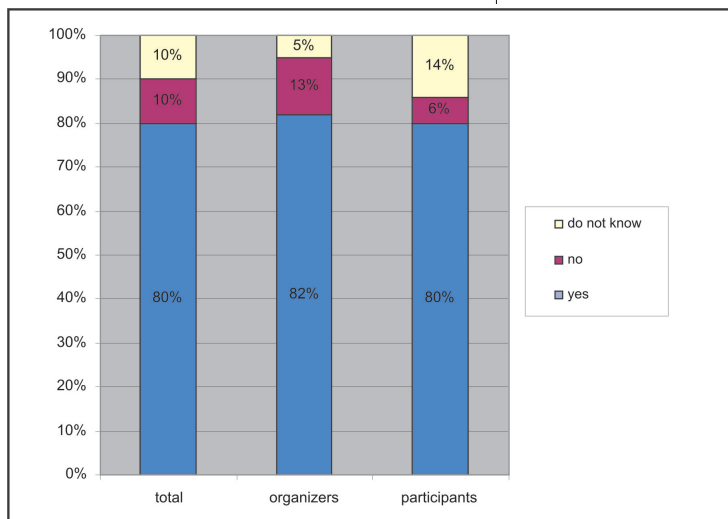
differs. That is 13% of organizers and 6% of participants responded that there were no problems related with conduct of assemblies.

Correspondingly 5% and 14% of respondents said it was hard to answer this question.

Table 1

| | |
|-------------------------------------------------------------------------------------------|----|
| Pressure from police | 17 |
| Problems with getting permission to conduct assembly | 16 |
| Problems with selection of the place of assembly | 11 |
| Late notification on permission for organization of the assembly | 4 |
| Arrests prior to the assembly | 4 |
| Problems with distribution of the leaflets to inform the people about the assembly | 3 |
| Pressure from people in civilian clothes | 2 |
| Financial and technical problems within party | 1 |
| Closure of the roads prior to the event to prevent participants from joining the assembly | 1 |
| Admonitions of the district police inspectors | 1 |
| Pressure at the work place | 1 |
| Pressure on the relatives of the participants | 1 |

Diagram 10: Challenges connected with carrying of the assembly



Respondents provided brief description of the following challenges and problems, which they faced during the period of conducting assembly:

Table 2

| | |
|------------------------------------------------------------------------------|----|
| Violence of the policemen | 22 |
| Detention of the participants at the police stations | 18 |
| Facts of beating | 17 |
| Pressure from police to cease assemblies before the planned time | 9 |
| Police creates problems for participants to join the assembly | 8 |
| Psychological pressure from police | 7 |
| Prevention of the participants to gather in the assigned area | 5 |
| Acts of sabotage | 5 |
| Cutting off electricity during assembly | 2 |
| Prevention from sounding music during the meetings | 1 |
| Disposition of the buses with police forces around the place of the assembly | 1 |

At the same time it is very important to note political affiliation of respondents when analyzing answers to the above mentioned four last questions. All members of political parties and public unions (except member of New Azerbaijan party), 90% in total, were explicitly indicating that they

face challenges on both stages while preparing for the assemblies and while its conduct. "Yeni Azerbaijan Party" members and approximately half of non-partisan respondents were either denying existence of challenges and problems or did not know the answer.

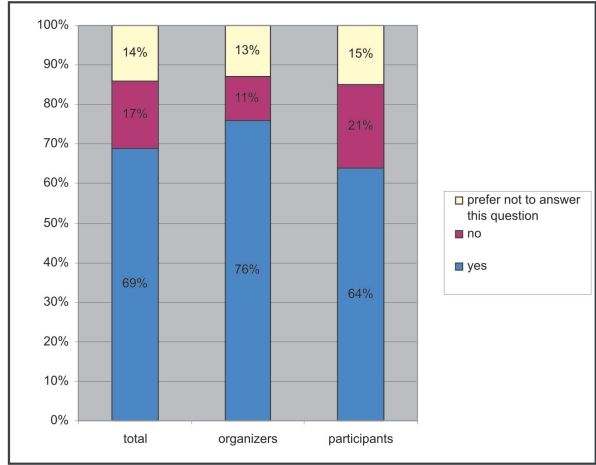
The next six questions were addressed only to people, who replied positively to the question number 9 connected with challenges related with preparation and conduct of the events.

Majority of respondents gave positive answers while answering the next question addressing the problem of violence from law-enforcement bodies during the assembly. So, 76% of the organizers replied that they were subjected to acts of violence dur-

ing conducting the mass events assembly, 11% responded negatively and 13% preferred not to respond to the question. Among participants the number of people who were subjected to acts of violence is lower (54%), while 24% responded negatively and 20% did not answer this question.

Diagram 11: Application of violence by security forces during the mass events

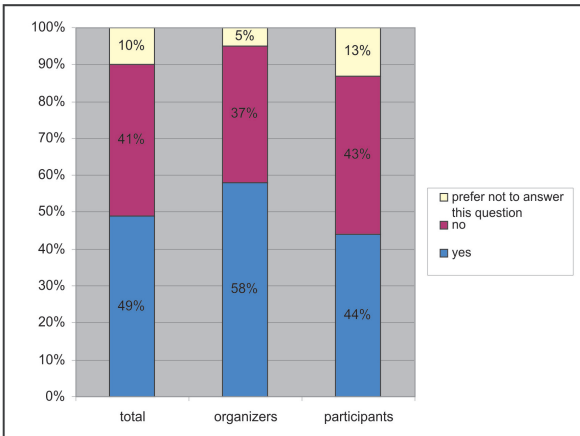
The majority of the organizers responded positively to the question that whether they were subjected to any administrative or criminal penalties for their involvement in political activities and participation in assemblies. Thus, 58% of the organizers emphasized that they were subjected to different types of punishments for organization and participation in assemblies, 5% did not want to answer this question and 37% were not subjected to any persecution.



And 43% of participants never had this type of experiences. And 13% of participants noted it was difficult to answer this question.

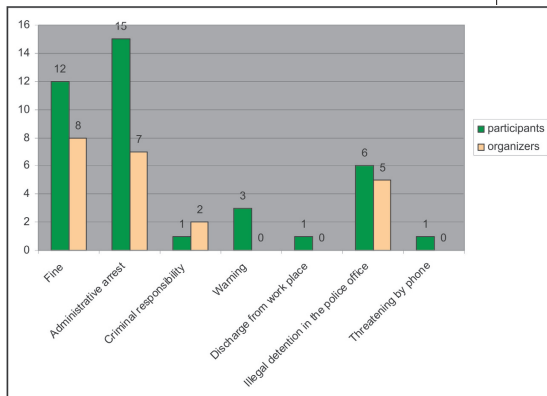
Diagram 12 Application of the administrative or criminal penalties

Only those respondents who responded positively to the previous question needed to specify the types of penalties they were subjected to (multiple answers were possible). The penalties applied against both participants and organizers of the events include administrative arrest (35%), fine (32%), illegal detention at the police station (18%), criminal liability (6%), warning (5%), dismissal from work place (2%) and threatening by phone (1%).



As is seen from Diagram 13 organizers pointed out to more "traditional" types of penalties such as detention at the police station (23%), administrative arrest (32%), fine (36%), and criminal liability (9%). Also participants of assemblies added to the list such illegal penalties as dismissal from work place and threatening by phone.

Diagram 13: Types of penalties for preparation or conduct of the assembly



As follows from Diagram 15, the complaints and appeals of organizers and participants of the assemblies are usually addressed to the same instances. The leading positions are held by international organizations, 42% of all the appeals are made to them, then followed up by Embassies of the U.S. and Norway - 26%. Only 8 people (21%) forwarded their appeals to the judicial bodies of Azerbaijan. Other variations of the responses included preparations for appeal to the European Court of

Although all of the respondents, who replied positively to the previous two questions and consider application of penalties against them as illegal, just few were ready to stand for their rights. The majority of appeals to any instances were prepared by the organizers of the events. In total 17 organizers (77% out of total number of organizers who were subjected to penalties) decided to make the formal appeal. The percentage among the participants who decided to appeal is relatively low and makes up 16 people (41%), whereas 23 people (59%) decided not to apply with plea (Diagram 14). This difference can be explained by few factors and the main out of them is coordinated activities of organizers, who usually do petitions collectively. Besides that, often organizers are well-known activists, who can use their own personal influence or relations in order to appeal on behalf of a party.

Human Rights, appeal to the non-governmental organizations and publications of the complaints in national newspapers. It should be noted that none of the respondents appealed with complaint to the governmental bodies, what reveals the problem of distrust to the state bodies and biased attitude taken by the state officials while consideration of these appeals.

Diagram 14: Complaints against illegal acts

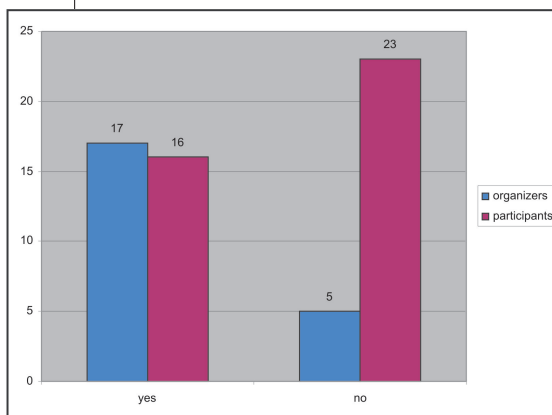
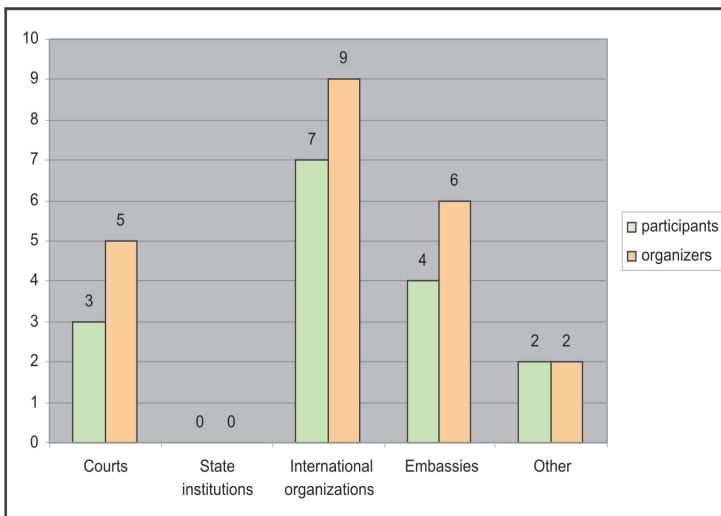


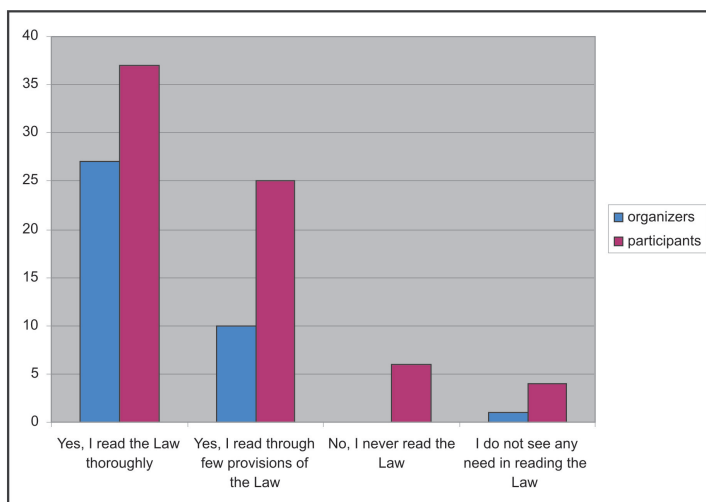
Diagram 15: Instances where appeals are addressed

The majority of respondents of the survey showed high level of familiarity with the Law on "Freedom of Assembly" of the Republic of Azerbaijan. The majority of organizers were either acquainted with the Law completely and thoroughly (71%), and every four organizer had read main sections



of the Law (26%). Only one person among organizers considered not important to be acquainted with the Law since it is not possible to enforce it in practice. Among participants of the events the level of acquaintance was relatively low. Thus 51% asserted that they have learned the Law thoroughly, 35% know its main sections and 8% had not read the Law, whereas 6% do not think that being acquainted with the Law is important.

Diagram 16: Acquaintance with the Law on "Freedom of Assembly" of Republic of Azerbaijan



Based on the opinion of the respondents we can divide the hindrances against exercising the "Freedom of Assembly" in Azerbaijan into following groups.

Table 3

| | |
|-----------------------------------------------------------------------------------------|----|
| Violation of the Article 49 of the Constitution by the government officials | 34 |
| I do not know | 8 |
| Gaps and contradictions in legislation | 21 |
| There are no problems and challenges in implementation of the freedom of assembly | 3 |
| Absence of political will in the bodies of power | 10 |
| The practices of getting permission for assembly should be abolished | 7 |
| Political regime should be changed | 5 |
| Financial problems created by the state structures | 3 |
| Indifference of population to and fear of political process | 2 |
| Importance of holding democratic elections | 2 |
| No condition to conduct political propaganda | 2 |
| International organizations support authoritarian regime | 1 |
| Democratic states sacrificed Azerbaijan's democracy for the sake of their oil interests | 1 |
| Presence of mass repressions | 1 |
| Dependence of the courts on the bodies of executive power | 1 |
| The root of the problems are inside of the parties which do not follow the law | 1 |

Thus the majority of activists of the political parties and public unions share frustration about implementation of the freedom of peaceful assembly in Azerbaijan. The data received during the survey also confirm that there are two political camps that support completely opposite points of view. They are activists affiliated with "Yeni Azerbaijan Party" and non-partisans who share their vision and confronting them activists of the oppositional political parties and public unions and non-partisans who sympathize them.

During the survey supporters of the ruling party pointed out non-existence of the challenges connected with implementation of the freedom of assembly in Azerbaijan and presented oppositional parties as violators of the Law who are responsible for all their problems. At the same time supporters of the oppositional camp point out the restrictions connected with exercising their right to peaceful assembly. These restrictions

start at the phase of preparations for the event, further followed during conduction of the event, when forces responsibly for public order do not let participants to enter place of the event, prevent its holding, use different methods of pressure to intimidate participants and organizers and use inadequate force when trying to disperse assembly. Contradictory statements made by representatives of the oppositional camps point to absence of dialogue among them and indicate absence of will to start negotiations to resolve the existing challenges.



ANALYSIS OF ANSWERS OF RELEVANT BODIES OF EXECUTIVE POWER IN RESPONSE TO NOTIFICATIONS ON CONDUCTING ASSEMBLY

We analyzed the written notifications submitted by the leading political parties, social institutions and physical persons to the relevant bodies of executive power on conducting of an assembly in accordance with Article 5 of the Law on "Freedom of Assembly" and decisions adopted by the bodies of executive power regarding those notifications and letters of response. We mainly analyzed 70 notification letters submitted by "Azadlig" Bloc of Political Parties, by the parties included to this bloc, National Independence Party and Journalist organizations.

The notification letters are developed in accordance with requirements of the legislation and submitted within the determined periods.

However the relevant bodies of executive power in most cases responded to those notification letters a day prior to the considered event. The main goal in responding only a day prior to an assembly meant to prevent presenting a complaint to court. That is according to

Article 11 of the Law on "Freedom of Assembly" courts shall consider complaints related with restriction or prohibition of an assembly within 3 days. Thus, even if a court reverses the decision on prohibition of an assembly (such a case has not taken place at national courts so far) it would not be possible to conduct the assembly in determined time.

Responses by the Bodies of Power to Notification Letters

We analyzed responses and decisions related with more than 70 notification letters submitted to the bodies of executive power and classified them into 3 groups.

1. The bodies of executive power strongly prohibit conduct of an assembly and do not refer to any legislative norm.
2. The bodies of executive power respond to notification letters indefinitely, with an excuse that "not considered expedient".
3. The bodies of executive

power roughly violate the principle of proportionality in response to applications related with conduct of assemblies; provide places unfit to conduct of a meeting and gathering.

1. Bodies of Executive Power Strongly Prohibit Conduct of Assemblies

The bodies of executive power negatively responded to multiple notification letters on conduct of a meeting, street procession and picket, definitely prohibiting conduct of assemblies. Such kind of responses without any grounds directly contradict the parts of the Constitution of Republic of Azerbaijan.

For instance, Azerbaijan Popular Front Party (APFP) applied to the Executive Power of Baku City on November 4, 2004 for conduct of picket in front of the building of Cabinet of Ministers. The Executive Power of Baku City prohibited conduct of the picket by referring to the fact that the building of the Cabinet of Ministers is categorized as the buildings protected for special state importance.

The Constitution of Republic of Azerbaijan states: *"Everyone has the right, having notified respective governmental bodies in advance, peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets"*.

The Constitution of Republic of Azerbaijan guarantees the citizens to freely select the formation, con-

tent and conduct of assemblies by ensuring the freedom of thought and speech. The parts of the Law on "Freedom of Assembly" referred by the bodies of executive power while making decision on "prohibition of the picket" can be subject in issue of the Constitutional Court. The flat refusal by the Executive Power of Baku City in response to the application for conduct of street-procession, by referring to *"arrival of high level officials for inauguration of pipeline"* can also be the subject of controversy.

Those who applied for conduct of assemblies consider that such a behavior by the bodies of executive power leads to violation of their legal status which is guaranteed by basic human rights and freedoms. Gathering freely and without special permission with others has always been considered as the symbol of freedom, independence and perfection of the people relying on their rights. However, when this right is related with political gatherings, ensuring the right for freedom of assembly is also referred to the right of self-determination, one of the basic rights, which is also related not only with the right to protection from state intervention but also to the right to free development of personality. The notion of the right for freedom of assembly which was originated from the natural rights in Anglo-American legal system has been understood since the beginning as the expression of people's sovereignty and correspondingly as the

right of a citizen's active participation in political process. The importance of ensuring the right for freedom of assembly is also asserted in the European Convention. In regards with fundamental rights, the real effectiveness of this guarantee is restricted only with the scope of content of this right as defined by legislation. This can also be referred in regards with the right of thought and speech. This right indeed has boundaries: the parts of the Constitution assert guarantees for this right within the laws governing general activities but despite of that, the limits of exercising of this right can not be defined by conventional laws.

The bodies of executive power should take into consideration the main parts of the constitutional rights while adopting restrictive decision. The authorities should consider that exercising of the right for freedom of assembly can be restricted only for the purpose of protection of those legal interests which have the same values as of right for freedom of assembly and in this case all restrictions must be in accordance with the principle of proportionality. In response to notification letter to conduct a picket in front of the building of executive power, the body of executive power gave prohibitive reply on December 20, 2004 year and hereby violated the principle of proportionality. The Executive Power of Baku City grounds its prohibitive response with the fact that the mayor's office

is of special state importance. This argument of the city administration is ungrounded and at the same time is unproportional in accordance with the importance and possibilities of exercising the right for freedom of assembly.

If the bodies of executive power and courts interpret and apply the parts of the law developed by the legislative body in regards with restricting the basic rights and freedoms, then this kind of interpretation will also be applied related with the right of speech. Restriction of the right of freedom of assembly is allowed only in cases if exercising of the right of speech by the participants of an assembly contradicts with the rights of third persons. But the Executive Power of Baku City in its letter of response dating December 20, 2004 year to APFP's application for conduct of picket stated that the behavior of the picketers would violate the rights of third persons, without providing any proof or grounds and prohibited conduct of the picket by "*not considered expedient*".

Even the state structures when make such decisions, the interpretation of the laws restricting basic human rights must be done from the point of fundamental importance of these rights in free and democratic society and steps taken should indeed be as important for protection of legal interests as exercising the basic human rights and freedoms. The reference to the Law on "Freedom of Assembly" made by

the bodies of executive power while restricting the right for freedom of assembly has crucial importance to make preliminary examination whether the parts of this Law correspond to the requirements of the Constitution. The fundamental importance of the rights and freedoms in question must certainly be taken into account while interpreting and exercising the Law on "Freedom of Assembly".

The requirement of prior notification is defined by the Constitution and the Law on "Freedom of Assembly". The requirement for notification is referred only for the assemblies conducted in open air, since such kind of events require taking special precautionary measures against external influence. The data indicated in the notification letter must provide necessary information to the bodies of executive power. This is important for the bodies of executive power to take measures to regulate the traffic and ensure conduct of assemblies freely. On the other hand the authorities should understand that they need to take measures which allow to coordinate different interests harmonically while protecting the rights of third persons and public interest. There is such a widespread opinion that requirement of prior notification is not related with fortuitous and unplanned demonstrations. Article 49 of the Constitution and relevant legislation provides guarantee for conduct of such assemblies.

As is seen from most of the answers of the Executive Power of City, prohibition of demonstrations and other types of assemblies are connected with necessity to protect public order and safety. For example, Executive Power of Baku City in its letter of response sent to Mr. Gulaga Aslanli and Ms. Arzu Samadova assumes that street-demonstration will lead to restriction of the traffic and disruption of public order. However, it is the duty and authority of the executive power of the city to protect safety and public order, facilitate normal operation of the traffic and infrastructure during conduct of such events.

Those applied, question this issue especially due to the expression describing "danger to public order or violation of law" as making the preliminary terms for intervention of state structures indefinite. They note that the terms turn out to be much more difficult when the bodies of lower level and police, authorized to make decision on intervention.

However, the abovementioned notions are clearly explained and come from the essence of the legislation on law-enforcement bodies. According to this law, idea of "public safety" covers the protection of certain legal interests including life, health, freedom, dignity, property and human welfare as well as rule of law and state bodies. In this regard, danger to public order is assumed in case if these interests protected by law really provide threat to welfare.

The idea of "public order" in current period should be understood as the set of a number of unwritten rules which should be observed in accordance with social and ethnic norms. This is the important condition for existence of people within certain territory and group. Such an explanation of the notions does not guarantee exercising of the law in full conformity with the Constitution. Two kinds of restrictions defined by the law are important for the evaluation from the Constitutional point of view. Prohibition or suspension of the demonstrations is allowed only for protection of legal interests. Existence of just a danger to public order is not enough for prohibition of meetings and demonstrations. First of all, prohibition of demonstrations and meetings is admissible in case of ultima ratio, realization of relatively soft measures is not possible. That is everything should be grounded based on the principle of proportionality. It means that there are restrictions not only related with selection of methods by the bodies of power for intervention but also with the decision adopted by the authorities. Like Fundamental Human rights, the right for freedom of assembly can be receded into background only in case if interests defined exactly by taking into account the importance to observe all rights and indicated that restriction of the right for freedom of assembly is important to observe other rights having the same value. Restriction of this freedom just

related with one fact of legal interests is inadmissible. Generally, the third party will also have to stand the concerns that might arise from exercising of the right for freedom of assembly, because it will not be possible to avoid such inconvenience without imposing restrictions on right for freedom of assembly. Imposing restrictions is incompatible with the objectives of the assemblies. At the same time it is not right to prohibit conduct of an assembly by providing grounds that it would prevent the movement of traffic. As a rule the conditions that the streets might be used both by the demonstrators and traffic can be provided beforehand. The Executive Power of Baku City in its response on November 24, 2006 year to "Musavat" party's application, states that planned street-procession might led to disruption of public safety.

Intervention of the authorities to conduct of an assembly is also restricted within certain conditions. Prohibition and dispersal of an assembly is allowed only in case if there is "direct danger" to public order and rule of law.

Intervention is possible only by observing this condition and existence of "direct danger" stipulates more severe conditions. It is obvious that the level of probability will always be questioned and the conditions providing grounds for danger should be considered in details. The Law stipulates that opinions about existence of such a danger should be

based on facts, existing situation and other details: suspicions and suppositions are not sufficient only. Considering the fundamental importance of the right for freedom of assembly, the bodies of executive power can not determine extremely lower standards for identifying expected danger while prohibiting assemblies. This is especially important when there is a threat for dispersal of a meeting as a result of wrong assessment of the situation. In any given situation the decision about observing the standards should be adopted at special court sessions. Applying these standards is inadmissible without taking into account concrete cases, from the point of the parts of Constitution. However, the situation can be different in regards to demonstrations having multiple participants, to what extend the organizers are prepared for cooperation during the preparation period as well as depending on the danger for creating disorder by third persons or minority.

Article 5 of the Law on "Freedom of Assembly" corresponds to the Constitution of Republic of Azerbaijan as a whole if its interpretation and exercising serves only for protection of public interests, and prohibition and suspension of the assemblies are done only for protection of important public interests and in accordance with the principle of proportionality, other legal interests are indeed under threat and this is proved by

clear facts. The Constitution guarantees "peaceful and unarmed gatherings". The law requirement for the gathering to be peaceful is quite clear along with Constitution and comes from the legal nature of the assemblies and understood as a tool influencing conduct of debates and formation of political will. It is not possible to draw distinct line between acceptable results and behaviors which can not be characterized as peaceful while act of violence. In any case if a participant acts violently against other persons and objects then his or her behavior can not be characterized as peaceful. The law, which empowers the state to use force to prevent violation (as well as for the interest of sensitive minorities) should consider serious measures. The right for freedom of assembly will remain as a means to take active part in political process only within these terms and serve democratic interests. We need to take into account that taking measures as a reaction against violation leads to restriction of freedoms. The demonstrators are likely to behave peacefully, because they will benefit from it. In case of confrontation the state will eventually subdue them and they will not achieve own goals. Prohibition of demonstrations with multiple participants does not contradict with the parts of the Constitution in case if the participants or their supporters are willing to act violently or there is serious and exact information about their supporting such kind of acts or

there are grounds proving their desire to do so. Article 49 of the Constitution of Republic of Azerbaijan does not provide any guarantee in regard with such demonstrations, because this gathering is not considered as peaceful and its prohibition or suspension will not be considered as the violation of the main law. If organizers and their supporters conduct peaceful gathering but the third persons (counter-demonstrators or groups attempting to disrupt demonstration) give way to aggressive acts, in this case everything is quite clear from the legal point of view. In these cases the bodies of power should take measures against disrupters and take steps to prevent any acts against the gathering and creation of any emergency situation, as considered by relevant scientific sources. If there is not any danger of mass disorder then there is no need to assume that the demonstration will certainly turn into violation of public order, popular uprising or the participants will make efforts to such developments or welcome such acts. In this case the Constitutional guarantee to the right for freedom of assembly will remain effective for the peaceful participants of the demonstration, even if separate participants of the demonstration or minority act aggressively. The guarantees stipulated by the parts of the Constitution should be taken into consideration while exercising the parts which consider restriction of basic rights and freedoms. In

regards with these guarantees and pursuant to the Law on "Freedom of Assembly" it is possible for the bodies of power to impose legal restrictions which does not exclude taking measures directed to protect public order. These measures can be applied to the demonstration as a whole, even up to its restriction. However, it would be proper to take an approach to suspend a demonstration after start - this measure would not deprive the peaceful demonstrators from realization of their basic rights and allow the organizers to isolate aggressive participants. Prior prohibition of a gathering because of possible danger that may come from the aggressive participants is allowed only on condition of observing a number of requirements and exercising of the parts of the Law of "Freedom of Assembly" in accordance with the Constitution. This is very important to observe the parts of the Law on "Freedom of Assembly" and the requirements of the procedural law coming from these parts. It is important that possibility of risk should be high for making a decision on prohibition and at the same time all the resources must be mobilized to allow the peaceful demonstrators to realize their basic rights. Prohibition of a demonstration completely, means that joint cooperation with the peaceful demonstrators to prevent dangerous situations gave no results or this cooperation did not take place because of the demonstrators' fault. If the pos-

sibility of prohibiting mass demonstrations where peaceful participants prevail is considered by taking into account concrete cases then as a rule the participants should be notified about the prohibition ahead of time.

2. Bodies of Executive Power Respond Indefinitely As "Not Considered Expedient"

By analyzing the second group of answers we can make conclusion that the bodies of power does not consider expedient the realization of people's constitutional freedoms such as right of thought, independent thinking, right of speech and right for freedom of assembly through grounding their responses as "not considered expedient". Such an interpretation by the bodies of power contradicts with the Constitution which stipulates right for freedom of assembly and international norms. Such responses to applications meaning restriction of the right for freedom of assembly are unlawful. Executive Power of Baku City grounded its response dated November 28, 2005 to "Musavat" party's application for conduct of picket that *"Executive Power of Baku City does not consider expedient conduct of picket on November 29, 2005"* since the irregularities taken place in the elections and the results of the parliamentary elections were presented to the Constitutional Court for approval.

Citizens' Labour Rights

Protection League on May 23, 2007 year submitted notification letter to the Executive Power applying for conduct of a picket at "Sabir" park located in "Istiqlaliyyat" street aiming to protect right of speech, to which the Executive Power responded on May 30, 2007 stating that *"...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 did not consider conduct of the picket expedient since it considered peaceful gathering as uncivilized event.

"Everybody" determines expediency of realization of his or her right for freedom of assembly from the point of right of thought and speech. Everybody or an organization determines the right for freedom of assembly according to their views by using the right of speech and thought. Nobody or an agency has the right to express an opinion about the essence of would be conducted event.

The freedom of speech is considered as one of the main basis of democratic states being the essential and inseparable element of democratic society and the important means for direct expression of personality. The right of speech guarantees existence of different ideas, thinking and discussions being important for existence of a democratic society. We can also refer the expressed views to the right for freedom of assembly if we consider it as the expression of collective thought.

Here there is no need to assume that the fact that factor of discussion typical for the right of speech does not play the primary role in the gatherings. A person also expresses his or her own position openly through participating at demonstrations and other mass events without using mass media.

Demonstration is also an element of a group of people's expressing their opinions without using mass media physically. In the course of such events the participants on the one hand share their belief with others, on other hand they in fact protect own positions and express opinions. Executive Power of Baku City responded to "Musavat" Party's application for conduct of meeting to realize the right of speech and right for freedom of assembly on September 21, 2006 year, stating that conduct of the meeting was not considered expedient, because, *"President Ilham Aliyev is doing his best to improve social condition of people, oil income increases year by year, the government struggles against corruption, anti-corruption structures are established under procurator's office..."* Using the right of speech and right for freedom of assembly for making populist speeches and the danger of using it as a method for emotional pressure does not serve to be the main factor to identify the distinctive features in the sphere of the right for freedom of assembly.

3. Bodies of Executive Power Roughly Violate the Principle of Proportionality and Propose Unsuitable Places to Applicants

Most of the applicants are not able to conduct authorized meetings in the places and times provided by the bodies of executive power. The reason is that the places proposed by the bodies of executive power would make conduct of the meeting ineffective. For example, the letter of response sent by the Executive Power of Baku City dating November 06, 2005 in reply to application to conduct street-procession states, *"It is not possible to conduct street-procession on November 8th and November 10th through the route of "20th January Metro Station - State Film Fund" and on November 10th you can conduct street-procession only at the time set by the Executive Power of Baku city"*.

Conduct of a meeting is a tool for every participant to convey his or her opinion regarding a problem to the public and conduct of the meetings at the places and in a form proposed by the bodies of executive power makes it useless. Limiting the conduct of the gatherings afar from the places where most of the city population gather, reduces the essence of the right of speech and thought to zero.

For instance, in reply to the application submitted on February 15, 2007 year for conduct of meet-

ing, the Executive Power of Baku City responded that conduct of the meeting would not be possible in any of the indicated places. At the same time the Executive Power of Baku City enumerated a number of state organizations stating that conduct of the meetings in front of those facilities were not allowed and the list of the places allowed for conduct of meetings and gatherings was published on October 29, 2006 year issue of "Azerbaijan" newspaper. Almost all of these places cover inactive areas of the city and it is not possible to influence public opinion here. It is clear that big-sized unions, wealthy sponsors and mass media have great capacity to influence the public and ordinary citizens seem weak in comparison with these groups. The ordinary citizens who do not have direct access to mass media may have the only way besides joining parties or public unions: influence the public opinion collectively through conducting a demonstration by using the right for freedom of assembly. The government's duty to provide condition for realization of this comes from the primary political decision as defined by the Constitution. This duty lies on both assisting in conduct of meetings and demonstrations and preventing any possible intervention from a third party to realization of the right for freedom of assembly. The bodies of power should take into consideration the rights stipulated by the parts of the Constitution while adopting any

restrictive law and decisions. The bodies of power may restrict the right for freedom of assembly only for the sake of protecting other interests having the same value and in this case the principle of proportionality must be certainly taken into account. Realization of the right for freedom of assembly without obstacles does not only affect understanding about political weakness and the dangerous tendencies that might cause negative attitude against the state. Ultimately, the right for freedom of assembly serves the interests of the whole society, because diversity and variety of the elements affecting formation of political thinking will result in dynamic development in all directions.

Journalist Elmar Huseynov was murdered in 2005 year in Baku. The majority in the society believed that the murder was committed on political motive. Azerbaijan Democratic Part (ADP) and Azerbaijan Popular Front Party applied to Executive Power of Baku City for conduct of street-procession from 16:00 till 18:00 on April 10th, aiming to convey opinions to the public concerning the murder of the prominent journalist. In reply to the application, the Executive Power of Baku City responds that *"this issue should be solved with the state and bodies of power through dialogue and there is no need for conduct of street-procession"*. In this case the principle of proportionality was violated, because the blow on freedom of

speech is of public importance and expression of thoughts about this issue is very important in democratic and lawful society.

The right for freedom of assembly becomes the main and invariable elements of the representation system where possibilities of conducting referendum is weak and in the existence of parliament type democracy. Here (even in regards to the decisions being of great importance for the majority as well as the decisions which are difficult to reverse after change of power) majority principle remains in force. On the other hand the potential of the voters to influence the process is considerably restricted during the period in-between the elections. The cases when the bodies of power do not confess violation of rights, do not see or acknowledge the mistakes or attempt to connect the violation of rights with protection of other interests make it much more important to conduct protest actions in the places of public importance. The right for freedom of assembly plays the role of stabilizing factor for the powers of representation system. The right for freedom of assembly allows dissatisfied people to express their protest openly. The right for freedom of assembly serves like political indicators pointing the disturbances related with the system of society management, stresses out the potential for disorders and defects in the integration of different layers of the society and hereby assists to change the official political

course. The parts concerning the right for freedom of assembly are directed for guaranteeing this right. These parts define the forms of conducting meetings and demonstrations and organizers can select any form of these events which is not prohibited by the law. The law only defines organizational restrictions for conduct of meetings and demonstrations. Making demands by the participants and organizers of mass event which are incompatible with formation of political thinking and will is inadmissible. If the measures taken by the bodies of power go beyond the norms of restricting basic rights and freedoms, then this is very likely to create groundless hindrances for conduct of the demonstrations through creating artificial obstacles and prolonging the initial procedures. Any measure taken by the bodies of power aiming to determine the expediency and demand for exercising the right for freedom of assembly, identifying place for the meetings as well as the measures that result in creating extreme control and making the conduct of a meeting useless shall contradict with the Constitution of Republic of Azerbaijan.

Fortuitous Meetings

The issue related with the fortuitous meetings should also be focused on. Such an assessment of the fortuitous meetings lies on the fact that the parts of the Law on

"Freedom of Assembly" recedes into the background in necessary cases from the point of realization of these basic rights and freedoms. Conduct of meetings and demonstrations are allowed not because they are written in the law but because the citizens have right for doing so. The Law on "Freedom of Assembly" considers certain restrictions only in case of need. That's why it is considered that violation of the rules on application does not mean immediate prohibition or suspension of meetings and demonstrations. It is certain that an organization or a leader organizing a meeting without prior notification violates the Law on "Freedom of Assembly". Article 7 of the Law on "Freedom of Assembly" states that the authorized bodies may suspend meetings and demonstrations conducted in the open air.

Restriction on the right for freedom of assembly may be imposed only in conformity with law and for protection of interests necessary in a democratic society.

The bodies of executive power think that they can use the prior prohibition of the meetings if this prohibition is considered softer than the prohibition stipulated by the law, like sanctions. However the law does not require the authorities to prohibit or suspend such meetings all the time. Considering the importance of the right for freedom of assembly, the law empowers the bodies of power with authorities to intervene only in case if there are

serious grounds for doing that and within their duties.

The Law on "Freedom of Assembly" also considers the possibility of imposing restrictions on fortuitous meetings and demonstrations whose objectives and achievement can not be realized through observing the parts of the law stipulating prohibition. Despite of the fact that such kind of meetings do not correspond with Article 49 of the Constitution they are considered as lawful and the state can take measures in any time for restriction of this right.

Thus, the requirement of prior notification can not be applied all the time and failure to observe this requirement does not mean immediate prohibition and it is not possible to state that this requirement - substantiated with necessity of observing important public interests is incompatible. The meetings with multiple participants and fortuitous meetings can be assessed separately. The existence and features of exceptional rules should be discussed in other context from the point of danger to public order.



NON-STRUCTURED INTERVIEWS WITH THE PERSONS SUBJECT TO PHYSICAL VIOLATION WHILE DISPERSAL OF MASS EVENTS BY THE BODIES OF POWER

We conducted non-structured interviews with 20 people who participated in the gatherings "unauthorized" or suspended by the bodies of power at different periods. They applied to our organization based on the announcements placed on press and expressed willingness to take part in the interviews.

The following indexes have been determined in regards with the people attracted to non-structured interviews:

- Gender and age category (child, juvenile, middle age, elder)
- Activity (political, social, humanitarian, religious and etc.)
- Membership to a party or public organizations.

Mainly the following questions were asked during the interviews:

In which gathering you were the victim of violation?

Under which conditions in par-

ticular and what kind of violation you were subjected to?

Please describe the situation.

What was your status of participation in the gathering?

(organizer, participant, accidental participant, passer-by during a gathering).

Have you been brought to responsibility for participating at the gathering?

(detention, administrative penalty, administrative arrest, criminal liability).

7 of interviewed persons were women and 13 were men. Out of women, 1 person was elder, 4 of medium ages and 2 young. 4 of men were young and juvenile, 3 elders and 6 of medium ages. 4 out of men and 2 of women who were subjected to physical violation during an event were arrested by administrative order (from 3 up to 15 days). Among the people attracted to the interviews 3 were non-partisans, 16

members of political parties and 1 activist of a youth organization.

During the non-structured interviews 11 people out of those suffered of physical violation noted that were subjected to violation while standing at an event, 3 while leaving the gathering as soon as police start dispersing the action, 2 people while assisting those who got heavy injuries and 4 for holding placard or banners.

One of the interviewees who suffered of violation notes: "I was beaten from behind with club while standing and knocked down. I got injuries on my shoulders and neck. I faced abuse and physical pressure. I received treatment at home". Most of the interviewees note that the aim of the police was not only to disperse the gathering in which they participated. The police also demonstrated special cruelty in regards to the participants.

Another participant of a gathering notes the following: "3 people in civilian cloths knocked me down and started to kick. They dealt blow on my head, face, shoulder, chest, belly and in various parts of body while I attempted to stand up. As a result, I got injuries on my shoulder-blade and back.

The group of people attempting to organize a picket to protest eviction of "Azadlig" newspaper, "Turan" Information Agency and Popular Front Party of Azerbaijan

from their office were caught near the "Baku Soveti" metro station and subjected to tough physical violation. A party activist who participated in that event tells in her interview: "The policemen attacked me as soon as I left the metro. They dragged me in 30 meters and threw into the bus after dealing blows on my head and back. I was brought to the place secured for administrative arrest. I was not provided with any medical aid. Later I learned that was sentenced to 5 days of administrative arrest by a court".

All of the interviewees, except 2 people said attended the gatherings as participants and 2 people said they participated as organizers.

Most of the interviewees noted that police and mobile forces as well as civilians had demonstrated special cruelty while dispersal of unauthorized assemblies. They deliver blows with club on head and other parts of body which can be harmed severely, kick and use offensive language. One of the interviewees noted that he was dealt blows with metal rod and could not recover despite of receiving treatment for long period. In general, several of the interviewees also mentioned that non-standard tools were used while dispersal of the assemblies.



OBSERVATION OF BEHAVIOR OF PARTICIPANTS, ORGANIZERS AND THE FORCES ENSURING PUBLIC SAFETY DURING THE ASSEMBLIES

We observed two assemblies organized in Baku city. One of them was procession-meeting and another picket. The event organized by "Musavat" party on March 18, 2007 year comprised of procession which started from "Hazi Aslanov" metro station, about 14 kilometers away from the city center up to the Ukraine Square passing through Mahammad Hadi street and an assembly conducted at the square. The event was authorized by the Executive Power of the City.

The other event was organized by "Azadlig", "Yeni Musavat", "Bizim Yol", "Gundalik Azerbaijan", "Realniy Azerbaijan" newspapers, "Qanun" journal and "Turan" Information Agency on May 15, 2007 year. The organizers of the picket submitted written notification to the executive power of the city including time, place and number of participants by fully meeting the requirements of the Law on "Freedom of Assembly". However, the executive power of the city prohibited conduct of the picket without providing any serious grounds and

presented a letter to the organizers about its decision 1 day ahead of the event. Meanwhile the organizers insisted on conduct of the assembly and attempted to conduct the picket at assigned time.

We have determined the following as a result of the observations of the procession-meeting organized by "Musavat" Party and authorized by the bodies of power.

Behavior of the Forces Ensuring Public Safety

1. Both forces in police uniform and civilians were deployed to the area secured for conduct of the procession-meeting. The vehicles of the traffic police service were also making maneuvers in the area. The members of the observation group have detected the cases when the traffic police stopped vehicles heading to the meeting, in the areas close to the venue and sent back. At the same time there were cases observed when the police prevented the participants entering the area of the meeting. According to the organizers, the bodies of power had instructed the police to use artificial obstacles to reduce

the number of the participants to minimum.

2. The number of the police forces deployed to the area was apparently much more despite of the fact that there was no any suspicion that the meeting would not be of peaceful character. The police lined up closely along the street where the procession was conducted. The area was closely encircled by the police during the conduct of the meeting. The participants were not allowed to go beyond the limits of the police cordon during the meeting. There were only special corridors for those willing to leave the assembly. Unknown camera crews were operating in the area and civilians were instructing those groups.

Behavior of Participants and Organizers

The number of the participants amounted to 1,000-1,200 people on the eve of start of the procession-meeting.

The participants did not demonstrate any special aggression to the instructions, sometimes being unnecessary of the forces ensuring public safety. At the same time, some participants expressed their protest against unnecessary interventions by the police to the procession-meeting. The procession started at the assigned time and the participants rallied to the determined area to start the meeting. There was neither any serious dispute nor other incidents between the organizers and the bodies of police. The meeting finished at the set time and the participants left the square peacefully.

The above-mentioned another gathering - picket was organized aiming to protest against the pressure by the bodies of power on freedom of speech. The bodies of power notified that would not allow conduct of the picket.

Behavior of Participants and Organizers

The participants started to gather in the assigned area 15-20 minutes before the time set to conduct the picket. The participants were assembling in the area of the gathering- the park named after Sabir and around. The number of the participants was 35-40 people at the time set for the picket - 2:00 PM. The participants and organizers of the picket gathered in small groups and held discussions. There was no any sign of aggressiveness in the behavior of the participants and organizers, though they knew that conduct of the picket would not be allowed.

Behavior of Police

Police detachments gathered in the area. The number of the police was almost equal to the number of the participants. The police officers attacked at the time set for conduct of the picket, confiscated the slogans and pictures and tore off. Afterwards the participants were removed from the area of the picket rudely while there was no any resistance and in some cases were offended. The process finished in 5-10 minutes and nobody was detained by the police since there was no any resistance by the participants or organizers.



ANALYSIS OF PRESS

We have analyzed the leading three newspapers published in the country starting from the period starting from April 01, 2007 through June 30, 2007 year. During the period we analyzed all of the articles on problems related with exercising the right for freedom of assembly, debates and proposals issued by "Azadlig", "525th Newspaper" and Russian language "Zerkalo" newspapers. Please find the summary of all the published materials and expert opinion or brief comments in the page of notes.

In general, the leading press has focused on this issue only when there was an event related with the freedom of peaceful gathering or on the eve of an event, despite of the fact that ensuring the freedom of assembly remains to be the serious problem in the country. Sometimes there were cases when there was no any article on this issue published by these newspapers within a week, despite of being daily newspapers. We can conclude that the press does not keep the issue in the center of attention all the time.

Despite of the fact that these

newspapers were published 195 times in total during the three months period, they published articles on freedom of assembly only in 99 issues.

The articles covered 4 groups of issues: Preparation to mass events, writings about the realized actions (53 article); Prohibition of mass events by the relevant bodies of executive power or writings about postponement of the actions (17 article); Writings about the participants or organizers of the unauthorized mass events who were subjected to police violation, detained or sentenced to administrative penalty (12 articles) and; Discussion of the legislation related with freedom of assembly, writings about the proposals made by the international or local organizations concerning improvement of the legislation and other writings (17 article).

Although the articles issued by the periodical press did not serve as the main source for the results of the monitoring, analysis of these materials adds additional arguments to the accuracy of conclusions drawn through application of other monitoring tools.

Statistical indicators related with the analysis of the writings on exercising the freedom of assembly issued by the periodical press during the period from April 01, 2007 to June 30, 2007.

| Name of newspaper | Total number of the articles issued on the topic | Preparation to mass events, articles about the realized actions | Writings on prohibition of mass events by the relevant bodies of executive power and postponement of the actions | Writings about the participants or organizers of the unauthorized mass events who were subjected to police violation, detained or sentenced to administrative penalty | Discussion of the legislation related with freedom of assembly, writings about the proposals made by the international or local organizations concerning improvement of the legislation and others |
|-------------------------------|--------------------------------------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Azadlig" | 59 | 27 | 13 | 6 | 13 |
| "525 th Newspaper" | 31 | 20 | 4 | 3 | 4 |
| "Zerkalo" | 9 | 6 | 0 | 3 | 0 |
| Total | 99 | 53 | 17 | 12 | 17 |

That is the articles published by the press also indicate that the norms required for ensuring and regulating the freedom of assembly in the country correspond neither to the Constitution of Republic of Azerbaijan nor the international standards to which Republic of Azerbaijan is a party and these norms do not ensure the freedom of assembly, instead serve to its restriction. Both OSCE and Venice Commission of Council of Europe make efforts to facilitate improvement of the legislation. April 12, 2007 issue of "Azadlig" newspaper informs, *"The group of experts of the Venice Commission of the Council of Europe is visiting Azerbaijan. The experts of the Venice Commission started discussions with the representatives of the government concerning*

the changes to be made to the Election Code of Azerbaijan and regarding the Law on Freedom of Assembly".

"Zerkalo" and "Azadlig" newspapers published articles on their April 17, 2007 issues about conduct of the picket by "Dalga" youth movement on April 16, 2007 year.

The young people attempted to conduct a picket in front of the Ministry of Internal Affairs aiming to protest deportation of Iranian citizen Hadi Musavi who ran away to Azerbaijan to escape from political persecution. However, the police dispersed the action by using force, took 8 members of the movement to police station and released after keeping 3 hours.

As is seen, the bodies of power

even prevent conduct of small-sized pickets. The monitoring group also registered similar behaviors through application of other monitoring tools as well as observation of mass events.

The attempts by journalist organizations and newspaper editors to conduct picket or meeting aiming to protest against the arrest of Eynulla Fatullayev, editor in chief of "Gundalik Azerbaijan" and "Realniy Azerbaijan" newspapers have been prevented several times. The analyzed newspapers gave multiple writings about the preparation

to these actions, attempts to conduct them and behavior of police forces. The status of ensuring the freedom of assembly in the country turns out to be plainly visible while analyzing those writings.

Thus, the general analysis of the writings issued by the periodical press allows us to conclude that the national legislation to ensure this freedom is problematic enough and its application creates multiples shortcomings. As a result, the freedom of assembly being one of the basic freedoms is seriously violated in the country.

FINAL MONITORING RESULTS

We have developed separate reports based on each monitoring tool applied within the monitoring. Each report reflects conclusions on the status of ensuring the freedom of assembly in the country. Below are the general references on the results achieved through the tools applied within the monitoring.

Norms Ensuring Freedom of Assembly in the Country

Pursuant to Article 49 of the Constitution of Republic of Azerbaijan *"every person shall have the right to freely gather with others"*. Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms to which Azerbaijan is a party also guarantees the freedom of peaceful assembly.

According to Part VI of Article 71 of the Constitution of Republic of Azerbaijan, *"Human rights and freedoms shall be in force immediately in the territory of the Republic of Azerbaijan"*.

"...exercising and restriction ..." of the freedom of peaceful assembly stipulated by Article 49 of the Constitution is defined by the Law on "Freedom of Assembly" of Republic of Azerbaijan which was adopted on

November 13, 1998 and changes and amendments were made to the Law on March 4, 2005 year.

Part III of Article 149 of the Constitution of Republic of Azerbaijan states that *"Laws should not contradict the Constitution"*. Also according to Article 151 of the Constitution *"When disputes, have arisen between normative-legal Acts included in Legislation system of the Republic of Azerbaijan (excepting the Constitution of the Republic of Azerbaijan and the Acts, passed via referendum) and International Treaties, of which the Republic of Azerbaijan is a party, the latter ones shall be applied"*.

Thus the legal grounds necessary for realization of the right for freedom of assembly in the country are provided by the Constitution and International Norms.

As mentioned, this freedom stipulated both by the Constitution and International Norms can not be restricted by any other norms.

Restrictions can be imposed only in conformity with law and in cases as necessary in a democratic society.

However the analysis of the Law on "Freedom of Assembly" and other statutory acts related with exercising and restriction of the freedom of assembly indicates that serious obstacles have been created on the level of legislation before realization of this fundamental freedom. Practice of applying these norms causes serious problems to ensure the right for freedom of assembly.

The main conclusions drawn through analysis of the norms are as following:

☑ The Law on "Freedom of Assembly" of the Republic of Azerbaijan (was adopted on November 13 of 1998 and changes and amendments were made on March 4 of 2005 year) and the orders adopted by relevant bodies of executive power in regards with exercising of this Law, restricts the rights for freedom of assembly as prescribed by the Article 49 of the Constitution of Republic of Azerbaijan, Article 21 of the International Covenant on Civil and Political Rights and the Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to which the Republic of Azerbaijan is a party.

☑ The Law does not put serious requirements before the bodies, which adopt decisions on restric-

tion, suspension and prohibition of an assembly to indicate substantiated reasons for doing that. The relevant bodies of executive power do not provide any grounds while adopting decisions on restricting, suspending and prohibiting of conduct of an assembly (not permitting or authorizing) and in this case the Law does not place any burden of proof or any serious responsibility on them. In essence, the Law does not support presumption in favor of holding assemblies but its prohibition.

☑ The restrictions and prohibitions are not prescribed as a measure of last resort but as main order by the Law.

☑ Most of the parts of the Law related with restriction of freedom of assembly as well as suspension, dispersal and prohibition of assemblies exceed the limit of "*as prescribed by law and are necessary in a democratic society*" reflected in the International Standards.

In many cases, the parts related with exercising restrictions and prohibitions violated the "principle of proportionality".

☑ Most of the parts of the Law are not concrete and are abstract. This creates conditions to arbitrary acts by the authorities and abuse of the parts of the Law.

☑ The notion of fortuitous assembly indicated in the Part IV of Article 5 of the Law is not interpreted in detail. The provisions of the Law allow to classify any fortu-

itous assembly or a gathering taking place spontaneously as an unlawful assembly. Such kind of gatherings which took place in practice so far, have been dispersed by the state structures violently and participants and organizers were called to responsibility.

☑ The requirements for the written notification for conduct of an assembly as stipulated by Article 5 of the Law are excessive. Most of the data to be included to the letter of notification provide grounds for the bodies of power to regulate the assembly.

☑ III Point of the Part III of Article 8 of the Law contradicts the Constitution of Republic of Azerbaijan and International Norms to which the Republic of Azerbaijan is a party. The principle stated by this Point allows the bodies of power prohibit assemblies without any grounds. Prohibition of an assembly *"during the period of preparation for international events of state importance determined by the decision of the relevant body of executive power and on days of holding them on the territory of cities and regions where they are conducted"* as stipulated by this Point violates the principle of proportionality and at the same time contradicts a sound logic. Restriction of conduct of an assembly (even a picket) by legislation in a place 30-40 and even more kilometers away from the area where *"international event of state importance"* is held in capi-

tal Baku city with the area of several thousands square kilometers is absurd.

☑ The restrictions on places of conduct of assemblies by the Part III of Article 9 of the Law restrict the freedom of assembly without any grounds. Prohibition of conduct of assemblies *"in a radius of 300 meters around buildings of legislative, executive and judicial powers of the Republic of Azerbaijan"* as defined by I Point of Part III, in many cases reduces the importance of an assembly to zero. Exercising of this part does not allow conduct of any gathering in the central part of Baku city.

☑ Part VIII of Article 9 of the Law defines time for conduct of an assembly. According to this part *"in summer time an assembly can be held from 8.00 till 19.00 and in other periods of a year from 9.00 till 17.00. A time of any assembly must be coordinated with the relevant body of executive power"*.

As is seen from this part conduct of an assembly shall be coordinated with the relevant body of executive power even if an assembly held at the time as defined by the Law. This part of the Law also indicates that the freedom of assembly in Republic of Azerbaijan may be exercised not by notifying as stated by the Constitution, but only through coordination, that is getting permission. Imposing restrictions on time of conducting assem-

blies also violates the freedom of peaceful assembly. This Law prohibits conduct of assemblies of permanent character. That is any peaceful gathering is considered as unlawful beyond the indicated time frame. There are cases in the national practice when peaceful meetings were dispersed ruthlessly and by using special violation because of several minutes pass of an indicated time.

☑ Article 10 of the Law states that decision of the relevant body of executive power related with conduct of an assembly must be presented to the organizers of the assembly in written form at least two days prior to the intended date of the assembly. According to Article 10 of the Law *"all the decisions provided for in Article 7-9 of the present Law can be appealed in a relevant court. A complaint shall be considered by court within 3 days"*. This creates grave shortcomings in practice. That is the relevant bodies of executive power submit their decisions related with letters of notification to the organizers two days prior to the intended date of the assembly at best. In this case appeal to a court by the organizers turns out to be ineffective. Even if the court considers the complaint within the period as defined by the legislation, it takes place after the intended date of the assembly. Thus the "right to an effective remedy" is violated.

☑ Part VIII of Article 12 of the Law states that *"The government shall have the responsibility for ensuring the security of an assembly. However, with an aim to ensure the security of an assembly that goes beyond security limits ensured by the government, organizers can request to attract additional police forces under the condition of paying for it"*.

This part of the Law contradicts Article 11 of the European Convention on Human Rights as well as the Constitution of the Republic of Azerbaijan. Ensuring the security of the assembly is the positive responsibility of the government and from this point the government must fulfill its duty in all cases. The expression of "security limits" is abstract.

There are neither concrete indicators nor units of measurement to determine the security limit to be ensured and it can not be. The degree of expected danger should be assessed by the government ahead of time and adequate security measures must be taken.

☑ Part V of Article 13 of the Law indicates that *"a participant of a lawful assembly can not be later brought to responsibility for participation in such an assembly. Only the participants of a lawful assembly who violate the law can be brought to responsibility"*.

According to both the parts and the observed defective practice we can tell that all of the assemblies which take place without permis-

sion of relevant body of executive power are considered as unlawful by the authorities and there are many cases when even participants of peaceful assemblies were called to legal liability. In any case if a participant of an assembly does not violate the law, it is inadmissible to call him or her to responsibility.

☑ III Point of Part I of Article 14 of the Law defines the authorities of police, including the right to *"suspend when necessary an assembly if holding of this assembly does not meet the conditions stipulated in a written notification"*. This part creates serious problems in practice. There are multiple cases registered when police abused this part.

☑ Conduct of assemblies at "Azadlig" Square, the biggest square in capital Baku city is prohibited by the decree of the President of Republic of Azerbaijan. According to the executive order only events of state importance can be held at this square. Prohibition of conduct of assemblies at this square while gatherings have been traditionally held here and which is suitable for conduct of mass events is the restriction of freedom of assembly. The Presidential decree contradicts the Constitution and the relevant International Norms to which Republic of Azerbaijan is a party.

Results of Sociological Interview

One of the tools applied within the monitoring was conduct of sociological interviews among the activists of political parties and public organizations. The following conclusions were made through summarizing the results of the conducted interviews.

☑ As a rule the politically active part of the population participate in the assemblies. These people are mainly the activists represented in the opposition parties.

☑ Afterwards even most of those who participate in authorized assemblies face persecution in their work place and educational institutes where they study. The entrepreneurs involved in business activities face pressure by the various state structures following the event. That is why most of the politically inactive people avoid participating in the assemblies.

☑ Most of the interviewees including organizers of assemblies note that the authorities create multiple problems during both the preparation and conduct of the assemblies.

☑ Majority of the respondents who participated in the assemblies regularly indicate that encountered police violation as well as were subjected to both administrative and criminal penalties.

☑ Majority of the interviewees think that to complain to state structures about the violations and

punishments they faced is useless. The main aim of using force and applying punishments against those attempting to conduct an assembly is to restrict the right for freedom of assembly in the country in general, demonstrate to people that attending an assembly is dangerous and thus prevent any mass protest action against the government.

Application of Norms Ensuring Freedom of Assembly

Serious shortcomings and gaps existing in the Law on "Freedom of Assembly" and other relevant standard acts create substantial problems in practice of application of these norms.

One of the tools applied within the monitoring was the analysis of the letters of notification submitted by the political parties, public unions or groups of persons to relevant bodies of executive power aiming to exercise the freedom of assembly and the responses by the relevant bodies of executive power to the organizers related with these notifications.

We have analyzed more than 70 letters of notification and responses to them.

In particular, this analysis has clearly revealed the application of the legislation on freedom of assembly in the country.

We mostly analyzed the letters of notification submitted to the bodies of executive power of capital

Baku city and responses to these notifications.

☑ All of the responses indicate that the bodies of executive power definitely understand the part of the Article 5 of the Law on "Freedom of Assembly" that "... have to notify in advance the relevant body of executive power" as if *"have to get permission in advance from the relevant body of executive power"*. In all of the letters of response they either permit conduct of an assembly or state that its conduct is not permitted (in most cases the expression of "not considered expedient" is used).

☑ They abuse the rights to impose restrictions and prohibitions as stipulated by the Law on "Freedom of Assembly" and hereby roughly violate the principle of proportionality. In a group of answers the reasons such as *"the traffic is intensive"*, *"located close to dwelling houses and violates the people's right to rest"*, *"because this place is dense with movement of people"* and etc. are taken as a ground and conduct of an assembly is prohibited by referring to point 6 of part I of Article 7 of the Law (protection of rights and freedoms of others).

☑ In most of the letters of response conduct of an assembly is prohibited by referring to point I of part I of Article 7 of the Law (protection of public interests and interests of a national security). While giving such an answer it is by no means explained that what kind of

threats are expected against public and national security interests in case of conduct of an assembly. In general, references to the Law to prohibit an assembly as indicated in all of the analyzed letters are defective.

☑ Some of the prohibitions are imposed by referring to point 3 of part III of Article 8 of the Law. According to this point, authorities "during the period of preparation for international events of state importance determined by the decision of the relevant body of executive power and on days of holding them on the territory of cities and regions where they are conducted" prohibit conduct of assemblies. Relevant body of power uses the notion of "international event of state importance" in the way it likes. For example, a conference taking place with participation of representatives of several countries is classified as international event of state importance and conduct of assemblies are prohibited on the eve of this conference and during the period it takes place.

☑ In a group of letters of response, prohibition is imposed by not referring to the Law but by referring to absurd excuses. For example: Response to those planning to protest against the murder of the well-known journalist: *"this issue should be solved with the state and bodies of power through dialogue and there is no need for conduct of street-procession"*; response

to the organizers planning to convene an assembly to protest against corruption: *"President Ilham Aliyev is doing his best to improve social condition of people, oil income increases year by year, the government struggles against corruption, anti-corruption structures are being established under procurator's office ...that's why there is no need to conduct an assembly"*; response to the application for conducting a picket to protest against restriction of freedom of speech: *"...we think it would be beneficial not to convene an event but to express your position in a civilized way regarding this issue"* and etc. There is no any reference to the Law at all while imposing such kind of prohibitions.

☑ According to the practice evolved in Baku city and other towns and districts the authorized bodies do not make any decisions regarding the notification submitted for conduct of an assembly. The existing practice is based on that the letter of response is presented to the organizers a day ahead of the assigned assembly with the signature of the head of department for affairs with public organizations and political parties operating at the local bodies of executive power. The police departments of city and districts accept the letter by the head of department to prohibit an assembly as the main document and prevent conduct of the assembly. It is rough violation of the Constitution that one of the depart-

ments of the bodies of executive power makes decision about assemblies.

☑ As a rule the assemblies, which are not authorized by the authorities, are dispersed with special cruelty even if they are exceptionally of peaceful character, the organizers and participants are subjected to use of physical force along with administrative and sometimes criminal penalties. Any resistance demonstrated while dispersal of such assemblies is assessed as public disorder. Public disorder in the criminal legislation of the country is referred to the category of "crimes against public safety" and considers imprisonment of up to 12 years.

☑ As a rule, administrative and criminal liabilities are brought against the participants and organizers of assemblies in the way which is not adequate.

Non-Structured Interviews

We conducted non-structured interviews with the persons subjected to use of physical force and brought to responsibility while dispersal of mass events by the bodies of power, as one of the monitoring tools applied within the Project.

The following are the conclusions made based on the interviews:

☑ Police forces demonstrate special cruelty while dispersal of all the peaceful but "unauthorized" gatherings by the relevant body of

executive power. Police were relatively loyal only during some of the gatherings (mainly the pickets organized by journalists) and satisfied by removing the participants from the area through forcing out without use of force.

☑ The aim of applying special cruelty and penalties against the participants of an assembly is not only to disperse it but also to make the organizers and participants suffer physically and psychologically and avoid conducting such assemblies further. Such a cruelty also means to fear the passers-by and by that way restrict the circle of participants of an assembly.

☑ Non-standard tools are used while dispersal of assemblies and blows are delivered on the parts of body that can undermine physical integrity of a person (head, face, belly, back, jawbone and etc.).

☑ Special instructions are given to nearby medical and first aid stations not to grant medical aid to the participants injured while dispersal of big-sized assemblies with cruelty. A part of the interviewees note that they were denied of medical aid when turned to hospitals and polyclinics.

☑ Medical aid is not provided to the people arrested by administrative order.

☑ Most of those arrested by administrative order are not brought before court. First, they are arrested by administrative order and after some time the

administration of the institution of confinement informs them about the term of imprisonment.

Observation of Assemblies

The observations made by the monitoring group during the assemblies proved most of the results achieved through application of other tools.

Police and other forces ensuring public safety during the assemblies authorized by the relevant bodies of executive power also carry out planned measures to prevent the assembly. Such measures include stopping and sending back the buses carrying participants to an assembly from the regions, confiscation of some slogans and their handles (usually the wooden articles) carried by the participants, illegal interventions to assemblies, abuse of the participants and etc. During observation of such assemblies conducted with permission of the authorities it was evident that the main aim of the police was not to ensure safety of the assembly but to make efforts to reduce number of the participants.

During the assemblies conducted without permission of the authorities (unauthorized) even if the number of the participants is 30-35 people and they do not disturb anybody, we registered cases when the assemblies were dispersed by using immediate force, peaceful

participants subjected to abuse and beating.

Although not any aggression is observed in the behavior of the organizers and participants of the observed assemblies, the forces ensuring public safety demonstrated aggression and readiness to disperse the assembly at any time by using force.

Observation of the assemblies allows to conclude that the government is intolerant to any mass protests.

Analysis of Writings on Freedom of Assembly Issued by Press

This tool facilitated evaluation of the events and summarizing the results achieved through other tools, though was not accepted as the main means of monitoring.

We analyzed the writings dedicated to ensuring the freedom of assembly, its prevention and improvement of corresponding legislative acts issued by the leading national three newspapers within three months. The results achieved through analysis of the press also coincided with the results got through application of other monitoring tools.

The following are the conclusions drawn through analysis of press:

The press writes about the freedom of assembly mainly on the eve of an event or aftermath. These

writings are mainly dedicated to prohibition of mass events by the relevant bodies of executive power or their postponement, to participants or organizers of the mass events who were subjected to police violation, administrative penalties or detained during the unauthorized events as well as discussion of legislation on freedom of assembly, proposals made by the international and local organizations concerning improvement of the legislation and writings about the freedom of assembly.

☑ Most of the writings were about the police violation against the participants and organizers of an assembly or application of administrative penalties against participants of an assembly. Within the period of analysis of the press only some of

the assemblies were agreed with the executive power of the city to conduct outside of the city. All other actions were prohibited and because of this, either organizers refused to conduct an assembly or such attempts were prevented through intervention of the police;

☑ Efforts are being increased in the country and by the international organizations to facilitate improvement of the legislation to ensure freedom of assembly and eliminate the shortcomings observed in practice. In this regard, there were writings by the press concerning the discussions and meetings held between OSCE, Council of Europe, other international organizations and the government.

■

RECOMMENDATIONS

Recommendations to Improve Legislation

☑ The Law on "Freedom of Assembly" of Republic of Azerbaijan adopted on November 13, 1998 year defining the rules for exercising and restricting the freedom of assembly as stated by the Article 49 of the Constitution of Republic of Azerbaijan should be changed substantially. In essence, the Law should regulate realization of the assemblies. According to the current language, the Law serves as instruction for the relevant state structures to prohibit and disperse the assemblies.

☑ The Law should put serious requirements before the bodies adopting decision about restriction, suspension or prohibition of an assembly to indicate substantiated reasons for restricting, suspending and prohibiting an assembly. The body adopting the decision should provide serious grounds for restricting, suspending and prohibiting an assembly. The requirement that decisions regarding conduct of an

assembly be made by an authorized body and official and signed should be included to the Law.

☑ Specific provisions defining the rules for conduct and restriction, prohibition, suspension and dispersal of fortuitous assemblies, spontaneous assemblies and counter-meetings (counter-demonstrations) should be included to the Law.

☑ The requirements related with submission of written notification and letter of notification should be simplified. Most of the data required to be included to the letter of notification should be excluded from the Law, since they are not necessary.

☑ The authority by legislation to prohibit the mass action should be granted not to the bodies of executive power but to the courts. The relevant body of executive power, which receives notification about conduct of a mass action, should appeal to court for prohibition of conduct of the action and the prohibition should be imposed only based on the substantiated court decision. Otherwise:

☑ Changes should be made to the rules of submitting notifications and delivery of the decision adopted by the relevant body of executive power related with the notification to the organizers of an assembly. The organizers shall submit the notification at least 10 days before the date of the planned gathering. The executive power shall present the written notification about prohibition of an assembly at most 5 days prior to conduct of the assembly. This would allow the organizers of an assembly to appeal to court in timely manner and as a result, the right to an effective remedy would be ensured.

☑ The provision of prohibiting an assembly during the period of preparation for international events of state importance determined by the decision of the relevant body of executive power and on days of holding them on the territory of cities and regions where they are conducted as stipulated by point 3 of part III of Article 8 of the Law should be excluded from the Law since it contradicts the Constitution and relevant international norms to which Republic of Azerbaijan is a party.

☑ The provision on prohibition of assemblies in a radius of 300 meters around buildings of legislative, executive and judicial powers of the Republic of Azerbaijan should be excluded from the Law, because it creates conditions for ungrounded restriction of the free-

dom of assembly and makes it impossible to conduct assemblies in the central part of the city.

☑ The restriction related with time of conducting assemblies in accordance with part VIII of Article 9 of the Law should be excluded from the Law.

☑ The procedure of complaining should be determined in a way that the assembly could be held in the assigned time in case if the decision on prohibition by the relevant body of executive power abolished by court.

☑ The part VIII of Article 12 of the Law stating that "the government shall have the responsibility for ensuring the security of an assembly. However, with an aim to ensure the security of an assembly that goes beyond security limits ensured by the government, organizers can request to attract additional police forces under the condition of paying for it" should be excluded from the Law.

☑ The part V of Article 13 of the Law stating that "a participant of a lawful assembly can not be later brought to responsibility for participation in such an assembly. Only the participants of a lawful assembly who violate the law can be brought to responsibility" should be excluded from the Law. A participant of any assembly (authorized and unauthorized) should not be punished in case if does not act against the Law.

☑ The authorities granted to

police to suspend when necessary an assembly if holding of this assembly does not meet the conditions stipulated in a written notification in accordance with point 3 of part I of the Article 14 of the Law should be excluded, since it leads to violation of the freedom of assembly in practice.

☑ The Law should not consider any procedures of notification for conduct of pickets and small-sized gatherings.

☑ The provision considering that relevant bodies of executive power determine place of assemblies should be either excluded or defined concretely so that not to leave a gap for restriction of the right for freedom of assembly. Conditions should be provided for conducting the assemblies both in the center of the city and suburbs.

☑ The Law should define the notion of participant of an assembly more precisely.

☑ The Criminal Code and Code of Administrative Torts should consider administrative and criminal liabilities for the officials preventing the freedom of assembly illegally.

☑ The President's decree prohibiting conduct of assemblies in "Azadlig" square, which is the biggest square of capital Baku city, should be abolished.

Recommendations on Improvement of Practice of Application of Legislation

☑ Majority of the bodies of executive power, mainly the Executive Power of Baku city which receive notifications on conduct of assemblies prohibit the assemblies as if on legal basis by interpreting the points of the Law on "Freedom of Assembly" wrongly. To prevent this it would be expedient to present multiple complaints to courts against the letters of prohibitions related with notifications and further prove the groundlessness of the decisions of the bodies of executive power and its contradicting the Article 11 of the Convention through Constitution Court and European Court of Human Rights by overcoming the procedures.

☑ Any resistance shown while dispersal of the assemblies by police, which is peaceful but unauthorized by the authorities, is assessed as mass disorder. Two goals are being pursued here. They are: to apply inadequate force against the participants of the assembly and organize the campaign of anti-propaganda against the participants and organizers of the assembly. In this regard, there is a need for the Constitution Court to interpret the Article 220 of the Criminal Code (mass disorder) officially.

☑ Part VI of Article 9 of the Law on "Freedom of Assembly" states that *"Relevant bodies of executive power shall provide a special area for conducting gatherings, meetings and demonstrations in each city and region"*. This part of the Law is applied quite defectively. Most of the bodies of executive power adopt decisions on providing areas for conduct of assemblies by referring to this part, which are unfit to conduct of assemblies, located far from the city and populated areas. The state structures should instruct the local bodies of executive power to lift this defective practice and such kind of decisions should be analyzed and abolished.

The structures of civil society should also organize court debates to annul such decisions through the courts.

Recommendations on Public Awareness Increasing Activities

☑ Majority of the officials of local bodies of executive power violate the requirements of the Constitution of the Republic of Azerbaijan and corresponding international norms to which Republic of Azerbaijan is a party while imposing prohibitions on conduct of assemblies. In many cases it is due to the fact that officials are not aware of the requirements on freedom of assembly stipulated by the international norms and National legislation acts. From

this point, it is of high importance to enlighten the relevant state structures as well as responsible employees of the local bodies of executive power to ensure the freedom of assembly. The activities of the state and non-governmental organizations are important in this direction.

☑ The organizers of assembly as well as representatives of political parties and public unions should be educated about the freedom of assembly, exercising this freedom, procedures of complaining and other issues. The activities to increase awareness should be carried out through providing trainings and developing special literature.

☑ It is expedient to facilitate quality translation of the precedent decisions made by European Court of Human Rights related with Article 11 of the Convention dealing with freedom of assembly to Azerbaijani language and disseminate it widely. It is expedient to carry out measures to facilitate all of the judges of the courts of general jurisdiction of Supreme Court and Judicial Legal Council to learn these precedents.

☑ It is of great importance to learn the measures realized within the OSCE to facilitate ensuring the freedom of assembly, the "Guidelines on Freedom of Peaceful Assembly" prepared by the OSCE Office for Democratic Institutions and Human Rights and other docu-

ments and use the principles reflected in those documents both in development of legislation and its application.

Recommendations on Organization of Victims' Protection

The organization of protection of the people who were subjected to physical violation by the bodies of power and brought to administrative and criminal liabilities while using the right for freedom of assembly in the country still remains to be the issue of the day. So far, nobody achieved punishment of the offenders or got compensation for the caused material and moral damages, for being subjected to physical violation or for being brought to administrative and criminal liabilities through the National courts.

That is why:

☑ The NGOs involved in protection of Human Rights should arrange regular and consistent campaigns to organize protection of the victims both on national and international level who suffered of violation by the bodies of power and brought to administrative and criminal liabilities while using the right for freedom of assembly.

☑ The lawyers while defending the persons whose right for freedom of assembly had been violated should take into account that most of the victims are subjected to tortures; their right to freedom are restricted or they are deprived of the right to freedom and use of force applied against the right to testimony of these persons.

■

MONITORING REPORT

ANNEX

The questionnaire of the sociological interview conducted among political party and public organization activists.

1) Your age group:

- a) 18-24
- b) 25-34
- c) 35-44
- d) 45-54
- e) above 55

2) Gender

- a) Male
- b) Female

3) Please specify political party or public union/organization which you are affiliated with

- a) Non-partisan
- b) Political party (please specify)

c) Public union/organization (please specify)

d) Other (please specify)

4). How often do you participate in the peaceful assemblies?

- a) One-two times a year
- b) Three-four times a year
- c) Five times and more
- d) Other (please specify) _____

5). In what types of event do you participate most often? (multiple answers possible)

- a) meeting
- b) picket
- c) street procession
- d) Other (please specify)

6). In what capacity did you participate in the last event?

- a) Participant
- b) Organizer
- c) Other (please specify)

7). Where did the majority of the events, you participated, took place?

- a) Baku
 - b) Regions (please specify)
-

8). Did you encounter any problems or challenges at the stage of preparations for the mass events?

- a) Yes
- b) No

9). If yes, then please describe some of them.

10). Did you encounter any problems or challenges at the stage of conducting the assembly?

- a) Yes
- b) No (pass to the question # 17)

11). If yes, then please describe some of them.

12). Did you ever face any acts of violence by the forces ensuring public safety while participating in the mass events?

- a) Yes
- b) No
- c) Hard to answer

13). Were you ever subjected to administrative or criminal penalty for participation in the assemblies?

- a) Yes
- b) No
- c) Hard to answer

14). Please indicate the type of penalty applied to you (multiple answers possible):

- a) Fine
 - b) Administrative arrest
 - c) Criminal liability
 - d) Other (please specify)
-

15). Did you ever appeal to any instances with complaints and plea to restore your rights?

- a) Yes
- b) No

16). If yes, please specify institution where your appeal/plea was addressed

- a) Court
- b) Governmental bodies
- c) International organizations
- d) Embassy (please specify country) _____
- e) Other (please specify)

17). Are you acquainted with the effective legislation of the Republic of Azerbaijan on freedom of assembly?

- a) Yes, I read the Law
- b) Yes, I read some of the articles of the Law

- c) No, I did not read the Law
- d) I do not see any need to read the Law

18). What do you think is the main challenge towards realization of the right to peaceful assembly in the Republic?

Citizens' Labor Rights
Protection League

**MONITORING OF OBSERVANCE OF THE FREEDOM OF ASSEMBLY
IN THE REPUBLIC OF AZERBAIJAN**

LEGISLATION AND PRACTICE

MONITORING REPORT

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|-------------------|-------------|
| At the printer's: | 27.08.2007 |
| Format: | 70x100 1/16 |
| Volume: | 4,5 p.p. |
| Quantity: | 500 copies |
| Order: | 159 |

Book is published in printing
house of "Teymur Poligraf" LTD
Address: Salamzade str., 31

