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Il ritardo nella registrazione di una ONG viola la libertà di associazione
(CEDU, sez. V, sent. 2 dicembre 2021, ric. n. 64733/09)

Con il pronunciamento reso al caso in esame, la Corte EDU ha deciso il ricorso presentato dall'Osservatorio elettorale (XXX), e da due cittadini azeri, contro la Repubblica dell'Azerbaigian, col quale veniva lamentata la violazione degli articoli 11 e 34 della Convenzione. L'associazione ricorrente è una ONG specializzata nel monitoraggio delle elezioni. I cofondatori avevano avanzato diverse richieste di registrazione al competente Ministero della Giustizia, senza ottenere tempestiva risposta. In ragione di ciò, essi denunciavano la violazione delle disposizioni nazionali relative alla registrazione da parte delle autorità statali, che nel non concedere per tempo all'associazione stessa lo *status* di persona giuridica, e disponendo il suo successivo scioglimento, avevano leso il loro diritto alla libertà di associazione. Congiuntamente all'art. 11 della Convenzione, i ricorrenti lamentavano finanche la violazione del diritto al ricorso individuale, conseguente al sequestro del loro fascicolo presso l'ufficio del legale rappresentante.
Di contro, il Governo sosteneva la piena legalità delle azioni intraprese dal Ministero della Giustizia, argomentando come le stesse fossero giustificate sulla base di una documentazione incompleta e non congruente con i requisiti richiesti dalla legge.
La Corte EDU ha analizzato la questione sotto diversi profili. In primis, sulla liceità dell'addotta interferenza dovuta al ritardo della registrazione, essa ha ritenuto che le asserite violazioni imputate ai ricorrenti fossero "carenze procedurali sanabili". Pertanto, la restituzione degli atti senza la specificazione di un termine entro il quale rettificare la documentazione utile per la registrazione, ha provocato un significativo ritardo di per sé costitutivo di un'ingerenza nel diritto alla libertà di associazione. Tale ingerenza non può essere neppure considerata "prescritta dalla legge" ai sensi dell'articolo 11 § 2 della Convenzione, dal momento che non era stato adeguatamente dimostrato che i reiterati rifiuti di registrazione avessero lo scopo di assicurare il rispetto della legge e, quindi, la "prevenzione del disordine". Analogamente, per i giudici di Strasburgo il successivo scioglimento dell'Associazione XXX era stato ingiustificato e non necessario in una società democratica, ricordando a tale proposito che quando la Corte effettua il suo controllo deve esaminare l'ingerenza lamentata alla luce del caso nel suo complesso e determinare *i*) se essa sia "proporzionata allo scopo legittimo perseguito"; *ii*) se le ragioni addotte dalle autorità nazionali per giustificarla siano "pertinenti e sufficienti"; *iii*) e se le autorità nazionali abbiano applicato norme conformi ai principi sanciti dalla Convenzione. Qui nella specie, la Corte ha ritenuto che i tribunali nazionali non avessero addotto ragioni "pertinenti e sufficienti" per giustificare lo scioglimento dell'Associazione, ribadendo peraltro come il diritto di costituire un'associazione per agire collettivamente in un ambito di reciproco interesse è uno degli aspetti più importanti della libertà di associazione, senza la quale tale diritto sarebbe privo di qualsiasi

significato. E sebbene, nell'ambito dell'articolo 11, la Corte stessa abbia più volte fatto riferimento al ruolo essenziale svolto dai partiti politici nell'assicurare il pluralismo e la democrazia, anche le associazioni costituite per altri fini sono importanti per il buon funzionamento della democrazia.
Quanto, infine, alla violazione dell'art. 34 CEDU, i giudici di Strasburgo hanno stabilito che il sequestro dell'intero fascicolo relativo al ricorso pendente dinanzi alla Corte, insieme a tutti gli altri fascicoli di causa, aveva costituito un ostacolo all'esercizio del diritto di ricorso individuale.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXX v. AZERBAIJAN
(Application no. 64733/09)

JUDGMENT
STRASBOURG
2 December 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Lado Chanturia,
Ivana Jelić,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*
Having regard to:
the application (no. 64733/09) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by XXX ("the applicant association") and two Azerbaijani nationals, Anar Asaf oglu Mammadli (*Anar Asəf oğlu Məmmədli*) ("the second applicant") and Bashir Suleyman oglu Suleymanli (*Bəşir Süleyman oğlu Süleymanlı*) ("the third applicant"), on 20 November 2009;
the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 11 and 34 and to declare the remainder of the application inadmissible;

the parties' observations;
Having deliberated in private on 2 November 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicants complained that the delay in the registration and the subsequent dissolution of the XXX had violated their right to freedom of association under Article 11 of the Convention and that the seizure of their case file from the office of their lawyer had been in breach of their right of individual application without hindrance under Article 34 of the Convention.

THE FACTS

2. The applicant association, the XXX, is a non-governmental organisation based in XXX. The second and third applicants – the co-founders of the EMC – were born in XXX and XXX respectively and live in XXX. The applicants were represented by Mr I. Aliyev, a lawyer based in Azerbaijan.
3. The Government were represented by their Agent, Mr Ç. Əsgərov.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
I. REGISTRATION OF THE ASSOCIATION
5. The EMC was established in the form of an association in February 2006. It specialised in the monitoring of elections.
6. The initial co-founders of the EMC were the second applicant and Ms S.H. In July 2007, before the fifth request for the registration of the EMC was made (see paragraphs 7, 9 (v) and 10 below), Ms S.H. withdrew as a co-founder, and the third applicant became a new co-founder along with the second applicant.
7. From March 2006 to August 2007 the co-founders of the EMC made five requests asking the Ministry of Justice to register the EMC as a legal entity, each time submitting the necessary registration documents.
8. After each request, the Ministry of Justice extended the time-limit for examining the submitted (or resubmitted) registration documents, then replied with a letter indicating certain deficiencies allegedly contained in those documents and returned them to the co-founders. After receiving each reply, the co-founders made rectifications to the registration documents and resubmitted them together with their next registration request.
9. The Ministry of Justice indicated the following alleged deficiencies as the reasons for it not registering the association following the relevant requests:
(i) By a letter of 1 June 2006 in response to the first request for registration: The decision establishing the EMC and approving its charter had not been duly signed by the co-founders; moreover, with some exceptions, the charter did not set out the required rules on the adoption of decisions concerning issues falling within the remit of the association's management board;

(ii) By a letter of 15 September 2006 in response to the second request: The decision establishing the EMC and approving its charter had not been duly signed by the co-founders; and the charter did not set out rules governing the holding of meetings of the EMC's control and review committee;
(iii) By a letter of 8 December 2006 in response to the third request: The request for the association to be registered should have contained a disclaimer confirming that all the facts presented to the registering authority and all the documents submitted to it were correct; Article 6.7 of the EMC's charter needed to be amended in order that it would conform with Article 11 of the Law on accounting records; and the cover page of the charter should have contained the title of the registering department;
(iv) By a letter of 26 June 2007 in response to the fourth request: There was a certain inconsistency between the title of the association and its aim, as indicated in the charter; in a document confirming the payment of the registration fee the title of the association was written differently; the cover page of the charter needed to be amended in conformity with a special form that set out the requirements in this regard; and the second sentence of Article 6.7 of the charter needed to be amended in order to conform with Article 11 of the Law on accounting records;
(v) By a letter of 7 November 2007 in response to the fifth request: The charter did not specify a quorum in respect of meetings of the association's management board; the creation of the executive bodies of the association and any termination of their powers before the expiration of their respective term of office fell within the authority of the general assembly, and the wording of the charter therefore needed to be amended so that it stipulated those requirements clearly; on the cover page of the charter the title of the registering department needed to be indicated in the manner illustrated by a certain special form; and the content of Article 6.7 of the charter needed to be clarified.
10. In the above-mentioned letter of 7 November 2007, the Ministry also indicated that there was a divergence between the issues that had been included in the agenda of the co-founders' meeting of 1 August 2007 and the issues concerning which the co-founders had actually adopted decisions, and that it was therefore advised that the relevant clarifications be made. It appears that, according to the agenda of the mentioned meeting, the co-founders were scheduled to decide on the issue of enlarging the list of the co-founders; however, no decision was taken in that regard. (No copy of the agenda is contained in the case file.)
11. All the above-mentioned letters of the Ministry of Justice stated that, on the basis of Article 11.3.1 of the Law on State registration and the State register of legal entities ("the Law on State Registration"), the documents were "being returned" (*sənədlər geri qaytarılır*) or "being returned unexecuted" (*sənədlər icra olunmadan geri qaytarılır*).
12. In December 2007 the co-founders made their last request for registration of the EMC. That request was allowed, and the association was registered on 1 February 2008 and was issued a State registration certificate.
13. While copies of the last request and the one submitted before it (the fifth) are not available in the case file, it appears from the applicants' submissions and other material in the case file that those requests were signed by the second applicant and the third applicant, the latter replacing Ms S.H. as a co-founder (see paragraph 6 above), and that the requests detailed the second and third

applicants' relevant personal information and were approved by a notary. In those two requests Ms S.H.'s name was not indicated as a co-founder.

II. DISSOLUTION OF THE ASSOCIATION

14. Around two months after the registration, in April 2008 the Ministry of Justice brought an action in the Khatai District Court against the EMC under Articles 59.2.2 and 59.2.3 of the Civil Code, seeking the annulment of the EMC's registration and its dissolution.

15. The Ministry of Justice asserted that before its registration the EMC had failed to inform the Ministry of whether or not Ms S.H. had withdrawn from the list of the co-founders. The Ministry argued that by the above-mentioned letter of 7 November 2007 it had warned the applicants about a lack of clarity in the list of the co-founders (see paragraph 10 above) and that the applicants had failed to rectify that deficiency. The Ministry also stated that after its registration the EMC had failed to inform it of a change of its registered legal address and of the establishment of its eight local representative offices. The Ministry argued that by doing so the applicants had breached Articles 4.2, 5.1, 5.2, 12.8.3, 14.1.6 and 14.1.8 of the Law on State Registration, Articles 3.2 and 3.3 of the Law on non-governmental organisations (public associations and funds) ("the Law on NGOs") and Article 51 of the Civil Code.

16. In reply to the action brought by the Ministry of Justice, the EMC lodged an objection with the Khatai District Court arguing, *inter alia*, that the Ministry's allegations were false or did not have a lawful basis, or both. It argued that the Ministry had been informed about the change in the list of the co-founders and that, had the co-founders not rectified all the alleged deficiencies indicated in the letter of 7 November 2007, the EMC would not have been registered. Furthermore, the existence of the EMC's office at a different address had not affected its legal address – the latter had remained the same. Lastly, the EMC had been in the process of establishing its representative offices and would inform the Ministry about them as soon as they were established. The applicant association also argued that the requirements of the domestic laws that had allegedly been breached were not clear and that the procedural provisions concerning the dissolution (Articles 59.2.2 and 59.2.3 of the Civil Code) gave the domestic authorities unlimited discretion to dissolve a legal entity. In that connection, they maintained that, in any event, even if the Ministry of Justice's arguments concerning the alleged breaches were well-founded and had a clear lawful basis, those alleged breaches were minor and technical in nature and, therefore, could not serve as grounds warranting the dissolution of the EMC under domestic law and the Convention.

17. The EMC requested the first-instance court to summon and examine as witnesses Ms S.H. and members of the local representative offices. Those requests were not granted.

18. The EMC also lodged a counteraction against the Ministry of Justice and sought damages. The applicant association argued that the Ministry of Justice had breached the relevant provisions of the Law on State Registration (namely, Articles 8.2, 8.3 and 8.4 of the Law) and that consequently the registration had been unlawfully delayed.

19. On 14 May 2008 the Khatai District Court granted the Ministry of Justice's action and ordered the dissolution of the EMC, referring to Articles 59.2.2 and 59.2.3 of the Civil Code, on the following grounds:

(a) In breach of Articles 5.1, 5.2 and 14.1.6 of the Law on State Registration and Article 45 of the Civil Code, before its registration the EMC had failed to inform the Ministry of Justice whether or

not Ms S.H. had withdrawn from the list of the co-founders. Furthermore, the second and third applicants had failed to sign and submit a contract (approved by a notary) establishing the association. By the above-mentioned letter of 7 November 2007, the Ministry had warned the applicants regarding the lack of clarity in the list of the co-founders, but the applicants had failed to rectify that deficiency;

(b) In breach of Articles 3.2 and 3.3 of the Law on NGOs and Article 51 of the Civil Code, the EMC had failed to inform the Ministry of a change of its legal address. According to the website of the association, the main office of the EMC was located at an address (namely, an address on Vagif Avenue in Baku) that was different from the recorded legal address (namely, an address in Zig Yolu Street in Baku); and

(c) In breach of Articles 4.2, 12.8.3 and 14.1.8 of the Law on State Registration, the EMC had failed to inform the Ministry of the establishment of its local representative offices. According to the website of the association, eight such representative offices had been created.

20. The court did not expressly address the arguments raised by the EMC (see paragraph 16 above). It also dismissed the EMC's counteraction as unfounded, finding that the reasons indicated by the Ministry in its letters (see paragraphs 9 and 10 above) were lawful and the registration documents had been returned to the co-founders owing to deficiencies contained in them, and that there had been no undue delay in the association's State registration.

21. The applicant association appealed against the judgment of the first-instance court, reiterating the arguments raised earlier.

22. It appears that Ms S.H. submitted to the appellate court a written statement explaining that she had withdrawn from the list of co-founders and had done so voluntarily. However, the appellate court did not take that statement into account when examining the case.

23. On 25 November 2008 the Baku Court of Appeal dismissed the appeal, finding it groundless. The appellate court reiterated the first-instance court's reasoning.

24. On 22 May 2009 the Supreme Court upheld the Baku Court of Appeal's judgment of 25 November 2008, reiterating the reasoning of the lower-instance courts.

25. Following the dissolution of the EMC, on 1 December 2008 the second applicant and some of his colleagues founded the Election Monitoring and Democracy Studies Centre (*Seçkilərin Monitorinqi və Demokratiyanın Tədrisi Mərkəzi*), and lodged several unsuccessful applications with the Ministry of Justice for the registration of that association as a legal entity. The domestic authorities' refusal to register the Election Monitoring and Democracy Studies Centre is the subject of another application pending before the Court (see application no. 70981/11).

III. SEARCH AND SEIZURE IN THE OFFICE OF THE APPLICANTS' REPRESENTATIVE

26. On 8 August 2014 criminal proceedings were instituted against Mr Aliyev, who represented the applicants before the Court. Those criminal proceedings were the subject of a separate application lodged by him with the Court (see *Aliyev v. Azerbaijan*, nos. 68762/14, and 71200/14, 20 September 2018). On 8 and 9 August 2014 the investigating authorities seized a large number of documents from Mr Aliyev's office, including all the case files relating to the applications pending before the Court, which were in Mr Aliyev's possession as a representative. The file relating to the present case was also seized in its entirety. The facts relating to the seizure and the relevant proceedings

are described in more detail in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 21-28, 22 October 2015).

27. On 25 October 2014 some of the seized documents were returned to Mr Aliyev's lawyer.

RELEVANT LEGAL FRAMEWORK

28. The relevant parts of Article 4 of the Law on State registration and the State register of legal entities of 12 December 2003 ("the Law on State Registration"), as in force at the material time, provided as follows:

Article 4. General rules on State registration of legal entities and maintenance of the State register

"4.2. Branches or representative offices or other institutions of legal entities that have been State registered in the Republic of Azerbaijan shall be entered in the State register."

29. The relevant parts of Article 5 of the Law on State Registration, as in force at the material time, provided as follows:

Article 5. Request for the State registration of an organisation wishing to obtain legal-entity status

"5.1. An organisation wishing to obtain legal-entity status must submit a request (*ərizə*) to the relevant executive authority [the Ministry of Justice].

5.2. The request shall be signed by the founder (or, if there are several, by all the founders) or by a person authorised in the relevant manner to represent [him, her or them] and shall be approved by a notary.

...

5.4. The following documents shall be attached to the request:

5.4.1. Founding documents – the charter of the organisation wishing to obtain legal-entity status, approved by its founder (or founders) or his or her (or their) authorised representative, and the decision founding the organisation and adopting its charter (the decision ... must be signed by all the founders)."

30. The relevant parts of Article 8 of the Law on State Registration, as in force at the material time, provided as follows:

Article 8. Procedure for State registration of a non-commercial organisation wishing to obtain legal-entity status

"8.1. State registration of a non-commercial organisation wishing to obtain legal-entity status, as well as a branch or representation of a foreign non-commercial legal entity, shall, as a general rule, be carried out within forty days.

8.2. The relevant executive authority [the Ministry of Justice] accepts for examination the application for State registration and the required accompanying documents and, within thirty days, verifies their compliance with the Constitution of the Republic of Azerbaijan, this Law and other legislative acts of the Republic of Azerbaijan. If during the examination there arises a need for an additional review in exceptional cases, this period can be extended for another thirty days.

8.3. If the submitted documents are found to contain deficiencies that cannot serve as a basis for the refusal of State registration, the relevant executive authority [the Ministry of Justice] shall return the documents to the applicant and fix an additional twenty-day period for rectification of those deficiencies. Any deficiencies [in the registration documents] that cannot serve as a basis for

the refusal [of State registration] shall be identified and notified to the applicant for rectification at once.

8.4. No later than ten days after the submitted documents have been examined or after the deficiencies identified in those documents have been rectified, the relevant executive authority [the Ministry of Justice] shall issue to the applicant a certificate on State registration or give a written notice of refusal of State registration (specifying and explaining the legal provisions which serve as a basis for the refusal)."

31. The relevant parts of Article 11 of the Law on State Registration, as in force at the material time, provided as follows:

Article 11. Ensuring legality in the application of the law

"11.3. State registration of an organisation ... wishing to obtain legal-entity status ... may be refused only in the following cases:

11.3.1. if the documents submitted to the relevant executive authority [the Ministry of Justice] are in contradiction to the Constitution of the Republic of Azerbaijan, this Law or other legislation;

...

11.3.4. if the deficiencies identified by the relevant executive authority [the Ministry of Justice] in the founding documents have not been rectified within the time period specified in Article 8.3 of this Law."

32. The relevant parts of Article 12 of the Law on State Registration, as in force at the material time, provided as follows:

Article 12. Main principles concerning the State register of legal entities

"12.8. The State register consists of the following:

...

12.8.3. information about branches or representative offices, as well as other institutions of a legal entity registered on the territory of the Republic of Azerbaijan."

33. The relevant parts of Article 14 of the Law on State Registration, as in force at the material time, provided as follows:

Article 14. Information to be included in the State register

"14.1. The following information about organisations listed in the State register must be included in the register's written records:

...

14.1.6. the name, surname, patronymic, nationality and place of residence of each founder of an organisation; if a founder is a legal person, its title, legal address and information about its registration;

...

14.1.8. location, organisational-legal form and information about the registration of institutions (*qurumlar*) created by a legal entity on the territory of the Republic of Azerbaijan or outside the territory of the Republic of Azerbaijan."

34. The relevant parts of Article 3 of the Law on non-governmental organisations (public associations and funds) of 13 June 2000 ("the Law on NGOs"), as in force at the material time, provided as follows:

Article 3. Title of a non-governmental organisation and its location

"3.2. The location of a non-governmental organisation shall be identified by its legal address, as indicated in its charter.
3.3. If the legal address of a non-governmental organisation changes, written information about that change shall be provided to [the Ministry of Justice] within a period not shorter than seven days (*qeyri-hökumət təşkilatının hüquqi ünvanı dəyişdikdə müvafiq icra hakimiyyəti orqanına bu barədə 7 gün müddətindən az olmamaq şərti ilə yazılı məlumat verilməlidir*)."
35. Article 45 of the 2000 Civil Code, as in force at the material time, provided as follows:
Article 45. Creation of a legal entity
"45.1. A legal entity is created by its establishment and by the preparation of its charter.
45.2. If a legal entity is created by several co-founders, they establish its charter and define rules governing their cooperation concerning the establishment of that legal entity ..., by signing a contract [between themselves]."
36. Article 51 of the 2000 Civil Code, as in force at the material time, provided as follows:
Article 51. Location of a legal person
"A place where a permanent body of a legal person is located shall be considered a location of that legal person."
37. The relevant parts of Article 59 of the 2000 Civil Code, as in force at the material time, provided as follows:
Article 59. Dissolution of a legal entity
"59.2. A legal entity may be dissolved:
...
59.2.2. If a court considers the registration of the legal entity to be invalid owing to breaches of the law committed during its establishment.
59.2.3. By a court order, if the legal entity engages in activities without the required permit (licence) or in activities that are prohibited by law, or if it otherwise commits repeated or grave breaches of the law, or if a public association or foundation systematically engages in activities that are contrary to the aims set out in its charter, as well as in other cases provided by the [Civil] Code.
59.3. A request to dissolve the legal entity on the grounds specified in Article 59.2 of this Code may be lodged by [the Ministry of Justice] or by that local self-administration authority to which the right to lodge such a request is granted by law."
38. A detailed description of other relevant provisions of the Law on NGOs and of the Law on State Registration, as well as of the relevant international documents, may be found in *Jafarov and Others v. Azerbaijan* (no. 27309/14, §§ 36-37, 41 and 43-44, 25 July 2019).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 11 OF THE CONVENTION
39. The applicants complained under Article 11 of the Convention that the repeated failures by the Ministry of Justice to register the EMC and to grant the association legal-entity status in a timely manner had amounted to a violation of their right to freedom of association.
40. The applicants also complained that the dissolution of the EMC, after it had finally been registered, had violated their right to freedom of association.

41. The relevant parts of Article 11 of the Convention read as follows:
"1. Everyone has the right ... to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."
A. Admissibility
42. The Court notes that the present complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.
B. Merits
1. Complaint concerning the repeated refusals and the delayed registration of the applicant association
(a) The parties' submissions
43. The applicants submitted that the Ministry of Justice had breached the relevant domestic provisions concerning the State registration of an association as a legal entity and that consequently, the registration of the EMC had been unlawfully and arbitrarily delayed. Also, the Ministry of Justice should have identified all the alleged deficiencies at the same time and given the applicants the opportunity to rectify them all at once, in accordance with Article 8.3 of the Law on State Registration.
44. The applicants furthermore argued that there had been no valid "exceptional" reason, as required by Article 8.2 of the Law on State Registration, to extend the time-limit for the examination of the registration documents, and that the Ministry of Justice had failed to reply to some of their requests for registration within the ten-day time-limit provided by Article 8.4 of the Law on State Registration.
45. The applicants also argued that without registration and legal entity status, the association had been unable to function properly and to engage in its primary activities.
46. The Government submitted that the actions of the Ministry of Justice had been in line with domestic law and that the reasons given by the Ministry for its decisions had been well-founded. The applicants had been seeking to secure the registration of their association on the basis of documents which did not meet the relevant requirements. Consequently, the Ministry of Justice had returned the registration documents so that the applicants could rectify the deficiencies contained in them.
47. The Government also argued that the domestic law had not prevented non-governmental organisations from functioning without registration. Therefore, the association could have engaged in its activities and even entered into various contracts (it could, for example, have rented premises and opened a bank account) in the absence of registration and without obtaining legal-entity status.
(b) The Court's assessment
(i) Whether there was interference

48. For the reasons set out in *Jafarov and Others v. Azerbaijan* (no. 27309/14, §§ 59-60, 25 July 2019), the Court rejects the Government's argument that domestic law had not prevented non-governmental organisations from functioning properly without registration.

49. The Court notes that the repeated failures by the Ministry of Justice to register the EMC resulted in a significant delay in respect of the registration procedures, which took almost two years. The EMC was unable to acquire legal-entity status during that entire period and, consequently, could not, *inter alia*, open a bank account, hire employees, or receive in its name any grants or financial donations which constituted one of the main sources of financing of non-governmental organisations. Therefore, the delay, in itself, amounted to an interference with the applicants' right to freedom of association (compare, *mutatis mutandis*, *Ramazanova and Others v. Azerbaijan*, no. 44363/02, § 60, 1 February 2007, and *Jafarov and Others*, cited above, § 61).

(ii) Whether the interference was lawful

50. The Court observes at the outset that it has already found a violation of Article 11 in a number of cases against Azerbaijan concerning allegations that the authorities delayed or even practically impeded the registration and therefore the functioning of non-governmental organisations by repeatedly returning or refusing registration requests for alleged failure to fulfil administrative formalities many of which did not have clear basis in domestic law (see *Jafarov and Others*, cited above; *Mehman Aliyev and Others v. Azerbaijan* [Committee], nos. 46930/10 and 11 others, 20 May 2021; and *Abdullayev and Others v. Azerbaijan* [Committee], nos. 69466/14 and 12 others, 20 May 2021). The present case discloses no significant difference.

51. Referring to its analysis in the above-mentioned cases, the Court notes that the Law on State Registration contained several provisions applicable to the procedure for registering NGOs as legal entities – in particular, Articles 8.3 – applicable to situations in which there were "deficiencies" in registration documents not warranting a "definitive" formal refusal to register an association, that is to say "rectifiable deficiencies" – and 11.3.1 – applicable to situations that warranted a "definitive" formal refusal to register an association (see paragraphs 30 and 31 above; for a more detailed analysis of these and other relevant provisions of the Law on State Registration by the Court, see *Jafarov and Others*, cited above, §§ 87-90; *Mehman Aliyev and Others*, cited above, § 39, and *Abdullayev and Others*, cited above, § 28).

52. In the present case, similarly to *Jafarov and Others*, *Mehman Aliyev and Others* and *Abdullayev and Others*, the wording of all of the Ministry of Justice's letters was ambiguous as to which of the above-mentioned provisions of the Law on State Registration had been applied. Thus, on the one hand, in all its letters the Ministry of Justice noted that the documents of the EMC contained deficiencies and were accordingly being "returned" (or "returned unexecuted"). That wording suggested that the Ministry intended to return the documents in order that the alleged deficiencies could be rectified, in accordance with Article 8.3 of the Law on State Registration, without adopting a definitive decision with regard to the requests for registration. However, the letters did not expressly specify a twenty-day rectification period. On the other hand, the Ministry of Justice cited Article 11.3.1 of the same Law as a basis for returning the registration documents. Such reference to Article 11.3.1 of the Law on State Registration suggested that each of the Ministry's replies constituted a "definitive" refusal to register the association. However, the letters of the Ministry of Justice did not state that registration had been formally "refused", but merely that the

documents were being "returned" – the term used in Article 8.3 of the Law (compare *Jafarov and Others*, cited above, § 91; *Mehman Aliyev and Others*, cited above, § 40; and *Abdullayev and Others*, cited above, § 29).

53. Moreover, the alleged deficiencies identified by the Ministry of Justice after the applicants' subsequent requests would already have been present in the registration documents submitted with their first or earlier requests. Nevertheless, the Ministry did not notify the applicants of all those alleged deficiencies after the initial review; instead, after each successive registration request had been lodged by the applicants, it addressed a new alleged deficiency found in the same registration documents (compare *Jafarov and Others*, cited above, § 92; *Mehman Aliyev and Others*, cited above, § 41; and *Abdullayev and Others*, cited above, § 30).

54. The domestic courts, when seized with the EMC's counteraction regarding the registration procedure (see paragraph 18 above), failed to assess the procedural correctness and consistency of the Ministry of Justice's responses, or to clarify the interplay between the rules provided under Articles 8.3 and 11.3.1 of the Law on State Registration. The courts reiterated the submissions made by the Ministry of Justice to the effect that the documents had been "returned" owing to deficiencies contained in them and held that the reasons indicated by the Ministry in its letters were lawful (see paragraphs 20 and 23-24 above). None of the domestic courts examined and explained the lawfulness of the references by the Ministry of Justice to Article 11.3.1 of the Law on State Registration (compare *Jafarov and Others*, cited above, § 93; *Mehman Aliyev and Others*, cited above, § 42; and *Abdullayev and Others*, cited above, § 31).

55. If the Ministry of Justice indeed intended to return the registration documents for rectification – as was argued by the Government in its observations before the Court (see paragraph 46 above) – the provisions of Article 8.3 of the Law on State Registration should have been applied correctly. In particular, the Ministry should have identified all the alleged deficiencies in one review and explicitly given the applicants a twenty-day rectification period (compare *Jafarov and Others*, cited above, § 94; *Mehman Aliyev and Others*, cited above, § 43; and *Abdullayev and Others*, cited above, § 32).

56. Having regard to the above, the Court finds that the Ministry of Justice did not comply with the requirements of domestic law concerning the registration procedure, which resulted in an unlawful delay in the registration of the EMC. Accordingly, the interference in the present case cannot be considered to have been "prescribed by law" within the meaning of Article 11 § 2 of the Convention. The case therefore follows the same pattern as observed in series of similar cases against Azerbaijan (see paragraph 50 above).

57. In view of the above finding, the Court considers that there is no need to examine the other arguments raised by the applicants in connection with the lawfulness of the interference (see paragraph 44 above).

58. Lastly, having regard to the manner in which the authorities treated the requests to register the applicant association in the present case, as analysed above, the Court considers it necessary to add that the Government have not convincingly shown that the repeated *de facto* refusals to register the association had aimed at ensuring compliance with the law and therefore at "prevention of disorder". Neither has it been shown that those refusals pursued any of the other aims that could justify an interference under Article 11 of the Convention. Therefore, the

interference with the applicants' right under that provision resulting from the protracted registration process did not pursue a legitimate aim.

59. There has accordingly been a violation of Article 11 of the Convention in respect of the delay in the registration of the EMC.

2. Complaint concerning the dissolution of the applicant association

(a) The parties' submissions

60. The applicants submitted that the findings of the domestic courts had not been factually well-founded or had not had an adequate legal basis, or both. The applicants argued, in particular, that the legal provisions cited by the courts either had not contained the specific requirements that had allegedly been breached or had not complied with the "quality of law" requirement of the Convention. They furthermore maintained that the Ministry of Justice had been informed of the change made to the list of the co-founders. The existence of the EMC's office at a different address had not affected its legal address, which had remained the same. Furthermore, at the material time the EMC had been in the process of establishing its representative offices and would have notified the Ministry of them as soon as they were established.

61. The applicants also submitted that the wording of Articles 59.2.2 and 59.2.3 of the Civil Code, cited by the domestic authorities, was vague and gave the Ministry of Justice and the domestic courts unlimited discretion in deciding whether a legal entity should be dissolved. The applicants argued that the alleged breaches, even if the allegations thereof had indeed been well-founded and based on clear legal provisions, had nevertheless been minor and technical in nature and could therefore not have served as justifiable grounds for the dissolution.

62. The applicants lastly argued that in any event, the dissolution of the EMC had not been necessary in a democratic society.

63. The Government submitted that the dissolution of the EMC had been in line with domestic law and that the reasons given for that measure had been well-founded, as the applicants had breached several provisions of the relevant domestic laws either before or after the registration of the association. Namely, they failed to inform the Ministry of Justice about the change to the list of the co-founders, a change of the EMC's legal address and the establishment of eight local representative offices.

64. The Government also argued that the decisions of the domestic authorities had been necessary in a democratic society.

(b) The Court's assessment

(i) General principles

65. The right to form an association is an inherent part of the right set forth in Article 11 of the Convention. The ability to establish a legal entity in order to act collectively within a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveals the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention

institutions (see, among many others, *Sidiropoulos and Others v. Greece*, 10 July 1998; § 40, *Reports of Judgments and Decisions* 1998-IV, and *Jafarov and Others*, cited above, § 54).

66. Although, within the context of Article 11, the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important for the proper functioning of democracy. For pluralism is also built on genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, and artistic, literary and socio-economic ideas and concepts. Harmonious interaction between persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see, among many others, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, ECHR 2004-I).

(ii) Whether there was interference

67. The Court considers that the dissolution of the EMC had amounted to an interference with the applicants' right to freedom of association.

68. The interference will not be justified under the terms of Article 11 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or aims.

(iii) Whether the interference was lawful

(*α*) Principles applicable to the lawfulness of the interference

69. The Court reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that an impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision as to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail (see, among many others, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I, and *Gorzelik and Others*, cited above, § 64). The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020, with further references).

70. In particular, it would be contrary to the rule of law for the discretion granted to the competent authorities to be expressed in terms of an unfettered power. The law must therefore indicate the scope of any such discretion conferred on them and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 249-50, 22 December 2020, with further references).

71. Domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (ibid., § 254, with further references).

72. However, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see, among many others, *Gorzelik and Others*, cited above, §§ 64-65; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; and *Selahattin Demirtaş*, cited above, § 250). The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover, and the number and status of those to whom it is addressed (see, among many others, the above-cited cases of *Gorzelik and Others*, § 65, and *Selahattin Demirtaş*, § 254).

73. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many others, *Gorzelik and Others*, cited above, §§ 65 and 100; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 110, ECHR 2015; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 144, 27 June 2017). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018; *Jafarov and Others,* cited above, § 69; and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020).

74. In assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard both to the text of the law and the manner in which it was applied and interpreted by the domestic authorities (see *Jafarov and Others,* cited above, § 70).

(β) Application of the above principles to the present case

75. In the present case, the EMC was dissolved on the basis of Articles 59.2.2 and 59.2.3 of the Civil Code, applied with further reference to the alleged breaches of the various provisions of the Law on State Registration, the Law on NGOs and the Civil Code (see paragraph 19 above).

76. While the applicants argued that, textually, Articles 59.2.2 and 59.2.3 of the Civil Code were worded in general terms and were therefore unforeseeable in their application (see paragraph 61 above), the Court notes that those provisions were apparently designed to cover a wide spectrum of situations that could warrant the dissolution of a legal entity and were, moreover, applicable to all types of legal entities. In particular, those provisions referred to "breaches of domestic law committed during [the legal entity's] establishment" (Article 59.2.2 of the Civil Code), unlicensed activities, "activities prohibited by law", "repeated or grave breaches of domestic law", an NGO systematically engaging in activities that were contrary to the aims set out in its charter and "other cases provided by the [Civil] Code" (Article 59.2.3 of the Civil Code) as grounds warranting the dissolution of a legal entity (see paragraph 37 above).

77. The Court therefore considers that it might have been inevitable for those provisions to be worded in terms that were arguably not very precise and were rather general or even vague; those terms would then be subject to practical interpretation and application by domestic courts. In this regard, the Court reiterates that such practical interpretation and application of the law by the courts must give individuals protection against arbitrary interferences (see, *mutatis*

mutandis, *Selahattin Demirtaş*, cited above, § 275). The Court must therefore examine the grounds on which the EMC was dissolved and the reasoning of the domestic courts' decisions.

78. The first ground for the dissolution in the present case was the finding that, in breach of Articles 5.1, 5.2 and 14.1.6 of the Law on State Registration and Article 45 of the Civil Code, before the registration of the EMC the applicants had failed to inform the Ministry of Justice whether or not Ms S.H. had withdrawn from the list of the co-founders; that the second and third applicants had not signed and submitted a contract (approved by a notary) establishing the association; and that, despite the warning given in this regard by the Ministry of Justice in its letter of 7 November 2007, the applicants had failed to rectify the lack of clarity in the list of the co-founders (see paragraph 19 (a) above).

79. The Court notes that under Articles 5.1 and 5.2 of the Law on State Registration, a request for an organisation to be registered as a legal entity had to be signed by its founders or by a person authorised to represent the founders and be approved by a notary. Article 14.1.6 of the Law on State Registration required that the relevant personal information in respect of each founder of an organisation be included in the State register. Under Article 45.2 of the Civil Code, if a legal entity was established by several co-founders they had to, *inter alia*, establish its charter and define rules governing their cooperation concerning the establishment of that legal entity, by signing a contract (see paragraphs 29, 33 and 35 above).

80. It appears from the material contained in the case file that the fifth and sixth registration requests, which were made after Ms S.H. had withdrawn from the list of the co-founders, were signed by the second applicant, who was one of the initial co-founders, and by the third applicant, who replaced Ms S.H. as a co-founder (see paragraph 13 above). Apparently, those requests contained the necessary relevant information about the second and third applicants and were approved by a notary. Having regard to the texts of Articles 5.1, 5.2 and 14.1.6 of the Law on State Registration, the Court observes that the domestic courts never explained in what way those requests or the information about the co-founders contained in them had not satisfied the requirements of those provisions. Moreover, even if Article 45 of the Civil Code specified that co-founders of a legal entity had to establish its charter and define rules governing their cooperation concerning the establishment of that legal entity, by means of "signing a contract", a more specialised provision – namely Article 5.4.1 of the Law on State Registration – required that co-founders submit to the Ministry of Justice "a decision founding the organisation and adopting its charter" along with their request for their legal entity to be registered (see paragraph 29 above). It was never argued that the second and third applicant failed to submit such a decision. In addition, neither Article 45 of the Civil Code, nor Articles 5.1, 5.2, 5.4.1 and 14.1.6 of the Law on State Registration, required the signing and submission of a "contract establishing an association, approved by a notary".

81. The Court also observes that Articles 5.1, 5.2 and 14.1.6 of the Law on State Registration did not require that the Ministry of Justice be specifically notified of a withdrawal of any of the co-founders of an as yet unregistered association. Furthermore, the domestic courts never explained why the fact that the name of Ms S.H. was not mentioned in the fifth and sixth requests for registration was, in itself, insufficient for the purposes of informing the Ministry of Justice that she had withdrawn as a co-founder of the association.

82. In respect of the first ground for dissolution, the Court notes, lastly, that Articles 5.1, 5.2 and 14.1.6 of the Law on State Registration did not contain any rules expressly regulating any procedures to be followed at co-founders' meetings. It is therefore unclear why an alleged failure by the co-founders "to follow a meeting agenda" – that is to say the fact that they eventually took decisions that were different from those initially scheduled in the agenda (which was considered by the Ministry of Justice, in its letter of 7 November 2007, to constitute a "deficiency" in the registration documents – see paragraph 10 above) – was found to have been in breach of those particular legal provisions.

83. The second ground for the dissolution was the finding that, in breach of Articles 3.2 and 3.3 of the Law on NGOs and Article 51 of the Civil Code, the EMC had failed to inform the Ministry of a change of its legal address (see paragraph 19 (b) above).

84. The Court notes that, under Article 3.2 of the Law on NGOs and Article 51 of the Civil Code, the official seat of a legal person was equated to its legal address and to the place where its "permanent body" sat. According to Article 3.3 of the Law on NGOs, if the legal address of a non-governmental organisation changed, the Ministry of Justice had to be notified about that change in written form (see paragraphs 34 and 36 above).

85. The Court observes that, according to the material in the case file, correspondence throughout the domestic court proceedings between the EMC and the courts and the Ministry of Justice was effected via the legal address as noted in the association' charter (namely, the address in Zig Yolu Street, Baku), indicating that the EMC's legal address did not change, but remained the same. The applicants argued that the mere fact that, in addition to its legal address, the EMC had another address and that its website mentioned that other address could not lead to the conclusion that the recorded legal address of the association had changed to a different one (namely, to the address on Vagif Avenue in Baku), and that therefore, in the absence of any change of legal address, they had no obligation under the relevant law to notify the Ministry of any such change. The domestic courts failed to address that argument. The Court notes in this regard that it has not been demonstrated in the case before it, either by the domestic authorities or the Government, that, apart from the requirement of having a registered legal address, the domestic law prohibited legal entities from having offices at two or more addresses.

86. The third ground for the dissolution was the finding that, in breach of Articles 4.2, 12.8.3 and 14.1.8 of the Law on State Registration, the EMC had failed to inform the Ministry of the establishment of its eight local representative offices (see paragraph 19 (c) above).

87. The Court notes that, under Articles 4.2, 12.8.3 and 14.1.8 of the Law on State Registration, information about branches, representative offices and other institutions created by a registered legal entity had to be included in the State register (see paragraphs 28 and 32-33 above).

88. The Court observes that, from the text of the above-mentioned provisions alone, it could not have been clear to the applicants whether a legal entity had to notify the Ministry of Justice as soon as a decision to create a representation was adopted, or whether such notification had to be carried out only after a representation had already been created and had started functioning. In this regard, the Court notes that no clarifications were given by the domestic courts in response to the EMC's argument that it was still in the process of creating its representative offices and would inform the Ministry about them as soon as they were established. In such circumstances, the Court

considers that it has not been demonstrated that, at the time of the lodging of the Ministry of Justice's claim requesting the EMC's dissolution, the applicants were actually in breach of any clearly foreseeable requirement prescribed by law in respect of what was found to be a third ground for dissolution.

89. Having regard to the considerations outlined in paragraphs 78-88 above, the Court furthermore notes that none of the alleged breaches of law (the alleged failure to inform the Ministry of Justice about a change to the list of co-founders, a change of the legal address, or about establishment of the local representative offices) appeared to have amounted to engaging in any unlicensed activities, "activities prohibited by law", or systematic activities contrary to the aims set out in the EMC's charter, as provided by Article 59.2.3 of the Civil Code. It appears that the domestic courts treated the alleged breaches as falling within the ambit of Article 59.2.2 of the Civil Code; however, the domestic courts' decisions did not contain any legal analysis as to whether all of them could indeed be considered to constitute "breaches of domestic law committed during the establishment [of the legal entity in question]". It was also implied that the alleged breaches fell within the ambit of Article 59.2.3 of the Civil Code too; however, the decisions in question likewise did not contain any assessment of whether they constituted "repeated or grave breaches of domestic law" or "other cases provided in the [Civil] Code".

90. In the Court's view, even assuming that there were factual and legal grounds for finding that the alleged breaches had been committed, those breaches clearly did not concern substantive issues related to the EMC's existence or activities and could only be characterised as alleged shortcomings or breaches of a procedural nature (contrast *Vona v. Hungary*, no. 35943/10, §§ 56-71, ECHR 2013, where the movement and the association in question were involved in the staging of anti-Roma rallies and paramilitary parades, and *MİHR Foundation v. Turkey*, no. 10814/07, §§ 41-43, 7 May 2019, where the foundation in question was no longer capable, for lack of financial means, of functioning in conformity with its aims). Therefore, they could be reasonably argued – as the applicants indeed argued – to have constituted rectifiable breaches of law falling outside the scope of both Articles 59.2.2 and 59.2.3 of the Civil Code and not warranting the dissolution of the EMC.

91. The above considerations, taken together, give strong indications that the specific grounds for the dissolution of the EMC either did not have a basis in domestic law or were based on legal provisions that were not foreseeably applicable to the alleged misconduct at hand; and that, moreover, the provisions of the Civil Code in respect of situations warranting the dissolution of a legal entity appeared to have been applied by the domestic courts in an unforeseeably broad manner, without due consideration of their applicability to the categories of breaches of law allegedly committed in the present case, and this denied the applicants the necessary protection against arbitrary interference. However, the Court notes that, in the present case, the above-mentioned issues concerning the quality of the law applied and the lawfulness of the interference are closely linked to broader issues arising in respect of whether the interference was "necessary in a democratic society" including the question of proportionality of the measures taken. Therefore, the Court will proceed to examine those broader issues before making its conclusion on all aspects of the alleged violation of Article 11 of the Convention (see, for a similar approach, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 65, ECHR

2009; *Koretskyy and Others v. Ukraine*, no. 40269/02, § 49, 3 April 2008; and *Gafgaz Mammadov v. Azerbaijan*, no. 60259/11, § 57, 15 October 2015).

(iv) Whether the interference pursued a legitimate aim and was necessary in a democratic society

(α) Applicable principles

92. The Court reiterates that the exceptions to freedom of association are to be construed strictly, and only convincing and compelling reasons can justify restrictions on that freedom. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those decisions delivered by independent courts (see, among many others, *Gorzelik and Others*, cited above, § 95; *Sidiropoulos and Others*, cited above, § 40; and *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, § 140, 16 July 2019).

93. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards that were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among many others, *Gorzelik and Others*, cited above, § 96; *Sidiropoulos and Others*, cited above, § 40; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, § 62, 19 January 2006; and *Zhdanov and Others*, cited above, § 141).

(β) Application of the above principles to the present case

94. The Court observes that, while the Ministry of Justice was vested with authority to initiate an action for the dissolution of the EMC, it was for the domestic courts to decide whether it was justified to apply that sanction. They were therefore required to provide relevant and sufficient reasons for their decisions.

95. The EMC challenged before the domestic courts the allegations made by the Ministry of Justice against it and their lawfulness. The domestic courts, however, failed to address any of those issues. They ignored pertinent arguments brought by the applicant association and its requests for specific witnesses to be summoned and questioned (see paragraphs 16-17, 20, 80-82, 85 and 88-90 above), and simply reiterated the submissions made by the Ministry of Justice and accepted the allegations against the EMC as true.

96. Most importantly, the domestic courts failed to conduct a balancing exercise and to assess the necessity of the interference for the achievement of a clear and concrete legitimate aim. The Court notes in this regard that even if it were established that the allegations laid against the applicants – the alleged failure to inform the Ministry of Justice of a change to the list of the co-founders, a change of its legal address and the establishment of its local representative offices – were factually well-founded and based on applicable and foreseeable legal provisions – which was not the case

(see paragraphs 75-91 above) – the domestic courts were required under the Convention to assess the seriousness of that "misconduct", which they failed to do.

97. Consequently, the Court considers that the domestic courts did not adduce "relevant and sufficient" reasons to justify the dissolution of the EMC.

98. Moreover, the Court reiterates that the alleged breaches attributed to the applicants constituted essentially procedural shortcomings (see paragraph 89 above) and considers that, given the circumstances pertaining to the present case, they were rectifiable. However, neither the Ministry of Justice nor the domestic courts explained why they regarded that the alleged breaches were impossible to remedy and justified outright dissolution of the EMC. Even if the provisions of the Civil Code that was applied in the present case had not provided for rectification procedures, the Court does not see why the Ministry of Justice could not have taken such steps of its own motion (compare and contrast *Tebieti Mühafize Cemiyyeti and Israfilov*, cited above, §§ 61 et seq.).

99. It also follows from the above that, in any event, having regard to the nature and severity of the sanction applied, the interference was disproportionate to any aim that could be legitimately pursued in the present case. In the Court's view, even assuming that the alleged "misconduct" required the application of a sanction, it did not warrant such a radical measure as the dissolution of the EMC. A more proportionate sanction could have been achieved by applying or introducing into the domestic law less radical alternatives to outright dissolution, such as a reprimand, a fine or the withdrawal of various privileges and benefits. Dissolution should not be the sole sanction available in respect of an association found to have breached the requirements of the domestic law, and it should be applied only in exceptional circumstances for very serious misconduct (ibid., §§ 43 and 82).

100. As to whether the interference in the present case could be said to pursue a legitimate aim, the Court observes the following. Even if the dissolution of the EMC could be said to be aimed at ensuring the well-functioning of the system of the State registration of NGOs and protecting State institutions and individuals from NGOs that might jeopardise them, the Court does not discern any threat to that system, or to the rights and interests of State institutions or individuals in that the EMC allegedly failed to inform the Ministry of Justice of the change to the list of the EMC's co-founders, a change of the legal address and establishment of local representative offices. This is so especially considering that the allegedly committed breaches were rectifiable (compare *Koretskyy and Others*, cited above, §§ 50-53).

(v) Conclusion

101. In view of the above and of its analysis in paragraphs 74-91 above, the Court finds that the dissolution of the EMC did not meet the lawfulness requirement of Article 11, only seemingly pursued a legitimate aim, and was not "necessary in a democratic society".

102. There has accordingly been a violation of Article 11 of the Convention in respect of the dissolution of the EMC.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

103. On 9 September 2014 the applicants' representative, Mr I. Aliyev, lodged a new complaint on their behalf, arguing that the seizure from his office of the entire case file relating to the applicants' pending application before the Court, together with all the other case files, had amounted to a

hindrance to the exercise of the applicants' right of individual petition under Article 34 of the Convention, the relevant parts of which read as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Submissions by the parties

104. The submissions made by the applicants and the Government were similar to those made by the parties in respect of the same complaint raised in the case of *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 57-60, 22 October 2015).

B. The Court's assessment

105. In *Annagi Hajibeyli* (cited above, §§ 64-79), having examined an identical complaint based on similar facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. The Court considers that the analysis and finding that it made in the *Annagi Hajibeyli* judgment also apply to the present application and sees no reason to deviate from that finding.

106. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

108. The applicants claimed 20,000 euros (EUR) jointly in respect of non-pecuniary damage.

109. The Government submitted that the amount claimed by the applicants was unsubstantiated and that a finding of a violation would constitute sufficient reparation in respect of any non-pecuniary damage suffered.

110. The Court awards the applicants jointly EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

111. The applicants also claimed EUR 5,900 in total for the costs and expenses incurred before the domestic courts and the Court. In support of their claim they submitted contracts signed with Mr I. Aliyev, who represented the applicants before the domestic courts and the Court, and with Ms N. Kamilsoy, who provided translation services. According to those contracts, the applicants would have to pay, in the event that the Court awards compensation, 3,000 Azerbaijani manats (AZN) for the legal fees incurred before the domestic courts and EUR 2,900 for those incurred before the Court to Mr I. Aliyev, and EUR 600 for translation services to Ms N. Kamilsoy.

112. With respect to the applicants' claim concerning the legal fees incurred before the domestic courts the Government submitted that Mr I. Aliyev had not represented the applicants before the Supreme Court. The Government also submitted that the amounts claimed by the applicants were excessive and asked the Court to adopt a strict approach in respect of the applicants' claims.

113. As to the Government's specific objection against the applicants' claim concerning the legal fees incurred before the domestic courts, the Court, having taken note of the documents in the case file, observes that that objection is unsubstantiated because Mr I. Aliyev participated in the proceedings before the Supreme Court as a representative along with the applicants' advocate, Mr A.R.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for the legal fees in the domestic proceedings and the proceedings before the Court, to be paid directly into the bank account of the applicants' representative, and EUR 600 for the translation services, plus any tax that may be chargeable to the applicants.

C. Default interest

115. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention in respect of the delay in the registration of the EMC;
3. *Holds* that there has been a violation of Article 11 of the Convention in respect of the dissolution of the EMC;
4. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros) to the applicants jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of legal fees, to be paid directly into the bank account of the applicants' representative;

(iii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicants, in respect of the other costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.
Victor Soloveytchik Registrar
Síofra O'Leary President