

UDC 347.1

DOI <https://doi.org/10.32840/1813-338X-2023.1.6>**Habibova Samaya Maharram**<https://orcid.org/0000-0002-1031-8544>Doctoral Candidate in the Constitutional Law Department
Baku State University

ISSUES CONCERNING THE REGISTRATION OF RELIGIOUS ASSOCIATIONS IN THE REPUBLIC OF AZERBAIJAN

The article examines some issues of state registration of religious associations in the Republic of Azerbaijan. Religious organizations, like other legal bodies, are reminded that it is only after state registration that they acquire full rights and legal competence. Various acts regulate the subject of religious associations' state registration. These acts differ in a few ways from one another on various aspects of religious groups' state registration. Based on a review of these legal documents, discrepancies between them are identified, and suggestions are made for modifying the law to resolve these issues. These inquiries include the following: the proposal to the Law of the Republic of Azerbaijan "On State Registration and the State Register of Legal Entities" that religious organizations can carry out activities only after passing state registration, on the regulation of documents for applying to state registration of religious organizations only on the basis of the Law "On Freedom of Religion" and in this regard, the introduction of appropriate amendments to the Law "On Registration and the State Register of Legal Entities", on the introduction of amendments to the Law "On Freedom of Religion" in connection with the requirement of the Civil Code of the Republic of Azerbaijan to determine the subject and purpose of the activity of a religious organization, etc.

In order to better align them with the requirements of the Civil Code of the Republic of Azerbaijan and the Law "On Freedom of Religion," some suggestions were made to the Administrative Regulation "On the Adoption of Applications and Documents for the State Registration of Religious Associations," which was confirmed by the decision of the State Committee of the Republic of Azerbaijan for work with religious organizations dated April 2, 2014.

Key words: the legal entity, religious organizations, registration, law, charter, regulations.

Introduction to the issue. religious organizations have a considerable impact on the process by which freedom of conscience and religion are realized, in the Republic of Azerbaijan. The availability of legal protections for the defense of fundamental human rights and freedoms, as well as the effective legal control of relationships involving the participation of religious groups, are crucial for the social and political life of society.

The extent of the problem's research. Religious groups were denied the rights of legal entities and were not acknowledged as subjects of legal relations for a very long time. Therefore, research on religious institutions only becomes available when a nation gains independence. Various aspects of the activities of religious organizations, as well as the problems of their registration, were reflected in the works of Askerova, S.S. Allahverdieva, I. Jafarov, A. Ganbarova, M. Kurbanly, M. Aliyeva, R. Mustafaeva, from Russian scientists M.V. Ilyichev, A.V. Pchelintsev, V.V. Ryakhovsky and others. However, there are no publications

devoted to the analysis of the registration of religious groups as a whole.

In other words, it's important to define the characteristics of religious organization registration in the Republic of Azerbaijan in light of the national legislative framework. To accomplish this, it is important to examine the accessible legal documents, especially the main legislative acts.

The purpose of this study is to analyze the main aspects of the state registration of religious associations in the Republic of Azerbaijan and put forward appropriate proposals for improving the legislation. The article outlines tasks to accomplish this goal, including an analysis of general registration-related issues for religious organizations, a review of state registration laws, a study of issues relating to registration documents and religious organization charters, and a study of issues relating to registration or refusal of registration.

Main content.

In relation to state legislation registering religious organizations. The issues of state

registration of religious associations are regulated by various acts in the Republic of Azerbaijan.

These include:

– The Republic of Azerbaijan’s Civil Code governs broad rules on legal bodies, including issues relating to their formation and dissolution [3].

All legal entities must be registered with the state under the provisions of the Republic of Azerbaijan’s “On Registration and the State Register of Legal Entities” law [5].

Law of the Republic of Azerbaijan “On freedom of religion” establishing the status, rights and obligations of religious entities, regulating relations arising in connection with the activities of religious entities [6];

Administrative Regulation “On the Acceptance of Applications and Documents for the State Registration of Religious Associations” Adopted by the State Committee of the Republic of Azerbaijan for Work with Religious Organizations on April 2, 2014, № 05 [2].

The following presentation will show that these acts differ in a few ways on various topics related to religious groups’ state registration.

General issues of registration of religious organizations. The Republic of Azerbaijan’s legislative acts have a clear position on the legitimacy and authority of religious organizations. An organization that is legally recognized must register with the appropriate executive authorities (Civil Code of the Republic of Azerbaijan, Article 48.1) [3].

Religious groups, like other legal entities, only acquire full legal character after being registered with the state. According to S.S. Allahverdiev, the registration of legal entities should be understood as the approval of the civil legal capacity (civil personality) of organizations wishing to obtain the status of a legal entity, the determination of their legal status and the entry of information about them into the state register of legal entities [1, p. 463].

The act of state registration, with which the creation of a civil legal personality in an organization is related, is a constitutive value for the emergence of a legal entity [8, p. 211]. According to the Law, the state registration of legal entities is the approval of the eligibility of structures wishing to obtain the status of a legal entity in the territory of the Republic of Azerbaijan, as well as representative offices or branches established by foreign legal entities in the territory of the Republic of Azerbaijan, the establishment of their legal status and the entry of information (records) into the state register of legal entities about them (Article 2.0.7.

of the Law of the Republic of Azerbaijan On State Registration and State Register of Legal Entities) [5].

Those who wish to have a structure, as well as a representative office or branch of a foreign legal entity, have the status of a legal entity in the territory of the Republic of Azerbaijan must register with the state and be listed in the state register. (Article 4.1. Law of the Republic of Azerbaijan “On State Registration and State Register of Legal Entities”) [5].

In accordance with the Republic of Azerbaijan’s “On Freedom of Religion” Law, no religious formation may engage in any activity prior to being officially registered with the appropriate administrative authority and included on the state register of religious formations (Article 12) [6]. However, there is some disagreement between the laws on this matter. As a result, the Republic of Azerbaijan’s Law “On State Registration and the State Register of Legal Entities” only relates to entities that can conduct their business, public companies, and representative offices or branches of foreign legal entities [5].

As can be observed, this law does not include a clause stating that religious formations must be registered with the state before engaging in activities. The second clause of Article 4.1 of the Law of the Republic of Azerbaijan “On State Registration and State Register of Legal Entities” is therefore proposed to read as follows. Commercial groups, public legal entities, religious organizations, and representative offices or branches of foreign legal entities may only conduct activities after obtaining state registration.

State regulation of registration of religious organizations. The state body carrying out the state registration of religious formations is the State Committee of the Republic of Azerbaijan for work with religious formations [9]. The Committee was established by the Decree of the President of the Republic of Azerbaijan dated June 21, 2001. The State Committee has been assigned such tasks as creating appropriate conditions for the implementation of Article 48 of the Constitution of the Republic of Azerbaijan, the implementation of state policy in the field of religious activities, compliance with the provisions of the law in connection with religious formations, coordination of the activities of relevant executive authorities in connection with religious formations.

Among the main tasks of the Committee, one can single out the creation of appropriate conditions for the exercise of freedom of religion, ensuring control over the observance of legislative

acts in connection with freedom of religion, conducting state registration of religious structures in accordance with the legislation of the Republic of Azerbaijan, ensuring that amendments and additions are made in the appropriate order to the statutes (provisions) of these structures, assisting in strengthening mutual understanding between religious structures of different religions, tolerance and respect for each other, preventing cases of discrimination and confrontation on religious grounds, other negative phenomena, coordinating the activities of executive authorities in connection with religious affairs and exercising control over this activities, etc. Law of the Republic of Azerbaijan "On freedom of religion": religious organizations (religious communities) apply to the relevant body determined by the executive branch for registration, submitting the founding protocol, charter and application attached to other documents provided for by the Law of the Republic of Azerbaijan "On state registration and register legal entities", considering the documents specified in this Law.

Issues related to registration documents.

The Law "On Registration and the State Register of Legal Entities" in relation to various legal entities (non-governmental organizations, political parties, non-profit legal entities, etc.), depending on the specifics, provides for various forms of documents for their registration [5]. The situation with religious organizations, however, is different. The Law on Religious Organizations only mentions the document confirming the payment of the state fee and the identity document of the founder. Therefore, we consider it more appropriate to regulate documents for applying for state registration of religious organizations only by the Law "On Freedom of Religion" and, in this regard, to introduce an additional article 5.4-1 into the Law "On Registration and the State Register of Legal Entities" with the following content: In accordance with the provisions outlined in the Law "On Freedom of Religion". issues pertaining to the state registration of religious groups are regulated. It should be noted that both the Law of the Republic of Azerbaijan "On freedom of religion" and the Administrative Regulations "On the adoption of applications and documents for the state registration of religious associations" put forward requirements for additional documents for the state registration of religious centers and institutions, spiritual educational institutions and religious communities.

The following documents are necessary for religious centers, institutes, and institutions of higher learning to be registered with the state:

- Application for a religious organization to be registered with the state, signed by the founder (or, in the case of many founders, by all the founders) or by a trustee they selected in the proper manner and attested by a notary;

- decisions on the establishment, approval of the charter and formation of the governing bodies of a religious organization (constituent protocol)

- signed by the founders or their representatives;

- a document confirming the legal address (information on the location of the permanent body) of the religious organization;

- document confirming the payment of the state fee [2].

If the required documents must be notarized or otherwise provided by law, then electronic copies of these documents are presented, and after receiving the results, then the documents themselves. It should be noted that, despite the fact that clause 2.6.2 of the Regulations lists documents for the state registration of religious centers and institutions, as well as religious educational institutions, the third paragraph uses the words "religious communities". *The term "religious association" is suggested to take the place of this phrase.* Other regulations are offered for the state registration of religious communities.

First of all, religious groups are only permitted to function after submitting the necessary paperwork, which will include the official addresses of the places of worship and the names of the priests. Another significant difference is that documents for registration are presented by a religious center and representations of a religious community are attached to these documents. According to the legislation, a religious community is created by at least 50 (fifty) citizens of the Republic of Azerbaijan who have reached the age of majority. Therefore, to register a religious community, first of all, a signed application by 50 (fifty) co-founders and a notarized application is required [6]. The submitted application is accompanied by a list of surnames: at least 50 (fifty) persons-founders, or their representatives (authorized) at the age of majority, including copies of documents confirming data on their citizenship, home address and date of birth, the basics of religious education, information about the date of creation of this community, the forms and methods of its activities, its traditions, attitudes towards family, marriage and education, as well as information about the restrictions on the rights of members of this community [2].

We consider it necessary to clarify the list of records needed for a religious group to be registered with the state.

First, only section 2.6.1 of the Regulations, which sets the list of documents necessary for the state registration of a religious community, provides copies of the founder's identity certificates.. We believe it is reasonable to include this requirement in clause 2.6.2, which creates a list of paperwork needed for religious institutions and centers of worship as well as institutions of higher learning to be registered with the state.

Secondly, religious communities can only be created by citizens of the Republic of Azerbaijan. According to Art. 1 of the Law of the Republic of Azerbaijan "On the identity card of a citizen of the Republic of Azerbaijan", an identity card of a citizen of the Republic of Azerbaijan is a document proving the identity of a citizen of the Republic of Azerbaijan on the territory of the Republic of Azerbaijan [7]. Therefore, we consider appropriate the words "documents confirming data on their citizenship", enshrined in the fourth paragraph of Art. 12 of the Law "On Freedom of Religion" and the words "identity documents", enshrined in paragraph 7 of clause 2.6.1, should be replaced with the words "identity card".

Thirdly, despite the fact that both the Law and the Regulations provide for the submission of an application through authorized persons, they do not mention the requirement to provide a document confirming these powers. In the page And in Art. 5.3.3. The Law "On State Registration and the State Register of Legal Entities" notes that when an application is signed by an authorized person, it also contains information about the power of attorney, but the issue of presentation of documents by an authorized person is not regulated. Therefore, in our opinion, both the Law and the Regulations should contain a provision that, when an application is submitted by an authorized person, a document confirming these powers (a power of attorney certified by a notary) must be attached to it.

The Law states that the name of a religious organization must reflect its organizational and legal structure, the type of activities it engages in, and the faith to which its members belong. Religion-related organizations are not allowed to utilize the names of government entities or well-known Azerbaijanis in their titles. It is forbidden for a religious organization to conduct activities outside of its registered legal address, with the exception of a religious center or branch. The territory of location of a religious center (department) in

the Republic of Azerbaijan is not limited (Article 9-1 of the Law "On freedom of religion") [6].

Constitution of a religious group. Their charter serves a distinctive function among the documents needed for religious groups to be registered with the state. Religious organizations follow the law and recognized charters when conducting their business (regulations). The charter of a religious organization is adopted by its founders at a constituent assembly (Articles 7 and 11). A legal entity is often established and given a charter in accordance with civil law. The charter is a local legal act. It is characterized by such features as:

- normativity;
- consistency;
- the obligation of participants and members of the labor collective of a legal entity;
- written form;
- enforcement in case of violation by coercion [4, p. 56].

When multiple founders get together to form a legal entity, they come to an agreement and specify the legal entity's charter, the process for working together to form it, the requirements for transferring property to it, and the terms for taking part in its operations. The charter of a legal entity, approved by the founders, is the founding document of a legal entity. The charter defines the name of the legal entity, its location, the procedure for managing activities, as well as the procedure for its liquidation. The subject and objectives of an organization's activities are specified in its charter (Article 45.47 of the Civil Code of the Republic of Azerbaijan) [3].

At the constituent assembly, a religious organization's founders adopt the charter. The Law mandates that a religious organization's charter detail:

- Name, legal address, organization type, and religion of the religious body;
- goals and objectives of the religious organization, as well as the main forms of activity;
- the structure of the religious organization, the rules of administration, the governing bodies and the rules for their organization, as well as the powers of these bodies;
- conditions and procedure for accepting and withdrawing from the founders of a religious organization;
- sources of formation of the property of a religious organization;
- adoption of the charter and its amendment process;
- the process for a religious organization's liquidation and the utilization of its assets in the case of a liquidation (Article 11) [6].

As can be seen, despite the fact that religious organizations are a subspecies of non-profit legal entities, the law "On freedom of religion" does not provide for the requirements of the Civil Code of the Republic of Azerbaijan to determine the subject and purpose of its activities. Therefore, it is considered appropriate to amend Article 11.2.2 of the Law as follows:

Subject, obligations, and primary activities of a religious organisation are listed in 11.2.2.

Religious organizations do not register documents describing their religious activity or addressing other internal conflicts with official agencies

Registration or refusal of registration. The religious organization must inform the registration body of any changes to the constituent documents or registration information within 20 days and within 10 days of any changes to the legal address.

The responsible department for the registration of religious organizations within 30 days checks the compliance of the application and other documents with the Constitution of the Republic of Azerbaijan, the Law "On Registration and State Register of Legal Entities" and other legislative acts of the Republic of Azerbaijan. This window can be extended for an additional 30 days if more research is required.

The following reasons are specified by law as grounds for state registration denial:

1) if a religious organization's objectives, or the core beliefs and tenets of the religious teachings it propagates, conflict with the Republic of Azerbaijan's Constitution and laws;

2) if the created body is not recognized as a religious organization;

3) if the presented charter (regulation) and other documents contradict the requirements of the legislation of the Republic of Azerbaijan or the information reflected in them is unreliable [6].

A religious organization must be informed when its application for state registration is denied, together with the legal standards that led to the refusal.

Other reasons are not grounds for denial in addition to those stipulated by Republic of Azerbaijan law for the registration of a religious community. The state registration authority issues a document to a religious organization that has passed state registration, confirming their state registration – a certificate of state registration [5].

Список використаної літератури:

1. Аллахвердиев С. С. Курс гражданского права Азербайджанской Республики. Том 1 (2-ое изд.). Баку : Дигеста, 2008, 944 с.
2. Административный Регламент «По принятию обращений и документов для государственной регистрации религиозных объединений» / Принят 2 апреля 2014 года [Электронный ресурс]. Ссылка: / <https://e-qanun.az/framework/27557>
3. Гражданский Кодекс Азербайджанской Республики (на азербайджанском языке) / Принят 28 декабря 1999 года. / e-qanun.az. Министерство Юстиции Азербайджанской Республики: Единая электронная база правовых актов [Электронный ресурс]. Ссылка: <https://www.e-qanun.az/framework/46944>
4. Долинская В. В. Источники гражданского права: учеб. пособие. В. В. Долинская ; МГИМО(У) МИД России, каф. междунар. частного и гражданского права. М. : МГИМО-Университет, 2005. 81 с.
5. Закон Азербайджанской Республики «О регистрации и государственном реестре юридических лиц» (на азербайджанском языке) / Принят 12 декабря 2003 года (№ 560-IQ): / e-qanun.az. Министерство Юстиции Азербайджанской Республики: Единая электронная база правовых актов [Электронный ресурс]. Ссылка: <https://e-qanun.az/framework/5403>
6. Закон Азербайджанской Республики «О свободе вероисповедания» // Принят 20 августа 1992 года e-qanun.az. Министерство Юстиции Азербайджанской Республики: Единая электронная база правовых актов [Электронный ресурс]. Ссылка: <https://e-qanun.az/framework/7649>
7. Закон Азербайджанской Республики «Об удостоверении личности гражданина Азербайджанской Республики» // Принято 14 июня 1994 года (№ 817) // e-qanun.az. Министерство Юстиции Азербайджанской Республики: Единая электронная база правовых актов [Электронный ресурс]. Ссылка: <https://e-qanun.az/framework/9009>
8. Козлова Н. В. Понятие и сущность юридического лица. Очерк истории и теории : учебное пособие / Козлова Н.В.; науч. ред.: Ем В. С. М.: Статут, 2003. 318 с.
9. Указ Президента Азербайджанской Республики «О применении Закона Азербайджанской Республики «О регистрации и государственном реестре юридических лиц» (на азербайджанском языке) // Принят 12 декабря 2003 года (№ 48): / e-qanun.az. Министерство Юстиции Азербайджанской Республики: Единая электронная база правовых актов [Электронный ресурс]. Ссылка: <https://e-qanun.az/framework/6011>

References:

1. Allahverdiev S. S. Kurs grazhdanskogo prava Azerbajdzhanskoj Respubliki [Civil law course of the Azerbaijan Republic]. Tom 1 (2-oe izd.). Baku : Digesta, 2008, 944 s. (in Russian)
2. Administrativnyj Reglament «Po prinyatiyu obrashchenij i dokumentov dlya gosudarstvennoj registracii religioznych ob»edinenij» [Administrative Regulations «On the acceptance of applications and documents for state registration of religious associations»]. Prinyat 2 aprelya 2014 goda [Elektronnyj resurs]. <https://e-qanun.az/framework/27557> (in Russian)
3. Grazhdanskij Kodeks Azerbajdzhanskoj Respubliki (na azerbajdzhanskom yazyke) // Prinyat 28 dekabrya 1999 goda. [Civil Code of the Republic of Azerbaijan (in Azerbaijani)]. e-qanun.az. Ministerstvo YUsticii Azerbajdzhanskoj Respubliki: Edinaya elektronnyaya baza pravovyh aktov [Elektronnyj resurs]. <https://www.e-qanun.az/framework/46944> (in Russian)
4. Dolinskaya V. V. Istochniki grazhdanskogo prava: ucheb. Posobie [Sources of civil law: textbook]. V. V. Dolinskaya; MGIMO(U) MID Rossii, kaf. mezhdunar. chastnogo i grazhdanskogo prava. M. : MGIMO-Universitet, 2005. 81 s. (in Russian)
5. Zakon Azerbajdzhanskoj Respubliki «O registracii i gosudarstvennom reestre yuridicheskix lic» (na azerbajdzhanskom yazyke) // Prinyat 12 dekabrya 2003 goda (№ 560-IQ): [Law of the Republic of Azerbaijan “On registration and state register of legal entities” (in Azerbaijani)] e-qanun.az. Ministerstvo YUsticii Azerbajdzhanskoj Respubliki: Edinaya elektronnyaya baza pravovyh aktov [Elektronnyj resurs]. <https://e-qanun.az/framework/5403> (in Russian)
6. Zakon Azerbajdzhanskoj Respubliki «O svobode veroispovedaniya» . Prinyat 20 avgusta 1992 goda [Law of the Republic of Azerbaijan «On freedom of religion» // Adopted on August 20, 1992. Ministry of Justice of the Republic of Azerbaijan: Unified electronic database of legal acts]. e-qanun.az. Ministerstvo YUsticii Azerbajdzhanskoj Respubliki: Edinaya elektronnyaya baza pravovyh aktov [Elektronnyj resurs]. <https://e-qanun.az/framework/7649> (in Russian)
7. Zakon Azerbajdzhanskoj Respubliki «Ob udostoverenii lichnosti grazhdanina Azerbajdzhanskoj Respubliki». Prinyato 14 iyunya 1994 goda (№ 817) [Law of the Republic of Azerbaijan «On the identity card of a citizen of the Republic of Azerbaijan». e-qanun.az. Ministerstvo YUsticii Azerbajdzhanskoj Respubliki: Edinaya elektronnyaya baza pravovyh aktov [Elektronnyj resurs]. Ssylka: <https://e-qanun.az/framework/9009> (in Russian)
8. Kozlova N. V. Ponyatie i sushchnost' yuridicheskogo lica. Ocherk istorii i teorii [The concept and essence of a legal entity. Essay on history and theory. Textbook]. Uchebnoe posobie / Kozlova N. V. ; Nauch. red.: Em V. S. M. : Statut, 2003. 318 s. (in Russian)
9. Ukaz Prezidenta Azerbajdzhanskoj Respubliki «O primenenii Zakona Azerbajdzhanskoj Respubliki «O registracii i gosudarstvennom reestre yuridicheskix lic» [Decree of the President of the Republic of Azerbaijan “On the application of the Law of the Republic of Azerbaijan “On registration and state register of legal entities”]. (na azerbajdzhanskom yazyke) // Prinyat 12 dekabrya 2003 goda (№ 48): / e-qanun.az. Ministerstvo YUsticii Azerbajdzhanskoj Respubliki: Edinaya elektronnyaya baza pravovyh aktov [Elektronnyj resurs]. Ssylka: <https://e-qanun.az/framework/6011> (in Russian)

Хабібова Самая Магеррам. Питання щодо реєстрації релігійних об'єднань в Азербайджанській Республіці

У статті розглядаються деякі питання державної реєстрації релігійних об'єднань в Азербайджанській Республіці. Релігійні організації, як і інші юридичні особи, нагадують, що лише після державної реєстрації вони набувають повноти прав та дієздатності. Тематика державної реєстрації релігійних об'єднань регулюється різними актами. Ці акти децю відрізняються один від одного щодо різних аспектів державної реєстрації релігійних груп. За результатами розгляду цих нормативно-правових документів виявлено розбіжності між ними та внесено пропозиції щодо внесення змін до законодавства для вирішення цих питань. Ці запити включають наступне: пропозицію до Закону Азербайджанської Республіки «Про державну реєстрацію та державний реєстр юридичних осіб» про те, що релігійні організації можуть здійснювати діяльність лише після проходження державної реєстрації, щодо регламентації документів для звернення до держ. реєстрації релігійних організацій лише на підставі Закону «Про свободу віросповідання» та у зв'язку з цим передбачається внесення відповідних змін до Закону «Про реєстрацію та державний реєстр юридичних осіб», щодо внесення змін до Закон «Про свободу віросповідання» у зв'язку з вимогою Цивільного кодексу Азербайджанської Республіки визначати предмет і мету діяльності релігійної організації тощо. З метою кращого приведення їх у відповідність із вимогами Цивільного кодексу Азербайджанської Республіки та Закону «Про свободу віросповідання» були внесені деякі пропозиції до Адміністративного регламенту «Про прийняття заяв і документів для державної реєстрації релігійних організацій». Асоціації», що було підтверджено рішенням Державного комітету Азербайджанської Республіки по роботі з релігійними організаціями від 2 квітня 2014 року.

Ключові слова: юридична особа, релігійні організації, реєстрація, закон, статут, положення.