

CONSTITUTIONAL LAW ON THE HUMAN RIGHTS COMMISSIONER (OMBUDSMAN) OF THE REPUBLIC OF AZERBAIJAN

Unofficial translation

CHAPTER I FOUNDATIONS OF THE ACTIVITIES AND APPOINTMENT OF THE HUMAN RIGHTS COMMISSIONER (OMBUDSMAN)

Article I. Foundations of the activities of the Human Rights Commissioner

1.1. The office of the Human Rights Commissioner of the Republic of Azerbaijan (hereinafter referred to as "the Commissioner") shall be set up to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan and to prevent violation of human rights in cases envisaged by this Constitutional Law.

1.2. The Commissioner fulfills the functions of the National Preventive Mechanism in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the purpose of preventing torture and other cruel, inhuman and degrading treatment or punishment s/he on regular basis or in the circumstances deemed necessary visits places which detained persons cannot leave on their own will.

1.3. The Commissioner supervises over execution of duties by the information holding state bodies, municipalities and state officials in accordance with the requirements of the Law of the Republic of Azerbaijan "On access to information".

1.4. In accordance with the directions of his/her activities the Commissioner co-operates with local, regional and international organisations.

1.5. The activities of the Commissioner shall not restrict and substitute the competence of other governmental bodies ensuring the protection of and restoration of violated human rights and freedoms.

1.6. Investigation of the activities of the President of the Republic of Azerbaijan, deputies of the Milli Mejlis of the Republic of Azerbaijan and the judges of the Republic of Azerbaijan shall not be subjected to the powers of the Commissioner.

1.7. The Commissioner may submit motions to the President of the Republic of Azerbaijan with regard to granting pardon, citizenship and political asylum.

1.8. The Commissioner may submit motions to the Milli Mejlis of the Republic of Azerbaijan with regard to the adoption or review of laws with a view to ensuring human rights and freedoms. The Commissioner may submit a motion to the Milli Mejlis of the Republic of Azerbaijan with regard to declaring amnesty.

1.9. The Commissioner may examine complaints on violations of human rights relating to red tape, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments.

1.10. The activities of the Commissioner shall be based on the principles of publicity, transparency, legality, justice, and impartiality.

Article 2. Election of the Commissioner

2.1. The Commissioner shall be elected by 83 votes majority of the Milli Mejlis of the Republic of Azerbaijan from among three candidates nominated by the President of the Republic of Azerbaijan.

2.2. If the Milli Mejlis of the Republic of Azerbaijan fails to come at decision with regard to these three candidates, the President of the Republic of Azerbaijan shall, within 15 days, submit a new list of three candidates to the Milli Mejlis of the Republic of Azerbaijan.

Article 3. Requirements concerning the candidature of the Commissioner

3.1. Any citizen of the Republic of Azerbaijan of high moral character and aged not less than 30 years who has a higher education and experience in the field of human rights protection may be elected as a Commissioner.

3.2. A person who possesses a dual citizenship, or has obligations before other states, or works in legislative, executive and judicial bodies, or is engaged in any lucrative activity, excluding research, teaching and creative activities, or the legal incapacity of which has been judicially established, or has been convicted of a serious or particularly serious crime may not become a Commissioner.

3.3. The Commissioner may not be engaged in any political activity and may not be a member of any political party. The Commissioner may not be represented in the leadership of any non governmental organisation.

3.4. The Commissioner shall, within five days of his or her election, waive any activity incompatible with his or her status.

3.5. On the day of his or her election the Commissioner shall make an oath at the Milli Mejlis of the Republic of Azerbaijan as follows: "I swear to faithfully and honestly fulfil my powers as the Human Rights Commissioner of the Republic of Azerbaijan, to observe the Constitution and laws of the Republic of Azerbaijan, and to act independently and impartially".

Article 4. Term of office of the Commissioner

4.1. The Commissioner shall be elected for a period of 7 years.

4.2. The same person may hold the post of Commissioner not more than twice.

4.3. If the new Commissioner is not re-elected before the day of expiry of term of the previous, the acting Commissioner continues fulfilling his/her functions. In these circumstances the term of

the Commissioner is considered to be extended until re-election of a new Commissioner.

Article 5. Safeguards of the independence of the Commissioner

5.1. The Commissioner shall be independent and obey only the Constitution and laws of the Republic of Azerbaijan.

5.2. The independence of the Commissioner shall be ensured by the following:

5.2.1. he or she shall not be replaced, while in office;

5.2.2. he or she shall enjoy immunities;

5.2.3. it shall be inadmissible to interfere with his or her activities by any governmental or municipal body or official;

5.2.4. he or she shall be provided with financial and social guarantees.

5.3. Declaration of a state of emergency or martial law shall not cease or restrict the activities of the Commissioner.

Article 6. Immunities of the Commissioner

6.1. The Commissioner shall be inviolable while in office.

6.2. The Commissioner, while in office, shall not be subjected to criminal or administrative proceedings, search, examination, shall not be arrested or detained, save in cases where he or she was caught red-handed. In a case, where the Commissioner is caught red-handed, the body that has arrested the Commissioner, shall, within 24 hours, inform the Milli Mejlis of the Republic of Azerbaijan and the Prosecutor-General of the Republic of Azerbaijan.

6.3. The inviolability of the Commissioner may be terminated only on a decision of the Milli Mejlis of the Republic of Azerbaijan taken by 83 votes majority following a motion of the Prosecutor-General of the Republic of Azerbaijan.

6.4. The inviolability of the Commissioner shall extend also to his or her home, service premises, means of transport and communication, correspondence, private property and documents.

6.5. Any former Commissioner shall remain inviolable for the activities conducted and the opinions expressed while performing the powers of Commissioner. Criminal or administrative proceedings with regard to offences committed by the Commissioner in that period shall be carried out as provided for in Art. 6.3 of the present Law.

Article 7. Termination of powers of the Commissioner before expiry of his or her term of office

7.1. Powers of the Commissioner shall be terminated before expiry of his or her term of office by a decision of the Milli Mejlis of the Republic of Azerbaijan taken by 83 votes majority on its own initiative or following a recommendation of the President of the Republic of Azerbaijan in cases, where:

7.1.1. the requirements relating to the Commissioner have been violated;

7.1.2. the Commissioner has completely lost his or her capacity to perform his or her duties.

7.2. In cases, where the following circumstances are declared at the Milli Mejlis of the Republic of Azerbaijan, the Chairperson of the Milli Mejlis by his or her decree shall terminate powers of the Commissioner before expiry of term of office of the latter:

7.2.1. death of the Commissioner;

7.2.2. a judgement of conviction in force delivered in respect of the Commissioner;

7.2.3. a written request of the Commissioner for resignation.

7.3. Where powers of the Commissioner are terminated before expiry of his or her term of office, the President of the Republic of Azerbaijan shall, within 30 days, submit to the Milli Mejlis of the Republic of Azerbaijan a new list of three candidates for the election of a new Commissioner. The Milli Mejlis of the Republic of Azerbaijan shall, within 15 days, adopt an appropriate decision on the election of the Commissioner.

CHAPTER II INVESTIGATION OF COMPLAINTS ON VIOLATIONS OF HUMAN RIGHTS AND EXECUTION OF FUNCTIONS OF THE NATIONAL PREVENTIVE MECHANISM

Article 8. Submission of complaints

8.1. The Commissioner shall examine complaints on violations of human rights from citizens of the Republic of Azerbaijan, foreigners and stateless persons, as well as legal entities (hereinafter referred as "applicant").

8.2. A complaint may also be lodged by a third person or a non governmental organisation with consent of the person human rights of which have allegedly been violated. If it is impossible to obtain consent of the person human rights of which have allegedly been violated (if that person died, lost his or her legal capacity etc.), a complaint may be lodged by a third person or a non-governmental or ganisation without consent.

8.3. The Commissioner shall not receive complaints from govermental bodies.

8.4. A complaint may be lodged with the Commissioner within a period of one year from the date on which an alleged violation of rights of the applicant occurred or he or she became aware of that violation.

8.5. Complaints addressed by persons held in penitentiary institutions or detention centres shall be delivered to the Commissioner within 24 hours without being subjected to any kind of censorship.

Article 9. Contents of a complaint

9.1. A complaint shall set out: the full name and address of the applicant; the essence of a decision or an act (or an omission) allegedly having violated his or her rights; the place and date of writing the complaint; and the signature of the applicant. Any other materials or judicial decisions relating to the complaint may be added to that complaint.

9.2. If the full name and address of an applicant are not indicated in a complaint, the latter shall be considered to be anonymous and shall not be pursued, save in cases referred to in Art. 9.3. of the present Law.

9.3. If the circumstances indicated in an anonymous complaint are attested by sufficiently evidential and substantiated facts, the Commissioner may admit such complaint for examination.

9.4. If a complaint is submitted orally, a Commissioner Office member shall note down the contents of the complaint on a special letterhead, which shall be signed by the applicant.

9.5. Upon a request of the applicant, the Commissioner shall keep secret the data concerning that person.

Article 10. Taking of a decision in respect to a complaint

10.1. In respect to a complaint on violation of human rights lodged with the Commissioner, he or she may take one of the following decisions:

10.1.1. accepts the complaint for investigation;

10.1.2. refuses to pursue the complaint.

10.2. In case of refusing to pursue the complaint, the Commissioner shall, within 10 days, submit to an applicant substantiated written reply.

Article 11. Grounds for refusing a complaint

11.1. The Commissioner shall not investigate complaints in the following cases:

11.1.1. the requirements of article 8.4. of the present Law have been violated;

11.1.2. the complaint is beyond the competence of the Commissioner;

11.1.3. a complaint is anonymous save in cases referred to in Art. 9.3 of the present Law;

11.1.4. a complaint is being examined within court proceedings;

11.1.5. the re-submitted petition does not contain any new information, facts and evidence.

Article 12. Procedure of investigation of complaints on violations of human rights and execution of functions of the national preventive mechanism

12.1. While investigating the circumstances indicated in a complaint on violations of human rights, the Commissioner shall receive observations as to that complaint from the body or official complained of. Within 10 days the observations shall be submitted to the Commissioner.

12.2. While investigating the circumstances indicated in a complaint on human rights violation and while executing the functions of the national preventive mechanism the Commissioner shall have the following rights:

12.2.1. to access, without hindrance and prior notification, to any governmental and municipal body, military units, as well as to the police stations, temporary detention facilities, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons cannot leave on their own will; to meet privately or when deemed necessary with participation of an expert or interpreter and interview in private the detained persons, as well as any other persons who may provide relevant information; to get acquainted with and obtain copies of the documents confirming the lawfulness of detention and providing information on treatment and the conditions of detention of the persons mentioned above; to prepare acts, document the process and the results of the actions undertaken; to provide relevant recommendations to the competent authorities and to receive responses to these recommendations within the identified time limits.

12.2.2. to receive necessary information, documents and materials, within 10 days, from any governmental and municipal body, and officials;

12.2.3. to obtain court orders (judgments) in force concerning criminal, civil and administrative cases, as well as cases, the proceedings in respect of which were terminated;

12.2.4. during investigation of a complaint, to receive written explanations from officials;

12.2.5. to give fact-finding tasks to relevant bodies; such a task may not be given to a body or an official whose decision or act (omission) is being complained of;

12.2.6. to charge relevant government bodies and organisations with a task of preparing an expert opinion;

12.2.7. to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, the directors of police stations, temporary detention facilities, investigatory isolators, penitentiary institutions military guardhouses, psychiatric institutions, as well as other places, which detained persons cannot leave on their own will.

12.3. No person or organisation can be persecuted or prosecuted for submitting information to the Commissioner.

12.4. with consent of the person whose human rights have been violated, the Commissioner may carry out investigations on his or her own initiative in cases of special public importance, or in cases, where the interests of persons which are not capable to vindicate their rights themselves are affected.

12.5. Where, during an investigation, any violations other than those mentioned in the complaint are revealed, the Commissioner shall carry out relevant investigation provided that this is within his or her competence; if not, he or she shall refer the materials to relevant government body.

12.6. Complaints shall be investigated during 30 days. If additional investigation or materials are required, this term may be extended to more 30 days. With consent of an applicant, if it is necessary to conduct additional investigation, this term may be re-prolonged.

Article 13. Results of investigation

13.1. The Commissioner shall, within 5 days, submit written information to an applicant of the measures taken in respect of his or her complaint, and results of the investigation.

13.2. If, as a result of an investigation, the Commissioner finds a violation of the rights and freedoms of an applicant, he or she may take the following measures:

13.2.1. to demand from the governmental or municipal body, whose decision or act (omission) violated the human rights and freedoms, to remedy those violations. The appropriate bodies and officials shall, within ten days, submit to the Commissioner written information of the measures taken in respect of those violations. Where such information is not submitted or the appropriate body fails to comply with the demands of the Commissioner, the latter may apply to the superior authorities.

13.2.2. in cases where certain conduct appears to be a criminal offence, to apply to relevant bodies;

13.2.3. to apply to the subjects entitled to file additional cassation complaints;

13.2.4. to submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated human rights and freedoms;

13.2.5. to inform mass media of the results of the investigation conducted in respect of human rights violations;

13.2.6. in cases, where violations of human rights take on special public importance, if the means available at the disposal of the Commissioner are not sufficient for remedying those violations, to apply to the President of the Republic of Azerbaijan, or to hold a speech before the Milli Mejlis of the Republic of Azerbaijan;

13.2.7. to apply to a court of justice with a view to the protection of the rights and freedoms violated by decision or act (omission) of a governmental or municipal body, or an official;

13.2.8. to apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person are violated by legislative acts in force.

Article 13-1. Specific aspects of consideration of complaints related to the violation of the right to obtain information

13-1.1. The Commissioner investigates the circumstances reflected in the complaint related to the violation of the right to obtain information within 10 work days. If the complaint requires specification or additional explanation and documents are needed for investigation of the complaint, with prior written notice to the complainant the Commissioner can extend the time of consideration of the complaint for 10 work days.

13-1.2. The Commissioner shall not consider the following complaints:

13-1.2.1. if the complaint is anonymous;

13-1.2.2. if the complaint is not related to the activities of the state body, municipality or state official holding the specific information;

13-1.2.3. if the complaint is repetitive, unjustified or biased;

13-1.2.4. if there is an in-force court decision related to the case;

13-1.2.5. if the applicant did not effectively enough use the opportunities provided by the information holding state body, municipality or state official for the purposes of obtaining the information.

13-1.3. While investigating circumstances of the complaint related to the violation of the right to obtain information the Commissioner clarifies compliance of the information holding state

bodies, municipalities or state officials with the following provisions of the Law of the Republic of Azerbaijan "On access to information":

- 13-1.3.1. registration of the request for obtaining information (hereafter -information request);
- 13-1.3.2. satisfaction of the information request within the period and the method envisaged by the law;
- 13-1.3.3. compliance of rejection to execute the information request with the requirements of the law;
- 13-1.3.4. clear and full compliance with the obligation to make the information public;
- 13-1.3.5. compliance with the obligation to create an Internet database of information.

13-1.4. In respect of a complaint related to the violation of the right to obtain information the Commissioner can require the information holding state bodies, municipalities and state officials to remedy the violation.

13-1.5. The information holding state bodies, municipalities and state officials shall report on undertaken measures to the Commissioner in writing within 10 days. In case of failure to provide feedback or to react in accordance with the Commissioner's requirements the Commissioner can address the relevant higher authority.

Article 14. Annual report of the Commissioner

14.1. Not later than 2 months after the end of each year, the Commissioner shall submit to the President of the Republic of Azerbaijan an annual report on the protection of human rights in the country and speak with that report before the Milli Mejlis of the Republic of Azerbaijan.

14.2. The annual report shall indicate the governmental and municipal bodies or officials having violated human rights, and failed to comply with the demands of the Commissioner, and of the measures taken in this connection.

14.3. The annual report of the Commissioner shall also contain general views and recommendations concerning the protection of human rights.

14.4. The report shall be submitted to the Cabinet of Ministers of the Republic of Azerbaijan, the Constitutional Court of the Republic of Azerbaijan, the Supreme Court of the Republic of Azerbaijan and the Prosecutor-General of the Republic of Azerbaijan.

14.5. The Report shall be published in the newspaper "Azerbaijan" and "Compilation of legislative acts of the Republic of Azerbaijan".

Article 15. Confidentiality of information

15.1. The protection of information constituting State secrets, which became known to the Commissioner while performing his or her activities, shall be carried out in accordance with the Law of the Republic of Azerbaijan "On State secrets".

15.2. No data concerning personal and family life of applicants, which became known to the Commissioner while investigating the circumstances indicated in a complaint, shall be made public without consent of those persons.

CHAPTER III ORGANISATION AND GUARANTEES OF THE WORK OF THE COMMISSIONER

Article 16. Social, financial and other guarantees for the Commissioner

- 16.1. The Commissioner shall receive a salary equal to 1320 manats.
- 16.2. The Commissioner shall be exempted from military service and periodical military training.
- 16.3. The Commissioner shall be given a diplomatic passport during his or her term of office.
- 16.4. The Commissioner shall be given leave as provided for in the legislation of the Republic of Azerbaijan.
- 16.5. The term of office of the Commissioner shall be included in his or her general, special and unbroken record of service.
- 16.6. On taking a leave, the Commissioner shall be given an allowance in the amount of his or her 2 months' salary for the purposes of medical treatment and recreation.
- 16.7. A former Commissioner reached the pension age shall receive a pension in the amount of 80 per cent of his or her salary determined for a Commissioner for the present period.

Article 17. Office of the Commissioner

17.1. An Office shall be set up for providing to the Commissioner legal, organisational, research-analytical, informational, material, technical and financial services. The Commissioner can establish regional centres.

17.2. The Office of the Commissioner shall have a seal and letterheads with the State Emblem of the Republic of Azerbaijan imprinted on them.

17.3. The Office of the Commissioner and the regional centres shall act in accordance with the "Regulation on the Office and regional centres of the Commissioner" which shall be affirmed by the Commissioner.

17.4. The structure, staff listing and expenditure estimates of the Office and the regional centres of the Commissioner shall be determined by the Commissioner.

Article 18. Rights and responsibilities of the Office staff

18.1. The staff of the Office and regional centres shall be appointed and dismissed by the Commissioner.

18.2. Rights, duties and responsibility of the staff of the Commissioner's Office and regional centres shall be determined in accordance with the Labour Code of the Republic of Azerbaijan, the Law "On State Service" of the Republic of Azerbaijan and other legislative acts of the Republic of Azerbaijan,

Article 18-1. National Preventive Group

18-1.1. The National Preventive Group is established within the Commissioner's Office for the purposes of fulfilling the functions of the National Preventive Mechanism referred to by Article 1.2. of the present Law. Persons not below the age of 25, with higher education, experience in human rights protection and of high moral values can be appointed as members of the National Preventive Group. The members of the National Preventive Group are appointed by the Commissioner based on transparent procedures for the period of 3 years.

18-1.2. The National Preventive Group has the following rights:

18-1.2.1.to access police stations, temporary detention facilities, investigatory isolators penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons cannot leave on their own will at any time, without hindrance or prior notification; to meet privately or when deemed necessary with participation of an expert or interpreter and interview in private the detained persons, as well as any other persons who may provide relevant information; to get acquainted with and obtain copies of the documents confirming the lawfulness of detention of the detained persons, as well as providing information on treatment and the conditions of detention of the abovementioned persons; prepare acts, document the process and the results of the actions undertaken.

18-1.2.2.to be received immediately by the directors of police stations, temporary detention facilities, investigatory isolators, penitentiary institutions, psychiatric institutions and other places, which detained persons cannot leave on their own will;

18-1.2.3.members of the National Preventive Group cannot be forced to testify about the facts that became known to them in relation to execution of their duties or to reveal these facts by any other method. This guarantee shall remain in place in respect of those persons who have ceased their membership with the National Preventive Group.

18-1.2.4.A member of the National Preventive Group cannot be apprehended or arrested, subjected to search or personal examination while fulfilling his/her duties in places, which detained persons cannot leave on their own will. No arrest, check or seizure can be undertaken in respect of postage, telegraphs or other correspondence to a member of the National Preventive Group.

Article 19. Financing of the work of the Commissioner

19.1. The work of the Commissioner and his or her Office shall be financed from the State budget of the Republic of Azerbaijan.

19.2. The annual expenditure allocated for financing the work of the Commissioner may not be reduced in relation to the previous financial year.

Article 20. Responsibility for impeding the work of the Commissioner

Persons guilty of impeding the work of the Commissioner bear responsibility in accordance with the legislation of the Republic of Azerbaijan.

Heydar ALIYEV
President of the Republic of Azerbaijan

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