

PERMANENT MISSION OF THE REPUBLIC OF
AZERBAIJAN TO THE UNITED NATIONS OFFICE
AND OTHER INTERNATIONAL ORGANIZATIONS
AT GENEVA



AZƏRBAYCAN RESPUBLİKASININ BMT-nin
CENEVRƏ ŞƏHƏRİNDƏKİ BÖLMƏSİ VƏ
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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva presents its compliments to the Secretariat of the Subcommittee on Prevention of Torture and in response to its note dated 2 March 2009, has the honor to present the following documents:

- the copy of the note (dated 21 January 2009) of the Ministry for Foreign Affairs addressed to the Secretary-General of the United Nations on designation of the Commissioner of the Human Rights (Ombudsman) as the national preventive mechanism;
- information of the Government of the Republic of Azerbaijan encompassing the elements contained in articles 18 - 23 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as;
- unofficial English translated version of the Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Subcommittee on Prevention of Torture the assurances of its highest consideration. *GD*

Enclosed: 15 pages

Geneva, 10 June 2009

Secretariat of the
Subcommittee on Prevention
of Torture
Geneva





**AZƏRBAYCAN RESPUBLİKASI
XARİCİ İSLƏR NAZİRLİYİ**

**REPUBLIC OF AZERBAIJAN
MINISTRY OF FOREIGN AFFAIRS**

№ 5/11-123/03/09

The Ministry of Foreign Affairs of the Republic of Azerbaijan presents its compliments to the Secretary General of the United Nations, and has the honour to inform that the Commissioner of the Human Rights (Ombudsman) of the Republic of Azerbaijan was designated by the Decree of the President of the Republic of Azerbaijan No. 112, dated January 13, 2009 as the national preventive mechanism according to Article 17 of the (United Nations) Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

The Ministry of Foreign Affairs of the Republic of Azerbaijan avails itself of this opportunity to renew to the Secretary General of the United Nations, the assurances of its highest consideration.

Baky, "21.01.2009"



**THE SECRETARY-GENERAL
OF THE UNITED NATIONS
NEW-YORK**

**Information of the Government of the Republic of Azerbaijan
in accordance with the articles 18 to 23 of the Optional Protocol to the
Convention against torture and other cruel, inhuman or degrading
treatment or punishment"**

General information

On 2nd December of 2008 "The law of the Republic of Azerbaijan on endorsement of "The Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment" was adopted.

Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan was designated as the national preventive mechanism by the Decree № 112 dated 13th January 2009 of the President of the Republic of Azerbaijan.

The mandate of the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan was defined with the Constitutional law № 246-IIKQ dated 28th December 2001 of the Republic of Azerbaijan on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan (hereinafter - Constitutional law).

According to the article 1.1 of the Constitutional law the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan was 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. Verification of the activities of the President of the of Azerbaijan, deputies of the Milli Mejlis (Parliament) of the Republic of Azerbaijan and the judges of the Republic of Azerbaijan is outside the competence of the Commissioner. (article 1.3)

The Commissioner may examine complaints on violations of human rights relating to bureaucracy, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments (article 1.6). The activities of the Commissioner shall be based on the principles of publicity, transparency, legality, justice and impartiality (article 1.7).

On the article 18 of the Optional Protocol

The provisions of the Commissioner's independence were enshrined in the Constitutional law. According to the article 5.1 of the Constitutional law, the Commissioner shall be independent and obey only the Constitution and laws of the Republic of Azerbaijan. Declaration of a state of emergency or martial law shall not cease or restrict the activities of the Commissioner (article 5.3).

According to the requirement of the Constitutional law, the independence of the Commissioner shall be ensured by the following:

invariability;

The Commissioner shall be elected for a period of 7 years and the same person may hold the post of Commissioner only once (article 4.1; 4.2 of Constitutional law);

inviolability;

The Commissioner shall be inviolable while in office (article 6.1 of Constitutional law) *it shall be inadmissible to interfere with his or her activities by any governmental or municipal body or official;*

To hinder the Commissioner's legal activity – to restrict activity or interfere in activity calls for responsibility with legislation of the Republic of Azerbaijan (article 310-1 Code of Administrative Punishment)

Provision to the Commissioner legal, organizational, research-analytical, informational, material, technical and financial services is carried out by the mechanism established under the article 17.1 of the Constitutional law. There are also regional centers in 4 regions of the Republic.

The activity of the Commissioner and his/her Office and regional centers shall be financed from the State budget of the Republic of Azerbaijan.

Among the staff in the central and regional office of Commissioner there are 47 men and 19 women. In the staff besides azeris there are also avars, georgians, lezgies, Russians, talış and jewish. In the central and regional offices work 40 lawyers specialized in human rights. Other staff members hold assistant (auxiliary) post.

On the article 19 of The Optional Protocol

According to the article 1.5 of the Constitutional law 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 and to declaring amnesty. The Commissioner may also submit motions to the President of the Republic of Azerbaijan with regard to granting pardon, citizenship and political asylum. According to the article 13.2.8 of the Constitutional law the Commissioner may 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.

According to the article 12.2.1 of the Constitutional law while investigating the circumstances indicated in a complaint, the Commissioner shall have the right to have access, without hindrance and prior notification, to any governmental and municipal body, military units, penitentiary institutions, detention centers; to meet and interview in private persons held in penitentiary institutions and detention centers; to obtain the documents confirming the lawfulness of their detention.

According to the article 8.5 of the Constitutional law complaints addressed by persons held in penitentiary institutions or detention centers shall be delivered to the Commissioner within 24 hours without being subjected to any kind of censorship.

Based on the article 14.3 of the Constitutional law the annual report of the Commissioner shall also contain general views and recommendations concerning the protection of human rights. 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. (the article 14.1 of the Constitutional law) 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 (the article 14.4 of the Constitutional law).

The Commissioner classifies, generalizes and analyses the complaints directed to her/him, according to the materials gained as a result of those analyses he/she submits a motion to the Milli Mejlis of the Republic of Azerbaijan about the improvement of national legislation. Commissioner as a national human rights institution with "A" status also contributes on the joining and ratification of various international conventions, protocols by the Government of Azerbaijan.

The proposal on acceptance of the National Action Plan (NAP) on Protection of Human rights which contains the measures directed to the protection of the right of prisoners besides other people groups was put forward in the annual speech of the Commissioner and was created a project plan and was submitted appropriate motions. The Project representing the complex provision of the human rights was confirmed with the Order dated 28th December 2006 of the President of the Republic of Azerbaijan. In the project were enshrined the draw of society to

reformatory process of prisoners, the extension of the measures directed to humanization of the detention conditions of prisoners in accordance with the international experience and other measures directed to the protection of the prisoners' rights, and also improvement of extradition problem.

The coordination, monitoring and verification of activity on the Project currently carrying out by 31 governmental bodies, NGOs and societies is held by the Commissioner as an independent entity. In 2007 in all regions of the Republic were held social auditions for the purpose to draw to people's attention the measures taken within the actively implemented NAP and its results, and to agitate and propagate NAP among the broad masses of population. Such auditions were held also in all regions of Republic in 2008. In mentioned events besides the local population participated also the deputies of Milli Mejlis, representatives of various ministries and state bodies, judges, public prosecutors, NGO and mass media representatives.

Within the Commissioner's Office there are also Sector on Protection of Prisoners Rights which has the competence of the investigation of applications entered to the Commissioner from prisoners and their relatives, arrangement of commissioner's visits to the preservation places of prisoners and also conduction of such visits, taking the measures for legal-enlightenment among the prisoners. Within the Commissioner's Office with the OSCE's support was established "Hot line" and prompt investigation group to give operative attitude to the facts of human rights violation and provide their restoration. Next to the Commissioner there work the counselor specialized on torture, also counselor specialized on protection of prisoners rights. By specialized counselors regularly are held analyses on national legislation and international normative acts in appropriate fields, also on the situation in country in this field, and on complaints and applications entered to commissioners address, are created and conducted events plan on various directions, to counselor are submitted projects of proposals and recommendations for posting to proper entities.

The Commissioner and staff regularly hold monitoring of preservation places of prisoners, meeting with prisoners see their complaint and problems, solve those problems within opportunities, give instructions to the heads of institutions for elimination of shortcomings and insufficiencies, in an inevitable cases apply to proper ministry and in most cases any insufficiency are eliminated. In 2008 300, but during full activity period totally were held 1500 such visits. By proper state bodies were given orders and instructions and provided inevitable condition for conducting Commissioner and its staffs' visits to detention and other penitentiary centers without obstacle.

To consider the Commissioner as an organization carrying out the national preventive mechanism functions, in the structure are intended to create the Department for elimination of torture.

On the article 20 of the Optional Protocol

According to the article 12.2 of the Constitutional law while investigating the circumstances indicated in a complaint, the Commissioner shall have the following rights:

- to have access, without hindrance and prior notification, to any governmental and municipal body, military units, penitentiary institutions, detention centers; to meet and interview in private persons held in penitentiary institutions and detention centers; to obtain the documents confirming the lawfulness of their detention;
- to receive necessary information, documents and materials, within 10 days, from any governmental and municipal body, and officials;
- 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;
- during investigation of a complaint, to receive written explanations from officials;
- 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;

- to charge relevant government bodies and organizations with a task of preparing an expert opinion;
- to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of penitentiary institutions and detention centers.

With the 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 who are not capable to vindicate their rights themselves are affected (the article 12.3 of the Constitutional law).

According to the article 13.2 of the Constitutional law 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:

- 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.
- in cases where certain conduct appears to be a criminal offence, to apply to relevant bodies;
- to apply to the subjects entitled to file additional cassation complaints;
- to submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated human rights and freedoms;
- to inform mass media of the results of the investigation conducted in respect of human rights violations;
- 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;
- 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;

Commissioner cooperates and creates an independent relation with various international organizations, in compliance with its activity fields. The Commissioner was elected as a member in Institute of European Ombudsmans, Institute of International Ombudsmans and Institute of Asian Ombudsmans, and successfully participating in activities within those organizations. On 27th October 2006 the human rights Commissioner (Ombudsman) of the Republic of Azerbaijan was bestowed a title the highest "A" status by The Committee of International Association of National Human Rights Organizations. This status is bestowed for meeting the Paris Principles of National Human Rights organizations, and gives to commissioner the competence to enlarge his/her international relations, to participate independently in the activities and give recommendations to UN Council of Human Rights, to state her/his opinion to UN organizations on reports made by government, to make parallel reports, and to monitor the implementation of agreements.

On the article 21 of the Optional Protocol

According to the article 15 of the Constitutional law 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". 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.

According to the article 9.5 of the Constitutional law upon a request of the applicant, the Commissioner shall keep secret the data concerning that person.

On the article 22 of the Optional Protocol

Under the article 12.1 of the Constitutional law 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.

In accordance with the article 13.2.1 of the Constitutional law, Commissioner may also demand from the governmental or municipal body, whose decision or act (omission) violated the human rights and freedoms, to restore 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.

In cases, where violation of human rights gains special public importance, and the measures within the competence of the Commissioner are not sufficient for restoration of those violations, the Commissioner is enable to apply to the President of the Republic of Azerbaijan, or to hold a speech before the Milli Mejlis of the Republic of Azerbaijan, (the article 13.2.6 of the Constitutional law).

Also has to be stated that under the article 14.2 of the Constitutional law the annual report of the Commissioner 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.

To achieve an effective solution of problems revealed as a result of analyses of complaint applications the Commissioner creates practical relations with state bodies and also other law-protection entities, ministries and state committees (General Prosecutor, Central Election Commission, Ministry of Internal Affairs, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Education, Ministry of Finance, Ministry of Communications and Information Technologies, Ministry of Health and other state bodies) , and this plays indispensable role in commissioner's activity and in restoration of violated rights. In different regions are held investigations, monitoring, receptions of complaints in regions cooperated with state bodies, and seminars, trainings in which were involved the representatives of governmental entities, executive bodies, law-protection bodies, judges, court staffs, and Mass media and NGOs. For the purpose of drawing attention of governmental bodies to peoples' problems and to violation of rights and law, prevention of human rights violations, provision of these rights and restoration of them under the law in cases of violation are set up the motions and submitted to competent bodies.

The Commissioner, as a human rights institute with "A" status, within the cooperation of governmental entities, takes part in preparation of reports on human rights principles which the Republic of Azerbaijan is engaged in as a Party. The Commissioner also contributes the governmental bodies on implementation of recommendations which were given by international organizations as a result of monitoring, and involves the NGOs and other members of civil society to these activities.

On the article 23 of the Optional Protocol

According to the request of the article 14.5 of the Constitutional law the Report of the Commissioner shall be published in the state publication - "Compilation of legislative acts of the Republic of Azerbaijan".

The annual reports of the Commissioner also are published on the official website of the organization, and in the magazine "Qanun".

Unofficial translation

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

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

Article 1. 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.

1.2. 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.

1.3. 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.

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

1.5. 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.

1.6. 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.

1.7. 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 organization.

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 fulfill 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 only once.

4.3. 30 days before the expiry of the term of office of Commissioner, the President of the Republic of Azerbaijan shall 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.

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 Azerbaijani.

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 judgment 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

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 organization 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 organization without consent.

8.3. The Commissioner shall not receive complaints from governmental 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 centers 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. Investigation procedure

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, the Commissioner shall have the following rights:

12.2.1.to have access, without hindrance and prior notification, to any governmental and municipal body, military units, penitentiary institutions, detention centers; to meet and interview in private persons held in penitentiary institutions and detention centers; to obtain the documents confirming the lawfulness of their detention;

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 organizations 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, by officials of penitentiary institutions and detention centers.

12.3. 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.

12.4. 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.

12.5. 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 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 that of the First Vice-Chairman of the Milli Mejlis of the Republic of Azerbaijan.

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, organizational, research-analytical, informational, material, technical and financial services.

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 shall act in accordance with the "Regulation on the Office of the Commissioner" which shall be affirmed by the Commissioner.

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

Article 18. Rights and responsibilities of the Office staff

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

Rights, duties and responsibility of the Commissioner Office staff shall be determined in accordance with the Labor 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 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.

Heydar ALIYEV

President of the Republic of Azerbaijan

Baku, 28 December, 2001

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