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PERMANENT MISSION OF THE REPUBLIC OF
AZERBAIJAN TO THE UNITED NATIONS OFFICE
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AT GENEVA



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CENEVRƏ ŞƏHƏRİNDƏKİ BÖLMƏSİ VƏ
DİGƏR BEYNƏLXALQ TƏŞKİLATLAR YANINDA
DAİMİ NÜMAYƏNDƏLİYİ

237 route des Fayards, 1290 Versoix, Suisse E-mail: geneva@mission.mfa.gov.az Tél.:+41 (0) 22 901 18 15 Fax: +41(0)22 901 18 44

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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (*Secretariat of the Working Group on Arbitrary Detention*) and, with reference to the latter's Note Verbale Ref. Nr. G/SO 218/2 dated 17 June 2013, has the honor to transmit herewith the responses of the Ministry of Justice of the Republic of Azerbaijan to the questionnaire related to the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention, as requested in resolution 20/16, paragraph 11 (a).

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other international organizations at Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (*Secretariat of the Working Group on Arbitrary Detention*) the assurances of its highest consideration.

Enclosure: 3 pages.

Geneva, 10 September 2013

THE OFFICE OF THE UN HIGH
COMMISSIONER
FOR HUMAN RIGHTS
GENEVA

Fax: 022 917 9006



INFORMATION

related to the draft basic principles and guidelines on remedies and procedures on the rights of anyone deprived of his or her liberty to be developed by the Working Group established in accordance with the UN Human Rights Council resolution 20/16 of 2012 on Arbitrary Detention

on questions 1, 2, and 3:

The Republic of Azerbaijan joined the International Covenant on Civil and Political Rights by the National Assembly decision dated 21 July 1992, numbered 227.

Issues mentioned in Article 9 (4) of the Covenant are regulated by Criminal-Procedural Code of the Republic of Azerbaijan, adopted by the 14 July 2000 Law and by the Administrative Offences Code of the Republic of Azerbaijan, adopted by the 11 July 2000 Law.

So that, according to Article 14 of the Criminal-Procedural Code, the detention, as well as compulsory placement of the person in medical or correctional institutions is only possible with a relevant court order. The investigator, the prosecutor, or the judge shall immediately release the unlawfully arrested or detained person.

The right of arrested or detained persons to file propositions, complaints, and requests on lawfulness and sufficient ground on their detention, as well as on issues related to breach of their legal interests is provided in Article 15.1.15 of the 22 May 2012 Law on Providing Rights and Freedoms for Detained Persons.

Besides, in accordance with Article 449 of the Code, the accused and suspected persons have the right to file a complaint against authorities for procedural actions or decisions taken while performing the arrest or detention.

Also, as provided in Article 473 of the Code, the person against whom compulsory measures of medical nature have been taken may make use of such a right.

In accordance with Article 383.1.4, the legal representative and the legal counselor of the person against whom a compulsory measure of medical nature and in cases where his or her medical condition does not prevent that person from exercising their rights, he or she has a right to appeal the application of compulsory measures.

Besides, the right to file a complaint to higher authority against the administrative arrest decision is provided for in Article 399.6 of the Administrative Offences Code, as well as to file a complaint to the appeal court for the application of punishment in the form of an arrest.

on question 4:

In accordance with Article 451.1 of the Criminal-Procedural Code as to the results of the verification of the legality of the procedural acts and decisions of the prosecuting authority, the judge may decide either that the contested decision or action is lawful, or that it is not lawful and shall be terminated.

In accordance with Article 451.3, if the act or decision complained of is found to be unlawful, the following steps shall be taken on the basis of the judge's decision: the prosecutor in charge of the procedural aspects of the investigation or the senior prosecutor shall immediately take the necessary measures to end the violations of the complainant's rights and freedoms and to restore the violated rights and freedoms; the head of the higher authority in the hierarchy shall settle the matter of the criminal responsibility of the accused official who violated the person's rights and freedoms, in accordance with the rules provided for in the legislation of the Azerbaijan Republic; it shall be explained to the person who lodged the complaint that he has the right to apply for compensation for the damage sustained.

on question 5:

In accordance with Article 449.2 and 101.5 of the Criminal-Procedural Code the legal representative of the accused (suspected) person has the right to file a complaint against the procedural actions or decision of the authority performing the criminal procedure.

Also, Article 383.4.1 provides that as regards the application of compulsory medical measures - the legal representative and defense counsel of the person to whom the compulsory medical measure has been applied, and the person himself if the nature of his illness does not preclude him from exercising his rights has the right to appeal such decisions.

Besides, in accordance with Articles 371.1.4, 373.5, and 375.4 of the Administrative Code, legal representatives have the right to lodge petitions and objections.

on question 6:

According to Article 92.7 of the Criminal Procedural Code, The defense counsel who takes responsibility for defending the suspect or the accused shall present the prosecuting authority with documents which confirm his identity and his entitlement to work as a lawyer in the territory of the Azerbaijan Republic, as well as the bar association's authorization.

In accordance with Article 101.2, the prosecuting authority shall allow only one of the parents, adoptive parents or guardians of the victim, civil party, suspect, accused or defendant to a civil claim who lacks or has limited legal capacity to participate in the criminal proceedings as that person's legal representative.

In accordance with Article 101.9.1, the legal representative of the accused or suspected person shall present the prosecuting authority with documentation confirming his authority as the legal representative.

on question 7:

In accordance with Article 452.1 of the Criminal-Procedural Code, within 3 (three) days of the announcement of the judge's decision to choose arrest as a restrictive measure the accused person, his legal counsel, or legal representative may lodge a complaint against it.

According to Article 384.1.8 of the Code, as to compulsory measures of medical nature, the decision may be appealed within 20 (twenty) days after the announcement.

In accordance with Article 5 of the 11 June 1999 Law on Lodging Complaints to the Courts against decisions and activity (inactivity) breaching rights and freedoms of citizens, a complaint shall be filed within 10 days after the receipt of the administrative punishment decision's copy or its announcement to the citizen.

In this regard, we inform that, according to Article 23.1.7 of the Administrative Offences Code, the administrative arrest is a form of administrative punishment.

on question 8:

In this field, there is the Supreme Court decision dated 3 November 2009 on Legislative application practice of the courts when reviewing cases on accused persons subjected to detention.

General Department of Legislation