

Constitutional Law of the Republic of Azerbaijan On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”

The Milli Majlis of the Republic of Azerbaijan hereby resolves:

The Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan” (Collection of Legislative Acts of the Republic of Azerbaijan, 2002, No. 3, Article 115; 2004, No. 9, Article 665; 2006, No. 3, Article 207, No. 11, Article 909; 2007, No. 10, Article 928; 2009, No. 12, Article 944) shall be amended as follows:

1. In Article 1.1 the words “and to prevent human rights violations in cases as specified in this Constitutional Law” shall be added to the end of the paragraph.

2. Articles 1.2-1.7 shall be deemed as Articles 1.5-1.10 respectively and Articles 1.2, 1.3 and 1.4 shall be added in the following wording:

“1.2. The Commissioner shall perform the functions of a national preventive mechanism as specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the aim of preventing torture and other cruel, inhuman and degrading treatment or punishment, he/she shall, on a regular basis or as deemed necessary, visit the places which detained persons can not leave at will.

1.3. The Commissioner shall oversee the fulfillment of the duties arising out of the requirements of the Law of the Republic of Azerbaijan "On Access to Information" by governmental bodies, municipalities or officials that are owners of information.

1.4. The Commissioner shall cooperate with local, regional and international organizations in accordance with the directions of his/her activities.”

3. The name of Chapter II shall read as follows:

“Investigation of complaints of human rights violations and performance of the functions of the national preventive mechanism”.

4. In Article 12:

4.1. The name of the Article shall read as follows:

“Procedure of investigation of a complaint of violation of human rights and performance of the functions of the national preventive mechanism”;

4.2. In Article 12.2 after the word “violation” the words “and while performing the functions of the national preventive mechanism” shall be added;

4.3. Article 12.2.1 shall read as follows:

“12.2.1. have access, without hindrance and prior notification, to any governmental and municipal bodies, military units, as well as police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken; provide relevant recommendations to the competent authorities and receive responses to these recommendations within the defined period.”;

4.4. Article 12.2.7 shall read as follows:

“12.2.7. be received without delay by heads and other officials of governmental and municipal bodies, commanders of military units, and management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions, and other places which detained persons can not leave at will.”;

4.5. Articles 12.3-12.5 shall be deemed as Articles 12.4-12.6 respectively and Article 12.3 shall be added in the following wording:

“12.3. Pressure or prosecution against any person or organization for having communicated to the Commissioner any information is inadmissible.”.

5. Article 13-1 shall be added in the following wording:

“Article 13-1. Peculiarities of consideration of a complaint related to the violation of the right
to obtain information

13-1.1. The Commissioner shall within 10 working days investigate the circumstances indicated in a complaint related to the violation of the right to obtain information. If the complaint requires specification or additional explanation and documents are needed for the investigation of the complaint, having notified the complainant accordingly, the Commissioner can extend the period of consideration of the complaint for another 10 working days.

13-1.2. The Commissioner shall not consider a complaint if:

13-1.2.1. the complaint is anonymous;

13-1.2.2. the complaint is not related to the activities of the concrete information owning governmental body, municipality or official;

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

13-1.2.4. there is a final court decision in relation to the case;

13-1.2.5. the applicant has not used, effectively enough, the opportunities provided by the information owning governmental body, municipality or official for obtaining information.

13-1.3. While investigating the circumstances indicated in the complaint of the violation of the right to obtain information, the Commissioner shall clarify whether the information owning governmental body, municipality or official has observed 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 pursuant to the procedure, within the period and by the method as specified in the law;

13-1.3.3. conformity of the rejection to satisfy the information request with the requirements of the law;

13-1.3.4. accurate and full compliance with the obligation to disclose public information;

13-1.3.5. compliance with the obligation to create an Internet-based information resource.

13-1.4. With regard to a complaint of the violation of the right to obtain information, the Commissioner can require the information owning governmental body, municipality or official to remedy the violation.

13-1.5. The information owning governmental body, municipality or official shall report the undertaken measures to the Commissioner in writing within 10 days. In case of failure to provide information or fulfil the Commissioner's requirements, the Commissioner can address the relevant superior authority.”

6. Article 18-1 shall be added in the following wording:

“Article 18-1. National Preventive Group

18-1.1. The National Preventive Group shall be established within the Commissioner's Office for the purposes of performing the functions of the national preventive mechanism referred to in Article 1.2 of the present Law. A person who is at the age of above 25, is a university graduate, has experience in human rights protection and possesses high moral values can be appointed as a member 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 rights to:

18-1.2.1. have access, at any time, without hindrance or prior notification, to police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken;

18-1.2.2. be received without delay by the management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, psychiatric institutions and other places which detained persons can not leave at will.

18-1.3. A member of the National Preventive Group can not be forced to testify about the facts that became known to him/her while performing his/her duties or to disclose these facts by any other methods. This guarantee shall remain in force in respect of a member of the National Preventive Group even after he/she leaves the Group.

18-1.4. A member of the National Preventive Group can not be arrested or detained, subjected to search or personal examination while performing his/her duties in places which detained persons can not leave at will. No arrest, check or seizure can be undertaken in

respect of the mails, telegraphic messages or other correspondence of a member of the National Preventive Group.”.

7. Article 20 shall be added in the following wording:

“Article 20. Responsibility for interfering with the Commissioner’s activity

Persons guilty of interference with the Commissioner’s activity shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.”

Ilham ALIYEV

President of the Republic of Azerbaijan