

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW OF
THE REPUBLIC OF AZERBAIJAN
ON THE OMBUDSMAN

(adopted by the Milli Mejlis in first reading)

Draft

**LAW OF THE REPUBLIC OF AZERBAIJAN
ON THE OMBUDSMAN
OF THE REPUBLIC OF AZERBAIJAN**

CHAPTER I

**APPOINTMENT OF THE OMBUDSMAN
OF THE REPUBLIC OF AZERBAIJAN**

Article 1. Powers of the Ombudsman of the Republic of Azerbaijan

1. The Ombudsman of the Republic of Azerbaijan shall be an independent institution set up to protect the human rights and freedoms as enshrined in the Constitution of the Republic of Azerbaijan and international agreements which Azerbaijan Republic is party to, and to promote the observance of these rights by the state and municipal bodies and officials, and the restoration of the violated rights.

2. The activity of the Ombudsman shall not restrict the competence of other state bodies ensuring the protection of and restoration of violated human rights and freedoms.

3. Investigation of the activity 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 Ombudsman.

Article 2. Appointment of the Ombudsman

1. The Ombudsman shall be elected by 83 votes of the deputies of Milli Mejlis of the Republic of Azerbaijan of three candidates proposed by the President of the Republic of Azerbaijan.

2. If the Milli Mejlis of the Republic of Azerbaijan fails to elect the Ombudsman then the President of Republic of Azerbaijan shall propose within 15 days other three candidates.

Article 3. Requirements concerning the candidature of the Ombudsman

1. Any citizen of the Republic of Azerbaijan of age not less than 30 years who has got higher education, high morals and experience in the field of human rights protection can be elected to the post of Ombudsman.

2. The Ombudsman may not hold any other position either through election or nomination, may not engage in any other activity involving payment, excluding scientific research, teaching and artistic work.

3. The Ombudsman may not engage in any political activity and may not be a member of a political party and head of non-governmental organization.

4. The Ombudsman shall, within ten days of his/her appointment, waive any activity incompatible with his/her status.

5. On the day of his/her election the Ombudsman shall swear the following oath at the session of the Milli Mejlis of the Republic of Azerbaijan: I do swear to implement with honor and dignity the duties of Ombudsman of the Republic of Azerbaijan, to respect the Constitution of the Republic of Azerbaijan, to carry out activity independently and impartially.

Article 4. Term of office of the Ombudsman

1. The Ombudsman shall be elected for a period of 7 years. While in office, he/she shall not be replaced.

2. The same person may be elected to the post of Ombudsman only once.

3. 30 days before the expiry of the term of office of Ombudsman, the President of the Republic of Azerbaijan shall submit to the Milli Mejlis of the Republic of Azerbaijan the new three candidates for election to the post of Ombudsman. The Milli Mejlis of the Republic of Azerbaijan shall, within 15 days, adopt a relevant decision on the election of Ombudsman.

Article 5. Independence of the Ombudsman

1. The Ombudsman shall be independent and obey only the Constitution and laws of the Republic of Azerbaijan. Powers of the Ombudsman may be terminated only on the grounds provided for in Article 7 of the present Law.

2. The independence of the Ombudsman shall be ensured by the following within his/her term of office: a) he/she shall not be replaced and shall enjoy immunities; b) there shall be restrictions for bringing him/her to responsibility and for terminating his/her powers; c) it shall be inadmissible to interfere with his/her activity by any state or municipal body or official; d) he/she shall be provided with financial and social guarantees.

3. The declaration of state of emergency or martial law shall not entail the termination or restriction of the activity of Ombudsman.

Article 6. Immunities of the Ombudsman

1. The Ombudsman shall be inviolable while in office.

2. The Ombudsman, while in office, shall not be subjected to criminal or administrative proceedings, search, examination, measures of administrative reproofs applied via judicial procedure, can not be detained, save in cases where he/she had been detained while committing a crime. In such a case the state body which has detained the Ombudsman, shall immediately inform the Prosecutor-General of the Republic of Azerbaijan and the Milli Mejlis of the Republic of Azerbaijan.

3. The inviolability of the Ombudsman may be terminated only by a decision of the Milli Mejlis of the Republic of Azerbaijan following a motion of the Prosecutor-General of the Republic of Azerbaijan.

4. The inviolability of the Ombudsman shall cover also his/her home, service premises, means of transport and communication, correspondence, private property and documents.

Article 7. Termination of powers of the Ombudsman

before expiry of his/her term of office

1. Powers of the Ombudsman shall be terminated before expiry of his/her term of office by the initiative of Milli Mejlis of the

Republic of Azerbaijan or by the Milli Mejlis of the Republic of Azerbaijan following a recommendation of the President of the Republic of Azerbaijan for any of the following reasons:

- a) Violation of the requirements envisaged in article 3 of this Law;
 - b) A judgement of conviction in force delivered in respect of him/her;
 - c) His/her judicially determined incapability or limited capability;
 - d) A judicial decision declaring him/her to be dead or missing;
 - e) Inability to perform his/her duties within a period of not less than four months because of disease;
2. The powers of Ombudsman shall be considered as terminated in case if he/she had lodged written request for resignation.

3. In case of premature termination of office of Ombudsman the President of the Republic of Azerbaijan shall with 30 days submit new three candidates to Milli Mejlis of the Republic of Azerbaijan for election to the post of Ombudsman. Milli Mejlis of the Republic of Azerbaijan shall within 15 days adopt the relevant decision as to election of Ombudsman.

CHAPTER II

INVESTIGATION OF COMPLAINTS

Article 8. Submission of complaints

1. The Ombudsman shall receive complaints from citizens of the Republic of Azerbaijan, the foreigners and stateless persons being temporarily or living permanently on the territory of the Republic of Azerbaijan, as well as legal persons (hereinafter referred to as applicant) who had passed the state registration via procedure provided for in the legislation of the Republic of Azerbaijan.

2. A complaint may also be lodged by a third person or a non-governmental organization with consent of the person concerned.

3. The state bodies can not lodge complaint with Ombudsman.

4. A complaint may be lodged with the Ombudsman within a period of one year from the date on which an alleged violation of rights and freedoms of the person concerned occurred or he/she became aware of that violation.

5. Complaints addressed by persons held in prison or detention centres shall be delivered to the Ombudsman within 24 hours without being subjected to any kind of censorship.

Article 9. Contents of a complaint

1. A complaint shall set out: the full name and address of the applicant; the essence of a decision or an action (or an omission) allegedly having violated his/her rights and freedoms; the date of submitting the complaint; and the signature of the applicant. Any relevant materials, including any judicial or other decisions relating to the complaint, can be attached to that complaint.

2. If the full name and address of an applicant have not been indicated in a complaint, the latter shall be considered to be anonymous and shall not be pursued.

3. In case if the application has been lodged orally, the staff member of Ombudsman shall put the notes of complaint on special sheet to be signed by applicant.

4. At the request of applicant the Ombudsman shall keep in secret his/her full name.

Article 10. The adoption of decision in respect to a complaint

1. In respect to a complaint lodged with the Ombudsman, he/she may take one of the following decisions:

a) Accepts the complaint for investigation;

c) Refuses to pursue the complaint;

2. If the Ombudsman refuses to pursue the complaint then he/she shall, within 10 days, submit to an applicant the substantiated written response.

3. The decision to not pursue a complaint shall not be subject to appeal.

Article 11. Grounds for rejecting a complaint

The Ombudsman shall not investigate complaints in the following cases:

a) If it breaks the requirements of Article 8.2 of the present Law;

b) The contents of complaint are beyond the competence of the Ombudsman;

c) If it breaks the requirements of Article 9.2 of the present Law;

d) A complaint is being examined within court proceedings;

e) The re-submitted petition does not contain any new information, facts and proofs.

Article 12. Investigation procedure

1. While investigating the circumstances indicated in a complaint, the Ombudsman should examine the views of the complained body or official in connection with this complaint. The view should be presented to Ombudsman within 10 days.

2. While investigating the circumstances indicated in a complaint, the Ombudsman shall have the following rights:

1) To have access, without hindrance or prior notification, to any state and municipal body, military units, prisons, detention centers and bull-pens; to meet and interview in private persons held in prisons, detention centers and bull-pens; to study the documents confirming the lawfulness of their deprivation of freedom;

2) To receive necessary information, documents and materials, within 10 days, from any state and municipal body, and officials:

3) To study the court decisions (judgments) in force concerning criminal, civil and administrative offences, as well as the cases, the proceedings in respect of which have been terminated;

4) During investigation of a complaint, to receive the written explanations from officials;

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

6) To charge relevant state bodies and organizations with a task of preparation of an expert opinion;

7) To be received without delay by heads and other officials of state and municipal bodies, commanders of military units, by heads of prisons and detention centers.

3. The Ombudsman may carry out investigations on his/her own initiative in cases where there is an information on massive violations of human rights, as well as, based on consent of a relevant person, in cases of special public importance or where the interests of persons who are unable to protect their rights themselves had been affected.

4. Where, during an investigation, any violations other than those mentioned in the complaint have been revealed, the Ombudsman shall carry out relevant investigation provided that this is within his/her competence; if not, he/she shall refer the materials to relevant state body.

5. The complaint shall be investigated within 30 days. This period can be prolonged for 30 days more if this is required for conducting the additional verification or requesting the materials.

Article 13. Results of investigation.

1. The Ombudsman shall, within 5 days, submit written information to an applicant about the results of an investigation and measures taken.

2. If, as a result of an investigation, the Ombudsman finds a violation of the rights and freedoms of an applicant, he/she may take the following measures:

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

2) to submit proposals to the Milli Mejlis of the Republic of Azerbaijan on modification of the legislation with a view to improving the protection of human rights and freedoms;

3) to apply to the subjects entitled to file additional cassation complaints;

4) to demand from the state or municipal body, whose decision or action (omission) violated the human rights and freedoms, to remedy those violations. The relevant bodies shall, within ten days, submit to the Ombudsman the written information of the measures taken. Where such information is not submitted or the relevant body fails to comply with the demands of the Ombudsman, the latter may apply to other authorities.

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

6) to inform mass media of the results of investigation conducted in respect of human rights violations;

7) in cases of massive violations of human rights, if the means available at the disposal of the Ombudsman are not sufficient for remedying those violations, to apply to the President of the Republic of Azerbaijan as well as to hold a speech before the Milli Mejlis of the Republic of Azerbaijan;

8) To apply to a court with a view to the protection of the rights and freedoms violated by decision or action (omission) of a state or municipal body or an official, as well as to participate in court proceedings personally or through a representative via the procedure determined by legislation;

9) To apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person had been violated by legislative acts in force.

Article 14. Annual report of the Ombudsman

1. Not later than two months after expiry of a current year the Ombudsman shall speak with annual report before the Milli Mejlis of the Republic of Azerbaijan on his/her activity.

2. The annual report shall contain information about the state and municipal bodies or officials who had violated human rights and freedoms and failed to comply with the demands of the Ombudsman, and of the measures taken in this connection.

3. The annual report of the Ombudsman shall also contain general views and recommendations concerning the protection of human rights and freedoms.

4. The report shall be sent to the President of the Republic of Azerbaijan, 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.

5. The report shall be published in the newspaper Azerbaijan and Compilation of Legislative Acts of the Republic of Azerbaijan which are the official publications.

Article 15. Confidentiality of information

1. The protection of information constituting the state secrets which became known to the Ombudsman while performing his/her duties shall be carried out in accordance with the Law of the Republic of Azerbaijan on State Secrets.

No data connected with private life of applicants, which became known to the Ombudsman while performing his/her duties, shall be made public without their express consent.

CHAPTER III

ORGANISATION AND SAFEGUARDS OF THE WORK OF THE OMBUDSMAN

Article 16. Secretariat of the Ombudsman

1. A Secretariat (staff) shall be set up to provide the Ombudsman with legal, organizational, scientific and analytical, informational, material and technical services.

2. The Ombudsman and the Secretariat shall be a state body with the status of a legal person, and shall have own bank account, as well as a seal and letterhead with the State Emblem of the Republic of Azerbaijan.

3. The Secretariat of the Ombudsman shall act in accordance with the Regulations on the Secretariat of the Ombudsman.

4. The structure, staff listing and expenditure estimates of the Secretariat of the Ombudsman shall be determined by the Ombudsman.

Article 17. Rights and responsibilities of the Secretariat staff

1. The Secretariat staff shall be appointed and dismissed by the Ombudsman.

2. Rights, duties and responsibilities of the Secretariat staff shall be determined in accordance with the relevant legislation of the Republic of Azerbaijan.

Article 18. Financing of the work of the Ombudsman

1. The work of the Ombudsman shall be financed by individual paragraph of the state budget of the Republic of Azerbaijan.

2. The annual amount allocated for financing the activity of the Ombudsman can not be less in comparison with previous fiscal year.

Article 19. Additional guarantees for the Ombudsman

1. The Ombudsman shall receive a salary equal to that of the First Deputy Chairman of the Milli Mejlis of the Republic of Azerbaijan.

2. The Ombudsman shall be exempted from military service and military trainings.

3. The Ombudsman shall be given a diplomatic passport during his/her term of office.

4. The Ombudsman shall be given the leave via the procedure provided for in the legislation of the Republic of Azerbaijan.

5. A former Ombudsman having reached the pension age shall receive a pension in the amount of 80 per cent of his/her salary.