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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT LAW OF THE
REPUBLIC OF AZERBAIJAN
ON THE OMBUDSMAN
(approved by the Milli Mejlis in second reading)**

Draft

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 promote the observance of these rights by the state and municipal bodies and officials as well as the restoration of the violated rights.

2. The activity of the Ombudsman shall not restrict the competence of other state bodies ensuring the protection 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.

4. The Ombudsman shall have the right to propose to the President of the Republic of Azerbaijan to grant pardon, citizenship and political asylum.

5. The Ombudsman shall have the right to propose to the Milli Mejlis of the Republic of Azerbaijan to adopt or to revise the legislation with the purpose of ensuring the human rights and freedoms. The Ombudsman shall have the right to propose to the Milli Mejlis of the Republic of Azerbaijan to announce amnesty.

6. The Ombudsman shall have the right to investigate the complaints relating to violation of human rights connected with undue delays in courts, loss of and non-issuing the documents in time, as well as the retardation of execution of court decisions.

7. The activity of Ombudsman shall be based on the principles of publicity, transparency, fairness and impartiality.

Article 2. Election 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 higher education, high morals and experience in the field of human rights protection can be elected to the post of Ombudsman.

2. The person having double citizenship, obligations before other States, working in the legislative, executive and judicial structures, engaged in any activity involving payment, excluding scientific research, teaching and artistic work, as well as the person whose incapability had been confirmed by court and the person convicted for grave crimes can not be elected to the post of Ombudsman.

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

4. The Ombudsman shall within five 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.

2. The independence of the Ombudsman shall be ensured within his/her term of office by the following:

a) he/she shall not be replaced;

- b) he/she shall enjoy immunities;
- 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, that has detained the Ombudsman shall within 24 hours inform the Prosecutor-General of the Republic of Azerbaijan and the Milli Mejlis of the Republic of Azerbaijan.

3. The immunity of the Ombudsman may be terminated only by a decision adopted by 83 votes of deputies of the Milli Mejlis of the Republic of Azerbaijan following a motion of the Prosecutor-General of the Republic of Azerbaijan.

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

5. The person who retired the post of Ombudsman shall be immune for the opinions expressed and the activity carried out during his/her term of office. In above stated cases this person can be brought to responsibility via the procedure laid down in Article 6.3 of the present Law.

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 83 votes of the deputies of the Milli Mejlis of the Republic of Azerbaijan following a recommendation of the President of the Republic of Azerbaijan in following cases:

- a) Violation of the requirements relating to Ombudsman;
- b) Complete inability to perform his/her duties.

2. Chairman of the Milli Mejlis of the Republic of Azerbaijan shall terminate the powers of Ombudsman before expiry of his/her term, by his/her decree at the session of the Milli Mejlis of the Republic of Azerbaijan in following cases:

- a) death of Ombudsman;
- b) if a judgement of conviction in force has been delivered in respect of Ombudsman;
- c) in case of Ombudsman's written resignation by his/her own will;

3. In case of premature termination of office of Ombudsman the President of the Republic of Azerbaijan shall submit within 30 days the new three candidates to the 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 investigate the complaints lodged by the citizens of the Republic of Azerbaijan, foreigners and stateless persons as well as legal persons (hereinafter referred to as applicant) as to violation of human rights.

2. A complaint may also be lodged by a third person or a non-governmental organization by consent of the person concerned. In cases where it is impossible (because of his/her death, loss of capability, etc.) to get the consent of a person whose rights had been violated, the complaint may be lodged by the third person or a non-governmental organization without a consent of the person concerned.

3. The state bodies can not lodge complaints 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 prisons, detention centers and bull-pens 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 place and date of submitting the complaint; signature of the applicant. Any relevant materials, including any judicial or other decisions relating to the complaint, can be attached to the 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 except the cases, provided for in Article 9.3 of the present Law.

3. If the matter indicated in the anonymous complaint is confirmed by reliable and substantiated information then this complaint can be investigated by Ombudsman.

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

5. At the request of applicant the Ombudsman shall keep in secret the information about him/her.

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

1. In respect to a complaint lodged by the applicant the Ombudsman may take one of the following decisions:

- a) To accept the complaint for investigation;
- b) To refuse 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.

Article 11. Grounds for rejecting a complaint

The Ombudsman shall not investigate complaints in the following cases:

- a) If the complaint breaks the requirements of Article 8.4 of the present Law;
- b) If the contents of a complaint fall beyond the competence of the Ombudsman;
- c) If the complaint is anonymous, except the cases provided for in Article 9.3 of the present Law;
- d) A complaint is being examined within court proceedings;
- e) The re-submitted complaint 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 within 10 days the necessary information, documents and materials from any state, municipal body and officials;

3) To study the court decisions (judgments) in force concerning criminal, civil and administrative offences, as well as the materials concerning the rejection to institute the criminal proceedings;

4) To receive the written explanations from officials during investigation of a complaint;

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;

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, heads of prisons and detention centers.

3. Based on the consent of a relevant person whose rights had been violated the Ombudsman may on his/her own initiative investigate the 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. In case where there is a need to conduct additional verification the period of investigation of complaint can be prolonged based on written consent of applicant.

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) 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 10 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 upper structures of this body or other authorities.

2) to apply to relevant bodies to institute criminal proceedings in cases where certain conduct appears to be a criminal offence;

- 3) to apply to the subjects entitled to file additional cassation complaints;
- 4) to submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or action (omission) violated the human rights and freedoms;
- 5) to inform mass media of the results of investigation conducted in respect of human rights violations;
- 6) 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 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;
- 7) 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;
- 8) 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 submit to the President of the Republic of Azerbaijan the annual report on protection of human rights within country and speak with this report before the Milli Mejlis of the Republic of Azerbaijan.

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 regard.

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".

Article 15. Confidentiality of some 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".

2. 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. Social, financial and other guarantees of 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. The Ombudsman's term of office shall be included into overall, special and uninterrupted period of service seniority.

6. When Ombudsman takes a leave he/she shall get as a sum equal to double month salary in order to pass medical treatment or to rest.

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

Article 17. Secretariat (staff) of the Ombudsman

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

2. The Secretariat of Ombudsman shall have 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 18. Rights and duties of the Secretariat

1. The Secretariat shall be appointed and dismissed by the Ombudsman.
2. Rights, duties and responsibilities of the Secretariat employees shall be determined in accordance with the “Labour Code”, Law of the Republic of Azerbaijan “On Public Service” and other relevant legislation of the Republic of Azerbaijan.

Article 19. Financing the work of Ombudsman

1. The work of the Ombudsman and the Secretariat shall be financed by 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.