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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**Draft Law of the Republic of Azerbaijan  
on the Ombudsman**

**Draft**

**CHAPTER I**  
**APPOINTMENT OF THE OMBUDSMAN**  
**OF THE REPUBLIC OF AZERBAIJAN**

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

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 to promote the observance of these rights by the government and municipal bodies and officials, and the restoration of the violated rights.

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

Investigation of the activity of the President of the Republic of Azerbaijan, deputies of the Milli Mejlis of the Republic of Azerbaijan, the Prime Minister of the Republic of Azerbaijan and the judges of the Republic of Azerbaijan shall not be subjected to the powers of the Ombudsman.

**Article 2. Appointment of the Ombudsman**

The Ombudsman shall be appointed by the Milli Mejlis of the Republic of Azerbaijan following a recommendation of the President of the Republic of Azerbaijan.

**Article 3. Requirements concerning the candidature of the Ombudsman**

Any citizen of the Republic of Azerbaijan of age not less than 30 years who has a University degree in law and more than 5 years of experience in the field of law may be appointed as an Ombudsman.

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

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

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

**Article 4. Term of office of the Ombudsman**

The Ombudsman shall be appointed for a period of 5 years. While in office, he or she shall not be replaced.

The same person may not hold the post of Ombudsman more than twice.

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

#### **Article 5. Independence of the Ombudsman**

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 law.

The independence of the Ombudsman shall be ensured by the following: a) he or she shall not be replaced and shall enjoy immunities; b) there shall be restrictions for instituting criminal proceedings against him or her and for terminating his or her powers; c) it shall be inadmissible to interfere with his or her activity by any government or municipal body or official; d) he or she shall be provided with financial and social guarantees.

#### **Article 6. Immunities of the Ombudsman**

The Ombudsman shall be inviolable while in office.

The Ombudsman, 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 arrested while committing a crime. In such a case the governmental body which has arrested the Ombudsman, shall immediately inform the Prosecutor-General of the Republic of Azerbaijan.

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

The inviolability of the Ombudsman applies also to his or 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 or her term of office**

Powers of the Ombudsman shall be terminated before expiry of his or her term of office 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 or her;
- c) His or her judicially established incapability or limited capability;
- d) Loss of his or her citizenship of the Republic of Azerbaijan;

- e) Inability to perform his or her duties within a period of not less than four months because of disease;
- f) His or her written request for resignation;
- g) A judicial decision declaring his or her to be dead or missing.

## **CHAPTER II**

### **INVESTIGATION OF COMPLAINTS**

#### **Article 8. Submission of complaints**

The Ombudsman shall receive complaints from citizens of the Republic of Azerbaijan, foreigners and stateless persons. A complaint may also be lodged by a third person or a non-governmental organization with consent of the person concerned.

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 or she became aware of that violation.

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.

Complaints shall be investigated within thirty days.

#### **Article 9. Contents of a complaint**

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 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, may be added to that complaint.

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

#### **Article 10. Taking of a decision in respect to a complaint**

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

- a) Accepts the complaint for investigation;
- b) Returns the complaint to the applicant informing him or her of the most appropriate ways to be used with a view to the protection of his or her rights and freedoms;
- c) Refuses to pursue the complaint;

The Ombudsman shall, within 10 days, submit to an applicant substantiated written information of the decision taken under this Article.

### **Article 11. Grounds for refusing a complaint**

The Ombudsman shall not investigate complaints in the following cases:

- a) A complaint is lodged with the Ombudsman more than one year after the date on which an alleged violation of rights and freedoms of the person concerned occurred or he or she became aware of that violation;
- b) The contents of a complaint is beyond the competence of the Ombudsman;
- c) A complaint is anonymous;
- 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**

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

- 1) To have access, without hindrance, to any government and municipal body, military units, prisons, and detention centres; to meet and interview in private persons held in prisons and detention centres ; to study the documents confirming the lawfulness of their detention;
- 2) To receive necessary information, documents and materials, within 10 days, from any government and municipal body, and officials;
- 3) To study court orders (judgments) in force concerning criminal, civil and administrative offences, as well as cases, the proceedings in respect of which were terminated;
- 4) During investigation of a complaint, to receive explanations from officials (excluding judges);
- 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;
- 6) To charge relevant government bodies and organisations with a task of preparing an expert opinion;
- 7) To be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of prisons and detention centres.

The Ombudsman may carry out investigations on his or her own initiative in cases where there is reliable information on massive violations of human rights, as well as in cases of special public importance.

Where, during an investigation, any violations other than those mentioned in the complaint are revealed, the Ombudsman 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.

### **Article 13. Results of investigation.**

The Ombudsman shall, within 5 days, submit written information to an applicant of the results of an investigation.

If, as a result of an investigation, the Ombudsman finds a violation of the rights and freedoms of an applicant, he or 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 amending the legislation with a view to improving the legal protection of human rights and freedoms;
- 3) To apply to the subjects entitled to file additional cassation complaints;
- 4) To demand from the government or municipal body, whose decision or act (omission) violated the human rights and freedoms, to remedy those violations. The relevant bodies shall, within thirty days, submit to the Ombudsman written information of the measures taken in respect of those violations. Where such information is not submitted or the relevant body fails to comply with the demands of the Ombudsman, the latter may apply to the superior authorities or resort to other measures.
- 5) To submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated the human rights and freedoms;
- 6) To inform mass media of the results of the 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, to hold a speech before the Milli Mejlis of the Republic of Azerbaijan;
- 8) 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 government or municipal body, or an official, as well as to participate in court proceedings personally or through a representative within the procedure established by law;
- 9) 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 Ombudsman**

At the end of each year the Ombudsman shall speak with an annual report before the Milli Mejlis of the Republic of Azerbaijan on the human rights situation in the Republic of Azerbaijan.

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

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

The report shall be submitted 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.

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**

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

No personal data, which became known to the Ombudsman while performing his or her duties, shall be made public without the express consent of the person concerned.

## **CHAPTER III**

### **ORGANISATION OF THE WORK OF THE OMBUDSMAN**

#### **Article 16. Secretariat of the Ombudsman**

A Secretariat shall be set up for providing to the Ombudsman legal, organisational, research-analytical, informational, material and technical services.

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

The Secretariat of the Ombudsman shall act in accordance with the “Regulation on the Secretariat of the Ombudsman”.

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**

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

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

#### **Article 18. Financing of the work of the Ombudsman**

The work of the Ombudsman shall be financed from State budget of the Republic of Azerbaijan.

#### **Article 19. Additional guarantees for the Ombudsman**

The Ombudsman shall receive a salary equal to that of the deputies of the Milli Mejlis of the Republic of Azerbaijan.

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

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

The Ombudsman shall be given leave as provided for in the legislation of the Republic of Azerbaijan.

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