

CONSTITUTION LAW OF AZERBAIJAN REPUBLIC ON “OMBUDSMAN OF AZERBAIJAN REPUBLIC”

Chapter I

BASIC PROVISIONS OF OMBUDSMAN’S ACTIVITY AND APPOINTMENT

Article 1. Basic Provisions of the Activity of Ombudsman of Azerbaijan Republic

- 1.1. The position of ombudsman on human rights (hereinafter referred to as “Ombudsman”) of Azerbaijan Republic is assigned to regain human rights and freedoms specified in the Constitution of Azerbaijan Republic and international agreements supported by Azerbaijan Republic and violated by the state and local self- governing bodies, and officials of the Azerbaijan Republic.
- 1.2. Ombudsman’s activity does not restrict or substitute for the authorities of other state bodies protecting human rights and restoring violated human rights and freedoms.
- 1.3. The terms of reference of Ombudsman do not include verifying the activities of President of Azerbaijan Republic, deputies of National Assembly (Milli Mejlis) of Azerbaijan Republic or judges.
- 1.4. Ombudsman may make proposals to President of Azerbaijan Republic on the issues related to granting the right of appeal, citizenship, and political asylum.
- 1.5. Ombudsman may make proposals to the National Assembly of Azerbaijan Republic in connection with the adoption or review of laws on promotion of human rights and freedoms. Ombudsman may also submit a proposal to National Assembly of Azerbaijan Republic regarding announcement of amnesty.
- 1.6. Ombudsman has the right to consider the complaints on human rights violation related to red tape in the court, loss of documents or their undue delivery, as well as delay in the execution of verdict.
- 1.7. Ombudsman’s activity is based on the principles of openness, transparency, lawfulness, justice and impartiality.

Article 2. Election of Ombudsman

- 2.1. Ombudsman is elected by National Assembly of Azerbaijan Republic out of three candidates nominated by President of Azerbaijan Republic with the majority of 83 votes.
- 2.2. If National Assembly of Azerbaijan Republic does not make a decision related to the election of Ombudsman, President of Azerbaijan Republic nominates 3 other candidates to National Assembly of Azerbaijan Republic within 15 days.

Article 3. Requirements to Ombudsman's Nomination

- 3.1. A citizen of Azerbaijan Republic over 30 years of age, educated, with experience in the sphere of human rights protection and possessing high moral values may be elected to the position of Ombudsman.
- 3.2. A person of double citizenship having liability before other states, serving in legislative, executive and judicial branches of government, involved in any fee-based activity other than scientific, pedagogical or creative ones, whose incapability has been confirmed in the court, convicted of heinous and especially grave crimes may not be elected for the position of Ombudsman.
- 3.3. Ombudsman shall not be involved in political activity or be a member of any political party. Ombudsman is not eligible to represent the management structure of a non-governmental organization.
- 3.4. Ombudsman shall cease any activity inappropriate for his/ her status within 5 days as of the date of assignment.
- 3.5. Ombudsman shall make the following declaration at the meeting of National Assembly of Azerbaijan Republic on the day of his/ her election: "I take an oath to fulfill my obligations undertaken with the position of Ombudsman of Azerbaijan Republic with honor and dignity, comply with the Constitution and Law of Azerbaijan Republic, and carry out independent and impartial activity."

Article 4. Terms of Office of Ombudsman

- 4.1. Ombudsman is elected for the term of 7 years.
- 4.2. A person can be elected for the position of Ombudsman only once.
- 4.3. President of Azerbaijan Republic nominates three persons to be elected by National Assembly of Azerbaijan Republic for the post of Ombudsman 30 days prior to the termination of his terms of office. National Assembly of Azerbaijan Republic makes appropriate decision in connection with the election of Ombudsman within the period of 15 days.

Article 5. Guarantees of Ombudsman's Independence

- 5.1. Ombudsman is independent and only obeys the Law and Constitution of Azerbaijan Republic.
- 5.2. Ombudsman's independence is provided with the following guarantees:
 - 5.2.1. Inalterability;
 - 5.2.2. Immunity;

- 5.2.3. Inadmissibility of interference with his/ her activity by any state or self- governing bodies or officials;
- 5.2.4. Provision of material and social securities;
- 5.3. State of emergency or martial law when announced does not stop or restrict Ombudsman's activity.

Article 6. Ombudsman's Immunity

- 6.1. Ombudsman is inviolable during the terms of office.
- 6.2. Criminal proceedings shall not be instituted against Ombudsman unless caught in the act of crime. Ombudsman shall not be arrested, detained, charged with any administrative punishment, prosecuted or searched. The body that has arrested Ombudsman caught in the act of crime shall notify Prosecutor General of Azerbaijan Republic and the National Assembly of Azerbaijan Republic within 24 hours.
- 6.3. Ombudsman's immunity may only be terminated upon the decision made with the majority of 83 votes by the National Assembly of Azerbaijan Republic pursuant to the assignment of Prosecutor General of Azerbaijan Republic.
- 6.4. Ombudsman's immunity is also applied to his apartment, office, transport facilities and means of communication, correspondence via post or telegraph, personal property and documentation.
- 6.5. The person having acted as Ombudsman is inviolable for the opinions pronounced and activity implemented during the term of Ombudsman's office after resignation. This person is brought to court in the cases specified above as per Article 6.3. of this law.

Article 7. Prior Termination of Ombudsman's Terms of Office

- 7.1. Ombudsman's terms of office may undergo prior termination based on the decision made by the majority of 83 votes at the initiative of National Assembly of Azerbaijan Republic or assignment of President of Azerbaijan Republic in one of the cases specified below:
 - 7.1.1. Requirements put forward to Ombudsman are not met;
 - 7.1.2. Ombudsman has completely lost his capability to perform his responsibilities;
- 7.2. Chairman of the National Assembly of Azerbaijan Republic issues an order to prematurely terminate the terms of Ombudsman's office in the following cases announced at the meeting of the National Assembly of Azerbaijan Republic:
 - 7.2.1. Upon the death of Ombudsman;

- 7.2.2. When there is a sentence passed in the court and effective with regard to Ombudsman;
- 7.2.3. When Ombudsman voluntarily resigns from his post at a written notice.
- 7.3. When Ombudsman's terms of office undergoes prior termination, President of Azerbaijan Republic submits three nominees to the National Assembly of Azerbaijan Republic within 30 days to elect new Ombudsman. The National Assembly of Azerbaijan Republic makes appropriate decision regarding the election of Ombudsman within the period of 15 days.

Chapter II

CONSIDERATION OF COMPLAINTS ABOUT HUMAN RIGHTS VIOLATION

Article 8. Regulations for Making Complaints on Human Rights Violation

- 8.1. Ombudsman reviews the complaints regarding human rights violation made by the citizens of Azerbaijan Republic, foreigners, people without citizenship, and legal entities (hereinafter referred to as Plaintiff).
- 8.2. The complaints may be made by third parties or Non- Governmental Organizations upon the agreement of the person whose human rights have been violated. When it becomes impossible to receive the consent from the person whose human rights have been violated (in case of his/ her death, loss of capability, etc.), NGOs and third parties may make complaints without his/ her consent.
- 8.3. State bodies shall not make complaints to Ombudsman.
- 8.4. Complaint shall be made within the period of one year from the day of violation of Plaintiff's rights or his being aware of that.
- 8.5. The complaints made by people kept in penitentiary, investigation and temporary detention facilities shall be forwarded to Ombudsman within 24 hours without going through censoring procedures.

Article 9. Content of Complaint on Human Rights Violation

- 9.1. The complaint regarding human rights violation shall contain Plaintiff's full name, address as well as the essence of action (inaction) or decision that has violated Plaintiff's rights and freedoms, place and date the complaint was written and Plaintiff's signature. In case there are other materials available and/ or judgment delivered by the court, these may be attached to the complaint.
- 9.2. When the complaint does not include Plaintiff's full name and address, it is treated as anonymous. These complaints are not considered in cases other than those specified under Article 9.3.

- 9.3. If the cases indicated in anonymous complaints are supported by substantial evidence and well- grounded facts, they may be received for further consideration by Ombudsman.
- 9.4. If the complaint is made in oral form, a representative of Ombudsman's office records the content of the complaint in a special form, and the Plaintiff signs this paper.
- 9.5. Ombudsman shall keep the secrecy of information about the Plaintiff upon his/ her request.

Article 10. Decision- Making in Connection with the Complaint about Violation of Human Rights

- 10.1. When a complaint regarding human rights violation is received, Ombudsman may make one of the following decisions:
 - 10.1.1. Accept the complaint for consideration;
 - 10.1.2. Refuse the consideration of the complaint made;
- 10.2. If Ombudsman rejects to consider the complaint, the Plaintiff is provided with a valid written reply within 10 days.

Article 11. Reasons for Rejection to Consider a Complaint about Human Rights Violation

- 11.1. Ombudsman does not consider the complaint in the following cases:
 - 11.1.1. The requirements set forth under Article 8.4. of this Law are not observed;
 - 11.1.2. The solution of the complaint is outside Ombudsman's terms of reference;
 - 11.1.3. The complaint is anonymous with the exception of cases specified under Article 9.3. of this Law;
 - 11.1.4. The case is investigated in court;
 - 11.1.5. The re- made complaint does not convey new information, facts and evidence.

Article 12. Regulations on Consideration of the Complaints about Human Rights Violation

- 12.1. Ombudsman shall find out the opinion of the body or official complained of in the process of investigation of the cases described in the complaints about violation of human rights. The opinion shall be related to the complaint and submitted to Ombudsman within 10 days.

- 12.2. While investigating the cases described in the complaints about violation of human rights, Ombudsman has the rights:
 - 12.2.1. To have access to state and self- governing bodies, military unit, penitentiary and investigation facilities, temporary detention places without previous notice or hindrance; meet and have face- to- face conversation with the people kept in penitentiary, temporary detention and investigation facilities; get familiarized with the documents recording the legality of their being kept there;
 - 12.2.2. To request of the government and self- governing bodies, and officials the necessary documents, materials and information due to be provided within 10 days;
 - 12.2.3. To get familiar with the materials on verdict of legal force related to criminal, administrative and civil activities, as well as rejection to commence legal proceedings;
 - 12.2.4. To receive written certificates from officials during the investigation of complaints;
 - 12.2.5. To instruct relevant bodies to verify the cases described in the application (the bodies or officials whose action (inaction) or decision has been complained of shall not be commissioned with verification);
 - 12.2.6. To charge relevant state bodies or agencies with developing of expert's report;
 - 12.2.7. To be received by the heads of state and local self- governing bodies, Commanding Officer, managers of penitentiary and investigation facilities without delay;
- 12.3. Ombudsman may carry out investigation on his own initiative in cases of particular public importance upon the consent of the person whose rights have undergone violation or when the interests of those incapable of independently protecting their rights are affected;
- 12.4. If any other cases of violation are revealed in the process of investigation, the investigation may be conducted by Ombudsman when authorized to do so. The materials shall be forwarded to other duly authorized state bodies if the case is outside Ombudsman's authorities;
- 12.5. The period under the review of submitted complaint is 30 days. This period may be extended to another 30 days if it is necessary to carry out additional verification or to require extra materials. The period under review may be again extended upon written agreement of the Plaintiff if another verification is required.

Article 13. Outcomes of the Consideration of Complaints about Human Rights Violation

- 13.1. Ombudsman informs the Plaintiff of the measures taken in connection with the consideration of the complaint and its outcomes in written form within 5 days.

- 13.2. Ombudsman may take the following measures if the violation of human rights is revealed in the process of investigation of the complaint. Ombudsman may:
 - 13.2.1. Demand from the state and local self- governing bodies, and officials restoration of the rights violated in the result of their action (inaction) or decision (Relevant bodies and officials shall provide Ombudsman with written information about the corrective actions within 10 days. In case the information is not provided or Ombudsman's requests are not responded, Ombudsman may approach the higher body of the organization or another state body);
 - 13.2.5. Apply to relevant bodies to commence legal proceedings upon revealing indications of a crime;
 - 13.2.6. Approach the subjects possessing the right to refer to the Court of Cassation;
 - 13.2.7. Submit proposals to the appropriate bodies with regard to fixing a disciplinary punishment for the officials having violated human rights through an action (inaction) or a decision;
 - 13.2.8. Familiarize mass media with the outcomes of the verification conducted in connection with human rights violation;
 - 13.2.9. Appeal to President of Azerbaijan Republic and make a speech in front of the National Assembly of Azerbaijan Republic if the possibility of influence within the limits of Ombudsman's authorities is not sufficient to restore human rights violation having particular public importance;
 - 13.2.10. Refer to the court to restore the rights and freedoms violated as a consequence of an action (inaction) or decision of a state or local self- governing body or official;
 - 13.2.11. Make inquiries from the Constitution Court of Azerbaijan Republic if a person's rights and freedoms are violated by the standard acts in force.

Article 14. Annual Report of the Ombudsman

- 14.1. Ombudsman submits to President of Azerbaijan Republic annual report on the protection of human rights in the state no later than 2 months after the current year is over and addresses the National Assembly of Azerbaijan Republic with that report;
- 14.2. The annual report lists the officials as well as state and local self- governing bodies disregarding Ombudsman's requests and violating human rights. It also briefs upon the measures taken in this connection.
- 14.3. General opinion, considerations and recommendations related to ensuring human rights shall also be reflected in the annual report of Ombudsman.

- 14.4. Annual report is delivered to the Cabinet of Ministers of Azerbaijan Republic, Constitution Court of Azerbaijan Republic, Supreme Court of Azerbaijan Republic and Prosecutor General of Azerbaijan Republic.
- 14.5. The report shall be published in “The Azerbaijan” (newspaper) and “Legislative Collection of Azerbaijan Republic”.

Article 15. Ombudsman’s Keeping Secrecy of Some Information

- 15.1. The information that is a State secret revealed during Ombudsman’s activity shall be protected in the way specified in the Law of Azerbaijan Republic on “State Secret”.
- 15.2. The information related to the personal or family life of the Plaintiff disclosed in the process of the complaint investigation shall not be disseminated without their consent.

Chapter III

ORGANIZATION AND SECURITIES OF OMBUDSMAN’S ACTIVITY

Article 16. Ombudsman’s Social, Material and Other Securities

- 16.1. Ombudsman is granted a salary in the amount no less than that given to the First Deputy Chairman of the National Assembly of Azerbaijan Republic.
- 16.2. Ombudsman is exempt from military service or assembly.
- 16.3. Ombudsman is granted a diplomatic passport for the term of office.
- 16.4. Ombudsman is provided with a leave as determined by the Legislation of Azerbaijan Republic.
- 16.5. Ombudsman’s term of office is included in his general, special and unbroken record of service.
- 16.6. When taking a leave, Ombudsman is provided with steering guarantee for his/ her treatment and/ or rest in the amount of 2 months salary.
- 16.7. The person having acted as Ombudsman shall be granted with a pension in the amount of 80% of the salary currently allocated for this position disregarding the term of his office when he reaches the pension age.

Article 17. Ombudsman’s Office

- 17.1. Ombudsman’s office is established to provide the legal, organizational, scientific & analytical, informational, logistical, financial and economic support of his activity.

- 17.2. Ombudsman's office has a stamp and letterhead with the State Emblem of Azerbaijan Republic on them.
- 17.3. The office functions in conformity with the Regulations on "Office of Ombudsman of Azerbaijan Republic" approved by Ombudsman.
- 17.4. Ombudsman determines the structure of Ombudsman's office, its staff and estimated costs.

Article 18. Rights and Responsibilities of the Staff of Ombudsman's Office

- 18.1. Ombudsman employs and dismisses the employees of his/her office.
- 18.2. Rights, duties and responsibilities of the employees of Ombudsman's office are defined in accordance with the Labor Code of Azerbaijan Republic, Law of Azerbaijan Republic on "State Service" and other legislative acts of Azerbaijan Republic.

Article 19. Funding of Ombudsman's Activity

- 19.1. The activity of Ombudsman and his office is financed from the State Budget of Azerbaijan Republic.
- 19.2. Annual funding allocated for the activity of Ombudsman shall not be diminished as compared to the previous financial year.