

## Azerbaijan

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*Azerbaijan Ombudsman Institute*

### **Independence and effectiveness of the NHRI**

#### **International accreditation status and SCA recommendations**

In May 2018, the Azerbaijani NHRI was downgraded from A to B status. The SCA was of the view that the NHRI had insufficiently addressed credible allegations of human rights violations having been committed by government authorities. It also encouraged the NHRI to advocate for amendments in its enabling law to ensure that the selection and appointment process of the Ombudsperson.

#### **Developments relevant for the independent and effective fulfilment of the NHRIs' mandate**

Safeguards for the functioning of the HRCA are provided by Article 5 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) (hereinafter-Constitutional Law). Article 19 of the Constitutional Law ensures the independent activities of the HRCA, thus, Article 19.2 stipulates that, "The annual expenditure allocated for financing the work of the Commissioner may not be reduced in relation to the previous financial year."

The Commissioner for Human Rights (Ombudsman), Sabina Aliyeva, presented the annual report on the activities of the Commissioner on protection and promotion of human rights (HRCA) in the country for 2019, on April 24, 2020, before the Parliament. The Parliament approved the report. The HRCA raised many issues during her speech before the Parliament including issues related to the rule of law such as the non-execution of the court judgments. The Annual Report will soon be available in English on the official site of the Ombudsman Institution.

#### **Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA**

This should be noted that a new Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was elected by the Parliament on 29th of November 2019. At

present, the Ombudsman Institution develops new amendments to Constitutional law, which also cover the SCA recommendations.

## Human rights defenders and civil society space

Human rights defenders are active in the country as members of civil society and the HRCA closely cooperates with them in different directions. For instance, in 2019, the HRCA joined regional project on “Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries”, which is funded by the EU and implemented by the CoE. In the framework of the project, the HRCA actively cooperates with human rights defenders, NGOs and local communities. As such the HRCA jointly with the above-mentioned international organizations organized a training seminar in Guba district where lot of national minorities live. In this seminar, the staff of the Ombudsman Institution, representatives of the EU and CoE, as well as representatives of the NGOs and local communities enjoyed the opportunity to share their views and thoughts on joint cooperation with regard combating discrimination.[1] The HRCA is in will to continue this cooperation with the members of civil society and learn their concerns in certain fields.[2]

### *References*

- (1) <http://www.ombudsman.gov.az/en/view/news/1705/a-training-seminar-on-anti-discrimination-was-held-in-guba>
- (2) [https://twitter.com/az\\_ombudsman/status/1263881305441386498](https://twitter.com/az_ombudsman/status/1263881305441386498)

## Checks and balances

The HRCA receives appeals on maladministration and non-execution of judgments, and sends due recommendations to the relevant state bodies. According to the HRCA’s Annual Report for 2019, the appeals addressed to the HRCA in relation to the right to administrative and judicial guarantees of the rights and freedoms, were mainly about dissatisfaction with judgments, biased review of the case, failure to send or delayed delivery of summons to the parties, failure to give or due time delivery of copies of judgments, failure to notify one of the parties to the case regarding the submission of appeals and cassations complaints and procrastination.

During the year of 2019 the HRCA also received many appeals related to the non-execution of judgments that raises concerns about non-implementation of judgments or remaining them unimplemented for a long time, procrastination, and violations of ethical conducts by the executive officers against citizens. The HRCA considers it as a serious problem raised this issue in the Annual Report. The HRCA noted in the report that the failure of some executive officers to take responsibility of their duties, their non-professional attitude to the fulfillment of their duties and failure to timely implement the statutory measures has led to serious problems and complaints in execution of judgments. The HRCA notes in the annual reports that the executive officers should not stay out of responsibility in such cases and necessary measures against the executive officers that fail to manage their duties, display unprofessionalism and indifference, breach the ethical conduct rules should be taken. The HRCA notes in the Annual Report for 2019 that with the appropriate interventions of the HRCA, several judgments about demands for other claims have been solved.

The HRCA also notes that, with the purpose of preventing infringements of human rights by executive officers, drafting and applying new conceptual approaches and efficient mechanisms to ensure respect of rules and procedures, as well as strengthening mechanisms of control and discipline in the execution field, would serve to increase accountability and prevent the aforementioned violations. This would require, in particular, sanctioning executive officers breaking ethical conduct rules or failing to show professionalism and commitment towards their duties.

As regards drafting and enacting legislation, the HRCA actively participates in improvement of the national legislation by analysing complaints. The HRCA notes in the Annual Report for 2019 that over the past few years, significant improvements have been achieved in terms of advancing national legislation, expanding the opportunities for national economic development and a state budget, solution of social problems of the marginalized groups of the population, including those with special needs. The HRCA recommends to use this opportunity and ratify a few of articles of the European Social Charter (Revised), including Article 10 on the right to vocational training, Article 15 on the right of persons with disabilities to independence, social integration and participation in the life of the community, Article 19 on the right of migrant workers and their families to protection and assistance; and Article 23 on the right of elderly persons to social protection. [1]

### *References*

- (1) Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2019

## **Functioning of justice systems**

According to the national legislation everyone is guaranteed administrative and judicial protection of his/her rights and freedoms. Every person has the right to an unbiased approach to and consideration of his/her case within reasonable time and to be heard during administrative and judicial proceedings.

The steps taken for improvement of the judicial structure and system, gradual elimination of the shortcomings, application of innovations and development of e-justice have a positive impact on facilitating by the access to judiciary in Azerbaijan.

The Decree "On Deepening of the Reforms in the Judicial-Legal System" signed by the country President in April, 2019, played an important role in further improvement of the access to justice, increase efficiency and transparency in judicial proceedings, fully and timely execution of judgments, and strengthening the measures for elimination of procrastination and other similar negative cases.

According to relevant Decree, in July 2019, Commercial Courts were established and from January 2020, started to function in Azerbaijan. These courts provide effective and prompt resolution to problems by handling commercial disputes. Therefore, this is advisable to carry out judicial and legal reforms in order to effectively and urgently settle the business-related human rights disputes.

The Ombudsman continued to cooperate with the judicial power, including the Constitutional Court of Azerbaijan in the field of protection of the right to administrative and judicial guarantees of the rights and freedoms of citizens.

The HRCA also promotes the use of mediation in disputes and in some cases, it was used in resolving the complaints addressed to the HRCA. As noted in the Annual Report of HRCA for 2019 some complaints related to disputes between teachers and pupils have been examined and solved through mediation.

The HRCA continues to cooperate with judicial power, including the Constitutional Court in protection of the right to administrative and judicial guarantees of the rights and freedoms of persons. According to the Constitutional Law, the HRCA submits inquiry to the Constitutional Court to check the constitutionality of the national normative acts.

The Commissioner does not investigate a complaint if that is being examined within court proceedings under Article 11.1.4 of the Constitutional Law.

The HRCA reflects the issues related to the judicial problems in the annual reports. In the annual report for 2018, the HRCA noted that "...the execution process of court decisions, allowing bureaucracy and rudeness, showing indifferent, sometimes biased attitude towards executive activity, unreasonably delaying the execution of court decisions, as well as not fulfilling the authorities to the extent prescribed by law, unlawful actions and deficiencies by some of the executive officers do not allow the solution of problem along with influencing negatively to the effectiveness and reputation of administration of justice." [1]

### *References*

- (1) <http://www.ombudsman.gov.az/en/view/pages/59/>

## **Media pluralism**

The issue of media and protection of journalists' independence has always been in the focus of the HRCA.

At the same time, the problem of unprofessionalism and combating spreading fake news in the society also remains an ongoing concern. The HRCA addresses this issue regularly and conducts awareness raising activities with the representatives of the mass media. In the annual report, the HRCA notes that the use information that displays violence, especially the "visible" content about the children and women, which in many cases includes unconfirmed news in media, mass media and social networks, is unacceptable.

It is worth to mention that the amendments were made to the "Guidelines on journalists' professional behavior in Azerbaijan". Also new obligations were determined for following the principle of gender equality in the course of journalistic activity on the basis of the CoE project on "Gender equality and freedom of media", which the HRCA also took part in.

Within the framework of the project that continued in 2019, several awareness-raising trainings were conducted in Baku city and regions with the participation of representatives of mass media on ensuring freedom of speech and press, gender equality in press, professional legal culture of journalists, and a staff member of the Ombudsman Office participated as the trainee-expert in these trainings.[1]

### *References*

- (1) Annual Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for 2018: <http://www.ombudsman.gov.az/en/view/pages/59/>

## **Corruption**

The activity of the HRCA also covers the issues related to combating corruption. Expanding public control plays an important role in ensuring the legality and transparency in all spheres of socio-economic life. The Commissioner actively cooperates with the members of civil society, NGOs and media, conducts public awareness events to raise the literacy in the society for combating corruption, which leads to human rights abuses as a result of business activities.

It is obvious that effective mechanisms for fighting against corruption play significant role in free entrepreneurship. In order to take constant measures for prevention of fabricated hindrances to the development of the entrepreneurship and needless interference, the Commissioner forwarded the corruption related complaints to the Prosecutor General's Office.

The HRCA met with the representatives of different bodies, including GRECO (the Group of States against Corruption) and discussed the perspectives of cooperation on combating corruption and also had a cooperation with Anti-Corruption General Directorate with the Prosecutor General, as well as with NGOs, particularly with Transparency Azerbaijan, Coalition Against Corruption, Information and Cooperation Network of NGOs against Corruption etc.

For the effective prevention of abuse of the duties and combating corruption it would be useful to study international experience on corporate social responsibility and look into the possibilities to apply the followings at the national level; to inform entrepreneurs on human rights; to report periodically on the situation about compliance with human rights by

enterprises, also to develop and implement mechanisms on requesting information from them if necessary.

As a National Human Rights Institution, the HRCA submitted written statements to the UN Human Rights Council. One of the statements of the HRCA was related to the business and human rights. In the HRCA's statement submitted to the 32nd session of UN Human Rights Council the recommendation on, inter alia, "Realization of activity in elimination of corruption cases" [1] took place. There were also other recommendations related to elimination of human rights abuse such as "Promotion of joint cooperation of business structures with the civil society institutions, mobilization of human resources" and "Promotion of acceptance of collective agreement in business structures".

### *References*

- (1) Written submission by the Azerbaijan: Human Rights Commissioner (Ombudsman) "The role of Azerbaijan NHRI in the field of business and human rights". The 32<sup>nd</sup> session of the UN Human Rights Council, June 6, 2016.

## **In-focus section on COVID-19 measures**

### **Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country**

Since the declaration of a special quarantine regime on March 24, 2020, in Azerbaijan, the Government takes all necessary emergency measures to prevent the outbreak of COVID-19 in the country. Therefore, the Government of Azerbaijan declared one-month lockdown and social distancing at the national level, which was later prolonged until 4th of May, 2020, by the Operational Headquarters under the Cabinet of Ministers [1] to avoid the possible complications in the future at this challenging time.

However, appropriate emergency measures are being taken to respond the COVID-19 in the country. In order to cover the country's own needs with regard to protective equipment infection control (such as medical masks, gloves and disinfectants), a new factory was exploited to produce medical masks and other necessary protective means.

As stated earlier, measures are being implemented in regard to the prevention of the spread of COVID-19 in order to protect people's health and security in the country. The

social isolation rules and the special quarantine regime have been applied and the activities have been limited for this purpose. In the framework of these measures, also the opportunity has been created for the implementation of court proceedings related to civil cases and commercial disputes by means of “Electronic court” information system. In order to protect the safety of citizens and ensure the judicial protection of their rights in the current pandemic, recently, with the application of this software, several court proceedings were held in the form of videoconferences, in an online regime, and final decisions were issued. As well as 260 convicts were released on parole.

During the special quarantine regime, the HRCA issued a general public call and special statements on protection of the rights of people with disabilities, migrants, children addressed to the relevant governmental bodies, public and business sectors. Special newsletters on the activities of the HRCA were also shared with the relevant international organizations and network of the Ombudsmen.

The vulnerable groups of population are under the high risk during the quarantine regime. Provision of their urgent needs and protection of their rights are principal during such challenging times. Since the beginning of a special quarantine regime due to COVID-19 pandemic, the HRCA issued calls addressed to the governmental bodies and private sector. Amid the activities taken in response to this pandemic, she put forward her specific recommendations and suggestions concerning the ensuring the rights of persons with disabilities [2], migrants [3], children [4], and the rights of population groups in detention and other places [5], which persons cannot leave on their own will, during this special quarantine regime.

The HRCA recommended providing conditional release of the prisoners with disabilities considering the situation regarding COVID-19 infection and appealed to the Ministry of Justice for submitting documents of such prisoners to the court, broadcasting TV programs in an accessible formats (with tiflo and sign language interpretation), as well as online promotional programs and producing booklets in Braille on this topic in order to ensure access for PWDs, including persons with visual impairment and hearing loss to decisions, recommendations and suggestions taken for fight coronavirus infection and guidance on prevention of the infection.

In the framework of combating new COVID19 pandemic the activities on combating the virus continues in Azerbaijan. By the country President’s decree on pardoning dated 6 April, 2020, 176 convicts were released from prison and sent into the quarantine. The decision on pardoning was given by taking into consideration the appeals of the convicts

over the age of 65 who need special care because of their age and state of health due to the spread of coronavirus infection. 10 convicts were released by the motion of the Ombudsman submitted in accordance with Article 1.7 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.

Due to the outbreak of COVID-19, in order to monitor the impact of preventive measures against the spread of the virus in the country, the members of the National Preventive Group of the Ombudsman of Azerbaijan conducted monitoring in some facilities of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan as well as in the center of detention place for administrative arrests of the Ministry of Internal Affairs of the Republic of Azerbaijan.

Furthermore, the HRCA also pays attention to ensuring the rights of detainees, taking into account their psychological situation in the context of the growing pandemic and recommends all competent bodies to follow the rules for the effective protection of their rights as provided in instructions of the Operational Headquarters under the Cabinet of Ministers, UN COVID-19 Guidance, in Advice of OPCAT Subcommittee on Prevention of Torture (SPT) and in Principles of the CoE Anti-torture Committee. NHRI published the CoE Principles about COVID-19 in Azerbaijani on its Facebook page to further disseminate them among the public and translated UN COVID-19 Guidance into Azerbaijani language [6]. It also released a video clip identified by the hashtag “Stay home and be healthy” calling people to follow the rule of social distancing and placed that on its official Facebook page.[7]

## References

- (1) <https://cabmin.gov.az/az/article/815/>
- (2) Message of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan to the state and local self-governing institutions, officials, and other offices, enterprises, organizations and business entities regarding the protection of the rights of persons with disabilities due to the coronavirus (COVID-19) infection outbreak
- (3) <http://ombudsman.gov.az/az/view/news/1758/azerbaycan-respublikasinin-insan-huquqlari-uzre-muvekkilinin-ombudsmanin-koronavirus-COVID-19-infeksiyasinin-yayilmasi-ile-elaqedar-elilliyi-olan-shexslerin-huquqlarinin-mudafiesi-ile-bagli-dovlet-ve->
- (4) Information on the measures carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan for effective protection of the rights of migrants due to the outbreak of coronavirus (COVID-19) infection
- (5) Information on the activities carried out by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in the field of child rights protection during the ongoing outbreak of COVID-19 infection in the country
- (6) <https://www.facebook.com/ombudsman.az/>
- (7) <https://www.facebook.com/ombudsman.az/videos/1148719708797564/#Evdəqal#Sağlamol#Bizbirlikdəgüclüyük>

## Most important challenges due to COVID-19 for the NHRI's functioning

In order to prevent spread of the COVID-19 according the rules and instruction of the Operational Headquarters under the Cabinet of Ministers, the Ombudsman Office temporarily suspended the in presence reception of people in the central office as well as in the regional offices. Taking this into account the head of the facility was recommended to address the application of the detainees to the Ombudsman without any delay by post.

Despite the fact that the HRCA has temporarily suspended the in presence reception of citizens because of the COVID-19 outbreak, complaints and applications are received via e-mail, telephone, fax and in an online form; each appeal is responded with the sense of urgency. The HRCA also receives appeals through Institution's Facebook page and Twitter.

The HRCA conducted online meetings with the Ombudsmen of other countries for exchanging views and experiences on combating the virus. The staff of the Institution also took part in different online meetings organized by ENNHRI and CoE, and actively discussed the current challenges in the period of pandemic and the solutions to cope with them.

