

## Azerbaijan

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*Office of the Human Rights Commissioner of Azerbaijan*

### **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.

### **Impact of 2020 rule of law reporting**

#### **Follow-up initiatives by the Institution**

In 2021, the Office of the Human Rights Commissioner of Azerbaijan (HRCA) held broad discussions on the basis of recommendations given to various public authorities in the Parliament. The recommendations were put forward to develop the domestic legislation framework and human rights protection mechanisms. The recommendations provided to the Parliament have been indicated in the 2020 Annual Report of the Ombudsman as well.

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

#### **Changes in the regulatory framework applicable to the Institution**

In 2020, within the premises of the HRCA a separate Department for the Protection of the Right to Information was established. This is meant to strengthen the mandate granted to the Ombudsman under the Constitutional Law for the supervision over the implementation of the provisions of the Law on Access to Information, the related oversight mechanisms and enable the Institution to effectively deal with the complaints on the violation of the right to information, as well as to discuss amendments to the national legislative framework.

Under this mandate, the HRCA operatively investigates the complaints, takes necessary measures to eliminate existing impediments, replied to the incoming requests for information and in some cases, provides complainants with legal advice.

The HRCA is currently drafting recommendations to the Parliament for amendments and additions to the provisions of the Constitutional Law in order to expand the powers of the Ombudsman. In particular, the HRCA is suggesting the integration within the mandate of new national preventive mechanisms on anti-discrimination and the strengthening of the institutional structure and financial resources to enable the Institution to fully fulfil its mandate under Article 33.2 of the CRPD.

The members of the national preventive mechanism (NPM) Group of the Ombudsman have been renewed.

Measures for the advancement of the overall work of the Secretariat and Office of the HRCA also continue to be pursued, for instance creating a new department (for Protection of the Right to Access to Information), creating and improving the existed social media networks (Facebook, Twitter, Youtube, Instagram), creating the unified call centre for all kind of applications and complaints, etc.

### Enabling space

The Constitutional Law of Ombudsman, details very well the powers and functions of the Ombudsman, including its participation in the legislative process. Under the Constitutional Law, the Ombudsman is independent and obey only the Constitution and the laws of Azerbaijan, enjoys immunities, and no governmental or municipal body or official may interfere with its activity. Therefore, the HRCA independently and without any hindrance follows up on the implementation of its recommendations by state authorities, during the monitoring in places of deprivation of liberty, social-care and health institutions, military units and other facilities. In case the recommendations are not taken into account, the Ombudsman points this out into its Annual Reports. Most of the time this allows the issues to be duly considered and lead to responsible officials being punished as provided by the law.

The Ombudsman has the power to make proposals to the Parliament, and to central and local executive authorities concerning the advancement of the legislation, human rights protection mechanisms, as well as the eradication of the human rights violations. Currently, the HRCA is working on a set of recommendations for the expansion of its mandate, which will soon be presented to the Parliament. The Ombudsman may also submit motions to the President and Parliament, concerning the granting of pardon, amnesty, citizenship and asylum. For example, on 18 March 2021, the country President has signed an Order "On pardoning a number of convicts" and on the motion of the Ombudsman 72 convicts were granted pardon.

The HRCA is currently working on improving its institutional capacity and mandate, and drafting subsequent recommendations to the Parliament for amendments and additions to the provisions of the Constitutional Law. In particular, the HRCA is suggesting the strengthening of the institutional structure and financial resources to enable the Institution to fully fulfil its mandate under Article 33.2 of the CRPD.

As part of the engagement of the HRCA with state authorities, the Ombudsman institution also actively collaborates with the State Committee for Family, Women and Children's Affairs within the CoE/EU funded Twinning online Project " Models of Disability in Eastern Partnership: best practices and lessons learnt", which covered learnt challenges and lessons, Istanbul Convention, prevention of domestic violence, promotion of gender equality and etc. The Project is still ongoing.

Within the framework of the Partnership for Good Governance (EU-CoE regional programme for the Eastern Partnership countries) II Project for Good Governance, the HRCA and other state authorities have improved their knowledge on how to further protect the rights of the victims of abuse and support them in compliance with international standards and rules.

Within the framework of its cooperation with civil society and state authorities, the HRCA discusses human rights issues related to businesses and violations emerging as a result of business activities with its Working Group on Business and Human Rights, which consists of experts of civil society and relevant state agencies. This group was established at the initiative of the HRCA to coordinate the activity between state authorities, raising awareness in the field of human rights in the context of business and human rights. The issues discussed include corporate responsibility, occupational diseases, social security, and protection of employees in state and private entities, environmental challenges due to business activities.

State authorities are encouraged to hold awareness raising events on the rights of the child during the annual Human Rights and Child Month-long campaigns. In 2020, between 20 October and 20 November, video discussions were held with civil society and state authorities.

### *References*

- <https://ombudsman.az/en/view/news/2440/72-convicts-were-pardoned-at-the-motion-of-the-ombudsman>

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

In 2021, due to the Covid-19 pandemic, all public awareness events organised by the HRCA, including those held through its Regional Centers, were held online. This significantly affected the number and level of effectiveness of such initiatives compared to in-person meetings. Indeed, the HRCA staff faced a heavy workload over the past year for the purpose of handling complaints remotely, as the Institution had to suspend the provision of legal advice in person during reception hours as it was normally the case before the pandemic outbreak.

## Human rights defenders and civil society space

Everyone has the right to legally seek, obtain, impart, produce and disseminate any information irrespective of status, be it natural or legal person or field of occupation. The HRCA has been taking some actions to promote the right to access to information for all.

The HRCA closely collaborates with members of civil society and human rights defenders, NGOs and local communities. In 2021, the new Ombudsman of Azerbaijan has established a separate Department for the Cooperation with international organizations and civil society institutions within the Office. The institution investigates any complaint received from human rights defenders, NGO members.

Regional Centers of the Ombudsman regularly hold awareness raising events for local communities and NGOs representatives. In 2020, the HRCA held online conferences with participation of civil society organizations within the month-long campaign "Child Rights Month" running between 20 October-20 November on the initiative of the Ombudsman.

In 2021, the HRCA is continuing its work to raise awareness on good governance and human rights. In this context, the HRCA held an online meeting with civil society organizations (CSOs) and NGO representatives to learn about challenges they are facing and discuss future joint projects. During the meeting, the matters related to the advancement of the national regulatory framework for human rights protection, exercising public control, the adoption of anti-corruption measures. Furthermore, it should be noted that the HRCA is currently drafting the recommendations for amendments and additions to the provisions of the Constitutional Law. Given the close cooperation of our Ombudsman Institution with NGOs, the Ombudsman encouraged civil society institutions to participate in this process.

## Checks and balances

The Government of Azerbaijan always attaches great importance to dialogue with citizens. The official website of the head of state has been updated, and every citizen has the opportunity to address the President via this official website. This right has now also be extended to aliens have direct access to the head of state through the official website, and can express their views on the issues that concern them.

The State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan (ASAN) Service and responsible state authorities run a project for the citizens who fled from the Nagorno Karabakh and seven adjacent districts that were destroyed by armed conflict. So, the Government of Azerbaijan starts a demining process even if this process is very difficult without any minefield map, as well as re-construction works in those areas. During the project, the competent authorities, conduct a survey with the citizens how they would like to have the layout of their new houses to be re-constructed, including other social protection issues after the re-settlement process. This process builds confidence and stable trust between citizens and the state.

The work of the Ombudsman is complementary to that of the courts. It has a power to identify violations based on its investigations of individual applications, and to report systematic problems related to maladministration. The new Ombudsman has received 27.500 complaints in 2020. Over the years, the HRCA has identified and investigated many issues and has introduced recommendations to the Parliament, the majority of which have been considered.

The HRCA continues to collaborate with all branches of government, including the judicial power, e.g. the Constitutional Court.

In 2021, the HRCA submitted two requests to the Constitutional Court for checking the compliance of Articles of the Civil and Criminal Codes with the Constitution.

The HRCA has been empowered with a special function on "Supervision over the Law on Access to Information" to react to complaints dealing with the violation of the **right to information**, including the right to know (e.g. access to personal data), by public authorities. In 2020, the HRCA set up a Department for Protection of the Right to Information, comprising two Units, Right to Information Unit and Analyses and Monitoring Unit. Besides the investigation, the HRCA raises awareness about the responsibility of public authorities to respect the right to information and to provide it to the requestors, unless otherwise provided by law.

### *References*

- <https://www.facebook.com/ombudsman.az/posts/277084017163995>
- <https://www.facebook.com/ombudsman.az/posts/277084017163995>

## Functioning of the justice system

Within its mandate under Article 1.9 of the Constitutional Law, during its human rights monitoring and investigation of complaints on the violation of the right to judicial protection, the HRCA found that the courts create **artificial and bureaucratic barriers hindering access to justice** by the citizens. Identified issues include: delays in obtaining copy of the judgments, failure to return supporting documents to the application when refusing the latter, delays in or failure to deliver summons to the relevant parties as required by the civil and procedural legislation, failure to take necessary actions for the participation of all relevant parties to the trial proceedings, violation of the code of ethical conduct by the judge during proceedings, rejection of evidence and failure to fulfil petitions, pressure on the parties during proceedings, unreasonable restrictions to the right to appeal, failure to direct the judgements to the execution and to respond to for requests leave to appeal. All these shortcomings affecting the justice system have been signalled in the HRCA 2020 Annual Report (an English version of the Report will be soon available).

Within its mandate, the HRCA may examine complaints on violations of human rights relating to failures to respect the right to good administration, including red tape, loss of or delayed delivery of documents in courts as well as delays in the execution of court judgments (Const. Law, Art. 1.9). The Institution however cannot interfere with the activity of judges (Art. 1.6).

As mentioned above, the HRCA currently works on the expansion of its mandate, which also consider similar aspects.

The HRCA highlights that ensuring **legal needs of low-income individuals** will lead to the best and most effective access to justice. As not all across the country are able to afford legal services, therefore, the Ombudsman considers that it would be appropriate to allocate additional resources for the establishment of state-financed lawyer consultation centres across the country, along with all necessary measures for stimulating the activity of lawyers in districts. This would promote more effective protection of human rights and prevention of law violations and maladministration.

Under its mandate, in 2020, the HRCA recommended increasing the number of **lawyers** across the country and amount of payment for lawyering services at state expense, supporting their activity and simplifying their selection procedures. Through its investigations, the HRCA found out that some lawyers violate the responsibility for clients (i.e. by demonstrating indifference to their clients). The Ombudsman therefore recommends training the lawyers in order to increase the quality of client-lawyer relationship and legal assistance services. To that effect, the HRCA submitted targeted recommendations to relevant bodies to take appropriate supportive measures, including increasing the number of legal consultation offices across the country, further develop and improve the legal aid system, etc.

As a result of investigations by the HRCA related to the problems like **non-execution of judgments**, especially on alimonies, salary arrears, property issues, in many cases the execution of court decisions was executed, and the violated rights were restored. The investigations conducted by the HRCA has revealed that the number of problems with alimonies (child support) increased and that most of the time the relevant judgments are not executed. Given that single parents and foster children are in need of such financial support, the HRCA intervened to ensure that appropriate measures be taken for the execution of court decisions. The Ombudsman's investigations and interventions resulted in part or full payment of alimonies in some cases.

## Media pluralism and freedom of expression

In 2020, the HRCA investigated the case of a **detained journalist**, Polad Aslanov, in order to protect his rights and ensure dignified conditions of detention.

The HRCA's new mandate supervising the application of the Law on Access to Information, also covers issues faced by journalists, such as **failures to disclose information**. The new Ombudsman is very open to the public, including journalists. The Institution has created social media channels on platforms such as Youtube, Facebook, Instagram and Twitter and publishes news and statements via those channels on a regular basis. Furthermore, in order to better deal with the issues of media and journalists, a new Department for the Protection of the Right to Information was created and the HRCA is currently working on a new communication strategy. The relevant Department deals with the complaints on the violation of the right to information received by citizens and media outlets against public authorities. The relevant complaints were mainly about failures to execute requests for information, refusals to disclose information on the pretext of confidentiality, or treating the knowledge as state secret, financial secret and etcetera.

## Corruption

The Government updated the State National Action Plan (NAP) on Promotion of the Open Government (2020-2022), which also considers anti-corruption activities. This new NAP will be carried out in accordance with the requirements of the International Open Government Partnership (OGP) initiative. A broad public and civil participation have been engaged in the preparation of the Plan, including through public discussions, hearings and round tables involving all relevant stakeholders, such as civil society organizations, mass media and citizens themselves.

The HRCA is also engaged in the implementation of this Plan, and continues its work to contribute combating corruption through awareness-raising initiatives among public authorities, CSOs and citizens, and by investigating relevant complaints, which are in certain cases further referred to the competent body for further investigation. In 2020, the Ombudsman has created a unified hotline for effective investigation of the incoming requests and information as required in the noted-above NAP.

As indicated above, the HRCA deals with the complaints related to corruption issues. For example, one of the cases brought to the attention of the HRCA in 2020 concerned alleged pressure by the head of the secondary school in Sumgayit city on the complainant for his resigning and for his claims about the head's corrupt activities. After the intervention of the Ombudsman and her request to the Ministry of Education, the case was investigated, and the principal was dismissed for misconduct.

## Impact of measures taken in response to COVID-19 on the national rule of law environment

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

As part of the emergency measures taken in response to COVID-19 outbreak, as an alternative to in-person **court proceedings**, court proceedings on civil cases and commercial disputes have been held online through the "Electronic Court" information system (2) (3), following the rules of social distancing and according to "the Decision No. 06 of the Plenum of the Supreme Court on measures necessary implemented in the courts to prevent the outbreak of the COVID-19 in the Republic of Azerbaijan" of 19 March, 2020, and in conformity with the Code of Civil Procedure

The COVID-19 outbreak seriously affected the **employment sector** in the country. Due to the lockdown and special quarantine regime, many people working in the private sector lost their

jobs. Regular measures are taken to address these challenges and to reduce the negative effects of the pandemic on employment and businesses, and on the economy more broadly, in the country. According to the decision of the Government, those who have registered as unemployed in the Database of the State Employment Service and low-income families are provided one-time subsistence allowance. To date, tens of thousands of people benefited from this support.

Another problem concerns the enjoyment of the right to education, in particular due to the practice of distance/remote learning during the COVID-19 outbreak. Difficulties were observed during online learning processes in state-owned child-care institutions, as well as in remote areas, where internet does not work properly. The problems were mainly related to technical issues, and to the lack of adequate number of computers for children in the above-mentioned child facilities.

In spite of the COVID-19 crisis, the HRCA in 2020 and 2021, held online meetings with public authorities and civil society organizations to expand multilateral cooperation.

The HRCA promptly investigates complaints and conducts investigations. The HRCA sent motions to the relevant state authority for pardoning within her mandate, according to which 72 detainees were pardoned. Given that **older persons** and **persons with disabilities** (PWDs) belong to high-risk group during pandemic, the Ombudsman requested the competent authorities to secure appropriate care and adopt measures to fulfil their basic needs, including home-based medical services. In addition, the HRCA has recommended taking social protection measures for older persons, including via the adoption of a public programme for their social protection.

The HRCA created a special Unit for the Protection of the Rights of PWDs. The Ombudsman recommended the Ministry of Justice to consider the impact of the COVID-19 pandemic on this vulnerable group and conditionally release the persons with special needs from detention facilities.

The HRCA also underlined the situation of **persons in detention**, as one of the groups most at risk to any kind of contagious diseases. The Commissioner has been engaging in educational activity to raise awareness on how inmates can be protected from infection.

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- Ibid. para. 1.3
- [https://courts.gov.az/az/shakiappeal/displaynews/VTNDASLARIN-NZRIN\\_484](https://courts.gov.az/az/shakiappeal/displaynews/VTNDASLARIN-NZRIN_484) (Sheki Court of Appeal)

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

Due to the COVID-19 crisis, excessive workload was caused by the countless online applications and requests received through social media channels (Facebook, Twitter, Youtube and Instagram) of the HRCA, which were created in order to facilitate access of the applicants to the Ombudsman, leading to fatigue among the staff.

In 2021, despite the temporary suspension of the possibility of submitting individual complaints to the HRCA in-person, the latter has continued its human rights monitoring and preventive visits to various institutions. The Institution's Office did not face any challenges during this period.

The Office also receives written applications by detained persons or their family members online and via ordinary mail, as well as via a 24H hotline. All incoming applications and correspondences are dealt with expeditiously and action is immediately taken if that is deemed necessary.

Persons in detention (1) are one of the groups most at risk to any kind of contagious diseases; therefore, along with the preventive monitoring, the Commissioner has been engaging in educational activity to raise awareness on how inmates can be protected from infection. Since the beginning of the state of emergency due to the COVID-19 pandemic, the Commissioner released messages addressed to the population and carried out monitoring. Amid the activities taken in response to the pandemic, she put forward her specific recommendations and suggestions in order to ensure the rights of PWDs (2) migrants (3) children (4) and the rights of population groups in detention settings and other places, where persons cannot leave on their own will, during this special quarantine regime.

In 2021, Regional Centers and the main Office of the HRCA conducted visits to places of temporary detention at police stations across the country.

## References

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- 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: <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->
- (3) 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
- (4) 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.

