

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Azerbaijan



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## Azerbaijan

*Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan*

### Impact of 2021 rule of law reporting

#### Impact on the Institution's work

During the reporting year, as in previous years, the Commissioner for Human Rights (Ombudsman) (hereinafter HRCA) and its 4 regional centres continued to conduct awareness raising activities on the mandate of the Ombudsman, on different matters related to human rights and other topics. Governmental bodies as well as civil society organizations (CSOs) actively participated in such activities.

As an example of such initiatives, it is worth mentioning the series of trainings entitled "The role of the Ombudsman and Civil Society Organizations in Promoting Good Governance", held in cooperation with in four regions of Azerbaijan – Guba, Sheki, Ganja and Jalilabad, with the support of the German Agency for International Cooperation (GIZ) country Office. The events were attended by representatives of local state authorities and CSOs. The expert-trainers of the Office of HRCA delivered presentations on good governance standards and principles, the mandate of HRCA and its role in contributing to good governance, rule of law, and in ensuring the right to access to information, on application and review procedures, on the Ombudsman's power to inquire on administrative offenses in cases specified by law, as well as on the Ombudsman's activities in the field of business and human rights. Furthermore, the trainings were an opportunity to highlight the importance of strengthening effective cooperation between state bodies and CSOs, and the importance of the role of the Ombudsman Institution in this respect. The trainings allowed to collect and compile several recommendations made by participants on how to improve the activities of their institutions and organisations in the concerned fields and on how to strengthen cooperation with the Ombudsman Office in this context.

The outcomes of these joint training seminars were further discussed in a hybrid roundtable held in Baku with the participation of representatives of government agencies, courts, CSOs, international organizations, embassies, and foreign ombudsman institutions.

The HRCA continues to receive support from the State and to cooperate with international organizations such as the Council of Europe (CoE) and United Nations bodies and mechanisms on a variety of human rights issues including in the field of eliminating discrimination, protection of child rights and protection of women's rights.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Human Rights Commissioner of Azerbaijan was downgraded from A to B status in May 2018 (1).

The Sub-Committee on Accreditation (SCA) was of the view that the NHRI had not adequately spoken out in a manner that effectively promotes protection for all human rights, including in response to credible allegation of human rights violations having been committed by government authorities. In doing so, the SCA deemed that the NHRI had failed to demonstrate sufficient independence. Therefore, it took the view that the NHRI was acting in a way that seriously compromised its compliance with the Paris Principles.

Moreover, while acknowledging that the NHRI had conveyed the SCA's previous recommendations on the selection and appointment process to relevant state authorities, the SCA noted that there had been no developments in this regard since the previous review. The SCA encouraged the NHRI to advocate for appropriate amendments to its enabling law to ensure the selection and appointment process of the Ombudsperson is sufficiently transparent and participatory.

ENNHRI has been in touch with the Azerbaijani NHRI to inform the institution of the support it can give when following-up on the SCA recommendations.

### References

- <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20May%202018-Eng.pdf>

### Regulatory framework

The NHRI has a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling and awareness-raising. The national regulatory framework applicable to the institution has not changed since the 2021 report.

The HRCA has addressed relevant recommendations to State authorities in order to bring the Constitutional Law on the Commissioner for Human Rights (Ombudsman) in line with the Paris Principles, taking into account the recommendations of the SCA.

## Enabling and safe space

The HRCA considers that the relevant state authorities have good awareness of the NHRIs' mandate, independence and role, and that the NHRI has adequate access to information and to policy makers and is involved in all stages of legislation and policy making with human rights implications.

Measures are being taken to ensure the Office of the HRCA can effectively carry out its work. The Constitutional Law on HRCA guarantees the effective and independent functioning of the Ombudsman Institute. The national legislation also guarantees that the Office of HRCA operates duly. According to the national legislation, any obstacles to the work of the HRCA are prohibited.

The Ombudsman submits recommendations to the Parliament for adoption of laws for more effective ensuring the human rights in the country on a regular basis. The Office of HRCA closely cooperates with state authorities, sends recommendations in order to increase the effectiveness of their work from the perspective of promotion and protection of human rights. The addressees of the NHRI's recommendations are legally obliged to provide a timely and reasoned reply. According to the Article 12 of the Constitutional Law, while investigating the circumstances indicated in a complaint on human rights violation, the HRCA has the right to receive necessary information, documents and materials, within 10 days, from any governmental and municipal body, and officials; to obtain court orders (judgments) in force concerning criminal, civil and administrative cases, as well as cases the proceedings in respect of which were terminated; and, during the investigation of a complaint, to receive written explanations from officials. The HRCA has also the power to address fact-finding requests to relevant bodies; such requests however may not be addressed to a body or an official whose decision or act (omission) is the object of the complaint. In addition, the HRCA may request relevant government bodies and organizations to prepare an expert opinion; and may request to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, the administration of police stations, temporary detention places, investigatory isolators, penitentiary institutions military guardhouses, psychiatric institutions, detention centers for illegal migrants as well as other places, which detained persons cannot leave on their own will. In line with the Constitutional Law on the HRCA, the institution includes its relevant recommendations in its annual report, which is submitted to the respective state authorities as well as the parliament of the country.

The necessary measures to protect and support the NHRI, its head of institution and staff against threats and harassment and any other forms of intimidation are in place.

## Human rights defenders and civil society space

The HRCA considers that the situation as regards human rights defenders and civil society space in Azerbaijan remains pleasing. In the reporting year, HRCA's human rights monitoring and reporting found no evidence of laws, measures or practices that could negatively impact on civil society space and/or reduce human rights defenders' activities, or hinder civil society actors' access to and involvement in law and policy making. As mentioned above, the HRCA has continued to engage and cooperate with CSOs in matters concerning good governance, rule of law and human rights.

## Checks and balances

The HRCA considers that the functioning of checks and balances in the country remains pleasant.

## Trust amongst citizens and between citizens and the public administration

Ensuring the effective dialogue with citizens is one of the priorities of the Government. Thus, a new Citizens Reception Centre of the Presidential Administration has started to operate recently to raise the quality of civil servant-citizen relations, increase transparency in the reception of citizens. Now citizens can call the Hotline 1111 to report their concerns. Another innovation implemented at the centre is the possibility of holding live video conferences with different regions of the country, which is very important in terms of simplifying the access of people living in rural areas.

## Functioning of the justice system

According to Article 1.6 of the Constitutional Law on the Ombudsman, the inspection of the activity of judges of the Republic of Azerbaijan does not fall within the powers of the Ombudsman. However, according to Article 1.9 of the relevant Constitutional Law, the Ombudsman has the right to consider complaints about human rights violations related to procrastination and delays of court proceedings, loss and late submission of documents during court proceedings, as well as delays in the execution of court decisions.

Within its mandate under Article 1.9 of the Constitutional Law, the analysis of the complaints received by HRCA revealed a number of issues concerning the functioning of the justice system in the cases examined. These included, among others: the unreasonable rejection of claims; the failure to send a copy of the court decision to the parties to the case in a timely manner, thereby restricting the parties' right to appeal the decision to a higher court; the unreasonable prolongation of court hearings and the prolongation of the

proceedings by repeatedly postponing the trial; repeated delays in court proceedings, as well as delays in scheduled forensic examinations; partial estimation of the facts and evidence submitted to the court; the failure to take all necessary measures for the parties to participate in the proceedings, making it impossible for the parties to prepare for or participate in the proceedings; the failure to create conditions for the parties to express their views during the process, and in some cases, the failure to ensure the principle of equality of arms; dissatisfaction with court decisions and non-enforcement of decisions.

All these shortcomings were indicated in the 2021 Annual Report of the HRCA. An English version of the Report will soon be made available.

### References

- <https://ombudsman.az/az/view/pages/59>

### Role of the NHRI in contributing to the effective functioning of the justice system

Within its mandate, the HRCA investigated complaints regarding the violation of access to justice and, as a follow-up, submitted appeals to the relevant judicial authorities and the Judicial Legal Council. Complaints which did not fall within the competence of the HRCA were answered by providing complainants with explanations of relevant law requirements.

On the basis of complaints addressed to HRCA about delays and their consequences, the Ombudsman addressed inquiries to courts and other relevant bodies. The HRCA observed that in some cases significant shortcomings were identified, and sometimes the relevant authorities failed to answer to its inquiries on the merits.

### Media freedom, pluralism and safety of journalists

In the reporting year, HRCA's human rights monitoring and reporting found no evidence of laws, measures or practices that could restrict a free and pluralist media environment.

### Corruption

In the reporting year, HRCA continued awareness raising activities for combating mal-administration, promotion of good governance, Rule of Law. Moreover, complaints on alleged corruption were investigated and relevant governmental bodies were addressed in this regard.

## 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

Though most of the restrictions imposed to curb the spread of the COVID-19 pandemic have been phased out, some still remain, such as the prohibition to enter closed facilities without a vaccination certificate and the closure of land borders with other countries.

The HRCA noted the growing number of orders for goods and services being provided through mobile applications and other online systems, especially in the context of restrictions imposed due to the COVID-19 pandemic. Therefore, the HRCA recommended in its Annual report 2021 the development of modern mechanisms to monitor the respect of consumers' rights, assess challenges and concerns and inform actions to more effectively ensure the respect of such rights.

As regards the rights of persons in detention, during its visits to temporary detention facilities, the HRCA observed that the transfer of detainees to pre-trial detention facilities and other facilities was not in compliance with the deadlines set by the law, as obtaining responses to COVID-19 tests took up to a week. The Ombudsman expressed concern over these shortcomings, encouraging authorities to take the measures necessary to ensure that the results of COVID-19 tests performed on detainees be provided as soon as possible, given the challenging circumstances and the ongoing pandemic.

### Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

Since the first days of the special quarantine regime enforced in the country due to the COVID-19 outbreak, the HRCA actively engaged in contributing to the fight against the pandemic. The unified Call Centre 916 was created using modern information technologies with a view to allowing citizens to effectively access the institution. This was a significant effort made during the COVID-19 pandemic.

HRCA addressed a public appeal to state and local self-government bodies, officials, as well as business entities to effectively implement the social and legal protection of persons with disabilities in the context of the COVID-19 pandemic. Considering the evolution of the COVID-19 epidemic, the HRCA appealed to the relevant authorities to issue statements in relation to persons with disabilities, convicted mothers with many children who genuinely regretted their actions and were rehabilitated and no longer pose a threat to society, juveniles, those over the age of 60, and inmates with serious health problems while

considering the parole, based on the requirements as provided by the law, and the principle of humanism.

HRCA also released various statements on the need to ensure respect of the rights of vulnerable groups such as children and migrants. Such statements also reflected relevant recommendations of the UN Special Rapporteurs.

### **Efforts by state authorities to mitigate challenges**

In order to mitigate the challenges caused by the COVID-19 Pandemic, the government implemented a number of social support measures, including: granting persons registered as unemployed for a certain period of time with unemployed-related benefits; providing financial support to entrepreneurs; providing tuition fees to full-time students from low-income families belonging to the disadvantaged groups; providing persons whose unemployment insurance payment had expired with a minimum of payouts; providing financial support to persons suffering from gaps in vocational training; securing continued financial support to persons with disabilities whose disability allowance had expired and to children with limited learning capacities; applying increased reductions to the payment of monthly fees for electricity consumption for the population.

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

As mentioned above, although the physical reception of citizens in HRCA's offices had to be suspended during the COVID-19 pandemic, the HRCA ensured its accessibility to citizens through the creation of a dedicated hotline. In addition, the HRCA continued to undertake visits to places of detention and other closed facilities.