

## **A. Name and date of creation**

The Office of the Commissioner for Human Rights of the Republic of Azerbaijan was created in 2002.

## **B. Status of the institution**

General human rights institution established by Constitutional Law in conformance with the Paris Principles

## **C. Mandate and Competences**

➤ Which general principles are contained in the mandate of the institution?

The mandate of Ombudsman is enshrined in the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

- “The Office of the Human Rights Commissioner of the Republic of Azerbaijan (hereinafter referred to as "the Commissioner") shall be set up to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan.” (Constitutional Law Art. 1.1.)
- Investigation of the activities of the President of the Republic of Azerbaijan, deputies of the Milli Majlis (the Parliament) of the Republic of Azerbaijan and the judges of the Republic of Azerbaijan shall not be subjected to the powers of the Commissioner (Constitutional Law Art. 1.3.)
- The Commissioner may submit motion to the President of the Republic of Azerbaijan with regard to granting pardon, citizenship and political asylum (Constitutional Law Art. 1.4.)
- The Commissioner may submit motions to the Milli Majlis of the Republic of Azerbaijan with regard to adoption or review of laws with a view to ensuring human rights and freedoms. The Commissioner may submit motion to the Milli Majlis of the Republic of Azerbaijan with regard to declaring amnesty (Constitutional Law Art. 1.5.)

The principle of independence is enshrined in the article 5 of the Constitutional Law.

The Commissioner shall be independent and obey only the Constitution and laws of the Republic of Azerbaijan.

The independence of the Commissioner shall be ensured by the following:

- he or she shall not be replaced, while in office;
- he or she shall enjoy immunities;
- it shall be inadmissible to interfere with his or her activities by any governmental or municipal body or official;
- he or she shall be provided with financial and social guarantees.

- Which powers has it been attributed?
  - Jurisdiction: public sector/private sector?
  - Powers of investigation:

11.1.1. The Commissioner may examine complaints on violation of human rights relating to red tape, loss of or delaying delivery of documents in courts as well as delays in the execution of court judgments (Constitutional Law 1.6).

But the Commissioner shall not investigate complaints if a complaint is being examined within court proceedings (Constitutional Law 11.1.4)

The powers of investigation of the Commissioner are envisaged in the article 12 of the Constitutional Law.

12.1. While investigating the circumstances indicated in a complaint on violations of human rights, the Commissioner shall receive observations as to that complaint from the body or official complained of. Within 10 days the observations shall be submitted to the Commissioner.

12.2. While investigating the circumstances indicated in a complaint, the Commissioner shall have the following rights:

12.2.1. to have access, without hindrance and prior notification, to any governmental and municipal body, military units, penitentiary institutions, detention centres; to meet and interview in private persons held in penitentiary institutions and detention centres; to obtain the documents confirming the lawfulness of their detention;

12.2.2. to receive necessary information, documents and materials, within 10 days, from any governmental and municipal body, and officials;

12.2.3. to obtain court orders (judgements) in force concerning criminal, civil and administrative cases, as well as cases, the proceedings in respect of which were terminated;

12.2.4. during investigation of a complaint, to receive written explanations from officials;

12.2.5. 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;

12.2.6. to charge relevant government bodies and organisations with a task of preparing an expert opinion;

12.2.7. to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of penitentiary institutions and detention centres.

12.3. with consent of the person whose human rights have been violated, the Commissioner may carry out investigations on his or her own initiative in cases of special public importance, or in cases, where the interests of persons which are not capable to vindicate their rights themselves are affected.

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

12.5. Complaints shall be investigated during 30 days. If additional investigation or materials are required, this term may be extended to more 30 days. With consent of an applicant, if it is necessary to conduct additional investigation, this term may be re-prolonged.

- Is a system/mechanism of individual complaints established and operational within the institution?

The Commissioner shall examine complaints on violations of human rights from citizens of the Republic of Azerbaijan, foreigners and stateless persons, as well as legal entities.

There is Reception Section at the Ombudsman's Office that deals with receiving and registration of the complaints and Department of Protection of Human Rights that deals with the execution of those complaints. Apart from that, there is Department of Control over Execution of Documents that controls the different sections of the Office with regard to timely and appropriate execution of the complaints.

#### D. Level of intervention

- Regional
- National
- Local
- Between local and national

#### E. Functioning of the institution

- How is the head of the agency appointed?

The Commissioner is elected by 83 votes majority of the Milli Mejlis of the Republic of Azerbaijan from among three candidates nominated by the President of the Republic of Azerbaijan.

- How is the staff selected?

The Office central and regional staff are appointed and dismissed by the Commissioner.

- If there is a complaints mechanism within the institution, how is its budget allocated?

The work of the Commissioner and her Office are financed from the State budget. There is also possibility to get financial assistance within the framework of cooperation with international organizations.

#### F. Participation of civil society and of children in the functioning of the complaints mechanism

There is child resource center of Ombudsman called Child and Youth Peace Network that acts in an advisory capacity to Ombudsman Office. Each Sunday Ombudsman organizes meetings with the members of this organization. Children inform the Commissioner, when they have any problem and the appeals are satisfied in most cases. Children regularly participate in the activities of the Ombudsman Office. They are aware of the hotline service of Ombudsman and raise the awareness of children about this service at different schools, in the police stations all over the country. Ombudsman

Office tries to find out the children's views through various surveys, questionnaires and consider them in activities and proposals.

Ombudsman attached considerable attention to the cooperation with civil society organizations and child groups.

In order to ensure the sustainability of this cooperation in April, 2003, Council of Independent Experts was established at the Ombudsman that mainly consists of NGOs dealing with human rights issues. Members of influential non-governmental organizations and civil society that deal with protection of human rights were represented at the Council of Experts. The activity of the Council is aimed at analysis of main directions of human rights in the country and at conduction of joint monitoring and taking actions in the field of human rights, as well as child rights protection. Moreover, on the initiative of Ombudsman the network of legal clinics under different universities (both private and state) in the country was established and functions at the Ombudsman's Office to expand the human resources of the Office.

Several awareness raising events are carried out jointly with NGOs. Moreover, NGOs are involved in investigation activities on the situation of children conducted by the Commissioner Office.

## G. Accessibility

In 2006 Child Rights Centre was established at the Ombudsman Office with financial support of UNICEF, following the recommendations of UN Committee on the Rights of the Child made on the second periodic report submitted by Azerbaijan under article 44 of the Convention. Child Rights Centre was supposed to protect the rights of children, to analyse complaints concerning child rights received by Ombudsman Office, to monitor implementation of the UN Convention on the Rights of the Child and national legislation, to prepare age and gender sensitive relevant modules and programs on teaching of child rights, to strengthen public awareness on child's rights, to monitor information on violation of the rights of children in mass media outlets, to explore the cases of violence against children in state enterprises (children homes, boarding schools, police departments, centres of detention of children in conflict with law), to get acquainted with international experience on the protection of child's rights and to fulfil other pertaining tasks.

Apart from the central office, Ombudsman institution has four regional centers that cover the areas of the neighbouring country districts. Special child rights advisor is appointed by Ombudsman in each of these centers.

The Office has hotline service functioning for the children. With the support and technical assistance of the Ministry of Communication and Information Technologies, three-digit hot line number 916 functioning within 24 hours was established within Ombudsman Office in order to enable children, their parents, teachers etc. to appeal to the Commissioner in case of violation of child rights. Information thereon was distributed through concerned state bodies, central and local executive power bodies, police stations all over the country and mass media outlets. The establishment of this hotline enables

more reliable, efficient and urgent protection of children's rights in the country. The telephone calls, including hotline and the meetings and services organized with the support of our office are free of charge.

Moreover, there are nongovernmental organizations called Azerbaijan Child and Youth Peace Network (School of Leadership exists within the organization) and Azerbaijan Women and Development Center that serve as resource center for Ombudsman Institution for regular contacts with children. The Office holds discussions with children themselves and their parents, reviews and reports on the remedies when their rights are breached. On the initiative of the Commissioner, every Sunday the meetings are organized with the participation of different guests that provide lectures for the children.

The abovementioned meetings with the children are organized also in the office provided by Ombudsman. It is very amicable and the attitudes of staff members and people working with children are child-friendly. The meetings, interactive discussions are held in very warm, friendly atmosphere.

We disseminate posters, held trainings on hotline information in secondary schools, children's homes, boarding schools, Correctional Institution to raise awareness on this issue.

Most of the parents are aware of the complaint procedure, both by petition and by calling hotline. We receive many appeals by children themselves and their parents relating to their children on different issues. It is well known in Azerbaijan Women and Development Center that closely works with and for children.

Furthermore, the information on this is broadcasted on TV and other mass media.

#### H. Protection

- Description of allegations received and processed regarding violence against children, particularly cases of sexual violence and exploitation (numbers, nature, form)?

Recently, we had an appeal from boarding school relating to the violation of the child to privacy. In one TV program the information given about the girl that subjected to sexual violence affected negatively her psychology. The name of boarding school was noted during the program. With the instruction of the Commissioner, psychological assistance was provided to the victim. Moreover, the Commissioner urged TV channels and applied to the Chairman of Press Council and National TV and Radio Broadcasting Council to be sensitive in this regard.

- Proactive in visiting structures and private spaces? (number, reports, results obtained)?

The Commissioner and the personnel of the office make regular visits to child institutions, hold conversations with them, talk in private, if necessary and get familiar with their status.

- Contribution to child protection policies (legislative reform, child protection strategies)?

Ombudsman Office prepared and submitted to the Parliament a draft law “On the Protection of Children from Corporal Punishment”. With the support of UNICEF, posters advocating inadmissibility of corporal punishment of children were prepared, published and distributed with the view of conducting public awareness work in the society.

Furthermore, Ombudsman recommended ratification of Council of Europe Convention on the Protection of Children from Sexual Exploitation and Abuse signed by the Parliament of the Republic of Azerbaijan on November 17, 2008.

Moreover, the adoption of the Law “On Domestic Violence” which is being discussed in the Parliament is of utmost importance and Ombudsman offered her recommendations thereon.

#### H. Confidentiality and protection of the child’s right to privacy

Protection of the child’s right to privacy is ensured in our institution. The appeals regarding the violation of children’s right remain confidential.

#### I. Challenges, Good practices and Recommendations

Good practices:

1) In the complaint addressed to Ombudsman Office it was indicated that Principal of school #10 of Nizami rayon abused and beat the pupils of the V “c” grade with rubber sticks. Child Rights Advisor and Employee of Child Rights Centre of Ombudsman Office explored the fact indicated in the complaint on the spot and held conversation with parents.

It was found out that on March 1, 2007, school director became angry because of the noise made by pupils of group of the 5<sup>th</sup> grade in the course of English lesson due to the absence of teacher and beat them with rubber sticks. Afterwards, school principal gathered both semi-groups in one room and forced pupils of first semi-group to their knees under the gaze of all pupils. This act of violence had a negative impact on psychological constitution of children and, as a result, cases of drop-out of school occurred. The parents of those children applied to Prosecutor Office of Nizami rayon and informed that investigation wasn’t commenced.

Ombudsman applied to the Ministry of Education and Prosecutor Office of Nizami rayon of Baku city concerning investigation of this case and taking relevant measures.

In the result of application, Labour Contract signed with school principal #10 was abolished based on the Order #11/185 of Baku City Education Department of April 10, 2007 and he was dismissed from his position.

2) Ombudsman Office together with UNICEF initiated a survey with the purpose of exploration of the cases of violence against children in different establishments.

The ultimate purpose of the survey is to define the cases of violence committed against children in establishments and to take measures towards elimination of the gaps existing in this field. As the result of the selection Baku, Sumgayit, Genje, Tovuz, Agstafa, Gedebey, Gax, Oguz, Zagatala, Balakan, Sabirabad, Alibayramli, Calilabad, Beylagan, Lenkaran, Lerik, Shamakhy, Berde, Guba and Davachi rayons were targeted by the survey. Ministry of Internal Affairs, Ministry of Labour and Social Protection of Population, Ministry of Justice and Ministry of Health has also facilitated the implementation of the survey within different establishments. Apart from Ombudsman Office personnel, 15 representatives from NGOs, who were identified based on interview **and they** participated in the implementation of the survey. The training has been carried out for participants by an international expert. Group discussions with children were carried out and chiefs of establishment and personnel working with children were interviewed in the course of assessment. Moreover, existing legislation on the elimination of the cases of violence, which can be committed in establishments against children, was analysed. Report and recommendations on elimination of existing problems were prepared based on the survey results and sent to concerned bodies and UNICEF. They were sounded at the Conference with the participation of representatives of executive bodies, media and NGOs.

#### Recommendations:

- Learning of international experience on social and psychological rehabilitation of children victims of sexual exploitation and its child-friendly application, by taking into account national and cultural values;
- Abandon of corporal punishment
- Adoption of the Law “On the Protection of Children from Corporal Punishment”;
- Adoption of the Law on Domestic Violence;
- Ratification by the State of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Abuse;

Adoption of under-mentioned laws is recommended:

The Law of the Azerbaijan Republic “On judicial defense of children”;

The Law of the Azerbaijan Republic “On Juvenile Justice”;

The Law of the Azerbaijan Republic “On Domestic Violence”;

The Law of the Azerbaijan Republic “On the Protection of Children from Corporal Punishment”;

The Law of the Azerbaijan Republic “On the Protection of Children from all Types of Violence”;

The Law of the Azerbaijan Republic “On reproductive Health”;

The Law of the Azerbaijan Republic “On arranging leisure time of children”;

The Law of the Azerbaijan Republic “On Provision of Social Rights of Children”;

The Law of the Azerbaijan Republic “On Prevention of all Types of Discrimination against Children”;

The Law of the Azerbaijan Republic “On Compensation of Financial and (or) Psychological Damage inflicted on children”;

The Law of the Azerbaijan Republic “On Identification of Talented Children”;

The Law of the Azerbaijan Republic “On regulating the participation of children in cultural events”;

The Law of the Azerbaijan Republic “On Provision of Children’s Rights to Property”;

The Commissioner made proposal on formation of juvenile justice system in Azerbaijan and adoption of necessary legislative acts in this respect. The Commissioner organized round table discussions on “Alternative Measures Applied by the Courts on Children Breaking Law”, “Comparison between the International Standards of Juvenile Justice”, “Court Execution in relation to Juveniles”, “Improvement of Protection System and the Roles of Commissions on the issues and rights of Juveniles” in cooperation with Azerbaijan NGO Alliance on Child Rights and with the support of the UN High Commissioner for Human Rights.

The first specialized report was prepared on child rights that is based on the summarized activity of the Commissioner carried out within her term in this position. The report was submitted to the Parliament, Cabinet of Ministers related ministries, state committees and other empowered bodies and relevant instructions were given in order to take actions on the proposals and recommendations aimed at improving the status of children.

In the frame of the “Year of the Child”, the Commissioner proposed to conduct “Child Rights Month Long Campaign” all over the Republic from October 20 to November 20, 2009. The campaign’s motto was “Let us listen to children and ensure their participation” which is considered as one of the 10 steps of the UN campaign “Say YES to Children!”. Seminars and round tables, on child rights, early marriages, elimination of violence against children, reproductive health, and on healthy lifestyle, paintings, article competitions and other events were conducted by the Ombudsman Office and its regional centers, respective state agencies, local executive powers at high and the secondary schools and the Universities, orphanages, and boarding schools with active participation of children themselves.

On the initiative of the Commissioner, in 2007 and 2008 independent, as well as joint monitoring with the representatives of the Ministry of Education was conducted for improvement of De-Institutionalization Program and raising the effectiveness of its implementation, as well as for learning the situation of children returned to their biological and alternative families.

The Commissioner sent motion to the President for pardoning imprisoned children and some of them were set free.

## Challenges:

- Lack of rehabilitation centres equipped with special installation for the children who are the victims of sexual violence. Unfortunately, currently, child who has become the victim of violence is being interrogated repeatedly, comprehensive information is being provided to public and it exerts negative impact on psychological status of the child.
- The competences of responsible state bodies to intervene in case of violent act are insufficient.
- Lack of knowledge of children, their parents and teachers about preventive and protective measures on violence.
- Attraction of children by means of contemporary ICT technology, especially through internet to cruelty, violence. Parents have less time to control their children.
- Lack of public awareness campaigns
- Inclusiveness of children into advocacy and implementation of child rights