

SUBMISSION

by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan with regard the questionnaire of the Working Group on Arbitrary Detention towards the study on arbitrary detention relating to drug policies

1. In accordance with her mandate, the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan continuously carries out awareness-raising activities related to the fight against drugs. In accordance with the Constitutional Law regulating the activities of the Ombudsman, in addition to protecting the rights of various groups of the population, the Ombudsman is also engaged in ensuring the rights of persons who are the subjects of relations arising in the field of illicit drug trafficking. This category also includes arrested, accused, convicted persons (hereinafter referred to as detainees).

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The Ombudsman conducts relevant investigations within the framework of the National Preventive Mechanism on applications and complaints received in this direction, as well as on the basis of calls to the Hotline and on issues of public interest in the media. At the same time, cooperation is established with government agencies, including law enforcement agencies, implementing the relevant state policy in the country in connection with the illicit trafficking and manufacture of drugs. Within the framework of this cooperation, the necessary documents and information are obtained, statistical data are analyzed, and official correspondence is carried out.

Regarding those detained in connection with crimes in the relevant field, the Ombudsman notes that the institution itself does not carry out or keep such special statistics.

This does not fall within the direct competence, rights and responsibilities of the Ombudsman institution. However, it is possible to draw certain conclusions basing on the information disseminated by government agencies. For example, in 2018, 3305 criminal cases were registered. Out of them 897 were related to sales, 2124 to storage, 234 to planting, and 50 to other criminal facts.

The distribution by age groups was as follows: 7 people under the age of 18, 172 people aged 18-25, 323 people aged 26-29, and 2025 people over the age of 30. In the same year, 58 foreign nationals were brought to criminal responsibility.

2-3. Azerbaijan has an improved normative-legal framework in the fight against drugs. The country has acceded to each of the three basic UN conventions on drugs and psychotropic substances, including the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. According to the latest amendments to the Criminal Code, the sanctions for the illicit manufacture, production, acquisition and use of drugs without the purpose of sale have been eased. There is also a state commission in charge with this field, which analyzes the situation and the work carried out in the country. Government agencies are accountable to this Commission.

4. The Ombudsman receives the complaints about cases of illegal detention. The 24/7 hotline receives a small number of complaints about these cases. In such cases, the National Preventive Group responds immediately and, in accordance with the requirements of the legislation, takes urgent measures to ensure the rights of these persons, the issue of taking preventive measures is also raised before the relevant authorities. At the same time, in order to prevent such cases, cooperation has been established with the administration of the Ministry of Internal Affairs and the Prosecutor General's Office.

In general, there is a national legislation with quite detailed regulatory features, based on the requirements of the Criminal and Criminal Procedure legislation on cases of illegal detention (arbitrary arrest), unlawful

restriction of the right to freedom. These should be stressed that the Ombudsman investigates the legality and validity of the custody of detainees, especially in police stations, during the visits under the National Preventive Mechanism mandate. In order to eliminate the revealed shortcomings, the issue is raised and the status of implementation is re-monitored during the following visits.

5. At any stage of the criminal process, the scope and sphere of influence of rights is the same as for other detainees as established for those already deprived of liberty and in respect of convicts the punishment-execution legislation has been applied towards.

These persons are provided with all necessary guarantees, including access to legal assistance. The Ombudsman has not encountered any serious case of discrimination against this category of individuals in his practice. Opportunities for early release, deferment of sentence, commutation of sentence, pardon and amnesty for persons convicted of these crimes are recognized both at the legislative level and in practice.

6. As known the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by UN General Assembly Resolution 57/199 dated December 18, 2002. The main purpose of the OPCAT is to establish a system of regular visits by independent international and national agencies to places of detention with the aim to prevent torture.

OPCAT was signed by the Republic of Azerbaijan on September 15, 2005 and ratified by the relevant Law on December 2, 2008. Since the publication of this law - on January 15, 2009, the Optional Protocol came into force in relation to the Republic of Azerbaijan. On this date, by the Order of the President of the Republic of Azerbaijan, the Commissioner was determined as an institution fulfilling the functions of the national preventive mechanism as envisaged by the OPCAT.

As an MPM, the Commissioner and his National Preventive Group (NPG) have enlisted for up to 240 places which persons cannot leave on their own will, penitentiaries, temporary detention places, educational, health, social, migration and state children's institutions in each city and region of the country. These include the relevant institutions of the Ministries of Internal Affairs, Justice, Defense, Education, Health, as well as of the Ministry of Labor and Social Protection of Population, State Security Service, State Migration Service, also of district (city) executive authorities.

There is Article 293 of the Criminal Code of the Republic of Azerbaijan, which contains and covers the concept of "torture" as a socially dangerous act that should be punished by creating a criminal element in connection with the above-mentioned cases.

7. The reforms realized in the country have also recognized the possibility of legal regulation in the case of drug users. Thus, criminal liability has been replaced by administrative liability for dependents who do not refuse treatment.

Also, Article 37 of the Code of Administrative Offenses of the Republic of Azerbaijan states that in case of application of collection in the form of administrative detention to the persons who made the administrative offense providing administrative detention, needing treatment for drug addiction, the court appoints by it forced treatment which is performed after serving of administrative punishment in the form of administrative detention. The Article also states that the purposes of application of forced treatment consist in treatment of those persons improvement of their health and psychological state, their return to normal conduct of life with rendering specialized medical care and social care, the prevention of abuse of them in the future the substances making impact on mentality of the person, and making of new administrative offenses.

The Criminal Code and the Code of Execution of Punishments also provide for the possibility of involuntary treatment of prisoners for drug addiction. Articles 93-99 of the Criminal Code define the grounds for forced measures of medical nature. The purpose of the application of forced measures of medical nature is to treat or improve the mental state of the persons concerned, as well as to prevent them from committing new crimes.

8. There are no private drug treatment centers in the country.

The relevant state centers are included in the list of institutions to which the Ombudsman's MPM mandate is applied towards. The Ombudsman and her NPG members visit these facilities on a regular and unscheduled basis to investigate detention conditions and treatment.

The Ombudsman cooperates with the Ministry of Health to ensure access to health care service and to achieve the compliance with standards.

The grounds for detention are being investigated during monitoring at the relevant establishments, as well as at the establishments carrying out the initial detention, which is important as a precautionary measure against unlawful deprivation of liberty. The Ombudsman's relevant hotline numbers are also important from a preventive measures standpoint.

9-11. There are no specialized courts in the country in this field.

The Ombudsman does not consider the existence of such specialized courts important in terms of ensuring human rights and freedoms.

14. According to the country's criminal law forced measures of medical nature in a stationary manner are applied by the courts against a person who has committed the crime of illegal acquisition, storage, preparation, processing, transportation of drugs or psychotropic substances in excess of personal consumption without the purpose of sale, has no other criminal offenses and has suffering from a drug addiction. When forced measures of medical nature are revoked because of the person's full recovery, the court shall release the person from criminal liability.

15. According to the criminal law, a person who has reached the age of sixteen before committing drug-related crimes is prosecuted. Persons who have reached the age of 16 when illegally acquiring, storing, preparing, processing or transporting drugs or psychotropic substances in excess of their personal consumption without the purpose of sale shall be brought to criminal responsibility. Persons over the age of 14 are prosecuted for robbery or extortion of narcotic drugs or psychotropic substances. According to the law, the commission of a crime by a minor is considered a mitigating circumstance.

Juveniles shall be kept separate from other persons at all stages of the investigation, and juvenile convicts shall be kept in an educational institutions intended for them.

16. The State Migration Service is the central executive body implementing the state policy on the detention of illegal migrants.

Persons violating the migration legislation are detained in special detention centers and the legislation has general application to them. When these persons are brought to criminal responsibility, they serve their sentences together with the citizens of the country in the penitentiary institutions of the Penitentiary Service. Citizens of the Islamic Republic of Iran traditionally occupy the majority among foreigners prosecuted for drug offenses.

17. A number of institutions in the country are purposefully implementing state policy in this area.

The State Commission on Combating Drug Abuse and Illicit Drug Trafficking is the body that carries out general coordination in this area. The existence of such a Commission allows for the establishment of close cooperation between various government agencies, law enforcement agencies and civil society. The Commission regularly makes analyzes and put forward proposals. "Program on combating illicit trafficking in narcotic drugs, psychotropic substances and their precursors and extending of drug addiction (2007-2012)" and the State Program on Combating Illicit Trafficking in narcotic drugs, psychotropic substances and their precursors and Drug Addiction for 2013-2018" should be especially noted.

The specialized drug dispensaries operate in the country.

18. The Ombudsman is of the opinion that any research and analysis in this area is important. The application of modern medical science and legal research must always be taken into account, and international experience must be analyzed. The Commissioner supports this category of inquiries and expresses her readiness to cooperate.