

## INFORMATION

regarding the Questionnaire of the UN Rapporteur  
on the right to adequate housing

### ***On question 1:***

**Are the following components of the right to housing subject to hearings and effective remedies before courts in your country? If yes, please explain which law provides this protection, who has standing to bring claims forward and what court adjudicates the claim. Provide an example of a leading case and explain briefly how this may have advanced protection of the right to housing.**

Answer:

In accordance with Article 60 Part I of the Constitution of the Republic of Azerbaijan, everyone is guaranteed protection of his/her rights and liberties through the administrative remedies and in court.

According to Article 4.1 of the Civil Procedure Code, all physical persons and legal entities shall, in accordance with procedure specified by law, be entitled to exercise the right to appeal to court for protection and ensuring of their rights and freedoms, as well as interests guaranteed by law.

According to Article 35.1 of the Code, unless otherwise specified by law, claim shall be submitted to the court at place of official registration of the respondent.

In the Republic of Azerbaijan administration of justice is carried out by the following courts within the judiciary of the Republic of Azerbaijan:

district (city) courts;

courts on grave crimes;

Court on Grave Crimes of the Nakhchivan Autonomous Republic;

military courts;

administrative-economic courts;

Supreme Court of the Nakhchivan Autonomous Republic;

courts of appeal;

Supreme Court of the Republic of Azerbaijan;

Other courts can be created within the judiciary of the Republic of Azerbaijan in accordance with the procedure specified by law.

The Laws of the Republic of Azerbaijan “On Courts and Judges” and “On the Judicial-Legal Council”, as well as the Civil Procedure Code, the Criminal Procedure Code and the Administrative Procedure Code of the Republic of Azerbaijan are used in administration of justice.

**a) Non-discrimination (including accommodation of disabilities) Yes/No**

According to Article 25 Part III of the Constitution, the State shall guarantee the equality of rights and freedoms to everyone, irrespective of race, ethnicity, religion, language, sex, origin, property status, occupation, beliefs or affiliation with political parties, trade union organisations or other public associations. Restrictions of rights and freedoms on the grounds of race, ethnicity, religion, language, sex, origin, beliefs, or political or social affiliation are prohibited. According to Article 25 Part VI of the Constitution, persons with impaired health are entitled to all rights and carry all duties enshrined in the Constitution, except in cases when enjoyment of rights and performance of duties is impeded by their limited abilities.

According to Article 28 Part III of the Constitution, everyone lawfully present within the territory of the Republic of Azerbaijan may freely move, choose the place of residence and leave the territory of the Republic of Azerbaijan.

**b) Security of tenure (prohibition of eviction without appropriate alternative housing) Yes/No**

According to Article 27.1 of the Civil Code, the place where an individual usually lives is considered his/her place of residence. A person may have several places of residence. According to Article 27.3 of the Code, if for any reason a person leaves his/her place of residence for a certain period of time, his/her residence is not terminated.

According to Article 228.3 of the Code, person having right of use of integral part of residential building shall have the right to demand any person, including its owner, to rectify violation of right to the residential building. According to Article 228.4 of the Code, transfer of ownership right to residential house or apartment shall not be a ground for termination of right of use of integral part of residential building, except where person having right of use of residential room gives, prior to transfer of such right, notarized obligation relating to refusal from the ownership right. In accordance with Article 228.5 of the Code, family members of the owner of integral part of residential building (husband, wife, parents, children), residing together with him/her, shall have the right of use of living space equally with him/her. Family members of the owner of integral part of residential building are entitled to move their minor children in this building. Moving of other family members (husband, wife) in shall be permitted only with the owner's

consent. The right of use of integral part of residential building shall be reserved in case of termination of family ties with the owner.

According to Article 39.4 of the Law "On Mortgage", if the mortgaged property subject to collection is the mortgagor's only place of residence and he/she has no other place to live, based on petition made by the mortgagor, the court may postpone the collection of property for up to one year.

According to Article 59.1 of the Law, if a residential house or apartment put up for mortgage is levied or sold, with the exception of cases provided for in Article 59.3 of this Law (residential house or apartment are put up for mortgage to return the loan under the mortgage agreement or the adult family members and other persons living together with the mortgagor make a notarized obligation that they would leave this house (apartment) if it is petitioned to be levied or sold), this is not a ground for evicting persons registered in this house or apartment. According to Article 59.2 of the Law, between the new owner of a residential house or apartment and the former owner a lease agreement is concluded for this house or apartment. In the event of the refusal by the new owner to conclude a lease, the former owner (mortgagor) may appeal to the court in order to enter into lease agreement.

According to Part 1 of the "Exact list of property types prohibited to be collected while executing an execution act in respect of a physical person", approved by the Decision of the Cabinet of Ministers dated 5 June 2002 numbered 89, the apartment, house, or its separate parts, as well as the nearby land on which they stand, which allows the debtor and his/her family to live within sanitary norms (provided that there is no more than one house or apartment for one family) is prohibited to be collected while execution an execution act (except the cases of collection of debt given by a loan organization for building or buying a house, as well as except loaded movable property, made especially loaded by mortgage and in accordance with law).

According to Article 1 of the Law "On Place of Residence and registration based on location", citizens of the Republic of Azerbaijan, foreigners and persons without citizenship shall be registered in based on place of residence and location in the Republic of Azerbaijan. The purpose of registration based on place of residence and location is to create necessary conditions for the registry of persons living in the Republic of Azerbaijan, execution of their obligations before other persons, the state and society, exercising human and civil rights and liberties (social protection, pension provision, military conscription, enforcement of judicial decisions and etc.). Registration based on place of residence and location is not permissive by nature and may result in legal status only in cases prescribed by legislation of the Republic of Azerbaijan. No documents other than those prescribed in this Law can be demanded for registration based on place of residence and location.

According to Article 5 Part 3 of the Law, citizens of the Republic of Azerbaijan who have been released from serving sentences in penitentiary institutions and non-citizen permanent residents of the Republic of Azerbaijan, unless they have lost their rights on residential area in accordance with legislation, shall be registered by the relevant executive authority at that place of residence within 3 days of application. If family members of the released person live at the place of his/her prior place of residence, his/her family members' consent is not required in order for him/her to return there. In cases where minors under guardianship in line with legislation live in the residential area, the person released from serving sentence (except cases where he/she is the owner of said property) may move-in to that place of residence subject to consent by the guardianship and patronage authorities.

According to Article 9 Part 2 of the Law, cancelling of registration at the place of residence of the children, who have lost their parents and parental guardianship is possible only with the consent of the relevant executive power authorities (Commissions on affairs and rights protection of minors at districts, cities, and city districts).

**c) Adequacy standards (habitability, access to water, sanitation, services, health and safety etc.) Yes/No**

In accordance with Article 4 of the Housing Code, state authorities and municipalities, within their competences, create conditions for exercising housing rights and for this purpose ensures control over compliance with housing legislation, the utilization and protection of the housing fund, compliance of residential areas with the set sanitary and technical norms and rules, as well as other legislative requirements.

According to Article 15 of the Code, the use of residential area shall be in compliance with the rights and legal interests of the persons living in that residential area, the neighbors, fire safety requirements, sanitary and hygiene, ecological requirements and other legislative requirements.

According to Article 16 of the Law "On Sanitary-epidemiological safety", public unions, facilities, organizations, departments and citizens shall ensure the maintenance and utilization of residential houses in accordance with the sanitation norms and rules, hygiene normatives, construction standards, norms and rules, as well as the requirements of other documents related to this field.

**d) State protection (review of effect on right to housing of program cuts, removal of legal protections or austerity measures) Yes/No**

According to Article 149 Part VII of the Constitution, normative legal acts that improve the legal situation of physical and legal persons, and which eliminate or mitigate their

legal liability, shall have a retroactive effect. Other normative legal acts shall have no retroactive effect.

**e) Progressive Realization (obligation to take reasonable measures, establish and meet goals and timelines, prioritize the most disadvantaged, allocate maximum available resources, etc.) Yes/No**

According to Article 43 Part II of the Constitution, the state promotes construction of residential premises, and takes special measures for realization of right to housing.

In accordance with Article 48.1 of the Housing Code, citizens considered to have low-income on the grounds stipulated in this Code and other legislative acts shall be granted residential areas from the state or municipal housing funds on the basis of social renting contracts.

According to Article 53.3 of the Code, the decision on refusal to be registered as a citizen in need of residential area is presented or sent within 3 business days after the decision to the citizen who requested to be registered and the decision can be contested by the said citizen in court.

According to Article 4 Part 2 of the Law "On Eternalization of the title of Martyr and concessions for Martyrs' families", families of martyrs in need of housing improvement are provided with residential areas first of all.

According to Article 32.3 of the Law "On Rights of Disabled Persons", when disabled minors who have lost their parents and parental guardianship and who live in social service establishments reach adulthood, based on the opinion of the relevant executive power authority they have the right to get housing out-of-turn, if they are able to carry themselves and live independently.

According to Article 7 Part 1 of the Law "On Social protection of minors who have lost their parents or parental guardianship", children who have lost their parents or parental guardianship, as well as persons of such kind and children under patronage, during the entire time while they receive education at educational establishments of all types and at the masters level of the scientific institutions determined by the relevant executive power authority, or serve in Armed Forces of the Republic of Azerbaijan, and the period spent at social service facilities and prison establishments, shall reserve their rights to residential areas belonging to their parents or themselves or where they used to live, in accordance with the legislation. If moving in to such residential area is not possible, they shall be provided out-of-turn with housing of equal residential area.

In accordance with Article 7 Part 2 of the Law, children who have lost their parents or parental guardianship who did not own any residential areas, as well as children under

patronage are provided out-of-turn with residential area of the size not less than that determined by social norms, three months prior to completion of their education at educational institutions of all types and the masters level of the scientific institutions determined by the relevant executive power authority, and their service at Armed Forces of the Republic of Azerbaijan, and their release from serving sentence at correctional institutions. Minors who have lost their parents and parental guardianship and have been released from serving sentence at penitentiary establishments and who have no residential area, are sent by the relevant executive power authority to boarding schools and taken under full government support, in accordance with legislation.

For the purpose of ensuring discounted purchase of apartments at the disposal of the State Housing Development Agency of the Republic of Azerbaijan the Statute on "Discounted Housing" system was approved by the Presidential Decree dated 24 May 2017 numbered 1418.

The persons who have the right to purchase the apartments at discounted rate are listed in Paragraph 3.2 of the "Procedure of granting mortgage loans from the Mortgage and Loan Guarantee Fund of the Republic of Azerbaijan and granting discounted mortgage loans", approved by the Presidential Decree dated 22 June 2016 numbered 940:

1. Following members of a young family:

- member of a martyr's family (husband/wife, children);
- National Hero (himself/herself, husband/wife, children);
- refugee or person with the same status;
- person who has served at least 3 years in public service, including those serving in special public service;
- person who has worked as a teacher for at least 5 years at a state general education school;
- person with the doctor of philosophy degree;
- person with special services in sports (honorary physical education servant, winner of nationwide competitions (1<sup>st</sup> place), prize winner of international competitions (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> places);
- person with the scientific degree of the doctor of sciences;
- person who has served at least 15 years in public service, including special public service;
- person who has served at least 3 years of military service (except terminal active military service), including military servicemen of the Republic of Azerbaijan on reserve and retired;
- person with special rank who has served at least 3 years in internal affairs organs;
- scientific workers who have worked in scientific positions for at least 3 years.

***On Question 2:***

**What measures have been taken or are planned to improve access to justice for the right to housing? Please include, where applicable, measures relating to i) education of lawyers, advocates and potential rights claimants; ii) barriers facing women and other groups; iii) access to legal representation; iv) making hearings and other procedures more accessible and less intimidating or costly; v) more effectively addressing systematic issues; and vi) ensuring implementation of remedial orders.**

Answer:

i) In 2017-2018 Justice Academy of the Ministry of Justice conducted trainings on the Article 1 (Protection of Property) of the Protocol No. 1 to the Convention for the Protection of Human Rights with participation of 64 lawyers (advocates.).

ii) In recent years, a number of seminars on “Enhancing women’s access to justice” were organised for 108 candidates for judges, 58 judges and 13 prosecutors within the framework of “Improving Women’s Access to Justice in the Six Eastern Partnership Countries” project in the Justice Academy. Currently, the above mentioned project is expected to continue.

iv) Simplified access to justice has led to significant increase in the number of cases heard in courts. The judicial statistics reveal that the number of civil cases increased 21 times exceeding 470000 compared to the cases brought to the court when the new judicial system began to take shape in 2000. However, 98% of judgments on civil cases passed by the court of first instance have remained unchanged.

At present, measures are being taken to fill the vacant judge positions in order to reduce the workload and 108 candidates for judges, who passed the exam successfully, have been presented to the Judicial-Legal Council. Adequate analysis are carried out in pursuance of reducing the judicial burden, besides in order to improve the efficiency of judicial system alternative solutions to the resolution of civil disputes outside the courts are being sought and international experience is being studied.

It must be mentioned that the delegation of responsibility for the termination of civil judgements to executive officers has resulted in reducing the workload in courts as well as operational effectiveness was achieved, additional correspondence was ended saving time and public spending. Apart from this, in the interest of ensuring effective realization of citizens’s right to lodge a complaint to the court on the decision of executive officer was established.

As in leading European countries (Germany, Great Britain, Italy, Austria, Spain, Luxembourg, etc.), amendments to the Civil Procedural Code, “Law on Notaries” and “Law on Execution” were approved in order to reduce the workload of the courts, increase their efficiency and improve the procedures of bringing demand into action and in accordance with these amendments which are going to enter in force from 1 January 2019, claims that were settled under court order (providing telecommunication services, credit agreements signed with credit organizations and documents for payment of

natural gas, water, electricity or heating consumed in everyday life) will be delegated to notary services that will be ensured by keeping executive records.

The introduction of the new procedure in this area will have a positive impact on the reduction of the workload of the courts, the operational solution of the issue, the efficient use of human resources and will foster shorter trial procedures.

The mediation institute plays an important role as an alternative method of out-of-court settlement. It is known that mediation is widely used as a progressive institute around the world.

The establishment of a mediation institute in our country was on the agenda, and recently for this particular purpose a number of steps were taken, including studying the international practice, and preparing proposals for a potential mediation model for Azerbaijan. It has also been agreed to promote joint projects with the Council of Europe and the European Union in this field.

***On Question 3:***

**Please identify where responsibility lies for education and training of judges and administrative decision-makers regarding their international human rights obligations. What measures have been taken to ensure that domestic law is interpreted as far as possible to provide for effective remedies for the right to housing?**

Answer:

In accordance with Article 12.0.20 of the Law “On Judicial-Legal Council”, within its competences, the Judicial-Legal Council has the right to hold qualification raising courses, seminars and trainings at educational institutions for the purpose of increasing the professional level of judges.

A number of training courses were carried out for judges and judgeship nominees at the Academy of Justice:

A 4-hour lecture on “Some issues of application of the Housing Code” and a 2-hour lecture on “Respect to right of home and correspondence under Article 8 of the European Convention on Human Rights” were included in the long-term initial training for judgeship nominees at the Academy of Justice.

Training on “Some issues of application of the Housing Code” was held on 28 February 2017 for 21 judges; and on “Respect to right of home and correspondence under Article 8 of the European Convention on Human Rights” was held on 19-20 October 2017 for 18 judges.



Also, on 7 September 2018 training on “Some issues of application of the Housing Code” was held for 26 judges.

*On Question 4:*

**Are you aware of examples in your country of community-based initiatives to provide hearings and remedies for the right to housing outside of formal court processes? How have they been supported and how effective have they been? Do these operate at the national or subnational level, and do decisions create precedents that can be relied upon by others?**

*On Question 5:*

**What role does your National Human Rights Institution play in ensuring access to justice for the right to housing? Are there other human rights bodies that play a role in this respect, such as an ombudsman?**

Answer:

According to Article 1.1 of the Constitutional Law “On the Commissioner for Human Rights of the Republic of Azerbaijan (ombudsman)”, the office of the Human Rights Commissioner of the Republic of Azerbaijan shall be established 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 party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan.

In accordance with Article 8.1 of the Constitutional Law, 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.

According to Article 13.2 of the Constitutional Law, if, as a result of an investigation, the Commissioner finds a violation of the rights and freedoms of an applicant, he/she may take the following measures:

- 1) to demand from the governmental or municipal body, whose decision or act (omission) violated the human rights and freedoms, to remedy those violations;
- 2) in cases where certain conduct appears to be a criminal offence, to apply to relevant bodies in order to open a criminal case;
- 3) to apply to the subjects entitled to file additional cassation complaints;
- 4) to submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated human rights and freedoms;

- 5) to inform mass media of the results of the investigation conducted in respect of human rights violations;
- 6) in cases, where violations of human rights take on special public importance, if the means available at the disposal of the Commissioner are not sufficient for remedying those violations, to apply to the President of the Republic of Azerbaijan, or to address the Milli Mejlis of the Republic of Azerbaijan;
- 7) to apply to a court of justice with a view to the protection of the rights and freedoms violated by decision or act (omission) of a governmental or municipal body, or an official;
- 8) to apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person are violated by legislative acts in force.