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# *The Systematic Composition of Asylum Legislation in the Republic of Azerbaijan*

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The law with the greatest legal effect on the territory of the Republic of Azerbaijan ('RA') is the RA Constitution.<sup>1</sup> Granting political asylum is provided for by Article 70 of the RA Constitution that stipulates that 'in accordance with universally accepted norms of the international law, [RA] grants political asylum to foreign nationals and stateless persons'<sup>2</sup>

In accordance with the second part of Article 148 of the Constitution international agreements of which the Republic of Azerbaijan is a signatory are an integral part of the legislative system of the Republic of Azerbaijan.<sup>3</sup> That is why the *1951 UN 'Convention Relating to the Status of Refugees'* and the *1967 'Protocol Relating to the Status of Refugees'* signed by the Republic of Azerbaijan on February 13 1993, are the second most important statutory acts (after the Constitution) in this area.<sup>4</sup> In this respect it is noteworthy that on July 9 1996, RA concluded a bilateral agreement with the UN High Commissioner for Refugees,<sup>5</sup> under which the UN High Commissioner on Refugees (UNHCR) Baku Office may provide the international mandate or protection document to persons denied refugee status by the RA government and ensure their return to their country of origin or departure to a third country.

Another important legal act in this area is the RA Law '*On the Legal Status of Refugees and Displaced Persons*',<sup>6</sup> which provides the definition of a refugee<sup>7</sup> and regulates relations as regards people arriving on the territory of RA to receive refugee status. The notion of a refugee provided in the above law fully reflects the definition of a refugee provided in the 1967 Protocol to the 'Convention Relating to the Status of Refugees'. Although the Law does not provide a definition of an 'asylum-seeker', one can deduce from the content of the Law that a person arriving in the RA territory, applying or intending to apply for the status of refugee, is regarded as an asylum-seeker before a decision is made to grant or refuse him/her refugee status.

This Law also defines conditions that may constitute grounds for refusal for granting refugee status.<sup>8</sup> It further stipulates that refugees shall be provided with conditions for their adaptation to local conditions, acquiring citizenship, learning the language, their rights and obligations.<sup>9</sup> A refugee may receive citizenship of the Republic of Azerbaijan in accordance with the Law on Citizenship<sup>10</sup>

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<sup>1</sup> *The RA Constitution* (12.11.1995) came into force on November 27, 1995 and was published in the official newspaper 'Azerbaijan'. The latest amendments to the Constitution were introduced by way of referendum on March 18, 2009.

<sup>2</sup> *Article 70 of the RA Constitution (Right to Political Asylum)* stipulates that in accordance with the universally accepted norms of the international law the Republic of Azerbaijan grants political asylum to foreigners and stateless persons. The second part stipulates that no person persecuted for political beliefs or deed not regarded a crime in the Republic of Azerbaijan shall be handed over to another state.

<sup>3</sup> *Art. 148 of the RA Constitution* 'Acts incorporated in the legislative system of the Republic of Azerbaijan'.

<sup>4</sup> Azerbaijan ratified this Convention following the decision of Milli Majlis (Parliament, the National Assembly) No. 402 as of December 8, 1992.

<sup>5</sup> The agreement between the RA Government and the UN High Commissioner for Refugees as of July 9, 1996, was published in the 'Collection of the RA Statutory Acts' 2007 No. 26.

<sup>6</sup> *The RA Law 'On the Legal Status of Refugees and Displaced Persons'* (21.05.1999) N 668 came into force following its publication in the official 'Collection of the Statutory Acts of the Republic of Azerbaijan' on July 31, 1999. Initially this Law was adopted in 1992 but on May 21, 1999 the legislative authority adopted a new Law under the same name and declared the 1992 Law invalid. The latest amendments were introduced by the RA Law No. 160-IVQD as of June 10, 2011 (these amendments were published in the 'Azerbaijan' newspaper on July 30, 2011, No. 165).

<sup>7</sup> A *refugee* – a person who is not a citizen of the Republic of Azerbaijan, who stays outside the country of his/her nationality, owing to a well-founded fear of being persecuted for reasons of race, nationality, religion, membership of a particular social group or political opinion and is unable to or, owing to such fear, is unwilling to avail himself/herself of the protection of that country, or who has no specific citizenship, and as a result of the same circumstances finds himself/herself outside the country where s/he has customarily lived and has no possibility or willingness to return there as a precaution.

<sup>8</sup> Article 2 (Instances of refusal to grant refugee status.)

<sup>9</sup> Article 7 (Adaptation of refugees to local conditions and their naturalisation, providing them with humanitarian aid) stipulates that conditions shall be created in order to accommodate refugees to local conditions, naturalise them, for them

In order to support implementation of this law, *'The Procedure of Examining an Application for Granting Refugee Status'* was adopted and approved by the *Decree of the RA President as of November 13, 2000*<sup>11</sup>. It defines the duties of the state authorities<sup>12</sup>. A foreign national or stateless person seeking refugee status in RA should make an application for refugee status to the *State Migration Service of the Republic of Azerbaijan* at a border checkpoint, on the territory of the country directly or via state authorities (the Ministry of the Interior, the Ministry of National Security, the State Border Service and their structural entities as well as local executive authorities). A person lacking identification documents or grounds for lawful entry into the territory of the Republic of Azerbaijan will undergo identification procedures (and if necessary –fingerprinting) carried out by law enforcement authorities and until the authenticity of presented information is checked, s/he stays at a temporary accommodation centre. These individuals are immediately reported to the Ministry of Foreign Affairs of the Republic of Azerbaijan.<sup>13</sup> Information on individuals granted refugee status is recorded on the inter-ministerial automatic information search system 'Entry-Exit and Registration'.<sup>14</sup>

Granting refugee status is within the scope of competence of the State Migration Service,<sup>15</sup> which decides whether to grant or refuse refugee status following the results of an interview carried out with an individual. This decision should be made within three months period after the registration of an application. Written notification of the decision (in the case of refusal – together with the information on the right to appeal against this decision in accordance with the administrative and/or judiciary procedure) is forwarded to this person and to the Ministry of the Interior within five days.<sup>16</sup>

While awaiting a decision on an application, applicants are given temporary legal residence in the RA territory. The State Migration Service must forward the copy of the respective decision to the representation of the UN High Commissioner for Refugees in the Republic of Azerbaijan within 5 days.<sup>17</sup>

The list of legal acts governing refugee-related issues may also include the Regulation of the Cabinet of Ministers No. 98, which adopted:

- 'The *residence* procedure for individuals granted refugee status and status of a displaced person (a person displaced within a country) in special facilities until they find employment and shelter',
- 'The procedure of availing of the living quarters provided at the site of a temporary accommodation centre by refugee status applicants before the decision on granting refugee status is made'.<sup>18</sup>

(Contd.) \_\_\_\_\_

to acquire the language, get acquainted with their rights and obligations. A refugee may receive humanitarian aid. A refugee may receive citizenship of the Republic of Azerbaijan in accordance with the Law of the Republic of Azerbaijan 'On Citizenship of the Republic of Azerbaijan'.

<sup>10</sup> Article 5 (Affiliation with citizenship of the Republic of Azerbaijan) of the RA Law 'On RA Citizenship'. The Law was adopted on September 30, 1998 and entered into force following publication on October 7, 1998 in the official 'Azerbaijan' newspaper. The latest amendments were introduced by the RA Law as of June 24, 2008 No. 658- IIIQD (published in the 'Azerbaijan' newspaper on August 7, 2008 No. 173).

<sup>11</sup> The Decree of the RA President 'On the Procedure of Examining an Application for Granting Refugee Status' as of November 13, 2000. The latest amendments to the procedure were introduced by the Law as of May 10, 2011 No. 427 and these amendments have been published in the 'Azerbaijan' newspaper.

<sup>12</sup> The Ministry of the Interior, the Ministry of National Security, structural entities of the State Border Service as well as other local executive authorities.

<sup>13</sup> Paragraph 1 of 'The Procedure of Examining an Application for Granting Refugee Status'.

<sup>14</sup> Paragraph 3 of 'The Procedure of Examining an Application for Granting Refugee Status'.

<sup>15</sup> Paragraph 1 of 'The Procedure of Examining an Application for Granting Refugee Status'. Even if these individuals refer to other state authorities, their structural entities refer an application of an individual aiming at receiving refugee status to the State Migration Service within three working days.

<sup>16</sup> Paragraph 13 of 'The Procedure of Examining an Application for Granting Refugee Status'.

<sup>17</sup> Paragraph 14 of 'The Procedure of Examining an Application for Granting Refugee Status'.

It is noteworthy that the RA Constitution, as the main document with the broadest legal effect on the territory of RA, does not define the procedure and right for granting refugee status. In addition, despite the fact that the RA Constitution and the Law 'On the Legal Status of Refugees and Displaced Persons' contain an article on political asylum, within RA legislation there is no separate law that regulates relations emerging in relation to political asylum or procedure of granting it. It is also noteworthy that legislation does not regulate granting temporary or additional support.

It is also noteworthy that, regardless of the legislative provisions on providing refugees with accommodation<sup>19</sup> and employment, it has not been implemented in practice.<sup>20</sup>

As for the remaining issues, legal acts regulating the area of granting refugee status are transparent and not complex.

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<sup>18</sup> 'The Collection of the RA statutory acts' as of August 6, 2003 (the latest amendments were introduced on January 11, 2008 and published in 'The Collection of the RA Statutory Acts' 2008, No. 1.

<sup>19</sup> Article 17 (Providing Refugees and Displaced Persons (Persons Displaced within a Country) with Accommodation) of the RA Law 'On the Legal Status of Refugees and Displaced Persons'.

<sup>20</sup> Article 16 (Employment of Refugees and Displaced Persons (Persons Displaced within a Country) of the RA Law 'On the Legal Status of Refugees and Displaced Persons'.