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**“Emerging issues of access to justice for vulnerable
groups, in particular:**

- migrants and asylum seekers;**
- children, including children perpetrators of crime”**

**Report presented by the Minister of Justice
of Azerbaijan**

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Some issues of access to justice by children: practice of the Republic of Azerbaijan

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Access to justice is one of the integral elements of the right to a fair trial provided for in Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. Following the case-law of the European Court of Human Rights the right to a fair trial holds a prominent place in a democratic society. However, it will make no sense if access to a court is denied.

One cannot overlook the fact that the existing international human rights treaties barely have explicit norms on access to justice. The domestic laws of many member states of the Council of Europe are in a similar situation, since they do not provide for the notion of access to justice, nor consider it as an independent procedural right.

Nevertheless, the judicial and law-enforcement practice of international courts and other bodies interprets the right to a judicial remedy in a way that it includes access to justice as a special and essential aspect, which is protected on the domestic and international level.

This right has also been enshrined in the legislation of various countries, whereas in Azerbaijan it was prescribed in the document of the highest legally binding nature, which is the Constitution. The Basic Law guarantees state protection of human rights and freedoms, and the right to a judicial remedy and to qualified legal assistance. The effectiveness of the court remedy is based on the implementation of each of the above-mentioned rights as well as on having a sufficient number of judges and courts, and a simplified and differentiated judicial procedure.

The efficient functioning of the judiciary is also of utmost importance as far as access to justice is concerned. The Azerbaijani judiciary has been profoundly reformed in association with the Council of Europe in order for individuals to enjoy easy access to courts and the efficiency of the administration of justice to be increased. A crucial point of the reform towards achieving modernisation and greater accessibility of the judicial system was the establishment of six regional courts of appeal instead of one country-wide appellate instance, expanding the network of specialised courts, and a fifty percent increase in the number of judges and of staff working in courts. Meanwhile, specific focus was placed on measures to strengthen judicial independence and to raise public confidence in the courts. To that end, transparent and effective screening procedures for judges were developed and implemented in order for the most worthy judicial candidates to be selected, and the remuneration of judges was also considerably increased (a 25 times salary raise in comparison with the year 2000). Efficient measures were taken to achieve greater transparency and openness in the judicial process, to prevent *red tape* and other obstacles in courts, and to improve the quality of legal aid provided to individuals as well as to raise public awareness of procedural rights.

There is no doubt that an effective and independent judiciary, statutory and procedural human rights guarantees, clear and consistently applied legislation are the major background requirements without which a failure to ensure equal access to justice for everyone would result. The provision of qualified and effective legal assistance to those concerned is also of importance.

The Constitution of the Republic of Azerbaijan while providing for the right to qualified legal assistance stipulates that it should be provided free of charge. In practice, free state legal aid is usually provided in cases where involvement of a legal counsel is mandatory. I believe that everyone would agree with the necessity of extending these criteria, subject to the financial capacities of the state, especially to the socially less protected strata of society. This thesis is particularly relevant in Azerbaijan, since refugees and internally displaced persons constitute 1/8 of its population (1 million persons).

Vulnerable groups, such as migrants and children undoubtedly have even more serious problems getting full access to justice. Domestic legislation should be ready to react. Thus, the Law of the Republic of Azerbaijan On the Rights of the Child provides for the right of a child wishing to protect his/her rights and lawful interests to appeal to relevant bodies, including courts, once he/she is 14 years old. They are entitled to do so directly without any side intervention whatsoever. The legislation also prescribes specific features of criminal proceedings for minors, including extra procedural guarantees. Thus, legal counsel shall be present in cases which involve minors, and specialised prosecuting units shall conduct pre-trial investigations of those cases, if possible. Moreover, at the trial the case shall be dealt with by the most experienced judge. The legislation requires caution in sentencing minors to deprivation of liberty unless he/she has repeatedly committed serious offences. It also prescribes that the punishment to be applied shall be reduced to a minimum level. Once arrested, a minor's parents or guardians shall be promptly informed. There is also a special restraint measure applied only to minors, such as release under supervision of a parent or guardian. Procedural legislation also provides for a wide range of other measures directed towards ensuring the rights of a child who participates in criminal proceedings. Furthermore, whilst legislation provides for the possibility of imposing life sentences on offenders, minors may only be subject to a maximum of 10-years imprisonment.

However, bearing in mind the existence of factual problems in effectively ensuring access to justice, the aforesaid legislative guarantees are not sufficient. Children are often confronted with barriers as far as access to justice is concerned. Thus, the majority of children, in particular those coming from disadvantaged backgrounds, including 300 thousand wretched and frustrated child-refugees and -internally displaced persons (IDPs), lack proper awareness of their rights to remedies and legal assistance to which they are entitled. From our point of view, children also face difficulties while trying to initiate criminal proceedings by themselves. Often there are numerous obstacles to overcome, such as the absence of a mechanism for free pre-trial legal assistance or aid during civil proceedings etc.

From our perspective, a wide range of coordinated measures is needed in order to resolve the above-mentioned and concomitant problems regarding access to justice of the groups concerned. These are the development and implementation of national programmes on the protection of children's rights, the prevention of juvenile delinquency, raising minors' awareness, legal education and training as well as improvement of mechanisms regarding independent access to courts.

The Republic of Azerbaijan has dealt with these problems by adopting a Law on Prevention of Child Abandonment and Offences among Minors. It provides main activity directions of state institutions and entities, clearly prescribing their obligations to ensure and protect minors' rights, including providing free legal aid and other services. Courts and prosecuting agencies have been empowered with discretion in dealing with cases of minors; a system of educational measures is also provided as an alternative to criminal prosecution. A National Action Plan on the Protection of Human Rights, which is currently being implemented, specifically underlines the rights of children, in the enforcement of which a key role is played by the State Committee on children's issues.

Alongside this, a newly adopted national concept of state support to non-governmental organisations has afforded priority to programmes directed towards increase the legal knowledge of the population, and on the protection and development of children.

We are also interested as are many others in the development of juvenile justice. A reform programme of juvenile justice has been developed in association with UNICEF. The Programme provides for the establishment of an alternative to the criminal justice system and the drafting and adoption of a Juvenile Code to set out the procedural rights of minors, such as reorganising court rooms in cases which might involve minors, etc. It might be relevant to concentrate the investigation of cases involving minors within a single unit so as to attain greater professionalism and specialisation and to train relevant officials; to revise the list of offences where the age of criminal responsibility is 14, grant prosecuting agencies wide discretion as to initiating criminal proceedings with regard to minors, expand the grounds and simplify procedures of exemption of minors from criminal liability and punishment, review the terms and types of punishment which minors could be subject to by court decisions, establish the position of Ombudsman for the rights of the child, etc.

I would like to point out that in order to provide effective access to justice it is also crucial to revise a number of traditional notions and practices as well as to establish new international legal standards.

Having noted this, I would suggest to discuss the possibilities of drafting international instruments to secure some procedural and other safeguards related to access to justice with the focus on vulnerable groups, especially children, and improving instruments on independent initiation of legal actions and providing professional legal aid.

Implementing a continuous monitoring of children's rights and a development of new evaluation mechanisms on the effectiveness of international standards aiming at their further improvement are also deemed to be important.

To conclude, it is my firm belief that discussing these vital issues at such a high level forum and the exchange of experiences and achievements in theory and practice of our states will substantially contribute to greater provision of unhindered access to justice of vulnerable groups, including children. That will obviously require considerable efforts, time and expense. However, as one famous sage said and I quote: "All the treasure of the world is worth no single tear of a child".

