

ACN

**Anti-Corruption Network
for Eastern Europe and Central Asia**

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OECD Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

Azerbaijan

Monitoring Report

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Executive Summary

This report analyses progress made in Azerbaijan in developing anti-corruption reforms and implementing recommendation received under the Istanbul Anti-Corruption Action Plan since the first monitoring round in 2006. The report also provides a set of new recommendations to continue supporting reforms efforts in Azerbaijan in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption.

Anti-Corruption Policy

While fight against corruption is declared a political priority in Azerbaijan at different levels of power, failure to implement certain measures may indicate an insufficient will to implement policy declarations. Following the State Programme for Fighting Corruption for 2004 – 2006, adoption of a new National Strategy on Increasing Transparency and Combating Corruption in 2007 and an Action Plan for 2007 – 2011 represents an important achievement in the development of anti-corruption policy in Azerbaijan. It appears that some analysis of levels and trends in corruption was carried out to provide the basis for the development of the policy; however, the results of these surveys were not sufficiently disclosed to the public. More efforts are needed to develop useful and result oriented action plans by central authorities to promote anti-corruption reforms in various sectors; there is also a need to promote anti-corruption measures at local level.

The involvement of non-governmental organisations in the anti-corruption activities carried out by the government remains limited to participation of NGO delegates in one working group of the Commission on Combating Corruption. The government needs to develop mechanisms to ensure more active participation of civil society in development, implementation and assessment of the anti-corruption strategy.

Growing number of activities and programmes to raise awareness about corruption, especially legal issues and reporting, among public officials and law-enforcement officials are undertaken by the government. However, a more comprehensive approach is needed. Measures to build practical skills to prevent and fight corruption and extending training to target groups of the society and businesses are required.

The Commission on Combating Corruption at the Cabinet of Ministers represents the focal coordinating institution for the implementation of anti-corruption strategy and is a well established and operational body. It should reinforce and target its efforts to support implementation of certain priority anti-corruption measures, including in the area of prevention of conflict of interest and development of specific action plans in corruption prone areas. The commission should also reinforce its role in anti-corruption awareness raising and verification of asset declarations for public officials.

Criminalisation of Corruption

Azerbaijan has made important progress in the criminalisation of corruption. Active and passive bribery in public sector, trading in influence, non-material benefits and bribery through third person are criminalised in accordance with relevant international standards. While private sector corruption is not a separate offence in the Criminal Code of Azerbaijan, the authorities of Azerbaijan reported about numerous cases of prosecution and adjudication of corruption and embezzlement in the private sector based on the

existing legislation. In order to be fully compliant with relevant international standards, Azerbaijan needs to criminalise promise and offer in trading in influence and introduce into its legal system the concept of responsibility of legal persons. Prosecution of active bribery is very limited in Azerbaijan and this is partly related to exemption from liability of those reporting bribery. The possibilities to release persons who pay bribes from criminal liability should be more limited. The immunity granted to certain groups of public officials should not present an obstacle to effective criminal prosecution of their corruption. The immunity should be limited to performance of official duties. While Azerbaijan is largely compliant with international standards in the area of confiscation of proceeds from corruption crimes, practical application of the confiscation provisions should be analysed and actively pursued.

Azerbaijan has made significant progress in strengthening the Anti-Corruption Department within the Prosecutor General's Office, its main institution to fight corruption through law enforcement. This autonomous department with specialised prosecutors, competent to investigate and prosecute corruption and entrusted to analyse corruption and propose anti-corruption measures is operational and overall its basis correspond to relevant international standards. As other law enforcement bodies also have competence in detecting corruption, the jurisdiction of the Department should be further clarified and its role as a central body detecting and prosecuting corruption should be strengthened. A serious shortcoming is the lack of access of the Anti-Corruption Department to special investigatory means, a key mean to detect such latent crime as corruption. The need to rely on law enforcement bodies to carry out special investigatory operations may limit the ability of the Department to detect high level corruption and corruption in the law enforcement. The Department should therefore be provided with powers and capacity to conduct special investigatory means. Insufficient cooperation and segregation of tasks among those involved in investigation, prosecution and representation of the state at the trial in corruption cases do not allow building and sharing knowledge in the course of the proceedings in a coherent manner. To successfully detect corruption, Azerbaijan should also continue to prevent money laundering. The recently created Financial Monitoring Service and the new strategy to prevent money laundering should be effectively implemented, including ensuring operational autonomy of the Financial Monitoring Service and addressing transactions related to politically exposed persons by it.

Prevention of Corruption

Azerbaijan made some progress in establishing rules of ethical conduct for public officials in general and for specific government authorities and professions, including starting development of a code of ethics for judges. There is a legal obligation for public officials to declare income and assets since 2005. However, this obligation is not enforced in practice up to date, and needs to be implemented without further delay. There are also no clear regulations on conflict of interest in place; no legislation on protection of whistleblowers has been adopted. Azerbaijan needs to pursue civil service reform, including widening its scope for transparent and merit-based system of recruitment, promotion and remuneration and separating career public officials and political officials. Education of public officials on their legal obligations, ethics and other key corruption related issues should be provided in a more systematic manner.

While there is legal and institutional basis for public financial control and audit, capacity of institutions in this area should be strengthened. Auditors should receive more training about fraud and corruption risks; instead of planned audits and controls, more proactive audits should be conducted.

Basic legal and institutional framework for public procurement is in place in Azerbaijan, but the reforms need to continue to prevent risks of corruption and increase transparency of this system. The capacity of the State Procurement Agency should be strengthened to lead these reforms. Among main loopholes is

the lack of an independent review mechanism. The dissemination of information about offers of public procurement is not sufficient. More transparency and competition should be introduced in procurement procedures. The procurement carried out by procuring agencies should be also more thoroughly monitored.

In order to ensure transparency and trust of citizens in political parties, a requirement to disclose information about sources of significant private donations should be introduced and properly enforced.

In order to prevent corruption among judges, Azerbaijan needs to consider how to effectively lift their immunities from criminal prosecution and improve the procedure for distribution of cases, based on international standards.

Further efforts are needed to address corruption with the private sector, including through development of joint efforts of government and the private sector to raise awareness about corruption among enterprises and encourage development of self-regulatory anti-corruption policies by businesses.

Second Round of Monitoring

The Istanbul Anti-Corruption Action Plan was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan targets Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan involves systematic and regular peer review of legal and institutional framework for fighting corruption in the targeted countries

The initial review of legal and institutional framework for the fight against corruption and recommendations for Azerbaijan were endorsed in June 2004. The first round of monitoring took place from 2005 – 2007. The first round of monitoring report which assessed the implementation of recommendations and established compliance ratings of Azerbaijan was adopted in June 2006. In addition to the adoption of the reports, since 2004 Azerbaijan has provided updates about national actions to implement the recommendations at all monitoring meetings. Azerbaijan has also actively participated in other activities of the ACN.

The second round of monitoring under the Istanbul Action Plan started in summer 2009. Azerbaijan and Georgia are the first countries reviewed under this round. The government of Azerbaijan provided answers to the questionnaire in November 2009.

The country visit to Azerbaijan took place on 7 – 11 December 2009. The aim of the country visit was to meet with relevant state institutions, civil society and foreign missions to discuss progress made in Azerbaijan in implementation of 2004 recommendations and to identify issues for further improvement in the areas of anti-corruption policy, criminalisation and prevention of corruption. The Anti-Corruption Division (ACD) of the Prosecutor General's Office of Azerbaijan, who acts as the National Coordinator for the Istanbul Action Plan, organized thematic sessions with relevant state institutions, including Administration of the President, the Parliament, Commission on Combating Corruption at the Cabinet of Ministers, Council for State Support of the NGOs, Prosecutor General's Office, Ministry of Internal Affairs, Ministry of Taxes, State Customs Committee, Ministry of Emergency Situations, Ministry of Justice, State Agency for Public Procurement, State Committee on Property Affairs, Chamber of Accounts, Ministry of Economic Development, Ministry of Finance, Education Ministry, Ministry of Health, State Migration Service, State Commission on Public Service, Ministry of Labor and Social Security of Population, State Fund of Social Security, Financial Monitoring Unit, Judicial Legal Council, National Security Service. In cooperation with TI Azerbaijan, the ACN Secretariat organized special monitoring session with civil society and businesses; a session for international organizations and bilateral donors was organized in cooperation with the Council of Europe.

This examination of Azerbaijan was led by the team leader Ms. Anne Lugon-Moulin (Switzerland). The monitoring experts included Ms. Diāna Kurpniece (Latvia), Mr. Ibrohim Ali (Tajikistan), Ms. Cynthia L. Eldridge (United States), Mr. Gheorghe Bocsan (Romania) and Ms. Olga Savran (OECD/SIGMA). The coordination on behalf of Azerbaijan was ensured by its national coordinator Mr. Kamran Aliyev, Director of the Anti-Corruption Division at the Office of the Prosecutor General of Azerbaijan.

This report was prepared on the basis of the answers to the questionnaire and findings of the on-site visit, additional information provided by the government of Azerbaijan and additional research, as well as relevant information received during the plenary meeting.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting on 31 March 2010. The report is made public after the meeting, including at <http://www.oecd.org/corruption/acn>. Authorities of Azerbaijan are invited to disseminate the report. A follow-up mission to present the report is planned. To further support implementation of the recommendations Azerbaijan is invited to participate to the OECD ACN/ Istanbul Action Plan Secretariat peer learning activities in 2010 and beyond.

Country Background Information

Economic and social situation

Azerbaijan covers an area of 86 600 km². 20 % of its territory is not under government control following a military conflict. The population of Azerbaijan is 9 million. The GNI in 2008 was of 8,579 USD per capita¹.

Azerbaijan has experienced a fast industrialisation since the beginning of nineties. The oil and gas sector now is the largest contributor to industry, accounting for around 70% of industrial output in 2007. The hydrocarbons sector is the mayor source of Azerbaijan's export revenues.²

Azerbaijan has experienced an extremely rapid economic growth in the recent years reaching a 31% increase in GDP in 2006, 25 % in 2007 and 10,8 % in 2008. This was mainly due to windfall gains of increased oil prices and high volume of exports of both oil and gas, before the financial and economic crisis hit the country. Despite this slight drop, Azerbaijan was still able to reach a 7,5% increase of its GDP in 2009. The effects of the global recession have been felt in Azerbaijan by way of lower global oil prices and reduced external demand. However, the country has fared much better than other oil exporters in the region, owing to its less dependence on global financial markets. As a result of this, the authorities were able to continue supporting social spending in 2009. However, rural sector become more vulnerable as a side-effect of the crisis.

Political structure

Azerbaijan has developed a strong presidential system. The executive branch is made up of a president, his office, a prime minister, and the Cabinet of Ministers. The president has wide range of powers, for example, he can propose appointment of judges, cancel a decision of the Cabinet of Ministers or dismiss the Cabinet. Since 2003 the President of Azerbaijan is Ilham Aliyev; he was re-elected for the second term in 2008. The presidential elections in 2008 were peaceful and progressive in terms of meeting international standards, according to the international election Observation Mission on-site visit at the time. However, the re-election of President Aliyev took place in a hardly competitive environment, where the five main opposition parties merely boycotted the vote. The constitutional referendum voted in 2009, removed the hurdles for a president to remain in office for unlimited terms.

The legislative branch is represented by the Parliament (Milli Majlis). Azerbaijan's first parliament was elected in 1995. The Parliament consists of one chamber of 125 members, who are elected for the period of 5 years. A majority of parliamentarians are from the ruling "New Azerbaijan Party", although the 2005 elections brought in a more diverse parliament. Parliamentary elections will be held in November 2010. The judicial branch is headed by the Supreme Court.

¹ World Bank, data is expressed in "Purchasing Power Parity".

² Economist Intelligence Unit, Country Profile Azerbaijan

Trends in corruption

The Doing Business Report 2009 ranks Azerbaijan as that year's top reformer (improvement from 97th position to 33rd). Significant improvements have been done in order to improve transparency and efficiency of regulatory requirements for private actors, such as business registration and tax declaration procedures.

Despite those good progresses, corruption remains an issue. The Transparency International Corruption Perception Index ranks Azerbaijan 143 out of 180 in 2009, which is slightly better than in 2008 when it was ranked 158 out of 180. It is considered that social services are prone to corruption and key economic sectors continue to be captured by a closed circle of actors.

According to the Global Integrity Scorecard of Azerbaijan, main corruption risk areas in Azerbaijan are education, health care, courts and public utility services. The judiciary is also perceived to be among the most corrupt institutions in the country. The government remains the main investor in the largest non-oil sectors of the economy, not open for privatization, which makes access to economic opportunities heavily dependent on the political loyalty. Such situation has contributed to the country's Freedom House rating on corruption worsening from 6.25 to 6.50 in 2009.³

It is acknowledged that private businesses in Azerbaijan face one of the most widespread corruption in Eastern Europe and Central Asia. This trend is illustrated by the data contained in the Enterprise Surveys⁴ conducted in 2009. It states that 43% of Azerbaijani firms report having to give bribes to tax inspectors. 35% of firms report having to pay bribes in order to obtain a license.

Over time some improvements in business climate have taken place. Increased availability of credit and some reduction of corruption have been noted and, in the opinions expressed in the BEEPs, reforms aimed at streamlining regulations could diminish opportunities for corruption and expanding of international trade might help Azerbaijan to further improve its business environment.

³ Freedom House, Nations in Transit 2009

⁴ World Bank, EBRD, Enterprise Surveys/Business Environment and Enterprise Performance Surveys (BEEPS)

1. Anti-Corruption Policy

1.1–1.2.–1.3. Political will to fight corruption, anti-corruption policy documents and corruption surveys

Previous Recommendation 1

Speed up efforts to adopt a comprehensive Anti-Corruption Program (Special State Program for Fighting Corruption) aiming at strengthening the implementation of anti-corruption measures. The Program should build on an analysis of the patterns of corruption in the country. It should propose focused anti-corruption measures or plans for selected institutions and have a balanced approach of repressive and preventive measures. The Program should also envisage effective monitoring and reporting mechanisms based on a participatory process which would include civil society in general and associations with experience in the area of anti-corruption, as well as the private sector / business community. In the light of this, ensure that the adopted strategy is widely disseminated within the civil service and among general public.

Fight against corruption is mentioned among priorities in the annual addresses of the President and Prime Minister. The governing, pro-government and opposition parties include anti-corruption in their election campaigns. These policy statements reflect political awareness and the declared political will to fight corruption. Failure to implement certain anti-corruption measures may indicate insufficient will to implement anti-corruption policies. For example, the requirement for public officials to declare assets was legally introduced in 2006, however, no declaration form was approved till 2010, and the system remained non-operational. Further implementation efforts are needed to confirm the political will in practice.

In September 2004, the President approved the State Program for Fighting Corruption for 2004-2006. The first round of monitoring noted that it was regarded as a comprehensive anti-corruption program; separate Action Plans were expected to be developed by line ministries to support the implementation of the State Programme. The reporting and monitoring of the implementation of the programme was entrusted to the newly established Commission on Combating Corruption. During the first round of monitoring, no information was available to confirm that the State Program was based on sound analysis of the patterns of corruption in the country. On this basis, during the first round of monitoring, it was considered that Azerbaijan was **largely** compliant with this recommendation.

The new National Strategy on Increasing Transparency and Combating Corruption (NSITCC) was approved by the President in July 2007. The NSITCC is a brief, but comprehensive strategy. It includes chapters on (1) objectives and tasks, (2) main principles, (3) measures, (4) monitoring, (5) implementation provision through the action plans, and (6) funding. The measures provided in the NSITCC include (1) improvement to legislative framework, (2) promotion of integrity in civil service (e.g. merit based admission/promotion/evaluation, codes of conduct and training, increase of salaries, asset disclosure) and financial control of political parties, (3) strengthening anti-corruption law-enforcement and judiciary, (4) measures in economic and social sphere (public financial control, public procurement, licensing and other business regulation, taxes and customs, education and healthcare), (5) public awareness raising, and (6) international cooperation. Priorities for implementation of the NSITCC are provided in the Action Plan for 2007-2011. The NSITCC does not have its own budget for implementation; measures established by the NSITCC and the Action Plan should be funded through regular budget allocations to the responsible agencies.

The NSITCC and its Action Plan are important achievements in the development of anti-corruption policy in Azerbaijan. Generally, the strategy has a balanced approach between preventive and repressive measures. It was disseminated among public administration and the public. However, a number of weaknesses remain. According to the Commission on Combating Corruption, several studies about levels and trends of corruption were used for the development of the strategy. Results of such studies were not made available to the peer review experts. It appears that some analysis was carried out which is reflected in the priority list of the Action Plan. However, the results of the analysis were not sufficiently disclosed.

The Commission on Combating Corruption and the Cabinet of Ministers continue to be the two main bodies responsible for monitoring of the implementation of the strategy. Central executive authorities, including ministries and public agencies, report on the implementation of their action plans to the Cabinet and the Commission; in addition, law-enforcement bodies report to the Commission. The Cabinet and the Commission collect and analyse this information, and twice a year report to the President; the Cabinet reports annually to the Parliament. These reports are also published in press. Parallel reporting to the Cabinet of Ministers and to the Commission appears as duplication; but the Commission insisted that this mechanism provided for alternative opinions, and the Commission makes the final decision if the implementation of the strategy is satisfactory or not. The NSITCC provides that the new World Bank Governance indicators will be used for the assessment of its implementation; however, no further details are provided.

The NSITCC establishes that the Commission will prepare reports on its implementation, with the inputs from NGOs. However, since NGOs do not have a seat in the Commission, there are no formal channels to feed these views to the official process of the monitoring of the strategy by the Commission and to involve NGOs directly in assessing the implementation of the strategy. Under the present monitoring structure, NGOs can provide their views to the Commission through the civil society representative on the Working Group on Legislation under the Commission; however this Working Group does not have a role in the monitoring of the strategy. The civil society also organised public discussions on the implementation of certain elements of the strategy through public hearings and round tables. During three months in 2008, from September to November, several NGOs, including League for the Defense of Labor Rights, Union of Young Azerbaijani Lawyers, Association of Eurasian Lawyers, Azerbaijan Lawyers Confederation, with the support of USAID and Counterpart International, conducted alternative monitoring of the implementation of the national strategy for Increasing Transparency and Combating Corruption. During the monitoring the organizers cooperated with the Commission and the representatives of the Commission participated in the presentation of the results of the monitoring. The results of the monitoring, also relevant recommendations of the NGOs were submitted to the Commission. Commission used these monitoring results in its annual evaluation of the National Strategy. This pilot provides a good example; its practice should be institutionalised on a longer term basis.

Finally, the NSITCC provides that 'comprehensive anti-corruption action plans' will be developed within central and local executive authorities and municipalities. All central executive authorities, including ministries, committees, commissions and agencies, have to develop such plans; specifically Ministry of Taxes, State Customs Committee, Ministry of Justice, Ministry of Health, Ministry of Education, Ministry of Labour and Social Security of Population, and General Prosecutor's Office were mentioned in this context. A very general template for the preparation of such action plans was developed with the assistance of the Council of Europe AZPAC project; the new plans for 2010 were expected to be developed in December 2009. According to the Azerbaijani authorities, most of the ministries and agencies, i.e., more than 20, have already submitted their plans, and others are in preparation. It appears that more efforts are needed to improve the quality of the action plans, to ensure that they are result-oriented, to provide

training to the various institutions, and ensure criteria-based monitoring of their impact on corruption in relevant sectors.

Recommendation 1 is largely implemented.

Previous Recommendation 5

Conduct further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.

During the 1st round of monitoring it was identified that the government did not carry out any surveys to establish the degree of the spread of corruption. However, several NGOs carried out such surveys. The Anti-Corruption Department of the Prosecutor General's Office received and analysed information from public agencies on corruption related violations. On this basis, it was decided that Azerbaijan was **partially** compliant with the recommendation.

Reportedly, a number of public opinion polls and surveys were carried out by various NGOs in Azerbaijan, in addition to surveys carried out by international partners, such as TI, EBRD and World Bank. For instance, the Commission on Combating Corruption invited the Information and Cooperation Network of the Anti-Corruption NGOs (ICN ACNGO) to conduct a survey on the reasons, trends and levels of corruption. This survey was conducted and examined by the Commission. It appears that its results were used in the development of the new anti-corruption strategy and its action plan, which contain clear areas for priority actions. However, as noted above, the results of this survey were not published, and were not even disclosed to the members of the ICN ACNGO.

The Ministry of Education ran a survey in order to determine causes and levels of corruption in higher education during 2009-2010. The results of this survey were not published.

Besides, several NGOs, which were awarded state grants to carry out public awareness and education campaigns (more information is provided later), also carried out several opinion polls and surveys on specific anti-corruption issues. However, the results of these surveys were not broadly disseminated, and it is not clear if they were used for development of the new anti-corruption strategy, or for the assessment of its implementation.

The Anti-Corruption Department of the Prosecutor General's Office collects statistical data on corruption-related crime, and publishes these data in press. The Department has developed a National Database of Corruption Offences, which accumulates information about the corruption offences reported by citizens, results of the inquiry into these reports, results of criminal investigations and trials. The analysis of these reports cover various criteria, including geography, gender, area of activity, profession, private/public sector, sources of information, employment of the complainants, communication between investigative authorities, interim measures, confiscation measures, types of punishments, etc. As a result, the analytical report of the Anti-Corruption Department based on the Database reflect the scope of the corruption offences in the country, perception of citizens as to what they consider as corruption offence, the ability of the law enforcement agencies to detect corruption offences, their success in the criminal investigation. Development of a survey about public trust to the Anti-Corruption Department is planned under the EU Twinning Project on the Support to the Anti-Corruption Department. Currently, approximately 10 similar EU twinning projects are being conducted in other ministries.

The Commission on Combating Corruption carries out a web-based survey about spread of corruption in different public institutions. It has a special budget line to finance surveys. However, no results of these surveys were made available to the monitoring team.

The Council of Europe AZPAC project conducted a seminar to review the capacities to conduct surveys.

While many initiatives are underway, there is little progress in obtaining precise information about the scale of corruption in the country; results of implemented surveys are not public. The recommendation remains **partially** implemented.

New Recommendation 1.1.-1.2.-1.3.

Strengthen political will and practical measures to implement the NSITCC and its Action Plan adopted in 2007. Improve a mechanism for civil society's participation in the assessment. Periodically carry out and publish surveys about levels and trends of corruption in different sectors. Implement measures to improve the quality and the implementation of the actions plans by specific institutions, develop policy and measures to address corruption risks at the municipal level.

1.4-1.5. Public participation in anti-corruption policy work, raising awareness and public education

Previous Recommendation 2

Ensure involvement and participation of civil society in general and through associations with experience in the area of anti-corruption, as well as representatives of the private sector / business community in the work of the existing Commission on Combating Corruption at the Civil Service Executive Board.

Civil society representatives are not included in the Commission on Combating Corruption; however, they participate in the Working Group on Legislation established under the Commission, which is responsible for developing proposals for improvements of legislation, state policy on corruption; analysis of the fight against corruption and public awareness programs. The criteria for inclusion of NGOs in the Working Group were not formalized. On this basis, during the first round of monitoring, it was considered that Azerbaijan was **partially** compliant with this recommendation.

While the new strategy has a whole section on public participation, it does not provide any new mechanisms to strengthen involvement of NGOs in anti-corruption policy development, implementation and monitoring. Public participation in the activities of the Commission remained unchanged since the first round of monitoring. There are no civil society representatives in the Commission itself. NGOs continue contributing to the work of the Commission through their involvement in the Working Group on Legislation. The Working Group comprises 28 members, including 2 NGOs. Procedures for selection of NGOs in the Working Group are does now allow for their more active involvement, for expansion or renewal of NGOs representation.

Civil society groups were involved in the discussion of the implementation of the previous anti-corruption strategy as well as in the development of the NSITAC, through their involvement in the Working Group. In addition, some NGOs organised other events to discuss the implementation of the NSITAC, e.g. a series of round tables was organised to discuss the Draft Law on the Code of Ethical Rules for Civil Servants. Inputs from these round tables or other similar events were sent to the Commission for information. There is no

information about participation of civil society in sector specific anti-corruption activities, e.g. in implementation of anti-corruption action plans in the areas tax, customs, health, education.

Members of the Working Group on Legislation act as contact points for coordination of public participation in their agencies. Role and visibility of these contact points is low. In the meantime, it appears that press officers in various public institutions often act as contact points for NGOs and provide them with requested information. In the Prosecutor's office and in law-enforcement agencies, there are officials responsible for communication with civil society and press. However, this appears insufficient for involving NGOs in specific anti-corruption activities of specific agencies.

Recommendation 2 is partially implemented.

Previous Recommendation 6

Conduct awareness raising campaigns and organize training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.

A number of awareness raising activities were reported during the first round of monitoring, including the "hotlines" to report corruption; publication of anti-corruption brochures and leaflets, talk shows and discussions on radio and TV, anti-corruption training modules developed by the Ministry of Education, Public Administration Academy, Police Academy, and training centres of ministries. While these efforts provided anti-corruption information to the citizens and training to civil servants, they could not be regarded as a comprehensive awareness raising campaign. The visibility of the efforts listed above was not high. On this basis, during the first round of monitoring, it was considered that Azerbaijan was **partially** compliant with this recommendation.

A growing amount of anti-corruption awareness raising and training programmes are delivered to public administration and law-enforcement officials. The Ministry of Education developed anti-corruption modules and provides training for all new public officials. The Public Administration Academy provides regular anti-corruption training to all senior public officials. Training on various aspects of anti-corruption was provided to officials in all law-enforcement institutions. A Working Group with the participation of Anti-Corruption Department of the Prosecutor General, and training institutions form the Prosecutor's Office, Ministries of Interior, Taxes and National Security, developed an anti-corruption training curriculum. The Prosecutor's Office and the US Embassy run a series of seminars on prosecuting of corruption offences in 2007 and 2009.

The Commission regularly publishes anti-corruption booklets and flyers, and distributes them among public institutions, local executive powers, NGOs, media and universities. The Anti-Corruption Department of the Prosecutor General's Office also publishes booklets about results of its activities, and published handbooks on investigation and prosecution of corruption in 2007 and 2009. TI Azerbaijan publishes promotional materials about its legal consulting and advocacy centres.

Members of the Commission, prosecutors and investigators regularly give interviews about their anti-corruption activities. The ICN ACNGO conducted a series of seminars in schools under the programme "Youngsters say no to corruption", dedicated to the International Anti-Corruption Day .

In October–December 2007, the Commission organised a grant programme for NGOs on Education and Propaganda of Cooperation between the State Institutions and Civil Society. Proposals which were

selected for funding aimed to raise public awareness and educate the society about the national anti-corruption strategy. In 2009, the Council of State Support to NGOs granted funds to several NGOs to carry out public awareness measures in different regions.

While the amount of training activities is growing, especially for public administration, awareness raising programmes for the public still lack a comprehensive approach, and appear to focus at legal issues or on reporting about efforts of government against corruption, but do not provide sustained effort to build practical skills to prevent and fight corruption in real life situations. Apart from the series of seminars in schools carried out by the ICN ACNGO, no information is provided about training and awareness raising events for targeted groups, such as business associations, special citizens groups which may face corruption in selected sectors.

Recommendation 6 is largely implemented.

New Recommendation 1.4.-1.5.

Enhance mechanisms to ensure civil society participation in the work of the Commission on Combating Corruption. Expand civil society participation in the Working Group on Legislation. Develop mechanisms for civil society involvement in sector specific anti-corruption activities as well as in the activities of local authorities. Increase efforts to raise public awareness through comprehensive and sustained campaigns, including for target groups, with the focus on practical skills needed to prevent and fight corruption.

1.6. Specialised anti-corruption policy and coordination institution

The Republic of Azerbaijan has a specialised anti-corruption policy and coordination institution – the Commission on Combating Corruption. The Commission was established according to the Law on Combating Corruption, adopted by Parliament on 13 January 2004. Article 4.2 of the Law provides that "The functions of a specialized body in the field of prevention of corruption shall be discharged by the Commission on Combating Corruption". The Statute of the Commission was approved by the Law of Azerbaijan Republic on May 3, 2005. According to the Statute, the duties of the Commission include participation in anti-corruption policy formulation, coordination of policy development and implementation with other state bodies, coordination with civil society and international partners, assessing the implementation of anti-corruption policies, expert and analytical support, e.g. collection and analysis of data, and development of legislative and regulatory proposal related to the fight against corruption. According to the Statute, the Commission is also responsible for collection of financial declarations, or asset declarations of public officials, envisaged in Section 5.1 of the law on "Combating Corruption".

The Commission is composed of 15 members, including 5 members are appointed by the President, 5 by the Parliament, and 5 by the Constitutional Court. It is a collegial body, it operates through meetings. The Chair of the Commission is elected by the members; it is currently chaired by the Head of Executive Office of the President of the Republic of Azerbaijan.

The Commission has its permanent Secretariat consisting of three employees, based at Executive Office of the President. The employees of the Secretariat are regular civil servants; there are no special procedures applicable to them in relation to their functions at the anti-corruption body. The Statute of the Secretariat was adopted by decrees of the Commission. The Secretariat carries out all organisation and analytical tasks to support the work of the Commission. It ensures public awareness about the work of the Commission, coordinates international cooperation and provides clerical support to the meetings of the Commission. The Secretariat is funded from the state budget; total budget of the Commission in 2008 was

143,000 USD. The Council of Europe provided assistance to the work of the Commission under the AZPAC project.

Two Working Groups were established under the Commission to provide consultations and advice on various issues of anti-corruption policy. One of the Working groups -on improvement of legislation – was established by the decree of the Commission on July 8, 2005. This Working Group consists of 28 members, including senior officials from the Parliament, Prosecutor General's Office, Ministries of National Security and of Justice, Constitutional and Supreme Courts, National Bank, Chamber of Auditors, Ministries of Economic Development, of Health, of Education and of Finance, State Social Protection Fund, State Real Estate Registry, State Customs Committee, State Committee on Management of State Property, and State Procurement Agency, Commission of Civil Service, Ombudsman's Office, Executive Power of the city of Baku, Baku State University and two NGOs. There is no information about the second Working Group.

The Commission on Combating Corruption is a well established and operational collegial body, with a clear mandate and powers. It has a small, but permanent Secretariat, as well as sufficient budget funding. Its activities are supported by at least one Working Group. There is a wide scope of activities undertaken by the Commission, formulation and monitoring of implementation of the anti-corruption strategy appears the priority. At the same time, as described above, no surveys about corruption were made public, NGOs do not have a seat in the Commission and there is no established mechanism for civil society to participate in the monitoring of the programme.

The Commission should reinforce its efforts to support the implementation of the priority actions established by the strategy and the Action Plan. Special priority should be given to the adoption of the Draft Law on the Prevention of Conflicts of Interest in the Activities of Public Officials, and development and implementation of the anti-corruption action plans in specific sectors, such as public procurement, and others.

While the amount of public awareness raising as well as anti-corruption training for public administration is growing, there are still important shortcomings, as described earlier in the report. Building on its public relations work with the media, and in cooperation with civil society, the Commission could launch a comprehensive and sustained public awareness raising programme. The Commission could also take a lead in establishing a permanent system of education for public officials on public sector ethics and prevention of conflicts of interest; criminal liability for bribery and abuse of office; identification of corruption risks and internal corruption prevention measures.

Finally, the Commission is responsible for collection of financial declarations, or asset declarations of public officials, envisaged in Section 5.1 of the Law on “Combating Corruption”, amended in 2005. However, the form for the financial declarations has not yet been adopted, and the system remains un-operational. It is important to adopt the form as soon as possible. However, as discussed during the first round of monitoring, it is questionable if the current resources of the Commission and its Secretariat are sufficient for the proper verification of the asset declarations of public officials when the system becomes operational.

New Recommendation 1.6.

Strengthen the role of the Commission in public awareness raising and in anti-corruption training for public administration, and in anti-corruption research. Focus the efforts of the Commission at the implementation of the priority measures of the strategy, such as adoption of legislation and sector specific action plans. Strengthen the capacity of the Commission and its Secretariat to verify asset declarations of public officials.

The Commission should collect and analyze information about various violations of anti-corruption provisions gathered by ministries and agencies, including the internal investigative sections within each agency, based on standardized reporting mechanisms.

1.7. International anti-corruption conventions

Previous Recommendation 7

Ratify the UN Convention against Corruption

Azerbaijani signed the UNCAC on the 27 February 2004 and ratified it on the 1 November 2005. The UNCAC entered into force in Azerbaijan on 9 December 2005. Azerbaijan submitted its self-assessment under UNCAC to the UNODC.

European Criminal Law Convention on Corruption and European Civil Law Convention on Corruption were signed on 21 May 2003, ratified on 11 February 2004, and entered into force on 1 June 2004.

Azerbaijan is a member of the Council of Europe Group of States against Corruption (GRECO). Joint first and second evaluation rounds by GRECO were carried out during 12-16 January 2005.

Azerbaijan is fully compliant with the recommendation 7.

2. Criminalisation of Corruption

2.1.–2.2. Offences and Elements of Offence

Previous Recommendation 8

Speed up the adoption and implementation of the draft legislation which should harmonize the criminal legislation in the area of corruption with the relevant international standards (such as the United Nation's Convention on Corruption, the Council of Europe's Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

Azerbaijan accelerated the adoption of legislation that harmonized its criminal legislation in the area of corruption with some, but not all, of the relevant international standards. The changes and amendments to the Criminal Code, adopted by the Milli Majlis (National Assembly) of the Republic of Azerbaijan in April 2006, brought significant improvements in criminalizing corruption, introducing the offence of money laundering and streamlining the confiscation of proceeds of corruption regime. These amendments became effective in May 2006.

During the first round of monitoring, Azerbaijan had not adopted all of the necessary changes and amendments for bringing its legislation entirely in line with relevant international standards. Recommendations 9, 11 and 14 address these issues.

As of June 2006, it was not possible to address implementation of the legislation which had only been in force for a couple of months. The overall process of harmonizing criminal legislation was not complete yet. On this basis, during the first round of monitoring in June 2006, Azerbaijan was **partially** compliant with this recommendation.

In view of the similarities between this recommendation and recommendations 9, 11 and 14 with no particular practical measure required, we have agreed to eliminate this recommendation entirely. Any new recommendations which might fall under Recommendation 8 will be included, as appropriate, in other recommendations under Pillar 2.

Previous Recommendation 9

Amend the incriminations of corruption offences to meet international standards. In particular ensure that undue benefits include material as well as non-material benefits, and that bribery through intermediaries is fully covered.

The amended provisions on active and passive bribery in the public sector are now in line with the relevant international standards. The criminal offence of trading in influence has also been added in the criminal code. The legislation addresses material and non-material benefits, as well as bribery through a third person.

Azerbaijan has not enacted legislation criminalizing active and passive bribery in the private sector in a separate provision in the criminal code. However, private sector corruption is addressed in Note 1 to Article 308, which is an integral part of the Criminal Code and which interprets the definition of "official"

to include persons in the private sector. During the first round of monitoring, Azerbaijan was considered **largely compliant** with this recommendation.

During the second round of monitoring, the government referred to at least two sections of the Criminal Code addressing private sector corruption. First, Note 1 to Section 308 provides as follows: “Officials in articles of the present chapter shall be persons constantly, temporarily or on special power carrying out functions of authority representative either carrying out organizational — administrative or administrative functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organizations, and also in other commercial and non-commercial organizations, representatives of international organizations, as well as other persons considered public officials for purposes of the ‘Law on Combating Corruption of the Republic of Azerbaijan.’” Persons occupying post is a generic term used throughout the chapter on corruption offences. Therefore, this section allows criminal prosecution of persons occupying posts in public institutions, which are public officials; persons occupying posts in the municipal establishments, which according to the Azerbaijani Constitution are not considered as public institutions; persons occupying posts in private institutions, commercial or non-commercial; and representatives of international organizations. Inclusion of the subjects foreseen by the Anti-Corruption Act has further expanded the list of persons who may be prosecuted under this section. Note 1 to Section 308 must be read in conjunction with Sections 311 and 312 criminalising passive and active bribery, a process which is somewhat confusing, but meets the requirement of UNCAC that private corruption be covered in the criminal code.

Likewise, Section 179 prohibiting embezzlement is also applicable to the private sector. Although this section is not in Chapter 33 governing corruption offences, embezzlement is considered a corruption offense pursuant to the Anticorruption Act of 2005.

The government provided numerous examples of private sector embezzlement and corruption cases which have been successfully prosecuted in the courts. Therefore, it is clear that the courts accept that private corruption is a crime under the criminal code.

The Code also does not criminalise “offering” or “promising” a bribe although Article 29 prohibits attempting to commit a crime, including bribery. Because attempting to commit a crime often requires more elements than offering or promising a bribe, separate provisions addressing offering and solicitation would be more comprehensive and clearly prohibit these actions in the area of corruption.

Azerbaijan remains largely compliant with the recommendation 9.

Previous Recommendation 14

Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Azerbaijan should, with the assistance of organisations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

Azerbaijan is a State Party to the relevant international instruments and therefore legally bound to introduce into its legal system the concept of responsibility of legal persons for corruption-related criminal offences. A working group was established which included international experts and organizations to consider this issue, and the result of the group’s efforts was a draft law on Amendments to the Criminal Code concerning responsibility of legal persons for criminal offences. During the first round of monitoring, it was not possible to comprehensively assess the quality of this draft and its compliance with legally

binding international standards, especially because the scope of criminal offences for which responsibility of legal persons might be invoked was not made clear in the draft. In addition, many important issues such as distinguishing between the terms “criminal liability” and “liability for criminal offences” or the request for establishment of responsibility of legal persons for omissions (negligent acting) of responsible bodies remained to be properly addressed.

Since the first round of monitoring, an expert with the Council of Europe reviewed the draft Bill on Criminal Liability of Legal Persons and submitted his proposals. With the remarks of the experts taken into consideration, the draft Bill addresses the issues raised in the commentaries to this recommendation. The review process was conducted through the spring of 2007 and consumed by summer, at the time when Parliament broke for summer holiday.

During the second round of monitoring, the draft Bill on Criminal Liability of Legal Persons remained stalled, either in Parliament or with some other branch of government. It is clear that the Council of Europe has completed its review of the draft bill and submitted recommendations, a copy of which was provided by the government. In addition, the government provided certain sections of the Administrative Code which address the administrative liability of legal persons. In the case of an administrative violation, sanctions include a warning, administrative fine, and confiscation of the object used as a tool to commit the violation. However, there is no criminal responsibility for legal persons

Azerbaijan remains partially compliant with the recommendation 14.

New Recommendation 2.1.-2.2.

Consider amending the Criminal Code to include a separate provision criminalising illicit enrichment.

Ensure criminalisation of “promising” or “offering” a bribe, including making these provisions applicable to Article 312-1, Trading in Influence.

Develop cases based on non-material benefits as an object of bribery.

Introduce into the legal system the concept of responsibility of legal persons for corruption-related criminal offences.

2.3. Definition of Public Official

Previous Recommendation 11

Ensure the criminalisation of bribery of foreign and international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

At the moment, there is no separate criminalisation of bribery of foreign public officials, either in the Criminal Code or in the Law of the Republic of Azerbaijan on combating corruption (from 13.01.2004).

The Anti-Corruption Law describes all categories of persons which could be subject to corruption-related offences (art.2). Articles 308-314 in the Criminal Code are the provisions related to bribery and other corruption offenses. Note 1 of Article 308 defines the term “officials.” During the first round of monitoring, Azerbaijan was rated partially compliant with this recommendation.

Both UNCAC and the OECD Convention on Combating Bribery of Foreign Public officials in International Business Transactions require a clear-cut definition of the criminalisation of active and passive bribery. For both standards, it is important to clearly distinguish criminalisation of such acts in the national law and not to extend the current domestic bribery offence to international context. Although Note 1 to Article 308 defines officials to include “representatives of international organizations,” the definition clearly does not cover foreign public officials.

Between 2006 and 2008, the number of persons prosecuted and convicted for passive bribery of foreign public officials and officials of international organizations was 0. Although not a direct indicator of the effectiveness of this legislation, it does appear that under the current law, prosecution of active/passive bribery of foreign public officials and other international officials is ineffective.

Moreover, only acts of “reception of a bribe” and “presentation of a bribe” are punished. As stated previously, “promising to offer a bribe,” “acceptance of the promise to offer a bribe,” or omissions, such as “not refusing a bribe” are not adequately covered in the current criminal code. This approach fails to comply with international standards on the matter (see art. 16, pct 1 of UNCAC). Section 12 of the Criminal Code of Azerbaijan, referred to by Azerbaijani authorities, is related only to crimes committed outside the borders of the Republic of Azerbaijan, and does not include corruption offences committed inside the country by foreign and international public officials. The texts are only sequentially applicable to such offences.

Thus, although Azerbaijan is in compliance with international standards regarding international officials, it fails to meet international standards regarding the criminalisation of bribery concerning foreign public officials.

Azerbaijan remains partially compliant with the recommendation 11.

New Recommendation 2.3.

Ensure a proper criminalisation of bribery of foreign public officials by introducing a separate criminal offence in the Criminal Code or by expanding the definition of official in Note 1 to Section 308 to clearly include foreign public officials.

2.4.-2.5.–2.6 Sanctions, Confiscation, Immunities and Statute of Limitations

Previous Recommendation 10

Take steps to make the actual period of limitation for corruption cases longer and consider increasing the punishment for active bribery.

During the first round of monitoring, the Criminal Code was amended increasing the punishments prescribed for corruption-related criminal offences so that these offences are now considered serious crimes. According to Article 75 of the Criminal Code, the category of serious crimes has a longer period of limitation (twelve years from the day of commission of a crime) than the category of less serious crimes (seven years).

Under Article 311, reception of a bribe (passive corruption) is considered a serious crime (punishment can be greater than 7 years), and it therefore has a longer period of limitations (from 12-15 years). Article 312 governs the presentation of a bribe (active corruption) and carries a sentence of up to 5 years, and in

some aggravated cases, up to 8 years. Therefore, as of the first round of monitoring, Azerbaijan was **fully compliant** with this recommendation.

During the second round of monitoring, prosecutors stated that very few cases of active bribery were being prosecuted. In fact, in 2009 there were no cases of active bribery. This lack of cases appears to be due in large part to Section 312 of the Criminal Code which exempts from liability anyone who reports the paying of a bribe to the relevant authorities. Due to the expansive reading of this provision, almost no one is prosecuted for active bribery. Thus, even though the punishment for active bribery has been increased, the statute is rarely.

Azerbaijan remains fully compliant with the recommendation 10.

New Recommendation 2.4.-2.6.1.

Amend the Note to Section 312 of the Criminal Code so that the person who pays a bribe and then reports it to the authorities is only exempt from criminal prosecution if that person reports the crime to the authorities before it is discovered by them. Also, make clear in the legislation that this exemption cannot be applied to bribery of foreign or international public officials.

Consider amending the statutory and constitutional provisions regarding immunity for public officials to limit such immunity to acts committed in the performance of official duties. Alternatively, amend these same provisions to apply only when a criminal case is ready to be filed to court or when the arrest of an official is requested. Lift the prohibition on using special investigative measures (SIMs), allowing detective activities (SIMs) and criminal investigations of officials with immunity to be conducted confidentially, as are all other criminal investigations. (See also New Recommendation 3.8. regarding immunity of judges which is consistent with this recommendation).

Previous Recommendation 13

Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Introduce a proposal to amend the Criminal Code ensuring that the 'confiscation of proceeds' measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect.

Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

Azerbaijan is to a large extent in line with the standards concerning confiscation of proceeds from crime. According to the Amendments to the Criminal Code, the confiscation of proceeds of corruption-related criminal offences is now mandatory and according to Article 51.3, a corresponding value may also be confiscated in cases where the proceeds are inalienable.

There are no official statistics of the number of cases where these measures have been applied or of the amount of the confiscated value. Therefore, the review of the efficiency of provisional measures for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases was not possible. In its responses to the Questionnaire, Azerbaijan only indicates the regulations from the Code of Criminal Procedure dealing with this issue.

In October 2006, parliament passed amendments to the Criminal Procedure Code authorizing procedures for interim measures and court arrest and confiscation of the tools, instruments, and proceeds of crime, as well as the money equivalent of the inalienable property. Relevant changes were also enacted to the Code on Enforcement of Court Decisions to secure proper implementation of court decisions ordering the new measures. The Prosecutor General issued a decree on conducting a survey on the efficiency of the newly introduced interim and confiscation measures. Azerbaijan is to a large extent in line with the standards concerning confiscation of proceeds from crime. Article 51 (and its various subparts) of the Criminal Code governs the confiscation of proceeds of crime which is now mandatory for corruption-related criminal offences. In addition, a corresponding value (substitute assets) may be confiscated in cases where the proceeds are not available. Articles 248-254 of the Criminal Procedural Code govern how property may be attached, confiscated and released. In addition, Article 12 of the Anticorruption Act of 2005 requires the confiscation of proceeds of corruption crimes, and in July 2009, the President issued a decree “recommending” that the Prosecutor General use this provision in all corruption cases.

In addition, there are 3 pieces of legislation, which regulate administration, registration, evaluation, storing, usage, sale and transfer of funds obtained from the sale of confiscated property to the budget:

1. Regulations of the Cabinet of Ministers on registration, evaluation, storing, usage and sale of the confiscated property, issued on the 18/04/2002, Ref 69;
2. Presidential Decree on the referral of some part of the confiscated property to the improvement of the logistics of the law enforcement agencies of 16/10/2006, ref 469;
3. Rules of the Ministry of Finance on the Registration of confiscated and other property (listed) dated 23/12/2002, ref I-198.

In practice, there is no evidence of any substantive review of those various laws on confiscation to assess how efficiently they are being implemented and applied. No information is available on the monetary value of any confiscated assets, whether physical assets are being sold and the proceeds deposited into the government treasury, or how the administration and disposition of assets is accomplished.

Azerbaijan remains largely compliant with the recommendation 13.

New Recommendation 2.4.-2.6.2.

Analyse the practice of application of confiscation provisions to identify deficiencies and develop measures to ensure their more effective application. Collect and analyse accurate statistics on what property is being confiscated, how the property is being disposed of, and the amount of money deposited into the government treasury. Consider adopting civil provisions for confiscation of the proceeds of crime.

2.8. Application, Interpretation and Procedure

The Detective-Search Activity Act (1999) is the law which provides all possible special investigative measures (SIMs) available for the law enforcement agencies. Section 10 of the Act establishes the following SIMs: interviews of people; informal inquiries; wiretapping of telephone conversation; surveillance of post and other communications; extraction of information from technical electronic communication channels; checking the letters of convicts; examination of vehicles; entrance and examination of dwellings and other premises as well as other closed buildings; monitoring of buildings, including dwelling premises, as well as other closed buildings, construction sites and land plots;

surveillance of persons; person's identification; controlled purchase of goods; examination of objects and documents; collection of samples for comparative analysis; controlled delivery; undercover penetration of criminal groups or marginal association; incorporation of a legal person; conducting investigatory experiments- i.e. application of model simulating the criminal behaviour. All these SIMs are detailed in Articles 226-278 of the Code of Criminal Procedure in a manner compatible with the international standards.

The access of law enforcement agencies to bank, financial and commercial records is possible but difficult since there is needed the authorization from a court of law, given on the bases of a motion from the prosecutor's office. The proceedings are complicated and time-consuming and because of the hazardous judicial outcome often lead to no concrete results.

At the actual stage of the Azerbaijani law, there is no possibility of the prosecutor to get involved personally and directly in SIMs performed only by law-enforcement agencies. The prosecutor (including prosecutors from the Anti-Corruption Division (ACD) could only instruct the agencies in charge with carrying out SIMs. As an example, there is no possibility for the prosecutor to have direct and unconditional access, in real time, to phone tapings. Such a deficiency in the system could generate the possibility of concealment from the part of law enforcement agents to the prosecutor of important information and also, in other cases, to the failing of the entire operation due to missed operative moments.

The criminal procedure of the Republic of Azerbaijan does not contain any disposition about prosecutorial discretion. Art. 45 C.P.C. refers to "the obligation to prosecute". The opening of a criminal case is done by inquirer, investigator or prosecutor in all situations described by law (art. 39, 45 and 46 of C.P.C.). The prosecutor could not decide to close any case based upon opportunity, since the "legality principle" is clearly enshrined in Art.1 par.2.1. C.P.C. There is no disposition in the criminal procedure of Azerbaijan which allows "plea bargaining".

New Recommendation 2.8.

Introduce measures to ease the proceedings for the access of the prosecutor's office and, particularly of the ACD, to bank, financial and commercial records. Consider amending the C.P.C. to allow these activities to be performed by order of a prosecutor, without authorization from a court. Amend the actual laws on SIMs or draw up methodologies in order to ensure full and direct control of the case-prosecutor to the operative activity and SIMs performed by law enforcement agents, by the direct participation of the prosecutor in such operations or by simultaneous access in the course of conducting detective operations and using special investigative measures (SIMs) and remote coordination by the case prosecutor.

2.9. Specialised Anti-Corruption Law-Enforcement Bodies

Previous Recommendation 3

Speed up activities to implement the President's Decree "On Application of Anti-corruption Law" of 3 March 2004 and support the work of the Special Anti-corruption Department within the Prosecution Service with adequate resources for its proper functioning. This Department should be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office, with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that it includes specialized prosecutors. Apart from working on actual corruption cases,

one of the main task of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigation etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Office and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions.

The President's Decree "On Application of Anti-corruption Law" established the Anti-Corruption Department (ACD) within the Prosecutor General's Office. The ACD is an autonomous department, with a special status, subordinated directly to the Prosecutor General; the Statute of the Anti-corruption Department was adopted on 28 October 2004. During the first round of monitoring, it was established that the special Anti-Corruption Department within the Prosecutor General's Office was substantially strengthened. The Department has 60 staff members, including 40 prosecutors and investigators, some of them with experience in tax fraud and corruption. Its staff received higher remuneration than regular prosecutors. The Department had competences to investigate and prosecute corruption, and reportedly also to detect corruption. The analytical division of the Department was responsible for the analysis of data on corruption and developing proposal on improving anti-corruption activities. The team work approach in the complex investigations was introduced in practice, but did not have clearly documented procedures. On this basis Azerbaijan was **largely compliant** with recommendation 3.

Autonomous status, adequate resources, specialisation and tasks of the ACD. The Republic of Azerbaijan made significant progress in ensuring proper functioning of the ACD and compliance with international standards related to anti-corruption law-enforcement institutions. The ACD has a sufficient autonomy in the prosecutorial system and adequate resources necessary to investigate and prosecute corruption and corruption related offences. The ACD is directly subordinated to the Prosecutor General. The ACD does not have a separate line in the state budget; its budget is allocated by the Prosecutor's General Office. The accountability of the ACD is ensured through a system of reports to other state institutions, such as the Commission on Combating Corruption, the Cabinet of Ministers and the Parliament. As noted during the first round of monitoring, the ACD has 40 prosecutors and investigators. In addition, detectives from the Ministry of Internal Affairs and the Ministry of National Security, financial, accountancy and other specialists, and investigators from other prosecutor's office are seconded to the ACD. By its mandatory decision, the ACD can engage in criminal investigations other external experts, belonging to specialized institutions in different matters, such as business and accounting, IT, forensic science. The ACD consists of 3 divisions, including Criminal Investigations, Internal Investigations and Analytical Information. The ACD has the right to legislative initiative granted to the Prosecutor's Office, which allows the prosecutor's office to propose improvements to the laws which have an impact on the criminal justice system. Also, the ACD representatives participate actively in civil society awareness campaigns in the media and in other informal events.

Powers to detect, investigate and prosecute corruption offences. The Prosecutor's Office may detect corruption through information it receives from private and legal person or media; but it is not entitled to perform detective operations. For performing detective operations it has to apply to the appropriate law enforcement agency. This provision may limit the ability of the ACD to detect high-level corruption, e.g. involving senior management of law-enforcement bodies such as of the Ministry of Interior, or in the Ministry of National Security. Concerning the investigation of corruption, Section 10 of Operational Detective Act of 1999 provides the law-enforcement bodies with a large scale of special investigative means (SIMs). However, the ACD cannot perform these SIMs directly, and has to apply to the appropriate law-enforcement agency (12 in total in Azerbaijan). This provision provides the same limitations when

investigating high-level corruption within law-enforcement agencies. For the prosecution of corruption, the ACD has all necessary competencies, and does not depend on executive branch.

The CPC provides a clear jurisdiction for prosecution of corruption-related crime and establishes that it is the office of the Prosecutor General that prosecutes these cases. The ACD is established within the Prosecutor General's office with the special mandate to deal with the corruption cases. However, there is no clear jurisdiction or internal regulation inside the Prosecutor General's office that establishes which corruption-related cases are passed to the ACD, and which are prosecuted by other prosecutors.

Competences of prosecutors and inter-agency cooperation. There are many bodies involved in detection and investigation of corruption cases (law enforcement authorities), including the Ministry of Internal Affairs and the Ministry of National Security, as well as Internal Investigation Units of the Ministry of Justice, Ministry of Taxes, State Customs Committee, State Border Guard Services. As noted above, the ACD relies upon them for detective operations and use of the SIMs in pre-trial investigation.

The Criminal Procedure Code of the Republic of Azerbaijan foresees a pure supervision role for prosecutors over the opening of a case, preliminary investigation, investigation and prosecution of a criminal case (art. 84 of the C.P.C, art. 84.5.7, art. 84.5.14, art. 84.5.15, art. 84.5.19). This results in a lack of personal involvement of the prosecutor in the investigative phase of the criminal case. The detective operations are only partially available for prosecutors, as they are conducted by other law-enforcement agencies. Moreover, the indictment, the most important and complex procedural act of the investigative phase, which presents the case before a court of law, is, in reality, written by an investigator and not by a prosecutor. Art. 84.4 C.P.C. establishes that: "A prosecutor who has carried out the investigation of a criminal case or who was in charge of the procedural aspects of the investigation may not take part in the court hearing as a public prosecutor." This provision could inhibit cooperation between investigative and trial prosecutors and damage the outcome of the case. Recently, the Prosecutor General has mandated that investigative and trial prosecutors to cooperate in order to inform the investigative prosecutor about the ultimate outcome of the case and to use the knowledge and assistance of the investigative prosecutor in trying the case. Additionally, the Prosecutor General has assigned specialised prosecutors to handle corruption cases at all levels in the courts.

Statistical monitoring of corruption-related offences. National Corruption Database was created recently 2008, operational since January 1, 2009. It provides a proper mechanism for the monitoring of corruption and corruption related offences. All the law enforcement agencies and local or district prosecutor's offices are bound to submit information, which is monitored and examined on regular basis. However, prosecutors and investigators within the ACD do not have direct access to the data bases maintained by all other public authorities of the Azerbaijan Republic (such as: evidence of the people, vehicle registration, passports, driving licenses, border police data, criminal records, commerce registrars, taxes, so on). Besides, it appears that the database does not provide comparative information to enable comparison among institutions.

The ACD has no military section; this type of corruption cases are investigated and prosecuted by the Military Prosecutor's Office. Articles 68, 69 and 70 of the Code of Criminal Procedure provides that if an offence is committed with the participation of a person who is not military personnel, the case related to this person shall also be heard by military justice. This provision goes against the Council of Europe standards, which imposes that a case should be heard by military justice only if all perpetrators are military personnel. It should therefore be recommended to create a Military Section within the ACD, for the investigation/prosecution of corruption offences perpetrated by military personnel. It is also recommended to change the dispositions of Code of Criminal Procedure in the sense that cases should

investigated/prosecuted/judged by military procuracy/ justice only if all perpetrators are military personnel.

Azerbaijan is largely compliant with the recommendation 3.

New Recommendation 2.9.1.

Establish criteria for defining the investigational jurisdiction of the Anti-Corruption Department.

Continue efforts to strengthen the ability of the ACD to detect, investigate and prosecute corruption. To enable the ACD to detect high-level corruption, empower the ACD with full scale detection of corruption functions. Ensure direct access for the ACD to all public data bases kept by the public authorities. Consider reducing the role of other law-enforcement agencies in detection and investigation of corruption, improve inter-agency cooperation and exchange of information. Review the role of all law enforcement bodies, including the Ministry of Internal Affairs and Ministry of National Security, in detection of corruption offenses to ensure that corruption detection and investigation are carried out by a specialised anti-corruption body.

Building up on the work implemented by the analytical division of the ACD to date, consider further strengthening analytical support for detection, investigation and prosecution of corruption, e.g. through provision of information which enables comparison among institutions, and/or development of typologies and identifying high risk areas, where detection and investigation, and other anti-corruption measures should be focused.

Provide a legal basis and establish a special unit in the ACD empowered to perform all SIMs, composed of specialised personnel who are competent to perform these tasks.

Previous Recommendation 4

To continue with corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.

The 2006 monitoring exercise and also the Evaluation Report on Azerbaijan, adopted by GRECO in 2006 both show that at the trainings programs for prosecutors, police and judges on anti-corruption matters were insufficient.

The situation has significantly changed since 2006. The Government of Azerbaijan contracted a loan of 21.6 million USD from the World Bank in order to modernize its judicial apparatus. The programme undertaken with this loan was “Human Capital – Strengthening Professionalism of Judges and Staff”. A part of this judicial modernization project was dedicated to specific training of judges on anti-corruption matters. With the help of other donors, the Government of Azerbaijan could undertake other projects in the same area:

- “Support to the Anti-Corruption Department with the Prosecutor General of the Republic of Azerbaijan”, EUR 1.000.000, duration of 24 months, starting in 2009. One of the most important points of the program is “training capacity of the ACD designed staff and development for delivering trainings to other Azerbaijani law enforcement agencies on questions related to fight against corruption”.
- USAID – Justice and Dispute Resolution Mechanisms – anti-corruption seminars;

- US Embassy in the Republic of Azerbaijan – Legal-Services – CPC Trainers training and anti-corruption seminars;

According to the NSITAC 2007-2011, a special ad hoc group, formed by representatives of the ACD, the Prosecutor’s General Office, the Ministry of Taxes, the Ministry of Internal Affairs and National Security, developed an anticorruption training curriculum for all these institutions.

Azerbaijan is fully compliant with Recommendation 4.

Previous Recommendation 15

Recognising that a strong nexus can exist between organized crime and corruption, with the possible assistance of organizations that have experience in fighting against these forms of criminal activity, study the interrelations between the two.

Azerbaijan was ranked largely compliant with this recommendation.

A “Unit for special investigation measures in corruption crimes” was created within the Department on Combating Organized Crime, which belongs to the Ministry of Internal Affairs. This Unit is entrusted with the power to undertake special investigation measures in corruption cases (covered by Chapter 33 of the Criminal Code). Under a Special Ordinance of the Prosecutor General of the Republic, the Anticorruption Department within the Prosecutor’s General Office, is entitled to oversee the operative detective activity of the Department on Combating Organized Crime within the Ministry of Internal Affairs. This is undoubtedly a very good start for interlinking the efforts of fighting both organized crime and corruption.

The issue however also needs to be evaluated with regard to the structure and organization of the Prosecutor’s Office. For example, it would be good to know if there is a Department on Combating Organized Crime within the Prosecutor’s General office, whether it is structured along the same lines as the Anticorruption Department, and what kind of cooperation is established by the legislation and practice between the two. There is no law or methodology which establishes a formalized way of dealing with inter-linkage problem between organized crime and corruption. Instead of regulating this issue through management decision, it shall be done by the normative way.

The need to formalize cooperation between entities through normative ways derives mainly from the extensive competences granted to the Prosecutor General which allow him to regulate matters in a discretionary manner (by Special Ordinances). However, the proper way of doing it is through the normative way, and not by management decision.

It would be good to assess how this collaboration works in case of a concrete corruption or organized crime case. A thorough review of the methodology of the instruction shall be done.

Azerbaijan is largely compliant with this recommendation.

New Recommendation 2.9.2.

Take measures to design a normative base for improving inter-linkage efforts to fight organized crime and corruption. Enhance cooperation with international organizations and NGOs dealing with both organized crime and corruption in order to ensure a holistic view about common areas of concern of both organized crime and corruption.

Previous Recommendation 22

Introduce legislation that fully covers the international standard as to combating money laundering, namely, as to criminalize the laundering of proceeds of all serious crimes (including corruption). Establish a financial intelligence unit.

During the first round of monitoring, Article 193/1 of the Criminal Code had just been adopted to address laundering the proceeds of crime. This provision covers all crimes, including bribery and other corruption-related offences. This newly-adopted provision had not been tested in court at that time. As of 2006, Azerbaijan was one of the few ACN countries without a Financial Intelligence Unit, thus falling short of international standards on this issue. Azerbaijan was considered **partially compliant** after the first round of monitoring.

In 2009, Azerbaijan enacted the “Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism” aimed at detecting and preventing offenses related to criminally derived funds. This law establishes the legal basis for the Financial Monitoring Service (FMS) and was enacted after much debate and with substantial input from international experts.

The FMS (which functions as Azerbaijan’s Financial Intelligence Unit, FIU) was created in 2009 and is located within the Central Bank of the Republic of Azerbaijan. In October 2009, Azerbaijan adopted an Action Plan entitled “On improvement of normative basis on Anti-Money Laundering / Combating Terrorist Financing and institutional development of Financial Monitoring Service.” According to the plan, 4 Codes, 15 Laws and 6 Presidential Decrees have been enacted or amended to bring the national legislation into line with international standards.

The Charter of the Financial Monitoring Service (FMS) endorsed by the Presidential Decree of the 16th July 2009 fully secures institutional and operational independence of the institution. According to the international standards, including those listed among the 40+9 recommendations of the Financial Action Task Force (FATF), (1) FMS collects information on the current and suspicious transactions from the monitoring subjects, (2) further it analyses this information, (3) if relevant it refers this information to the law enforcement agencies. Furthermore, the FMS avails itself of the information contained in the databases of other institutions; suspends operations with money and other assets; and issues mandatory decisions and instructions binding upon the subjects of the monitoring.

The decisionmaking procedures of the FMS are clearly stated in the provisions of the FMS Charter of 2009 and the AML Act of 2009. According to these pieces of legislation, the FMS carries out its duties directly and reports only to the President of the country. The FMS Director and Deputy Director are appointed and dismissed by the President of the country.

The information on operations with money and assets surpassing the limit provided by the Central Bank and listed in Section 7.1 of the AML Act shall be reported to the FMS. According to Recommendation 19 of the FATF information on the operations worth more than 15,000 USD/Euro shall be reported whether suspicion indicators are present or not.

Based on the abovementioned criteria, the Central Bank has determined this threshold at the rate of 20,000 Manats or more in cash. If the operation is performed in foreign currency, the exchange rate established by the CB is taken into account. Only operations reaching this threshold or above it, which is carried out in cash, shall be reported to the FMS by the monitoring subjects.

The conditions of reporting information to the FMS, which are set in Recommendation 13 and 4th Special Recommendation of the FATF, are reflected in Section 7.2 of the Act. The criteria for suspecting the money laundering and terrorism financing, as well as the criteria for giving substantial grounds to believe that the operation is suspicious are anonymous transactions, transactions by foreign public officials, operations conducted by the residents of the country listed by the FMS.

According to Section 10.11 of the FMS Charter of 2009, the FMS shall establish Centralised Electronic Information System in order to collect, store and analyse information on the suspicious transactions. The requirements for the CEIS have been evaluated and detailed reports have been prepared within the framework of AZPAC project. Currently, FMS has announced tender for the purchase of the relevant equipment and services.

The FMS director and deputy director were appointed in October 2009 by the President, and the first reports of suspicious activity were received in November. As of the second round of monitoring, the FMS was 75% staffed. Because the FMS is literally brand new and just beginning to implement the Action Plan, evaluation of its level of functioning was not possible.

Azerbaijan is largely compliant with this recommendation.

New Recommendation 2.9.3.

Continue the establishment of the FMS in accordance with international standards and ensure its operational autonomy. Continue with the implementation of FATF Recommendation 6 that deals with politically exposed persons. FMS should work with ACD to develop a mechanism to identify appropriate criminal cases from the relevant suspicious activity reports.

3. Prevention of corruption

3.1. Corruption Prevention Institutions

This issue is covered under Section 1.6. of this report "Specialised anti-corruption policy and coordination institution" dealing with the Commission on Combating of Corruption. There are no other stand-alone corruption prevention institutions in Azerbaijan.

3.2. Integrity of Public Service

3.2.1.– 3.2.2. Definition of Public Servant, Recruitment and Promotion

Previous Recommendation 16

Strengthen recruitment and promotion process to the civil service by enhancing the significance of objectively verifiable and merit-related criteria and limiting to the extent possible opportunities for discretionary decisions.

Azerbaijan ranked **partially** compliant with this recommendation during the first round of monitoring.

The legal framework of the civil service in Azerbaijan is scattered in numerous laws, decrees and orders of the President, decisions of Parliament and of the Cabinet of Ministers. The Law on Civil service of 2000 remains the main legal act; in addition there are about 90 various pieces of legislation, both primary and secondary, which regulate civil service in different sectors and in different areas.

The Law on Civil Service establishes a delineation of professional and political public servants, and a definition of professional servants. However, the definition of political servants is not provided. The Law on Civil Service does not cover law-enforcement officials, officials of the National Bank, officials of regional and local administration, and some other officials, who are regulated by sector specific acts.

Competitive recruitment Rules for the Civil Service were adopted in 2001. The system of appointments to civil service has recently been improved with the Decree of the President on approval of the "Rules of recruitment to the civil service in the state bodies through competition" which was adopted in June 2009. Those rules apply to the general Civil Service. Positions in the specialised civil service (including Ministries of Justice, National Security, Internal Affairs, Taxes, Foreign Affairs; State Customs Committee; Prosecutor's Office; Judiciary; and National Bank) have their own recruitment and promotion system also based on similar competition rules. According to the Rules, the Civil Service Commission under the President shall advertise vacancies to the position of 6-9 grades for an open and competitive recruitment process. Competition consists of test examination and interview. Tests can be conducted by the State Student Entrance Commission. Applicants who successfully passed the tests are invited to the interview. Interviews are conducted by panels of interviewers established by the Civil Service Commission; panel includes representative of relevant state bodies and the Commission. Candidates, who have succeeded in the tests and the interview, shall be introduced to the head of the relevant state body for appointment to the vacant position. The head of the relevant state bodies makes the final decision and informs the Commission about the results (this has also been reflected in the Civil Service Act). Candidates who succeeded in the competition, but were not recruited by the head of the state body, are registered in the reserve for 2 years. All the decisions about the results of the competition and recruitment are made public on the web site of the Commission. Candidates dissatisfied with the recruitment decision may file an

administrative complaint to the appeal commission established by the Civil Service Commission and/or to the court.

The above procedures provide an improvement in the recruitment process: they create a framework for fair merit based competition, reduce discretion of the senior management in the appointment decisions, and increase transparency of the process. However this competitive process is not applicable for positions of the highest grade (namely from first to fifth grades).

According to the Law on Civil Service, the right to be promoted in the civil service shall be based on consideration of successful performance of duties by civil servants, as well as results of internship, re-training and professional development in accordance with the requirements of the position. There is no special provision regarding limitation of the discretion of the head of the organization and periodic evaluation of performance of public servants. However, reform of the promotions system has started. While the legal basis is not yet well developed, some agencies have introduced systems of performance assessments for their employees. For example, the Ministry of Tax has introduced performance assessments since 2005; the Ministry of Education uses performance management for promotion, training and mobility of its employees.

The Civil Service Commission and other public agencies engaged in reform of civil service cooperate with international partners. For instance, German Cooperation Agency GTZ provides support in this area, as well as other international partners.

Azerbaijan is largely compliant with the recommendation 16.

3.2.3. Remuneration System

A Presidential Decree contains a salary table for various categories of civil servants, which are subject to the Law on Civil Service. Remuneration for the employees of tax, police, prosecution services and some other public bodies are regulated by special statutes for these bodies. Generally, salaries consist of a basic part, established in the salary table, and additional wages, such as premiums, allowances for duration of service, intensive work, location, number of population of district (for officials of the local executive), allowance for degree of service, rank, etc. Employees of customs administration may receive individual rewards based on their performance. Bonuses to the employees of the tax administration are linked to the revenues to the state budget they generate. The criteria for paying additional wages are included in the presidential decree of 28 January 2002 and the Rules of Professional Degrees Conferred on the Civil servants based upon the work experience of the civil servant as well as the degree of professionalism are considered. Additional wages, such as premiums, are established by the head of each agency, and there are no clear criteria to reduce the discretion of senior managers or to ensure transparency in this area.

3.2.4. Legality and Impartiality

According to the Law on Civil Service, the principle of legality is set in Section 4, among other principles of the civil service. According to Section 15, the civil servant shall take an oath to be impartial in his/her service. Regulations on the proper conduct of public servants are to be found also in the Rules of Ethical Conduct of Civil Servants Act of 2007. The definition of conflict of interest and rules of incompatibility are defined in the draft Law on Prevention of Conflict of Interests, which has not passed the Parliament yet. The Law on Combating Corruption includes a provision on accepting gifts with a monetary and time limit. The Civil Servants' Ethic Conduct (Rules) Act 2007 and Anticorruption Act 2005 set the limits on the gifts that may be accepted by civil servants in section 14 and section 8 respectively. Furthermore, Section 15 of

the Civil Servants' Ethic Conduct (Rules) Act 2007 imposes a limit on the recruitment of the ex-civil servant by the organization, institution or other entity, which used to be within the area of his/her control as a civil servant.

Previous Recommendation 17

Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility (not just disciplinary) for public officials for failure to comply with requirement to declare income, assets and liabilities. Consider disclosing publicly the declarations of certain groups of public officials.

In the first round of monitoring, it was established that the Law on Combating Corruption established obligation of the public officials to submit asset declarations. However, rules and declaration forms were not adopted and the system did not become operational. According to the Law, declarations should be submitted to the Commission on Combating Corruption; a concern was raised during the first round of monitoring that the capacity of the Commission was not sufficient to systematically verify the declarations. Finally, the Law established that information provided in the declarations was considered as private secret, which would not allow public scrutiny of the declarations. On this basis it was decided that

Azerbaijan was **partially** compliant with recommendation 17.

No progress has been reported in this area since the first round of monitoring.

Azerbaijan remains partially compliant with the recommendation 17.

Previous Recommendation 18

Adopt a uniformed Code of Ethic/Code of Conduct for Public Officials modelled on international standards (e.g. such as Council of Europe Model Code of Conduct for Public Officials) as well as specific codes of conduct for professions particularly exposed to corruption, such as police officers, prosecutors, tax officials, lawyers, accountants, etc. in addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption.

Many government entities had adopted their own Codes of Ethics in Azerbaijan, e.g. the Ministry of Tax, Ministry of Police, and Committee of Customs. During the second round of monitoring, Azerbaijan was in the process of preparing a new Code for Judges' behaviours. Progress had been made regarding the establishment of ethical standards for all categories of civil service and for some independent professions, including lawyers, notaries, auditors and accountants. The Civil Servants' Ethic Conduct (Rules) Act 2007 has become effective as of 16 August 2007. This statute also sets the requirement to the ministries, organizations, institutions and other entities to adopt statutory instruments enforcing the mechanism of application of the provisions of this rules, as well as sanctions for failure to implement them.

Azerbaijan is largely compliant with the recommendation 18.

Previous Recommendation 19

Set up a state authority body to supervise the implementation of laws and regulations in the civil service and, particularly, control the observance of conflict of interest regulations. Where needed, introduce legally binding regulations to directly address conflicts of interest in the civil service.

Civil Service Commission under the President of the Republic of Azerbaijan was established upon Decree of the President of the Republic of Azerbaijan No 180 dated of 19 January 2005. Decree of the President of the Republic of Azerbaijan No 247 dated of the 03 June 2005 approved Regulations of the Commission. The Civil Service Commission is the state body responsible for the dealing with all issues pertaining to civil service.

The main tasks of the Commission are the enforcement of legal acts adopted in the civil service area, the selection and placement of the civil service human resources on the competitive basis, professional development, attestation and social protection of the civil servants, as well as guarantee of the performance of the policy provided for by the legislation of the Republic of Azerbaijan referring to other issues related to the civil service. While general principles of impartiality are stipulated by the Law on Civil Service, the Law on the Prevention of Conflict of Interest has not been adopted. Therefore there are no regulations on conflict of interest in place yet that can be enforced. The draft law foresees a specific agency which will address conflict of interest.

Azerbaijan remains partially compliant with the recommendation 19.

Previous Recommendation 20

Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants. Adopt regulations on the protection of “whistleblowers”.

During the first round of monitoring, no information was provided on any measures taken to address this recommendation, it was agreed that Azerbaijan was **not compliant** with this recommendation.

No progress was reported during the second round either. There is no information on progressing towards legislation on protection whistleblowers, i.e. public servants who report suspicions of corruption to senior management or to law-enforcement bodies, e.g. against dismissal or other labour-later mistreatment. It is not clear if the public officials have an obligation to report corruption-related offences either.

Azerbaijan remains not compliant with the recommendation 20.

New Recommendation 3.2.

Pursue the implementation of civil service reform to streamline the legal framework and cover those sectors which are not yet covered. Provide clear delineation between professional and political officials. Continue reforms of recruitment and promotion to ensure that all vacancies are open for merit-based competitive and transparent appointments and promotions.

Establish a reasonable limit to the share of additional wages; introduce measures to reduce discretion; and improve transparency related to granting of additional wages.

Speed up measures needed to enforce the provision of the Law on Combating Corruption which requires public officials to submit asset declarations. Strengthen the capacity of the Commission on Combating Corruption to verify the declarations. Start a process for reviewing the provision which prohibits public disclosure of the declarations filed by public officials while still maintaining the private, personal and sensitive information of those officials.

Speed up measures to adopt the Law on Prevention of Conflict of Interests to establish a clear definition of conflict of interest and rules on compatibility, and institutional mechanism for application of these rules.

Clarify obligation for public officials to report corruption related crime, and adopt measure to protect whistleblowers in public administration.

Establish permanent system for education of public officials ethics, integrity and prevention of conflicts of interest; and on other anti-corruption issues, such as criminal liability corruption related crime; identification of corruption risks and internal corruption prevention measures in institutions, obligation to report crime and to protect whistleblowers.

3.3. Promoting transparency and reducing discretion in public administration

Review of anti-corruption compliance of laws

According to the Action Plan of Implementing the National Strategy on Increasing Transparency and Anti-corruption 2007-2011, the Cabinet of Ministers, the Ministry of Justice and other relevant institutions shall review and screen the draft laws according to anti-corruption standards. At present, when a central executive body draft a legal act, he consults with other bodies to review and provide comments. The draft laws and acts are supposed to be reviewed afterwards by the Parliament Administration with regard to anti-corruption compliance. The Working group on Improvement of Legislation has also the mandate to review the anti-corruption legislation according to the international standards. Expert opinions on dubious provisions and their recommendations are submitted to the Parliament for further deliberations.

At present, there is no legal act regulating the evaluation of the legal acts yet, but a Presidential Decree of June 2009 lays the basis for enacting such a piece of legislation.

Complaint mechanisms

Based on the “law on procedures for review of citizen applications”, almost all ministries have put in place a complaint mechanism, which is proving to be efficient (web-based system, short delay to receive answers, statistics show that a good number of cases have been solved in the favour of citizens). This law contains a chapter dedicated to treatment of complaints related to corruption offences. It also foresees the right of appeal.

An Administrative Procedure Act was passed in 2005. The Code of Administrative Procedure passed the third reading and awaits enactment. In the new law on Administrative Procedure, the level of discretionary power held by officials is defined to the extent possible. It led to simplifying procedures in 20 legal acts. A reduction of discretionary power was proposed. Discretionary power is mainly a problem regarding state property issues related to privatisation, an issue which can be found in most post-Soviet countries.

Citizens have the right to complain against an administrative decision (civil case) to the court on administrative issues. Rights and freedoms of citizens are ensured in the Constitution. Legal acts can be overturned by the constitutional court in case they are incompatible with civil rights and liberties.

Simplification of procedures

Each Ministry has to develop its own anti-corruption action plan according to the NSITAC 2007-2011. Some Ministries have undertaken serious reforms which have led to innovative regulations supposed to lower corruption risks, very often making use of the e-governance tools. For example, the Ministry of Tax has introduced the one-window system for new enterprises to register, the e-filing system for tax payers to hand out their tax return declarations and the VAT single account. The State Social Fund has also undergone major reforms which have abolished human interference in the calculation and the payment of pension allowances. The migration service has also improved its services dramatically: in order to obtain a passport, one had to previously count with 30 days while 3 days are now needed against the payment of a small fee. A centrally web-based automated system has been set up and covers 12 ministries: this central database can be accessed by those 12 ministries.

The customs administration is still under severe criticism as delays and corruption is reported by many private actors and NGOs. The Health and Education Ministries, despite their own anti-corruption action plan and code of ethics, do also face critics. Facing the problem of informal payments, the Education Ministry has put in place a complaint mechanism which seems to produce some results. The Health Ministry lags behind in terms of addressing corruption issues such as informal payments. The State Property Committee is also in the process of implementing a new procedure to file complaints.

New Recommendation 3.3.

Launch as soon as possible the process of drafting a legal act regulating the evaluation of legal acts as a way to strengthen the review of laws as regard anti-corruption compliance. Pay careful attention to streamlining the methodology, allocating clear competencies to the relevant government bodies involved, specifying which anti-corruption international standards shall be taken as benchmarks and stating the consequences of the review findings, especially concerning the duty of the Parliament in that matter. The specialised anti-corruption agencies, i.e. the Commission for Combating Corruption and the Anti-Corruption Department in the Prosecutor General's Office, should be directly involved in this process.

Ensure that the requirement of the National Strategy on Increasing Transparency and Combating Corruption 2007-2011 to improve and implement anti-corruption measures by line ministries is implemented. A clear monitoring mechanism of line ministries anti-corruption action plans measures shall be put in place and monitored by the Commission on Combating Corruption. The Commission shall also recommend measures to the line ministries on the basis of reports issued by international development actors.

Continue projects to simplify regulations and procedures in public administration, such as the privatisation processes and public service delivery.

3.4. Public financial Control and Audit

3.4.1. External Audit (SAI)

The Supreme Audit Institution in Azerbaijan is the Chamber of Accounts (CoA), on the following legal basis (among others): the Constitution of the Republic of Azerbaijan, the Law "On the Chamber of Accounts of the Republic of Azerbaijan", the "Charter of the Chamber of Accounts of the Azerbaijan Republic", the Law of the Republic of Azerbaijan "On Budget System", the Law of Azerbaijan Republic "On Civil Service". The Chamber of Accounts prepares methodological directives, regulations, audit standards, reports and information forms, as well as regulatory instruments in line with INTOSAI standards. The Chamber carries

out its financial budgetary supervision according to the requirements of INTOSAI based on national audit standards. The Chamber acceded to the Lima Declaration in 2001 – the date it had become a member of INTOSAI. In 2008 the Board of the Chamber of Accounts approved the translation of the Lima Declaration and made a decision on its distribution.

Although rare, the CoA yearly plan of activities can be developed taking into account the requests of the Parliament, of the President, the Parliamentary Committees and the Commission on Combating Corruption. It can also accommodate extraordinary requests. The CoA has been established by and reports to the Parliament. The President or the Speaker (in different cases) of the Parliament is entitled to order the termination of the Chairman, the Deputy Chairman and the auditors. The budget of the CoA is approved by the Parliament as a separate line item. The CoA can then freely decide how to use it.

The current number of staff of the CoA is 163. CoA offers to its employees the possibility to attend anti-corruption and anti-fraud conferences and workshops. The Corporate and Public Sector Accountability Project (CAPSAP), led by the World Bank, contains a component for further developing the work and the capacities of the Chamber of Accounts (find out more). The CoA carries out between 20 and 30 audits and around 20 supervisory analyses per year.

According to Sections 2 and 2.1 of the Chamber of Accounts Act, the Chamber carries out the audit of both incomes and expenditure of the state budget, as well as extra budgetary funds (such as state oil funds). It organizes the timely implementation of the object of this audit according to the income, volume of the income article, structure and destination of the state budget/extra budgetary state funds, ensures transfer of funds obtained from privatization to the state budget, checks the compatibility of the transfer of the state funds to the budget as well as their spending with the predefined indicators of the budget. It also reviews whether the legal persons and municipalities (local governments) spent public monies on the agreed-upon budget lines. The CoA performs only financial audits. Performance-based audits, anti-fraud and anti-corruption audits per se are not conducted, but are part of the on-going regular audits issues. The results of the audits are shared with the audited agencies first. The information on the results of the audit are first presented to the Parliament of the Republic of Azerbaijan and then to the audited entities.

It is not foreseen by the current legislation that the CoA carries out the examination of the work of the internal audit and of the departments of financial supervision. According to Section 23.4 of the Charter of the CoA, the loopholes in the organization of the internal supervision shall be reflected in the reports of the auditors.

The CoA signed a Memorandum of Understanding with the General Prosecutor's Office in December 2008 in order to improve its activities. On one hand, CoA can apply to the GPO for legal assessment. On the other hand, it can refer cases of serious financial violations to the GPO. The CoA also has memorandum of Understanding with the Ministry of Taxes, the Ministry of Finance and the State Fund of Social Security.

In accordance with Budget System Act control over the execution of the State Budget is conducted by the Parliament of the Republic of Azerbaijan and the Chamber of Accounts of the Republic of Azerbaijan. Yet control over the execution of the State Budget is also carried out by the PFCS as a respective organ of the executive power in correspondence with its mandates. Control over the revenues of the state budget is conducted by the Ministry of Taxes and by the Chamber of Accounts within its respective competencies.

3.4.2. Financial Management and Control

Previous Recommendation 21

Enact and implement clear rules on disclosure (making information accessible) and transparency of public expenditure. Consider possibilities to increase transparency in public procurement and with regard to credit agreements with international financial institutions.

The rules on the disclosure of the information on public expenditure and transparency in this area are reflected in the Budget System Act. The Budget System Act asks for publication of the draft budget for the next year. Further, according to Section 16, the Budget Paper shall be published after the Milli Majlis adopts it.

Quarterly reports include comparative analysis between income and expenditures, and on discrepancies between approved and actual expenditures, with appropriate explanations. Annual and quarterly reports are published in the press. Financial data on the State Oil Fund of the Azerbaijan Republic are also available to the public. Regarding public procurement, an electronic system has been put in place. Training courses are held on a regular basis. However, external voices are quite critical towards the system; many private sector actors argue that large tenders are not published. The State Treasury that executes the procurement transactions doesn't have the competence to check compliance with the relevant procurement legislation. Due to these shortcomings, Azerbaijan was rated **partially compliant** with that recommendation.

In order to enhance the financial control of the budgetary expenditures, to secure its swiftness and transparency, the financial management and control bodies have undergone profound reforms. The Unit of the Ministry of Finance responsible for financial management was dissolved and the new Public Financial Control Service (PFCS) was established under the Ministry of Finance, according to the Presidential Decree 48 of 9/2/2009. FMC is now centralised and PFCS has established 10 regional representations. PFCS has become fully operational as of April 2009 with a 124 staff and a budget of 601.600 Manats for the year 2009. There are on-going reforms, including enhanced cooperation with law enforcement authorities. Several initiatives supported by bilateral and multilateral aid agencies focus on improving the public finance management system and the work of the Chamber of Accounts.

PFCS is responsible for controlling the use of budgetary funds as allocated in the budget and therefore, controls the spending of the budgetary resources. The PFCS has the power to undertake ongoing controls over budget execution and ex-post controls. Since early 2009, the PFCS has performed 6 financial examinations upon request of the law enforcement agencies. Examinations are also carried out according to the yearly plans of activities, which is endorsed by the Minister of Finance. The PFCS reports on the results of its audit to the management of the institution, which was subject of its examination. The examinations reports are submitted to the Minister of Finance, who then passes on the information to the President of the Republic. Administrative sanctions, disciplinary measures or law suits towards public officials can follow as a consequence of discovery of misconduct.

According to the law on State Budget, the publication of the draft budget for the year ahead and an ex-post publication at the end of the fiscal year are done. However, unlike what is specified in the law, the discrepancies between the approved and the actual expenditures are not always provided. This shortcoming has been highlighted by several civil society organisations active in the area of public finance management and budget accountability, especially as the financial crisis has led to a decrease in tax revenues in the last year.

There has been a serious effort to enhance the cooperation between the PFCS and the law enforcement authorities of the Republic of Azerbaijan. As a result of this, the PFCS has submitted information on serious financial violations to the Prosecutor's Office in 10 cases since early 2009. PFCS can also perform audit on demand of the Prosecutor's Office and courts.

In addition, the PFCS is benefiting from the EU Twinning Project for Improvement of the Financial Control in Azerbaijan.

Azerbaijan remains partially compliant with part 1 of recommendation 21 as regards PFM aspects.

3.4.3. Internal audit

The Internal Audit Act of 2007 and the Decree of the President of the Republic of Azerbaijan of the 29th June 2007 are the main legal basis for Internal Audit. The Act applies to all economic entities that are subject to statutory audit. The system is decentralised, as each of those institutions shall appoint the manager of internal audit services and internal auditors (members of the Audit Committee). IA units might vary in their structures and number of staff depending on each institution. For example, the internal audit of the Ministry of Taxes is located within the framework of the Department of Internal Security and currently has 22 staff members. The IA units are independent in conducting their operations.

There are three types of audits performed by these units: performance audits, financial audits as well as compliance audit. Inspection units are subject only to compliance audits. These units do not pro-actively perform anti-fraud or anti-corruption audits, but would undertake an examination process only if they were to receive suspicion information about such malpractices. External parties to government entities may request audits to be performed. However, there are no statistics available as to how many audits of this sort have been carried out by the respective IA units. The reports of the IA units are submitted to the head of the government entity. It is left to the discretion of the head of the agency to decide whether or not information on financial fraud or corruption cases given in the reports shall be forwarded to law enforcement authorities (Prosecutor's Office).

Cooperation with other financial control bodies are not regulated by a single law, but by specific laws attached to specific ministries.

New Recommendation 3.4.

Provide long-term capacity building and training in the field of corruption and fraud detection to the auditors of CoA. Introduce anti-fraud and anti-corruption audits in the activity portfolio of the CoA, as well as strict performance-based audits, especially in line ministries facing high corruption risk. Ensure that the CoA develops detailed yearly statistics on the number and types of audits carried out, the source of audit (how it was initiated), and the outcomes and impact of those audits on the decisions taken by the Parliament. Consider introducing ex-ante control of budget execution by the CoA.

Ensure that regularly published information on public accounts and budget includes clear explanations on discrepancies. Consider introducing a requirement to the PFCS to review agencies not according to the periodical plan (e.g. each agency to be reviewed not more than once every 2 years), but on the basis of risk-prone financial misconduct.

Enhance the power of the IA units in order to allow them to proactively launch anti-fraud and anti-corruption audits, especially in government spending entities, and not only on the basis of a received complaint or suspicious information. Assess the usefulness and the effectiveness of the IA units and

propose further improvements; to this end, ensure that all IA unit in different entities should submit yearly statistics on the number of audits carried out, the types of audits, the source of audit (how it was initiated), and the outcomes and impact of those audits (fines, lawsuits, dismissal, financial and organisational reforms done on the basis of audit results, etc).

Organize joint trainings including personnel from Internal Audit and ACD on how to submit material to law enforcement bodies.

3.5. Public Procurement

Previous Recommendation 21

Enact and implement clear rules on disclosure (making information accessible) and transparency of public expenditure. Consider possibilities to increase transparency in public procurement and with regard to credit agreements with international financial institutions.

The public procurement system in Azerbaijan is regulated by the Public Procurement Law (PPL), adopted in December 2001. The law contains basic international standards of transparency and competition, and provides a basis administrative setting, capable to further develop and improve the system.

The PPL covers all contracts for goods, works and services awarded by state organizations and enterprises at local, regional and central levels, in financing of which the state participates in 30 per cent or more, and other contracts financed from public funds. The total value of public procurement transactions is equal to approximately 10-15 % of state budget.

The quality of the system of dissemination of information about procurement opportunities (publication of procurement notices) seems to be not sufficiently satisfactory in practical implementation. The PPL requires publication of several pieces of information about every tender, but even a short analysis of notices published on the website of the State Procurement Agency (www.tender.gov.az) shows that very often even the key elements (e.g. conditions for participation or contract award criteria) are described vaguely and imprecisely or omitted completely.

In 2009, out of more than 800 public procurements which were published, more or less 100 (or about 30% of all the value of public procurement transactions) were single source value tender. One of the reasons for the high share of single source procurement it is that the financial and budget system in Azerbaijan often releases funds for public procurement transactions to the procuring agencies only towards the end of the financial year. As a result these agencies have to spend these funds very quickly; short time periods do not allow them to organize competitive procedures properly. Besides, procuring agencies do not have procurement plans and as a result they need to carry out emergency procurement, which often involve single-source procurement. High participation fees established by the procuring agencies (0,5-1,5% of the total price of the contact), provide an obstacle for potential suppliers from bidding and reduce the number of participants, therefore further reducing competition.

The State Procurement Agency is a central government body responsible for overall guidance and monitoring of the public procurement system in Azerbaijan. The responsibilities of the Agency include: preparation of public procurement legislation, instructions and other regulatory instruments; elaboration of recommendations, guidelines, manuals and other operational tools; preparation and delivery of training for procurement officers; publication of electronic public procurement notices; control of legality of the contract award procedures; review of appeals filed by dissatisfied tenderers. It has 40 people of

staff. However, the State Procurement Agency does not conduct the procurements itself and has no power to intervene (apart from stopping public procurement processes during 7 days) and investigate how public procurements are done by the various government entities, which have the responsibility and competence to carry out the tenders and set up the tender commissions. It is important to note that there are no criteria for the establishment of tender commissions available for the procuring agencies; there are no standard bidding documents.

There is no independent review mechanism in the system of public procurement in Azerbaijan. There is no freezing period before the contract enters into force to allow for complaints to be filed. The existing review mechanism consists of audits of procuring agencies by the Ministry of Finance and by the Chamber of Audit. Courts can impose administrative sanctions (fines) on the heads of procuring agencies for violations of public procurement rules; however, these fines are very small and are rarely used in practice. While the State Procurement Agency does not have the mandate to verify the legality of procurement carried out by the procuring agencies, in cases of clear evidence of violations they can refer these cases for prosecution. During 6 months of 2009, the Agency recommended canceling 30 tenders due to violations; most of these recommendations were approved.

The PPL provides for basic organisational safeguards at the level of contracting entities to ensure impartiality and objectivity of the decision-making process (prevention of conflict of interest, requirement to establish an independent tendering commission, objective criteria for exclusion of economic operators). Data provided by the Azerbaijan authorities do not allow evaluating the effectiveness of efforts put in place to strengthen the professionalism of persons in charge of preparation and conducting the public procurement procedures (procurement officers).

The World Bank has recently completed a report, which studies the public procurement system in Azerbaijan and provides recommendations for its reform, including also recommendations for the reform of the State Procurement Agency. The Agency also cooperates with the USAID; in this framework a new draft law on public procurement was developed in 2009, and was sent to the Ministry of Justice for review.

Azerbaijan is partially compliant with part 2 of Recommendation 21 on public procurement.

New Recommendation 3.5.

Review and reform the legal and institutional framework for the public procurement, including the Public Procurement Law, and strengthen the capacity of the State Procurement Agency to lead the implementation of the reform. Ensure transparency of procurement procedures, expand the use of competitive procedures, ensure that emergency and single-source procurements are reasonably limited and properly controlled. Ensure that procurement plans are developed by procurement agencies. Introduce clear criteria for establishing and operation of tendering commissions, adopt standard template for bidding documents. Continue providing professional and anti-corruption training to the officials involved in the tendering commissions. Strengthen monitoring of public procurement carried out by the procuring agencies, collect and analyze precise statistical information on procurement methods, values, and other relevant information. Establish an independent public procurement review body competent to review appeals filed by participants of the tendering procedures, introduce a freezing period to allow for filing of complaints.

3.6. Access to Information

Previous Recommendation 23

Encourage non-governmental participation in the solving of policy issues and continue efforts to prevent obstacles for NGO registration and activities in practice.

Azerbaijan had history of difficult bureaucratic registration procedures and refusal to register NGOs dealing with socio-political rights, but since the previous evaluation round, the situation regarding NGOs registration has slightly improved. Registration to acquire legal entity is not regarded as a big obstacle any more although in some cases documentation of some NGOs is still scrutinized by the Ministry of Justice.

Azerbaijan's Parliament adopted a new law on non-governmental organisations on 30 June 2009, but eliminated several controversial amendments that were widely opposed by IFEX members and other international human rights groups. Parliament at first wanted to impose new restrictions in the Law, notably on the level of foreign funding. Such limitation would have a severe effect on many NGOs as a majority of them rely on foreign funding. Another controversial point included disallowing foreign NGOs to open offices in Azerbaijan unless there is an international agreement between Azerbaijan and the country of origin of the NGO. After strong opposition from the NGO community and the international organisations present in Baku, those limitations were lifted.

Azerbaijan remains partially compliant with the recommendation 23.

Previous Recommendation 24

Revise the access to information legislation to determine more precisely procedures and mechanisms for access to information and ensure that in practice the discretion of public officials is reasonably limited.

The Access to information Act was adopted in 2005. Section 2.1 of the Act stipulates: "Access to information in the Azerbaijan Republic is free. Any person is entitled to apply directly or via his (her) representative to the information owner and to choose the type and form for obtaining the information. Any person may obtain information". Some limitations to this general provision are set forth in Section 4:

- the information constituting the state secret as set in the legislation;
- the provision of the working access to archived documents in accordance with the Law of the Azerbaijan Republic 'On National Archive Fund';
- the proposals, claims and complaints regulated by the Law of the Azerbaijan Republic 'On Examining the Citizen's Appeals';
- the limitations determined by the international agreements.

The request for information shall be submitted verbally, in written or through other means, such as fax or email. The information provided is free of charge, unless it requires extensive copying.

The Act contains quite explicit rules for refusal of the request for information, as set forth in Section 21. Amongst others, those are the following conditions under which access may be refused:

- when the request relates to the information access which is limited by law;
- when the requestor is not duly authorized to acquire such information or when the requestor fails to present identification document as required by the present Law;
- when information owner lacks the required information;

- if it is not practicable to determine which information is requested by the requestor.

It shall be noted that the following stipulation “the requestor is not duly authorized to acquire such information” may lead to wide discretion of public officials in deciding whether or not the information shall be provided.

During evaluation meetings it was reported that formally almost in all institutions there are special information officials in charge of dealing of information requests.

Although the main legal framework has been established, there is no a Freedom of Information Commission or Commissioner/Ombudsperson in Azerbaijan, which is an important institution needed to ensure that information requests by citizens and media are satisfied in practice.

Azerbaijan remains largely compliant with this recommendation.

New Recommendation 3.6.

Analyse the implementation of the Access to information Act in order to identify if any difficulties remain in public access to information, e.g. if the provision requiring that the requestor should be duly authorised to acquire information leads to abuse of discretion by public officials.

Establish a special agency, such as Commissioner/Ombudsperson, or assign duties to monitor the implementation of the Access to information act to another already existing public institution; ensure relevant independence and impartiality as well as mandate and powers to this body.

3.7. Political corruption

State financing of political parties

According to the election-related legislation, the political parties, political party blocks, as well as agitation groups participating in elections may receive funds from the state budget. The amounts transferred from the budget are equal for all receivers.

The legislation provides however for certain restrictions on the financing of the election campaigns. The Election Code establishes the limit for private donations, providing the maximum amount of the allowed funds. There are three different types of limits: for referendums, for the election to the parliament, for presidential elections. The Election Code also states which subjects are banned from transferring donations to election funds.

The CEC evenly distributes funds assigned for financing candidates, candidates from political parties and blocks, agitation groups for referenda. There are upper limits for elections funds for presidential, parliamentary, municipal elections, as well as for referendum.

Transparency, registration and monitoring of party financing and donations

According to Sections 94.2 and 94.3 of the Election Code, the information on the input and output to the funds assigned for financing candidates, candidates from political parties and blocks, agitation groups for referenda shall be reported in three stages and the relevant election commission shall publish the copy of these reports within 5 days of the receipt. The relevant banks are also bound to report to the CEC the

abovementioned information in order provided by the CEC. The CEC and circuit election commissions are currently building control-revision service in order to oversee the proper registration and usage of election funds, as well as the sources of incoming means.

The CEC does not have a mechanism at its disposal to monitor the financing of the political parties. The only available source is the financial report submitted by the political party itself.

Subject to Section 94.2 and 94.3 of the Election Code, candidate, political party, political party block and agitating group of referendum are bound to keep records of their incoming election money and expenditures, and report on them to the competent election commission. Copies of the financial reports will be published by the said commission within 5 days of their receipt. The banks also have reporting obligations. The Central Election Commission and circuit election commissions are entitled to supervise the incoming and spending of the means on the election funds.

According to law, the supervisory and revising service is entitled to oversee the incoming, keeping record and expenditure according to the purpose of the means transferred to the election funds of the registered candidates, political parties, political party blocks and agitation groups of referendum. To this end, they are entitled to review the financial reports of the subjects listed above, as well as to obtain information relevant to their competence from the subjects listed above, as well as other relevant organizations and persons.

However, it is not clear how relevant is the competence of the Central Election Commission to carry out comprehensive and effective monitoring and inspection of financing of political parties if they review just financial reports of the parties concerned and in case where those are the only source of the information for examination. Non existing statistics (most probably due to lack of cases) seems to be caused by low capacity of the Central Election Commission to ensure proper monitoring the compliance of regulations on financing of political parties.

There is a set of sanctions for violation of rules on financing of parties and electoral campaigns, which mainly consists of warning and registration cancellation processes by means of court decision.

Prevention of conflict of interest for political public officials (members of parliament, ministers and other political nominations) and duty to submit declarations of assets

According to the Anticorruption Act 2005, members of Parliament shall submit their relevant financial information to the authority identified by the Milli Mejlis. The Bill on Prevention of Conflict of Interests has not yet been passed by Milli Mejlis, and it is not clear if it does cover political public officials.

As no information on regulation of lobbyist activities has been provided by Azerbaijani part, most probably there is no procedure to ensure greater transparency in activities of lobbyists and their influence on state decision process.

New Recommendation 3.7.

In order to foster trust of citizens in the independence of political parties, introduce a requirement to disclose information about sources of private donations received by political parties, above a certain threshold. In order to ensure transparency of financing of political parties and election campaigns, establish a system, with a clearly defined mandate and powers, to carry out this function.

Ensure that the Bill on Prevention of Conflict of Interests or a separate legal act establish conflict of interest rules for political officials and envisage sound monitoring system of the application of the above-mentioned rules.

3.8. Integrity in Judiciary

Judicial independence

Art. 127 par.1 of the Constitution establishes that "Judges are independent, they are subordinated only to the Constitution and laws of the Republic of Azerbaijan; they cannot be replaced during the term of their authority." The same principle is reaffirmed by art.8 and art.100 (Chapter XIII – Independence of judges) of the Courts and Judges Act. The last legal text cited stands that the independence of judges shall be provided by their depoliticizing and securing their inalterability and immunity; laying limitation on the appointment, calling to liability, suspension and termination of their office, operating of the judiciary independently; administration of justice in order provided by the legislation; preventing of imposing of any limitations on or interference with court proceedings; ensuring their personal safety and supplying them with the financial and social provisions according to their posts, throughout the entire term of their office.

Court judgment shall be based only on the independent persuasion of the judges and the trial outcome. Judicial power is protected from direct influence by other state powers in the general framework established by Section 7 of the Constitution. However, Section 8 of the Constitution establishes that "the President of the Republic is the guarantor of the independence of the judicial power". This provision of the Constitution appears inadequate since the President of the Republic is part of the executive branch of power and in this position such an attribution seems to create complications in the general context of the separation of state powers principle.

Appointment of judges

The procedure is described in the "Rules of selection of non-judicial candidates to vacant judicial posts". The procedure is conducted by written and oral examinations. The candidates who successfully passed the examinations shall move on the initial long-term training course at the Legal Training Center, under the authority of the Ministry of Justice, before being finally proposed by the Judicial-Legal Council to the President of the Republic for appointment. The "Judges selection committee Chart" provides transparent and coherent criteria for the committee which is vested by law with the procedure described above.

New judges shall be appointed for an initial term of 5 years; at the end of this period, their activity is subject to evaluation and, if deemed satisfactory, the mandate of judges is extended until the age of retirement.

The Judicial Legal Council reviews applications for judges of the Supreme Court and the Courts of Appeal and makes a recommendation to the President of the Republic. The President may then submit the nomination to the Milli Majlis who then votes to approve or reject the nomination. The President may also reject the nomination and return it to the Judicial Legal Council for further action. As for the Constitutional Court, the President makes his own recommendation to the Milli Majlis with no input from the Judicial Legal Council. The procedure for selection, appointment and promotion of judges is generally structured on merit-based and transparent criteria and is carried out by the Judicial-Legal Council, as the professional representative body of the judiciary. For the highest level courts, the selection of judges to

such positions could be subject to political interference due to the involvement of the President of the Republic and the members of the Milli Majlis.

The administration of justice and the distribution of cases among judges

The basic provisions on administration of justice are provided by Chapter II of the Courts and Judges Act and contains all the principles and guarantees established by international standards on the matter: the principle of equality before the law and courts; independence and impartiality of judges; interdiction of undue influence and pressure upon the court; the presumption of innocence; the rights to defense; publicity of the procedure in courts; the equality of weapons of the parties in court proceedings; the language used before a court of law; situations of incompatibility of judges; sine qua non of justice administration. These principles are further guaranteed by the Constitution, the Criminal/ Civil Procedure Codes, and the Code of Judicial Ethics of the Republic of Azerbaijan.

An important problem in this area remains the distribution of cases among the panels of judges. At present, the cases are distributed according to the level of experience, specialization and workload of judges". On the occasion of the on-site visit, there were allegations that the cases are distributed in a random manner by the use of a piece of soft designed for that purpose, but only in some courts, more or less at an experimental level.

For the prevention of corrupt practices among judges and court clerks, there is a definite need for a random distribution of cases between the panels of judges. If such a practice already exists at an experimental level, it should be generalized and completely implemented. If there is not such a practice yet, it should be immediately introduced as the only method for the distribution of cases between judges.

Professional ethics of judges

There is a Code of Judicial Ethics, approved by the decision of the Judicial-Legal Council and the Plenum of the Supreme Court on Dec.12, 2002. The Code is fully compliant with the Bangalore Rules on Judicial Conduct.

Disciplinary liability of judges

Articles 111-114 of the Courts and Judges Act grants to the Judicial-Legal Council the power to conduct disciplinary investigations and impose disciplinary measures on judges. There is a time limit for the procedure - one year after the exposure and three years after the commission of the facts. The elements for opening the disciplinary proceedings, the grounds for the liability and the sanctions are compliant with international standards on the matter. Decisions made by the Council are made public. There is a right of appeal against the decision of the Judicial-Legal Council in 20 days after enactment before the Plenary Board of the Supreme Court.

Training on judicial integrity and role of judges in anti-corruption efforts

The Judicial Legal Council's secretariat conducts an extensive programme of training for judges and candidates for judicial posts. The topic of judicial integrity and role of judges in anti-corruption has been included in the curriculum of all these trainings. However, no integrity test is performed. Discussions have shown that there was no proper understanding of this tool.

Previous Recommendation 12

Introduce procedures and clear criteria for lifting immunities enjoyed by judges.

This recommendation aims at introducing procedures and defining criteria for lifting immunity of judges in the course of criminal proceedings. Judges enjoy immunity as stated in Section 128 of the Constitution, and a judge may be called to criminal responsibility only in accordance with the Courts and Judges Act 1997. On the basis of written and oral responses from the Azerbaijan authorities and after reviewing the relevant legislation (Law on Courts and Judges), the first round of monitoring concluded that the recommendation was not entirely implemented. Namely, procedures and criteria for lifting immunity of judges should be addressed both procedurally and substantively. Article 101 of The Law on Courts and Judges addresses all relevant issues with respect to the necessary procedures for lifting immunity of judges. In order to ensure that immunity does not shield the judge from criminal prosecution for corruption, and in the absence of substantive legal criteria for lifting immunities of judges, the issue can be addressed through a requirement to the Judicial Legal Council to provide written grounded decisions in each case explaining why the immunity has or has not been lifted. It is important to ensure that these immunities do not prevent the law enforcement authorities from gathering all evidence and information relevant for lifting immunities. In addition no statistics were provided from Azerbaijan concerning the number of cases when the lifting of immunity was requested, granted or refused.

The Law on Court and Judges has not been amended since the first round of monitoring. During the second round of monitoring, government authorities report that several judges (approximately 15) have been sanctioned by the Judicial Legal Council for various judicial infractions. None of these sanctions, however, included the dismissal of a judge. Furthermore, no judge has been prosecuted for any corruption related charge. Even if prosecutors had information regarding a corrupt judge, the lifting of immunity by the Judicial Legal Council is a prerequisite for proceeding with an investigation. The prohibition on any use of special investigative techniques for investigating a judge, prior to lifting immunity makes it nearly impossible for the prosecutor's office to open and develop any cases against judges.

The current law regarding immunity for judges is too broad, covering all criminal procedural acts and operations. The law should be amended to balance the protection of judges against retaliation or pressure, especially from political sources, with the need to be able to carry out secret investigations prior to lifting of immunity.

Azerbaijan remains partially compliant with this recommendation.

New Recommendation 3.8.

Consider abolishing immunity of judges from prosecution. Alternatively, amend the statutory and constitutional provisions regarding lifting of immunity, which should be applied only when a criminal case is ready to be filed to court or when the arrest of a judge is requested. Lift the prohibition on using special investigative measures, allowing application of detective measures (SIMs) and criminal investigations of judges to be conducted confidentially, as are all other criminal investigations.

Develop and introduce a methodology using international standards (such as the recommendations of the Council of Europe) to ensure random distribution of cases between judges and panels of judges in all courts.

3.9. Integrity in the private sector

There are few trainings and awareness raising events organised for the private sector within the framework of a grant program run by the Commission on Combating Corruption and the Council on State Support to NGOs. Transparency International Azerbaijan is very active, as are some bilateral and multilateral donors. However, there is little information about awareness raising programmes about risks of corruption and solutions provided for the private sector and organised by the government, by the private sector associations or other partners.

When it comes to regulations concerning the private sector, Azerbaijan is generally compliant with international standards: the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents are all prohibited by law for all publicly-owned and private companies. These actions are considered as violations under Accountancy Act, the Tax Code and other pieces of legislation. The sanctions are foreseen in the Tax Code and the Criminal Code, and can be fines, deprivation of the right to be engaged in certain types of activity or hold certain posts, imprisonment, etc.

According to the legislation of the Republic of Azerbaijan, the following economic actors are subject to mandatory external audit: Banks and credit organizations, joint stock organizations, insurance organizations and societies, investment funds, financial-industrial groups, limited liability companies, fund and stock-exchanges, emitters of the securities, extra-budgetary foundations, institutions of public significance, municipalities and municipal institutions, legal persons submitting consolidated (united) reports (holdings), agents of natural monopoly activities, and non-governmental organizations. The Government of Azerbaijan made several efforts to develop standards for auditors based on international standards. The independence of auditors is safeguarded by the provisions of the Audit Service Act, the audit standards and the Code of Professional Ethics of Auditor. The auditors shall report any corruption suspicion to the manager of the audited entity. But more importantly, they have to perform know-your-customer and due diligence exercises according to the Anti-money Laundering and Terrorism Financing Act 2009 and report anything suspicious to the Financial Intelligence Unit.

In terms of internal company control, the legislation is quite loose. Companies are free to have one such system or not. The business sector is not put under pressure to adopt business ethics rules.

The Chamber of Auditors is composed of members of enterprises which have and auditor licence. They are automatically enrolled. The Chamber of Auditors suggests adaptation of legislation to the Cabinet of Ministers.

New Recommendation 3.9.

Develop and launch awareness raising programmes about risks of corruption and solutions for private sector. Together with private sector organisations, promote the development self-regulation within the private sector (code of conduct, anti-corruption compliance policies).

Summary Table

Pillar I. Anti-Corruption Policy						
New structure	New recommendations	Previous recommendations	Rating			
			fully	largely	partially	not
1.1. Expressed political will	+					
1.2. A-c policy document		1. A-c programme and monitoring		+		
1.3. Corruption surveys		5. Survey and research on corruption			+	
1.4. Public participation	+	2. Public participation in anti-corruption efforts			+	
1.5. Raising awareness and public education		6. Awareness raising on corruption		+		
1.6. Anti-corruption policy and coordination institutions	+	1. A-c programme and monitoring				
1.7. international anti-corruption conventions		7. Ratification of UNCAC	+			
Pillar II. Criminalisation of corruption						
2.1. Offences	+	8. Harmonisation with international standards	Not relevant			
		14. Responsibility of legal persons			+	
2.2. Elements of offence		9. Non-material benefits		+		
2.3. Definition of public official	+	11. International, foreign officials			+	
2.4. Sanctions	++	10. Statute of limitation, sanctions				
2.5. Confiscation		13. Mandatory confiscation and provisional measures		+		
2.6. Immunities, statute of limitation		10. Statute of limitation, sanctions	+			
2.7. International cooperation, MLA						
2.8. Application, interpretation and procedure	+					
2.9. Specialised anti-corruption law-enforcement bodies	+++	3. A-c prosecution department		+		
		4. Training for law-enforcement	+			
		15. Organised crime and corruption		+		
		22. Financial Intelligence Unit		+		
2.10. Statistics						
Pillar III. Prevention of corruption						
3.1. Corruption prevention body						
3.2. Integrity of public service	+	16. Recruitment, promotion		+		
		17. Asset declarations			+	

			fully	largely	partially	not
		18. Code of ethics		+		
		19. Conflict of interest			+	
		20. Whistleblowers				+
3.3. Transparency and discretion	+					
3.4. Public financial control, audit 3.5. Public procurement	+	21. Transparency of public expenditure and public procurement			+	
	+					
3.6. Access to information	+	23. NGO registration			+	
		24. Access to info legislation		+		
3.7. Political corruption	+					
3.8. Judiciary	+	12. Immunity of judges			+	
3.9. Private sector	+					