



**ACN**

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

Anti-Corruption Division

Directorate for Financial and Enterprise Affairs

Organisation for Economic Co-operation and Development (OECD)

2, rue André-Pascal, 75775 Paris Cedex 16, France

Phone: +33(0)1 45249964, Fax: +33(0)1 44306307

E-mail: [anti-corruption.contact@oecd.org](mailto:anti-corruption.contact@oecd.org)

Website: [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn)

## **The Istanbul Anti-Corruption Action Plan**

### **Second Round of Monitoring**

#### **AZERBAIJAN**

### **Report on main anti-corruption measures and detection and prevention of corruption crimes**

Report presented by Azerbaijan at the 9<sup>th</sup> Monitoring Meeting on 5-8 December 2010.

## **Periodical review**

Continuing to demonstrate its anticorruption political will, the Government of Azerbaijan build on potential to prevent corruption, improve its statutory framework, as well as enforce anticorruption legislation. The Government is in the process of implementation of the National Strategy for Increasing Transparency and Anticorruption through the Action Plan detailing measures for the period of 2007-2011.

While it continues the implement systematic measures in the specified directions, the Government of Azerbaijan complies with its international commitments. GRECO has issued its report on Azerbaijan in the framework of the Third Round of Evaluation. Anticorruption theme is one of the dimensions in the overall cooperative framework between the EU and Azerbaijan. Furthermore, one of the EU Twinning projects is dedicated to the Increasing of Capacities of the Anticorruption Department with the Prosecutor General. The Azerbaijani experts are participating in the elaboration of the Review Mechanism of the United Nations Convention against Corruption (UNCAC).

In the first round of monitoring under Istanbul Action Plan, Azerbaijan has elaborated substantial body of the Anticorruption Legislation, set-up specialized anticorruption agencies and established a framework for fight against corruption at the national and institutional levels.

To follow up, the Government is in the process of improving the existing mechanism also through the implementation of the recommendations of the Istanbul Action Plan and GRECO.

## **Part II Criminalization**

The Working Group, chaired by the President of the Supreme Court and including the representatives of various courts, General Prosecutor's Office, Bar, law enforcement agencies and civil society continued its work on complex amendment to the Criminal Code 2000. Among others, the Criminal Code (Amendments) Bill covers amendments on the criminalization of corruption offences, meeting the requirements of the UNCAC, as well as recommendations of GRECO and IAP.

In connection with the powers and jurisdiction of the Anticorruption Department (ACD) with the Prosecutor General, the appropriate drafts of the legislation was elaborated with the aid of the Lithuanian Anticorruption Agency (STT) and using the experience of the Romanian Anticorruption Directorate, attended by the ACD specialists. The Proposed draft is pending the appropriate legislative procedures.

### **Recommendation 2.4-2.6.2**

Under its exclusive powers of procedural management of the pre-trial investigation, the General Prosecutor's Office has conducted a review of the application of the provisional measures (to ensure confiscation) in all investigative institutions, as well as local prosecutor's offices. The Anticorruption Department with the Prosecutor General of the Republic of Azerbaijan (ACD) summarized the review reports and submitted its findings. Based on the

findings of the summary of the review, the General Prosecutor issued a Decree to endorse *Rules for Enforcement of the Provisional Measures aimed at Ensuring Confiscation* on the 24.09.2010 Ref. 10/88.

The Review of the application of the confiscation by courts has been carried out also by the Department for Public Prosecutions, which has an entity within the Prosecutor's Office and has the exclusive authority to prosecute in courts on behalf of all investigative authorities, unclosing the prosecutor's offices.

In Parallel, the appropriate department of the Ministry of Finance, which is in charge of registering and disposal of the confiscated property, has also carried out its own review in order to evaluate the efficiency of the confiscatory mechanism.

According to the statistical data, in the period of 9 month of 2010, the Government has recovered 2,249,047.00 Manat (2,428,970 Euro).

Among the finding of the analysis performed by the ACD and Ministry of Finances were the following deficiencies:

- the courts do not put the identifying information as to the property to be confiscated;
- the courts do not specify the technical condition and other specifications related to the value of the confiscated property;
- the draft *Rules for Evaluating, Storing and Transporting, as well as Auctioning of the Confiscated Property* is still pending Endorsement.

Currently, the General Prosecutor's Office, along with other investigative authorities, courts and the Ministry of Finance are considering the issue of necessity of operation of an institution in charge of the abovementioned functions.

### **Recommendation 3.2**

In connection with the separation of the political and administrative positions, the Civil Service Act states that the provisions of this act do not apply to political positions (Section 10.4). The matter shall be subject of consultations between the General Prosecutor's Office and the Civil Service Affairs Commission (CSAC) under the President of the Republic of Azerbaijan.

In the area of transparency and competition based recruitment and promotion of civil servants, the CSAC is running the competition-based transparent recruitment procedures on an on-going basis. In the concerned period, for the first time, the Commission launched the competition for recruitment to the vacancies in the judicial clerks positions (total of 44) pertaining to the 6-9 categories of civil servants.

The Commission, in cooperation with the appropriate public institutions has developed questions database and specific examination software. The software contains the information on the topics, used sources for answers, including the statutes. The tests used during the examination are uploaded on the web-page of the CSAC few months before the examination.

With a view to secure transparency of the second stage for the competitive examination, which is the Interview, the CSAC set up the panel for independent experts. The panel was set up also through the competition, the information on which law uploaded on the web-page of the Commission, specifying the requirements for the independent experts.

In addition to this, the Interview with the candidate is video-recorded and archived and the Commission arranges all necessary conditions for the participation of the civil society in this process.

The Appellate Commission (AC) was established in order to Review the appeals by the unsatisfied failing candidates in an expedient manner. The AC looks into the appeal, reviews the examination process and passes the founded decision with the participation of the candidate. If the candidate remains unsatisfied with the AC decision, s/he is entitled to appeal to the court of law.

In order to promote transparency and fair competition during the second stage of the examination (the Interview), the CSAC has developed a software which contains the topics for questions, as well as the sources of information for replies to these questions. This software is also uploaded to the web-page of the Commission few months in advance.

The Commission initiated the amendment to the legislation, according to which the Head of the Institution is bound to choose one of the CSAC candidates provided to him/her and appoint this candidate to the vacant position.

With regard to the promotion of the civil servants, a civil servant is entitled to the advancement in service through promotion by the management, interview or competition, according to Section 32.1 of the Civil Service Act. The interview is run by the Interview Commission, which shall include the representative of the CSAC. The Interview is conducted based on the same rules as the Interview as the second stage of the Recruitment Examination Process, mentioned above.

In connection with the establishment of the limits to variable part of the wage of civil servants, the Civil Service Affairs Commission has formulated a proposal to the Action Plan 2011-2015 for the Implementation of the National Strategy for Reduction of Poverty and Development 2008-2015. The proposal is to determine fixed variable additional parts to the salaries of civil servants based on the results of their productivity.

As to the adoption of rules for mandatory continuous training in the area of code of ethics, integrity, conflict of interests, these types of seminars are foreseen in the National Strategy for Increasing Transparency and Anticorruption Action Plan (NSITAC) 2007-2011. At the beginning of each year, the Commission requests information from all central and local public institutions concerning the measures, which they plan to arrange trainings in the mentioned area. Based on their replies, the CSAC issues recommendations to them, which propose to carry out continuous mandatory trainings. An example to this is the timetable for running such trainings in the Ministry of Economic Development, Ministry of Transportation, Ministry of Finances and Ministry of Education.

In order to promote the compliance with the ethics of civil servants, the Commission has improved its web-page by uploading the Civil Servants Ethic Behavior Rules Act and the Presidential Decree aimed at establishing measures to implement this statute. The statutes are contained in the specific area of the web-page, which also allows the citizens to lodge on-line complaints.

According to the Institutional Action Plan of the Commission aimed at the implementation of the Action Plan for the implementation of the NSITAC, the CSAC ran joint trainings in central and local executive institutions covering such issues as the ethical behavior of the civil servants, integrity, fairness, requirements of the Civil Servants Ethic Behavior Rules Act and significance of compliance with these Rules. Thus, the CSAC held trainings in the Scientific-Practical Institute of the Ministry of Economic Development on the 18.03.2010, 15.04.2010, 06.05.2010, 16.06.2010; training center of the Ministry of Ecology and Natural Resources on the 21.04.2010; training center of the Communications and Information Technologies Ministry on the 09.06.2010.

The Seminar on Civil Servants Ethic Behavior Rules Act was held on the 24.02.2010, with the participants from the executive bodies of 11 districts of Baku city.

The CSAC also runs trainings on Civil Servants Ethic Behavior Rules Act for its own employees on an on-going basis. It also studies and analyses the state of compliance with the mentioned Rules. According to the information furnished by the public institutions, the Ministry of Transportation, Ministry of Finances, Ministry of Economic Development and Ministry of Education ran the Civil Servants Ethic Behavior Rules Act-related 2010 trainings according to the time-table agreed with the CSAC. The other institutions complied with the time-table of measures aimed at the implementation of the NSITAC AC events.

The issues under consideration is the appointment of the Commissioner for Civil Servants Ethic Behavior, review and discussion of the condition related to the compliance with the rules and setting up of the appropriate section in the web-page of the CSAC.

#### **Recommendation 3.4**

In case if there are differences between the quarterly or annual reports and the factual expenditures figures, these differences are published on the web-page of the Ministry of Finances and the official magazine entitled *Finances and Booking*.

As regards the recommendation concerning extra-planned examination of the budgetary institutions, the State Financial Control Service (SFCS) of the Ministry of Finance acts in accordance with the *Rules for Examination by the SFCS* endorsed through the Decree I-100 dated 27.08.2009 of the Minister of Finances. According to these Rules, the Service is conducting examinations in the budgetary institutions based on the annual plan. While drafting its annual plan, the SFCS is taking into account also the information on irregularities in the budget-financed institutions, which is received by the Service from various services.

Furthermore, the SFCS is entitled by the mentioned Rules, as well as the SFCS Charter endorsed by the Presidential Decree Ref.48 dated 09.02.2009 to carry out extraordinary examinations subject to court orders or directives of the law enforcement agencies.

Finally, the Ministry of Finances is elaborating Bill on State Financial Control, which foresees the extraordinary examinations based on the well-founded information.

A Strategic Development Plan (SDP) was prepared for the improvement of capacity of the Chamber of Accounts and there are activities implemented according to SDP under the World Bank supported project CAPSAP on the account of resources allocated by SECO. Implementation of these activities is ensured on the account of resources envisaged in the

Grant Agreement for Technical Assistance between the Government of the Republic of Azerbaijan and the Government of Swiss Confederation allocated specifically for categories of activities envisaged in the SDP. These activities include improvement of qualification of staff of the Chamber of Accounts, conducting professional trainings and seminars, supporting the development with the focus on international audits methodology, standards, practices and principles, establishment of twinning arrangements and other relations for the purpose of strengthening the cooperation with other Supreme Audit Organizations of different countries, etc. it is envisaged to focus professional trainings on improving knowledge and skills of the staff of the Chamber on detecting corruption crimes financial violations and pay attention on conducting special trainings leading to building of long-term capacity in the field of detection of corruption and fraud cases.

The planning of activities of the Chamber of Accounts based on the Law of the Republic of Azerbaijan “On the Chamber of Accounts”, the Charter of the Chamber of Accounts and “Rules on Planning the Activities of the Chamber of Accounts”, along with provisions included in the paragraph 3.4.2 (page 43) of the Istanbul Plan of Actions of Eastern Europe and Central Asia Anti-Corruption Network of the OECD, also takes in to account proposals and recommendations from other financial institutions of the State, law-enforcement agencies, Supreme Audit Bodies of the other organizations as well as studies conducted by the Chamber itself (monitoring, analytical researches, etc). Apart from these, while setting up a plan and selecting audit objects, sources and uses of state financing, as well as possible operational risks, the volume of state resources use by the audited state agency or covered by audit activity, results of previous audits and other grounds, envisaged in the legislation are taken into account for better identification of objects with higher risk of being exposed to fraud and corruption.

It should be pointed that after strengthening the capacity of the Chamber of Accounts under the CAPSAP projects it would be expedient to introduce separate planning of audits against corruption and fraud. Currently, while detecting any case of fraud or abuse during audits performed under the existing legislation, the audit group, according to “Rules On Preparation, Performance And Documenting The Results Of Financial-Budgetary Supervision Activities Performed by the Chamber of Account of the Republic of Azerbaijan”, the relevant report (act) is being prepared and sent to the General Prosecutor’s Office based on the decision of the Board of the Chamber on detected violations.

The Chamber of Accounts, based on Law of the Republic of Azerbaijan “On the Chamber of Accounts”, the Charter of the Chamber of Accounts and other legislation regulating activities of the Chamber of Accounts of the Republic of Azerbaijan, the Chamber of Accounts reports on annual basis to the Parliament of the Republic of Azerbaijan and reports covers types of financial-budgetary supervision activities performed during the year, their number and grounds, results of such activities, identified shortcomings and discrepancies and reasons causing them, proposals of the Chamber of eliminate the and counter-activities made by audited agency, as well as other information related to current operations of the Chamber. Report also contains special notes on information to be delivered to the Parliament. It should also be mentioned that shortcomings and discrepancies, discovered as a result of audit activities, the status of implementation by the Government of proposals and recommendations of the Chamber for the purpose of elimination of gaps in the legal framework is also reflected in the Report. The Parliament of the Republic of Azerbaijan reviews and endorses the report in accordance with the provisions of paragraph 21.1 of own Charter.

Preliminary audits, based on Law of the Republic of Azerbaijan “On Budget Systems”, “On the Chamber of Accounts”, the Charter of the Chamber of Accounts and other legislation

regulating activities of the Chamber of Accounts of the Republic of Azerbaijan, for the purpose of prevention of reasons and causes of legal violations is performed by the Chamber by means of development of relevant opinions at the state of consideration of draft laws related to the State Budget, budgets of Extra Budgetary Funds and budgetary financial issues.

Currently at the state of the development of draft budgets for relevant years, draft law on changes and amendments to approved budgets the Chamber mostly reviews the ways and terms of establishment of incomes and expenditures parameters of the state budget, efficiency of implementation of the reallocation function, analysis the correspondence of state debts and budget deficit to the current economic situation and thus ensure the prevention of implementation of any financial operation that may contradict the provisions of law.

### **Recommendation 3.5**

- The number of refusals issued by the State Agency for Procurement to the applications for purchase of single-source by the procuring institutions has increased 5 times in comparison to the previous year.
- The Agency is about to complete its mutual work with the USAID on elaboration of the statutory framework for the Standard Templates for procurement of goods, works and services. These templates are already worked out and printed.
- The Agency is about to complete (within the next half-a-year) its work on the single internet portal, which meets the demands of the Agency in line with its new duties under the Public Procurement Act 2010 (enacted on the 17.03.2010).
- The Agency has elaborated Draft Presidential Decree on the Additional Measures on Public Procurement.
- The Agency has elaborated Public Procurement (Amendment) Bill.

### **Recommendation 11**

The FIU was entrusted with the new functions, subject to the recent (17.03.2010) amendments to the legislation in order to ensure the compliance with the international standards. Thus the Financial Monitoring Service (FMS) is now entitled to

- enact the statutory instruments in the areas specified in the Counter Money Laundering and Terrorism Financing Act (CMLTF);
- draw a list of property and minimal amount of money to be declared financially;
- determine the rules for compliance of the intermediary activities in real-estate transactions with the CMLTF Act;
- draw a list of persons falling with the effect of the sanctions set by UN Security Council Declarations. Legislation of the Republic of Azerbaijan, as well as treaties to which it is a party and maintains the data-base related to these persons;
- define the rules for simplified identification and verification in respect of customers and beneficiaries in cases provided by law;
- take actions for immediate freezing of assets based on the request of the authorized foreign institution, in accordance with the legislation of the Republic of Azerbaijan and the treaties to which it is a party.

In connection with the implementation of the recommendation on proceeding with the implementation of the FATF recommendation, the recommendation concerning the foreign PEPs was fully implemented through the addition of the Section 9-1, which obliges the monitoring subject to verify whether the clients or beneficiaries are PEPs and find out the source of the money. The amendment requires the endorsement of the management of the

FMS for launching or continuing business affairs with foreign PEPs. To this end, the FMS joined the *World Check, Dow Jones Factiva*.

Concerning the establishment of the mechanism of communication with the Anticorruption Department with the Prosecutor General, the two institutions signed the *MoU*, which further details the requirement of the Criminal Procedure Code to submit the information about crimes to the prosecutions bodies.