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**Istanbul Anti-Corruption Action Plan for  
Armenia, Azerbaijan, Georgia, Kazakhstan,  
the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine**

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews  
of Legal and Institutional Frameworks for the Fight against Corruption**

**AZERBAIJAN**

**UPDATE ON NATIONAL IMPLEMENTATION MEASURES**

Presented at the 6<sup>th</sup> Monitoring Meeting of the Istanbul Anti-Corruption Action Plan  
on 13 December 2006 at the OECD Headquarters in Paris

## I) NATIONAL ANTI-CORRUPTION POLICY, INSTITUTIONS AND ENFORCEMENT

### *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.***

The State Program for Fighting Corruption that could be regarded as a comprehensive anti-corruption program was adopted by Azerbaijan on September 3<sup>rd</sup>, 2004. The program provides for a broad spectrum of measures to curb corruption in the country. Separate Action Plans were developed for the implementation of the Program in the line ministries. The reporting and monitoring mechanism envisaged in the program is based on the newly created inter-agency coordination body, the Commission for Fight against Corruption. CFC is composed of 15 members – 5 from the Executive and Legislative and 5 from the Judiciary. The Commission and the Civil Service Executive Board monitor the implementation of the program; they report to the President of Azerbaijan on the implementation status.

The program was developed in cooperation with some civil society organizations. In April and August 2004 two public hearings took place to discuss the draft of the State program with participation of NGOs, business associations, lawyers, international organizations. Some of the recommendations of the NGOs made their way to the final text of the Program. The program was published in the media and was made available at the Commission web-site. Familiarization with the program is an obligatory element of the public servants' training programs. No data suggest though that the draft of the State Program is based on sound analyses of the patterns of corruption in the country.

The Council of Ministers reports on the implementation of the Program are published in the media and are available on the Internet.

Currently the Commission for Fight against Corruption is supported by a secretariat of 5 staff members – civil servants. The Commission has a range of instruments to monitor the implementation of the State Program, such as holding hearings of all operators of the program, revealing the problem areas and issuing decisions putting tasks and suggesting the ways to resolve the outstanding problems.

**Azerbaijan is largely compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

The State Program for Fighting Corruption has been elaborated to carry into effect the anticorruption measures in years 2004-2006. At the time of the update report, the preparation of the report on implementation of the Program is underway. Summarizing the effect of the Program at this stage, the State Programme has served as a framework to build an institutional basis for fight against corruption on national and institutional levels. CFC administers the role of the strategic body coordinating the implementation of the Program and therefore fighting against corruption per se, forms a platform for reporting for ministries and formulating trends of activity and measures to remove vulnerabilities and shortcomings in institutions. ACD is a national investigation agency responsible for detection,

investigation and criminal prosecution of corruption offences. Each public institution has established its own internal investigation unit.

Considerable work has been done in the field of improvement of legislation. With all the major international instruments being ratified and given full effect, a number of the legislative instruments passed within the framework of the Programme has considerably contributed to the criminalization of corruption, harmonization of the legislation with the international instruments, increasing transparency and resistance to corruption. The most recent requires rotation, administrative liability for corruption wrongdoings, etc.

Transparency in civil service has dramatically grown through large-scale installation of competitive-examination based recruitment to public service. An ongoing series of the competitive tests, involving Student Admission State Committee, is indicative of the shift of the public service sector for greater transparency.

A major success achieved within the Program is bringing the corruption into the public agenda. Corruption has become a topic of great number of round tables, seminars, conferences and other fora with civil society being in the centre, public service being supportive and actively involved, along with the business community

That the first State Program of Fight against Corruption has generated many crucial changes, galvanized the vigilance of the emerging anti-corruption civil society and contributed to the raising of awareness of the public in relation to this problem shows that the Program has been well catered to the modern requirements. The success and overall impact of the Program is yet to be evaluated. Therefore specific measures, stipulated hereafter, have been taken.

## ***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 for Fight against Corruption at the Civil Service Executive Board.***

The Commission for Fight against Corruption is a main organizer of and a participant in the Information and Cooperation NGO Network, comprised of 14 NGOs, including the National chapter of Transparency International. The mission of the Network is to stimulate the anti-corruption activities of the civic organizations in Azerbaijan.

Non-governmental and international organizations were invited also to participate as members in the Working group on legislation drafting with the Commission. Among these NGOs are TI Azerbaijan, ABA/CEELI, Constitutional Research Fund (chair of Anticorruption Network), Entrepreneurship and Market Economy Development Assistance Foundation and the OSCE Office in Baku. The tasks of the Commission include proposals for improvements of legislation, participation in the formation of the state policy on corruption; analysis of the state and efficiency of the fight against corruption; public awareness programs etc.

The legislation in preparation by the group is not adopted yet and the input of the NGOs is difficult to assess. The criteria for inclusion of NGOs in the Working group do not seem to be formalized.

The wording of the recommendation requires representatives of the civil society to be included in the work of the Commission; and legislation drafting is only one of the aspects of the Commission work.

### **Azerbaijan is partially compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

At the time of implementation of the State Program, a considerable number of civil society organizations have started to operate in the field of fighting against corruption. Within the short period of time NGO's have become involved in the work of the Commission in a number of ways. In the field of generating legislation, NGO's are not merely directly involved with the work of the commission. With Anti-Corruption Network NGOs' initiative of taking the draft Bill on Conflict of Interest to public discussion (13<sup>th</sup> October 2006) is within the on-going campaign of the civil society aimed at advocating the legislation. Commission has been involved on equal partnership basis. In parallel, draft Act on Code of Ethics has been taken to public discussion. Civil society is a driving force of the EITI (Extracting Industry Transparency Initiative) in Azerbaijan, with the government of Azerbaijan supporting this initiative. The ALAC (Advocacy and Legal Advice Centre) project run by the local chapter of the Transparency International has the widest network of field branches in comparison to other countries where this initiative is carried out. Overall number of regional branches throughout the country has reach five. The information collected by this network is channelled to the relevant public institutions for consideration and reaction. Anti corruption Fund (NGO) opened Regional Coordination boards in different regions of Azerbaijan. To ensure involvement of the population to the anti-corruption process, the Fund Established Coordination Council against Corruption. The object is to support the actions conducted with a view of creation of a lawful state.

The wording of recommendation speaks of involvement of the civil society "in general and through association". The NGOs Representatives are very actively involved in the anti-corruption work, in general and association, pursued also by the Commission.

#### **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 tasks 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 investigations 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 Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions.***

The Special Anti-corruption Department with the Prosecution Service was substantially strengthened. The idea behind its creation is that it is going to deal with the high-level corruption. It consists of three divisions, one of them is charged with analytical functions. The total number of staff of the Department is 60 people, including 40 prosecutors and investigators. Some of them have experience with tax frauds, corruption and evasion. The department is directly subordinate to the Prosecutor General. It has broad competence to co-ordinate task forces; to investigate and prosecute corruption; and reportedly to also detect corruption.

The Department staff receive higher remuneration compared to the “regular” prosecutors. Since its establishment it investigated 20 cases and indicted 47 persons. There were twelve convictions. At least to the extent of its own operations the Department maintains regular and up-to-date statistics on the cases it works on.

The analytical division of the Department is responsible for gathering, analysing and summarising data on corrupt offences and developing proposals on improving the anti-corruption activities.

No clear guidelines for reporting and exchange of information were adopted. The team-work approach in the complex investigations is effectively introduced; however the mode of cooperation is based rather on established practice and not on clearly documented procedures. No harmonized methodology was developed to allow for comparisons among institutions.

The Anticorruption Department may consider to facilitate and speed up the process of drafting and adoption of such guidelines and of the methodology by initiating a consultation process with the relevant government bodies that may result in a joint document (Memorandum of Understanding, Instruction etc) to be signed that may contain the guidelines for reporting and exchange of information.

#### **Azerbaijan is largely compliant with this recommendation**

##### **National Action since June 2006 to Implement the Recommendation Further**

In the period covered the Department has further developed the internal investigation capacities. The Internal Investigation Division within the ACD is operating, inter alia, as an internal audit and anti-corruption watchdog for the prosecution service.

The team-work approach in the complex investigations is effectively established in the law enforcement system according to Section 215.6 of the Criminal Procedure Code (year 2000), which requires establishment of the joint investigation group in cases where the matters investigation cover jurisdiction of several investigative agencies. The implementation of this provision of the primary legislation ought to be conducted through the secondary legislation, in this case formal decisions by the authorised agency, proscribed by the primary legislation. The effective system of team based multi-institutional investigation is fully operational.

CFC has passed a decision on the establishment of the working group to implement the anti-corruption recommendations issued to the Government of Azerbaijan. In order to give full effect to implementation of the recommendations, the Prosecutor General has issued special decree on measures incumbent on the Prosecutor’s Office. According to this decree a number of tailored working groups have been established. They have been tasked with elaboration of the corruption offence data base, formulation of proposals on the collection and sharing of information on corruption violations in public institutions based on unified methodology and other issues, covering the recommendations of the ACN OECD. One of the groups is pursuing consultation with the relevant government bodies concerning elaboration of the joint instrument, as a framework for interagency cooperation on various issues covered by the recommendations.

#### **Recommendation 4**

***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.***

Azerbaijan continued to provide some anti-corruption training, including joint trainings for prosecutors, police and judges; 2 seminars for total of approximately 60 participants were held in 2005.

Several seminars and study tours were organized for the staff members of the anti-corruption department. The training centres at the Justice Ministry and the Prosecutor General's Office included in their curricula specialised courses on corruption.

The goal of this recommendation is to ensure that there is common understanding among the law-enforcement officials, the prosecution and the judiciary on the dangers of corruption; the ways to detect it; and the prosecution and investigation techniques to be employed in counteracting corruption – in order to build a critical mass of civil servants that share similar goals and vision and are equipped with compatible tools. This goal is still to be achieved; and though the initial efforts of Azerbaijan are to be commended, the number of trainings and, respectively, trained officials ought to be substantially higher in order for this goal to be met.

*Azerbaijan is partially compliant with this recommendation.*

#### **National Action since June 2006 to Implement the Recommendation Further**

Within the period covered, the specialised training institutions of the law enforcement agencies other public institutions have intensified their training efforts in the field of anti-corruption. The training institutions of the Ministry Of Internal Affairs, Prosecutor's Office and the Ministry of Justice are running joint courses, involving judges, prosecutors, investigators and detective police officers. While running training courses for their employees, the training institutions are involving trainers from other institutions, academicians, etc. The practice has been continued to run training for the employees of other institutions, Thus, recently Customs investigators were trained in the Training Center of the Prosecutor's Office.

As a part of joint efforts in the field of anti-corruption, Seminar-discussion on anti-corruption efforts was held in October in cooperation with the General Prosecutor's Office and the Special Investigation Service (STT) of Lithuania. Judges, prosecutors appearing in court, prosecutors supervising investigation and detective activities, investigators, Tax Investigators and police officers from the special anti-corruption unit of the Ministry of Internal Affairs joined this seminar to learn the Lithuanian experience, as well as to share the experience with the Lithuanian colleagues.

#### ***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.***

The analytical division of the Anti-corruption Department does receive and analyze some information from (mainly) Government bodies on the spread of corruption in the country. Attention was paid to the areas of education and health care; and vulnerabilities are detected in these spheres. A similar department in the Ministry of Interior was established to analyze certain aspects of the corruption in the economy of the country, mainly the private-to-private corruption.

However, no surveys were carried out by the Government to establish the degree of the spread of corruption; and to the extent there is research on the topic it does not meet the standard of being based on transparent, internationally comparable methodology.

A number of surveys were carried out by NGOs and international organizations. The Commission has supported and helped some of these surveys and has taken into consideration the results in its daily work. The Commission has also conducted such a survey through its website.

Examples of these surveys include:

- “Transparency Azerbaijan”: Country Corruption Assessment, 2004; Public Opinion Survey in Azerbaijan “The Impact of Corruption on Business. Survey of South Caucasus Countries”
- “Fund of Struggle against Corruption”: Social research project, 2005; “Problem of corruption in small and medium businesses and the ways of eliminating it”
- The citizens’ Labor Rights Protection League: Monitoring project 2006 “Access to Information in the Republic of Azerbaijan – Legislation and Practice”;
- National Confederation of Entrepreneurs (Employers’) Organizations of Azerbaijan Republic; "Strengthening of the Role of Entrepreneurs - Employers and their social unions in combating corruption" Conducted social survey 2006 “Impact of the corruption to development of entrepreneurship”.

*Azerbaijan is partially compliant with this recommendation.*

#### **National Action since June 2006 to Implement the Recommendation Further**

Subject to the Decision on the CFC on the establishment of the working group on the implementation of the anti-corruption recommendations, the working group established in the Prosecutor’s Office is looking into the issues building of system of statistics on corruption violations in public institutions though the consultations with the Ministry of Internal Affairs, Taxes and other law enforcement agencies.

Within its competence Commission for Fighting against Corruption is entitled to conduct the appropriate surveys. Therefore the CFC budget for the next envisages year special funds are assigned for conducting public surveys.

«Fund of Struggle against Corruption» investigated corruption level and the condition of struggle conducted against it in various regions with participation of local society - mass-media, political parties, NGO-s and the state bodies, and revealed inefficiency in this struggle.

#### **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.***

The public campaigns in Azerbaijan were aimed primarily at informing the public of the existence of “hotlines” to report corruption to certain administrative bodies. It seems that the goal of this information campaign was to a certain degree achieved, because the hotlines are operative and corruption complaints are regularly received. The line Ministries and the Government agencies have their own web-sites that inform the public about certain aspects of their work; they also contain the relevant legislation and instructions on how to submit a complaint.

The Commission for Fight against Corruption has, with the involvement of NGOs, compiled, printed and disseminated a codification of the Azerbaijan anti-corruption legislation. The National Audit Office

has published brochures and leaflets with anti-corruption content, under the titles “Anti-corruption” and “Corruption – the social disaster”.

The Ministry of Education has developed special anti-corruption training modules to be included in the subject “Azerbaijan Constitution - Basic legal knowledge”. The Commission for Combating Corruption requested the Ministry of Education to organise special courses on anticorruption in secondary and higher education schools. The State Academy on Public Administration, Police Academy, and all the training centres of the ministries have included anticorruption programs in their academic programs. Newly appointed civil servants have obligatory induction training courses (from 1 to 3 months) at the training centres before beginning their work.

With the support and participation of the Commission different talks shows and discussions on radio and TV stations were organised. In its decision of December 2005 the Commission asked all the state bodies to organise special seminars for the civil servant on the newly adopted Law on Freedom of information.

These important efforts however could not be regarded as a comprehensive awareness raising campaign. They lack the holistic approach, the single goal and many other important aspects of the awareness raising campaigns. Their goal was to deliver some information to the citizens; and to a large extent the goal may have been achieved. However there was no sustained effort to educate the public at large of its rights and responsibilities; of the dangers of corruption; and to build practical skills among the civic and private sector to work against corruption. The visibility of the efforts listed above was not high.

*Azerbaijan is partially compliant with this recommendation*

**National Action since June 2006 to Implement the Recommendation Further**

Within the specified period, the measures have been continued in the field of awareness raising campaigns. Along with publishing articles in the media, participation in the broadcasts, and continuing provision of the relevant information through the electronic means, awareness raising among the target groups have taken shape of the organized training. The CFC and ACD along with other public institutions have either actively participated or acted as co-organizers of a number of events in conjunction with the civil society and business community. Among the events is the round table arranged by National Confederation of the Employers of Azerbaijan with the financial support of the USAID and Eurasian Foundation dedicated to the topic ‘Enhancement of the role of the proprietors-employers in the fight against corruption’. In addition, The Ministry of Youth and Sport along with local authorities, civil society and ACD arranged a series of training seminars for civil servants, civil society and media of adjacent districts in 5 major regional centres of Azerbaijan. A seminar dedicated to the topic “Establishing of the FIU and application of the appropriate legislation” with the support of the US Embassy in Azerbaijan. Another crucial event dedicated to the raising awareness about the corruption in education was the international conference on Corruption in Higher Education arranged with the support of the ABA CEELI and USAID.

*Recommendation 7*

***Ratify the UN Convention against Corruption.***

**Azerbaijan is fully compliant with this recommendation**



## II) LEGISLATION AND CRIMINALISATION OF CORRUPTION AND THE RELATED MONEY-LAUNDERING OFFENCE

### *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 speeded up the adoption of legislation that harmonizes its criminal legislation in the area of corruption with some but not all of the relevant international standards. With this respect the very recent changes and amendments to the Criminal Code that were adopted by the Milli Majlis (National Assembly) of the Republic of Azerbaijan in April 2006 are to be welcomed. They bring significant improvements in criminalizing corruption, introducing the offence of money laundering and streamlining the confiscation of proceeds of corruption regime. They have come into force in May 2006.

However it has to be noticed that not all changes and amendments necessary for bringing the legislation of the Republic of Azerbaijan entirely in line with relevant international standards were adopted. Recommendations 9, 11 and 14 deal with these issues.

It is not possible to address the issue of implementation before the adoption of the legislation in question. It is also obvious that the recommendation at least to a certain extent presupposed that in the moment of its assessment new legislation would already be applicable and therefore the quality of its implementation could be assessed as well. The overall process of harmonizing criminal legislation is not complete yet.

**Azerbaijan is partially compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

In view of the overlap between this recommendation and recommendations 9,11 and 14 with no particular practical measure required, it is suggested that this recommendation be evaluated as fully compliant in light of the speedy adoption of the amendments to the legislation or be suspended.

### *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 the active and passive bribery in public sector are now in line with the relevant international standards. The criminal offence of trading in influence was also introduced in the criminal legislation of Azerbaijan. The legislation covers both the material and non-material benefits; as well as the act of bribery through the third person.

However, Azerbaijan has not introduced the specific (separate) criminal offences of active and passive bribery in the private sector - a requirement of the UN Convention against Corruption as well as

CE Criminal Law Convention on Corruption. Enlarging the application scope of the relevant provisions through interpreting the definition of “official” in the Note 1 to Article 308 to persons carrying out functions of authority in private sector as well does not appear to be sufficient. Nature of corruption offences in private sector is as a rule different from those committed in relation to performing official duties and this difference has to be recognized and find its place in specific incriminations in the Criminal Code, in line with the international documents, named above. However, the authorities are investigating cases of private corruption based on the current corruption.

**Azerbaijan is largely compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

The note to Section 308, which according to the Azerbaijani legal doctrine is fully integrated part of the Section, reads as follows, ‘The person holding post in sections 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 the purposes of the Anti-Corruption Act of the Republic of Azerbaijan’. Person holding post is a generic term used throughout Chapter XXXIII (Corruption Offences, etc). It is seen that the Section enables criminal prosecution, for bribery in the case of Section 308) of persons occupying post in the public institution, in other words public officials; persons occupying posts in the municipal establishments, which according to the Constitution of the republic of Azerbaijan are not considered as public institutions; persons occupying post in private institutions, commercial or non-commercial; and representatives of the international organizations. Inclusion of the subjects foreseen by the Anti-Corruption Act has further expanded this circle. The abovementioned shows that the notion of the corruption in public and private sectors (public-to-public and private-to-private) are coexistent in the Criminal Code. With the same logic the Criminal Code does criminalise appropriation of property, both public and private without separation in Section 179.

#### **Recommendation 10**

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

**Azerbaijan is fully compliant with this recommendation.**

#### **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.***

Separate criminal offences of bribery of foreign and international public officials are not introduced in the Criminal Code. The definition of an official in the Criminal Code has been expanded in a right direction and now covers representatives of international organizations as a category of international (foreign) public officials.

The authorities also made an attempt to address the bribery of foreign officials through amending the title of Chapter 33. However, this approach is not sufficient to meet the international standards, which require a full coverage of all categories of foreign public officials, through further expansion of the

definition of an official to include foreign public official or establishing of a separate office of bribery of foreign public official.

**Azerbaijan is partially compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

Although it is considered that the criminal legislation of the Republic of Azerbaijan is sufficient to foreign public officials under Sections 11 and 12 of the Criminal Code, the recommendation has been taken note of. The appropriate recommendation has been submitted to the national legislative body for consideration.

***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. On the basis of written and oral responses from the Azerbaijan authorities and after looking into the relevant legislation (Law on Courts and Judges) it can be concluded that the recommendation fails to be entirely implemented. Namely, procedures and criteria for lifting immunity of judges have to be addressed in both ways: procedurally and substantively. The procedural aspect is adequately dealt with in Article 101 of The Law on Courts and Judges, that is addressing all relevant issues of procedural actions taken with respect to deciding on 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 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.

**Azerbaijan is largely compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

Section 101 of the Courts and Judges Act 1997 provides for the procedure of lifting immunity of a judge in the sufficiently clear manner. The section clearly sketches out the boundaries of the immunity of the judge, specifies the body entitled to initiate the procedure for lifting immunity. I.e. only the Prosecutor General shall be entitled to apply for lifting of the immunity. The Section also clearly specifies the body to consider the motion of the Prosecutor General and that is the Judicial-Legal Council. The terms of considering the motion of the Prosecutor General are also clearly defined. There is no other specific legislation to be applied in case of the criminal prosecution of the judge. If the JLC grants its permission, the prosecution proceeds according to the criminal procedure legislation. The encouragement, termination of office and disciplinary liability of judges are specified in the Judicial Legal Council Act 2004. The JLC is the collegial board composed of the prominent judges and other high-ranking officials. The substantiated decisions of the JLC are published in the official journal and web-site of the Judicial-Legal Council's Secretariat. The council has considered 59 disciplinary proceedings in respect of 45 judges. 40 judges have been made subject to the disciplinary punishment.

### *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 be confiscated as well in cases where the proceeds are inalienable.

There are no official statistics of the number of cases where these measures have been applied and of the amount of 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. There is no evidence of any substantive review of these measures in order to be able to assess how efficiently they are being implemented and applied.

**Azerbaijan is largely compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

The parliament has passed a Legislation Amendment Act on the 10/10/2006 introducing the amendments to the Criminal Procedure Code. These amendments authorize procedures for interim measures and court arrest and confiscation of the tools, instruments, proceeds of crime, as well as money equivalent of the inalienable property. In order to secure the proper implementation of the court decisions the relevant changes have also been introduced to the Code on Enforcement of Court Decisions by the same law. Furthermore, the Prosecutor General has issued decree on conducting a survey on the efficiency of the newly introduced interim and confiscation measures. The result of the survey shall be available early next year.

### *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 institute of responsibility of legal persons for corruption related criminal offences.

A working group was established and together with some international experts – organizations it considered the issue of introducing the institute of responsibility of legal persons for corruption related criminal offences in Azerbaijan legislation. The first obvious result of these considerations is a draft law on

Amendments to the Criminal Code concerning responsibility of legal persons for criminal offences. It is not yet possible to comprehensively assess the quality of this draft and its compliance with legally binding international standards, especially because it is not clear what is going to be the scope of criminal offences, for which responsibility of legal persons might be invoked and it therefore remains opened if this draft envisages establishing responsibility of legal persons for corruption related criminal offences as well (unfinished draft). Besides this, 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 still have to be properly addressed.

**Azerbaijan is partially compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

A working group under the Commission on Fight against Corruption has worked on the draft law, introducing the criminal liability of legal persons for committing corruption related offences. International experts have participated in the elaboration of this draft. The draft law elaborated as a result has been submitted for the examination by the Council of Europe.

**Recommendation 15**

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

The Working Group was informed from the representatives of the Ministry of Interior that they are analysing and following the possible connections and interrelations between corruption and organized crime. The Group recognized from the information obtained that there have been cases of kidnapping, extortion and drug trafficking committed by organized criminal groups. In none of these cases evidence of possible nexus between these crimes and corruption had been found.

Although some activities have been carried out concerning this recommendation more could be expected from other institutions in the area and especially from scientific institutions, such as Criminological Institutes and similar. This question needs a harmonized, balanced and multidisciplinary approach; efforts of a single institution can not give a complete picture.

**Azerbaijan is largely compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

The Prosecutor’s office of the Republic of Azerbaijan has recently joined, as one of the founding members, the newly established Association of the Anti-Corruption Authorities (IAACA) and is closely cooperating with International Association of Prosecutors, of which it is a member since 1998. Azerbaijan is pursuing a course of greater involvement in the initiatives run by this prominent organizations, especially, which are covering both corruption and organized crime, also through the study of best practices and implementation of recommendations.

In addition, following this recommendation, the Prosecutor General has tasked a working group with formulating proposals on the conducting a survey into relation between organized crime and corruption. The members of the working groups are the prosecutors supervising detection, inquiry and investigation in police and other law enforcement agencies.

### III) TRANSPARENCY OF THE CIVIL SERVICE

#### *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 has taken some measures concerning the implementation of this recommendation such as increasing salaries of civil servants; introducing a centralized system of anonymous examinations (tests) in the recruitment procedure; establishing the Civil Service Commission under the President of the Republic with functions to prepare and approve competition rules for recruitment to civil service and control correct and transparent holding of such competition. There is also a system of rotation for some categories of civil servants such as tax, customs authorities, and police. The use of this mechanism in an appropriate manner could prevent the establishment of ongoing corruptive links between officials and citizens.

However, the general situation in the sphere of civil service has not been significantly changed since the review.

According to articles 28 and 29 of the Law on Civil Service, citizens shall be recruited to the sixth-ninth grades of administrative posts through a competition. Appointments to administrative positions of first-fifth grades (positions) shall be carried out on the basis of an interview and promotion.

The procedure of promotion and evaluation of professional skills of civil servant is mainly based on an attestation system. However, the frequency of the attestation procedure (once per five years) and a lack of clear criteria for evaluating professionalism of the civil servants give reason to doubt in effectiveness of this procedure. These provisions gives to the head of state body a discretionary power to recruit to high-ranking administrative positions (first to fifth grade) candidates by its own decision without competition and verifying professional skills and other merit-related criteria.

**Azerbaijan is partially compliant with this recommendation.**

#### **National Action since June 2006 to Implement the Recommendation Further**

In the course of implementation of the State Program on Fight Against Corruption and subject to the Civil Service Act, recruitment to the public service is run through competitive examinations. State Student Admissions Committee held examination for candidates to civil service on the 25-26 November 2006. 1613 applicants applied for vacations to the Prosecutor Office, Ministry of Taxes, Camber of Accounts, State Agency on Standardization, Metrology and Patents, State Committee for Administration of State Property, State Committee of Family and Children Problems and State Students Admission Commission. The successful candidates who passed the written examination, with the questions selected by computer from the data base of questions previously distributed among candidates, in the presence of international and local observers moved to the next stage of competition.

*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.***

The Law on Combating Corruption and Law on Submission of Financial Information by Public Officials obliges public officials to submit an asset declaration. Article 3 of the Law on Submission of Financial Information by Public Officials defines the following authorities to collect asset declarations:

- The Commission on Combating Corruption under the State Council on Management of the Civil Service for high-level officials;

- The authority identified by the Milli Mejlis (Parliament) of the Azerbaijan Republic, Supreme Mejlis of Nakhichevan Autonomous Republic for relevant members of mentioned Mejlisses; relevant local authorities for relevant servants of local governments;

- The relevant financial (accounting) authority determined of the head of their respective state body.

The Cabinet of Ministers was assigned by Decree of President of Azerbaijan Republic of 09.08.2005 to prepare rules for the submission of information of financial character by the officials and the form of the declaration of assets considered in the Law on Combating Corruption. However, to date, such rules and declaration forms were not adopted and no declarations of high-level officials are being made. In addition, there is no requirement for declaring officials expenditures.

The system of declaring of assets is ineffective also due to the lack of mechanism of control under the incomes and expenditures of civil servants. According to the Law on Combating Corruption, the asset declarations shall not be submitted to the tax authorities. One of the main objectives of the Commission on Combating Corruption under the State Council on Management of the Civil Service is to collect financial declarations envisaged in the Law on Combating Corruption and supervise the submission process of such financial declarations. The Commission, once it will receive the declarations, will have authority to send the materials for examination to the competent authority, shall it contain the constitutive elements of the corruption related offences. It is doubtful that the Secretariat has enough capacity to check these asset declarations systematically.

Another critical issue is the lack of transparency of the asset declaration system. According to the Law on Submission of Financial Information by Public Officials, all information mentioned in an asset declaration is considered as private secret. A dissemination of that information is restricted according to this Law. These provisions significantly decrease the effectiveness of civil society control.

**Azerbaijan is partially compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

Subject to the Amendment to the Legislation Act dated 10/10/2006, the appropriate changes have been made to the Civil Service Act, Prosecutor's office Act, Police Act, Service in the Prosecutor's Office Act, Charter of the Service in the Tax Authorities. These amendments cover all civil servants in Azerbaijan, including the authorities regulated by specific legislation mentioned above. Thereby the violation of the requirements of the Anti-Corruption Act specified in Section 5.1 regarding producing information of

financial nature shall entail disciplinary punishment in case if it does not qualify for launching criminal and administrative proceedings.

### **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.***

The Ministry of Tax (for tax authority officials), the Ministry of Internal Affairs (for Police officers) and the State Customs Commission (for customs officials) have developed and published codes of conduct for some specific categories of officials. The Code of Honour of Judges of Azerbaijan has been approved in 2002. The Judicial Council is currently drafting a new code of conduct for judges.

All these Codes (except the one for the judges) provides for mandatory acquaintance of relevant officials with its content. Thus officials are obliged to know and execute rules of conduct in performance of their duties. However, there is no form practice of implementation of provisions of these Codes concerning liability for abuse, as basically no corruption cases have been investigated in these authorities.

There is little progress on the establishment of ethical standards for all categories of civil service and for some independent professions (lawyers, notaries, auditors and accountants). The Draft Code of Ethics and Conduct of Civil Servants is currently tabled in Parliament.

**Azerbaijan is partially compliant with this recommendation.**

### **National Action since June 2006 to Implement the Recommendation Further**

The new Draft of the Code of Ethics and Conduct of Civil Servants has been submitted to the examination by the experts of the Council of Europe. In addition, the work is accomplished on the Code of Ethics for Judges and Code of Ethics for the Prosecutors. The Commission on Fight against Corruption has reiterated in its recent decision the necessity of acceleration of adopting codes of ethics.

### **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.***

The Presidential Decree dated 19/01/2005 established the Civil Service Commission under the President of the Republic with status of a central executive agency responsible for the state policy in the area of civil service. The regulations on this Commission were adopted by the Decree of the President of the Republic of 3<sup>rd</sup> July 2005. Under the Regulation the main duties of the Commission are such as follows:

*to take part in formation of the common state policy in civil service and other recruitment issues, implementation of this policy;*



*to prepare proposals In the field of forecasting of recruitment in civil service, to coordinate activity of the state authorities in the area of professional preparation, re-preparation and professional training of the civil servants, analyse state of affairs in this field and prepare proposals;*

*to develop centralized database on civil servants management and ensure its efficient application;*

*to arrange in centralized order realization of citizens' recruitment to the civil service on competitive and transparent basis according to Articles 2.3 and 28.1 of the Law of the Republic of Azerbaijan "On Civil Service".*

The Commission has the functions *to arrange preparation and implementation of programs and other documentation on civil service improvement; to control enforcement of the civil service legislation in the state institutions; to prepare and approve competition rules for recruitment at civil service, and control correct and transparent holding of such competitions; to determine training demands and prepare training strategy for civil servants; to coordinate activity of the state institutions in preparation, re-preparation and professional training of the civil servants; to make proposals on cancellation of the state authorities' resolutions passed with violation of the civil service legislation.*

In order to implement its duties the Commission is authorized *to make proposals to the President of the Republic on civil service improvement; to inquiry and receive from state authorities, organizations, officials information required for fulfilling its duties and carrying out its functions; if facts of the legislation requirements violation are revealed, then to make proposals to state authorities and officials on elimination of these facts and take other measures provided by the legislation; to hold competitions for civil servants recruitment in the order provided by the legislation; to pass statutory legal acts within its powers regulating relations in civil service area.*

The Commission is empowered with some controlling functions. In the meantime the Commission does not have authority to issue enforceable decisions or to bring to responsibility in order to react on any violation of legislation. The Commission is not entitled to issue any regulations concerning conflict of interest regulations and to control execution of legislation on conflict of interests.

There is no special act that addresses the issue of conflict of interests in the civil service. The definition of such phenomena, as well as special regulations will be provided in the Draft Law on prevention of a conflict of interests, which is currently developed by the working group at the Commission for Development of the Anticorruption Legislation. In the meantime, some issues of preventing of conflict of interests are treated in the above mentioned Codes of Conduct.

**Azerbaijan is partially compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

Draft law on prevention of Conflict of Interests was submitted to the Council of Europe for expertise. Draft is enclosed.

**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".***

There is no information about any measures have been taken by Azerbaijan authorities to establish comprehensive regime of protection of “whistleblowers”.

**Azerbaijan is non-compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

Protection of the whistle blowers has been provided by the appropriate provision of the Subject to the Conflicts of Interest Prevention Act.

***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 Law on State Budget asks for publication of the draft budget for the next year, together with relevant attachments as well as quarterly reports on its implementation. These reports include, in addition to other data, a comparative analysis of incomes and expenditures, and if there are any discrepancies between the approved and actual expenditures, relevant explanations should be attached thereto. The annual and quarterly reports published in the press also include data on incomes, expenditures, amount of public debt, credits, etc. According to this Law, control over the execution of the budget is exercised by the Finance Ministry (current supervision) and the Chamber of Audit.

Reports and statistical data on expenditures of the State Oil Fund of the Azerbaijan Republic are also available to the public. Other initiatives in Azerbaijan in the sphere of increasing transparency in public expenditures are unknown.

As regard the transparency of public procurement, an electronic system of public procurement is being developed and installed on the website of the State Agency for Public Procurement. In order to raise the qualification of specialists involved in the public procurement procedures, the Agency holds periodical training courses on public procurement issues for public and private sectors representatives. However, there is a strong believe from representatives of private businesses that the process of public procurement lacks of transparency, especially with regard to breaching the rule of obligatory publishing of tender proposals. Business representatives also believe that many tenders, mainly the ones involving large sums, are not published at all.

The State Agency for Public Procurement is authorized to monitor the legitimacy of public procurement but has power only to raise the question of abolishing results of tender (article 4 of the Law on Public Procurements). The State Treasury that executes the procurement transactions does not have the competence to check compliance with the relevant procurement legislation. There is no practice in Azerbaijan to carry out joint examinations (State Agency for Public Procurement and Treasury) in area of the public procurement.

**Azerbaijan is partially compliant with this recommendation.**

**National Action ince June 2006 to Implement the Recommendation Further**

## **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.***

The new article 193/1 of the Criminal Code covers the legalization of proceeds of crime with regard to all crimes. Bribery and other corruption related crimes are now covered by the Criminal Code. As the provision has only been introduced recently, it has not yet been tested in court.

The Financial Intelligence Unit (FIU) has not been created yet. Azerbaijan is one of the few remaining ACN countries without FIU. The draft legislation that would introduce the establishment of an FIU and a set of preventive measures to fight money laundering is still pending in Parliament. No decision has been taken where to locate the FIU. Azerbaijan falls short of the international standard on this issue.

**Azerbaijan is partially compliant with this recommendation.**

### **National Action since June 2006 to Implement the Recommendation Further**

On the 30-31<sup>st</sup> October the Government of Azerbaijan in cooperation with the US Embassy, US DoJ OPDAT and the Council of Europe held a seminar on Legal framework for combating money laundering, terrorist financing and other financial crime. Establishment of the Financial Intelligence Unit has been the main subject of this seminar.

## **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.***

NGOs play an increasing role in Azerbaijan. Thirteen nongovernmental organisations, including Transparency Azerbaijan, are organised in the Government sponsored Net for Information and Cooperation whose task includes the invigoration of the role of NGOs in anticorruption measures. Representatives of the Net take part in some Governmental initiatives such as organizing seminars; participating in working groups for developing legislations. Representatives of Transparency International Azerbaijan and other organisations are included in the Working Group for the Development of Legislation at the Anticorruption Commission.

However, there is room to continue and improve cooperation and mutual trust between Government and the civil society, for example by:

- Involving NGOs in the processes of monitoring of implementation of legislation,
- Mandating NGOs to conduct surveys on different issues of anticorruption policy or executing mutual surveys,
- Jointly organising public awareness campaigns.

The Law “On State Registration of Legal Entities in the State Register” has been adopted on 28 June 2005. This Law envisages the shortening of the period of a registration application (which can take a long time under the current legislation) to 5 days for commercial entities. The maximum period for registration for NGOs remains 40 days as before; however in case there is no response, the registration is granted

automatically. The greater success would be accurate practical implementation of this Law with respect to European practice registration of NGOs as a formal legal act, allowing them to acquire legal personality and thus become capable of possessing rights and obligations and of entering into legally binding contracts.

**Azerbaijan is partially compliant with this recommendation.**

**National Action since June 2006 to Implement the Recommendation Further**

With a view of increasing the participation of the public in the policy decision making, the appropriate Civil Committee has been established.

With a view to conduct a corruption survey, the Prosecutor's Office is working on the establishing a project. The project is to be supported by the Prosecutor's Office and run by NGOs. The decision to establish such a project has been issued by the Prosecutor General.

**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.*

Azerbaijan has made some important steps forward on the way of ensuring the right to access information. The new Law on Right to Obtain Information, in force since December 2005, prescribes the rules and procedures for request and for information as well as the rules to execute or to refuse the requests; rights and obligations of information owners; regimes of access to information. According to this Law the position of special Ombudsman on information issues is established to ensure control over the observance of the relevant legislation. The Anti-Corruption Commission instructed executive authorities to carry out training on the implementation of the new Law.

In order to detect the whole range of possible deviations, a mechanism of monitoring of implementation of Law provisions in association with NGOs could be introduced. In doing so, the concerns expressed by surveys of the implementation of the Access to Information legislation, carried out by the NGOs, should be given full attention.

**Azerbaijan is largely compliant with this recommendation.**

**National Action Since June 2006 to Implement the Recommendation Further**

Within the period covered, new web-sites have been launched; access to information has also been included in the training curricula of the public institutions. In order ensure the rights to obtain information, the Prosecutor's Office came with the new initiative of operating local institutional applications network. All the applications of citizens to the Prosecutor's Office are processed through this centralised Network. Once the citizen has applied for information and his application is automatically registered with the network, s/he may check the progress of consideration of his/her application.

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# The Law of the Azerbaijan Republic

## ON THE PREVENTION OF CONFLICTS OF INTEREST

### in the Activities of Public Officials

The purpose of this Law is to prevent conflicts of interest during the performance of official duties by public officials. The purpose of preventing conflicts of interest is to ensure that public officials act effectively, fairly, with integrity, impartially, and in a manner that corresponds to the public needs, and which raises society's confidence in public officials.

#### Chapter 1. General Provisions

##### Article 1. Main definitions

1.1. The definitions as used in this Law:

1.1.1. "Public official" – persons listed in Articles 2.1.1 – 2.1.4, 2.1.6 – 2.1.7 of the Law of Azerbaijan Republic "On Combating Corruption". The provisions of this Law shall not apply to the members of Milli Majlis of the Republic of Azerbaijan<sup>1</sup>, members of Ali Mejlis of Nakhichevan Autonomous Republic<sup>2</sup>, judges of the courts of the Republic of Azerbaijan and the employees of the Prosecutor's office. Prevention of conflicts of interest in the activities of these public officials shall be regulated by special laws taking into account the provisions of this Law.

1.1.2. "State institution" - state bodies, state enterprises, companies and organizations; and any other institutions that are financed by state budget.

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<sup>1</sup> Parliament of the Republic of Azerbaijan

<sup>2</sup> Parliament of Nakhichevan Autonomous Republic

1..1.3. “Close relative” - public official’s wife (husband), parents, grandparents, children, including adopted children, siblings, stepbrothers and stepsisters, grandchildren, nieces and nephews, in-laws, uncles, aunts, as well as the spouse’s parents, siblings, stepbrothers, and stepsisters.

1.1.4. “Superior public official” - public official having the authority to supervise the work of public official, or to direct or make recommendations regarding his decision-making.

1..1.5 “Interested persons (hereinafter “interested person”)” are the following:

1.1.5.1 the public official’s close relative;

1.1.5.2 a person who owns 25% or more of the shares of a legal person or an (economic entity) in which the public official also owns 25% or more of the shares; or who owns 25% or more of the shares of a legal person or economic entity in which the public official holds a managerial or supervisory position.

**Another option:**

A person who owns a relevant share in a legal person in which the public official has a relevant share; or a person who owns relevant shares of a legal person in which the public official holds a managerial or supervisory position;

A relevant share (or relevant part of shares) – is a minimum share determined by a relevant executive body depending on the organizational-legal form of a legal person.

1.1.5.3. legal person or an economic entity in which public official or his/her close relative exercise managerial or supervisory functions.

1.1.5.4. legal person or an economic entity in which a public official or his/her close relative owns 25% or more of the shares (another option – relevant part of the shares);

1.1.5.5. a natural person, legal person, or economic entity which owes the public official or his/her spouse, children, or adopted children a financial or a civil law obligation in the amount of two thousand nominal financial units<sup>3</sup> or more.

1.1.5.6. a natural person, legal person, or economic entity to whom the public official or his/her spouse, children, or adopted children owe a financial or a civil law obligation in the amount of two thousand nominal financial units or more.

1.1.5.7. a person to whom are transferred managerial and supervisory functions shown in the article 9 of this Law.

1.1.6. “Conflict of interest” -- is a situation which concerns public official or his/her family members or is a situation in which public official has private interest which is such as to influence or appear to influence objective and impartial performance of his/her official duties.

1.1.7. “Private interest” – advantages, privileges, material, and other benefits for the public official or the interested person. It includes also any liability, whether financial or civil, relating thereto.

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1.1.8. Related laws –Law on “Code of Ethics and Conduct of Civil Servants” of the Republic of Azerbaijan and articles 7-13 of the Law “On Combating Corruption” of the Republic of Azerbaijan.

1.2. Definitions of this Law apply exclusively to the relationships regulated by this Law.

## **Article 2. The Legislation on the prevention of conflicts of interest in the activities of public officials**

The legislation on the prevention of conflicts of interest includes the Constitution of the Republic of Azerbaijan; international agreements to which the Republic of Azerbaijan is a party; this Law; and all other relevant legislative acts.

## **Article 3. The Scope of application of this Law**

This Law shall apply to all public officials within the territory of the Azerbaijan Republic while taking into account the limitations put in the article 1.1.1 of this Law. This law also applies to all public officials outside of the territory of the Azerbaijan Republic, pursuant to the international agreements to which Azerbaijan is a party.

## **Chapter II. Restrictions imposed on public officials**

### **Article 4. Use of official powers for private interests**

4.1 No public official shall use his/her official powers for the benefit of his/her private interests, and shall not permit interested persons to influence the implementation of his/her official duties.

4.2 No public official shall engage any activity, incompatible with his/her official duties and own shares including common property shares in a legal person, which may impair objective and impartial performance of his/her duties.

### **Article 5. Restrictions on activities that may result in conflicts of interest**

5.1 While exercising his/her official duties, no public official shall participate in drafting or adopting any normative legal acts or acts of normative character, decisions, contracts and perform inspectorial or supervisory duties on the issues concerning his/her private interests, or take any other action (inaction) which creates conflicts of interest.

5.2 No public official, for the benefit of his private interests, shall use his/her status, duties, powers, or the status of his/her state institution or municipal body in order to influence another public official in the preparation or adoption of any normative legal acts or acts of normative character or performance of any action (inaction).

5.3 No public official, who was previously a member of managerial or supervisory body of a business entity, after ceasing his/her labor and civil-legal relationships with this entity shall, for a period of two years, adopt any normative legal acts or acts of normative character or decisions regarding such business entity. This does not include persons holding elected positions.

5.4 Public official who is member of a board, in cases where issues examined by this board affect his/her private interests shall inform this body and ask the latter to be authorized to refrain from participating in the examination of these issues.

#### **Article 6. Restrictions on representing natural and legal persons**

6.1. No public official shall represent a state institution or a municipal body in the matters related to his/her private interests.

6.2 No public official shall be a council, expert or attorney or agent in any form of a third person in matters involving the state institution or municipal body where he/she serves.

#### **Article 7. Restrictions on public officials holding additional positions**

7.1 No public official shall engage any activity during the work time, which is inconsistent with the proper discharge of his/ her official duties.

7.2 Public official may exercise scientific and creative activity and may exercise pedagogical activity with the permission of the head of the state institution served by the public official and exercise other activity not creating conflicts of interest.

#### **Article 8. Restrictions on accepting additional payments**

8.1. With the exception of his/her state salary and other lawful payments, no public official shall request, demand, or accept any other advantages, privileges, material, and other benefits in exchange of performing or not performing his/her official duties.

8.2. No public official who represents state institution or municipal body in the managerial and control organs of economic entities shall:

8.2.1. acquire directly or indirectly privileges, advantages, material and other benefits not related to the performance of his/her official duties;

8.2.2 purchase assets, share in the charter capital and the property of the entity which he/she represents;

8.2.3. hold other positions in the economic entity where he/she serves as representative.

8.3. The requirements of the articles 8.2.2 and 8.2.3 of this Law shall apply to the public official during two years after termination of his/her employment as representative.

#### **Article 9: Management of interest in entrepreneurship (business) entity**

9.1. Within one month after appointment or election into his/her position, public official shall transfer his/her managerial or supervisory functions arising from his property share in the entrepreneurship (business) entity to a different legal or natural person. The person receiving such functions cannot be the person indicated in articles 1.1.5.1 to 1.1.5.6 of this Law. The person to whom such managerial or supervisory functions are transferred operate in the entrepreneurship entity in accordance with the legislation in their own name and on behalf of public official until the end of his/her duties.

9.2. Within 10 days after transferring managerial or supervisory functions, public official inform the body envisaged in the Article 18.1.2 of this Law about the legal or natural person to whom these rights were transferred. The information shall include the proofs of the transfer.



## **Article 10: Restrictions on the receipt of gifts**

10.1. No public official shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include minor gifts and use of conventional hospitality.

10.2. Public officials may not solicit or accept multiple gifts from one or more natural persons, legal persons, or economic entities during any twelve month period where the aggregate value of the gifts exceeds fifty nominal financial units.

10.3. Public officials may accept aid for themselves or on behalf of interested persons for medical emergencies or natural disasters.

10.4. In cases where the public official can not determine whether the acceptance of a gift violates this article, he/she must seek guidance from either his/her superior public official or the relevant state body. However, the public official is solely responsible for any liability that may arise from any subsequent acceptance of such a gift.

## **Article 11. Restrictions on business and financial relationships**

11.1 No public official shall request or accept any advantage, privilege, material and other benefits from any natural person, legal person or economic entity in exchange for recruitment or influencing the recruitment of any individual to state institution or municipal body.

11.2 No superior public official shall request or accept any advantage, privilege, material and other benefits from any natural person, legal person or economic entity in exchange for promoting a public official; or for changing his/her powers and duties; or for increasing his/her salary or other lawful payments.

11.3 No superior public official shall enter into business or financial relationships with another public official or that public official's interested person.

11.4 This Article shall apply to public official during two years after termination of his/her employment in the state institution or municipal body.

## **Article 12. Restrictions on aids to state institutions or municipal bodies**

12.1. No public official shall demand or compel natural persons, legal persons or other economic entities to give gifts, donations, financial or technical assistance, or any other form of aid to meet the needs of state institutions or municipal bodies.

12.2. To meet the needs of state institutions and municipal bodies, to raise the qualifications of employees, to improve their working environment and technical equipment, and for any other lawful purpose, state institutions and municipal bodies may receive gifts, donations, financial or technical assistance, or any other form of aid from natural persons, legal persons, or economic entities provided that the acceptance of the grant would not create a conflict of interest. State institutions and municipal bodies shall use this aid for the stated purpose of this aid.

12.3. State institutions, municipal bodies, and public officials shall not give any special preferences, benefits, or privileges to natural persons, legal persons, or economic entities who have given gifts, donations, financial or technical assistance, or any other form of aid to state institutions or municipal bodies.

12.4. No public official shall participate in donations or in collection of other material or technical assistance for the benefit of third persons except for the purposes of humanitarian and charity aids.

**Article 13. Restrictions on participation in state and municipal procurements as well as sales of state and municipal property**

13.1 No public official or his/her interested persons shall be party to a contract for the procurement of goods, works or services with the state institution or municipal body served by the public official.

*Another option:*

*No public official shall be party to a contract for the procurement of goods, works, or services with the state institution or municipal body where he/she serves.*

*Interested persons of the heads of state institution and municipal bodies as well as interested persons of public officials possessing organizational-ordering or administrative-economic functions connected with the purchase of goods, works or services for these bodies shall not participate as a party to a contract for the purchase of goods, works and services for the state institution or municipal body where the public official serves.*

13.2. Including their family members, heads of state institution and municipal bodies and other public officials exercising organizational-ordering and administrative-economic functions in these bodies shall not have a share of more than five percent (including a share of more than five percent in its debts) in a legal person involved in the contract of purchase of goods, works and services for these bodies and may not have managerial and supervisory functions in that legal person.

13.3. No public official shall take part in the negotiating, drafting, or signing of any contract, or any other activity involving a state or municipal procurement, if such participation creates conflicts of interest.

13.4. No public official shall take part in the sale or privatization of state or municipal assets or the grant of state or municipal credits, if such participation creates conflicts of interest.

13.5. If a public official negotiated, drafted, or signed a contract, or performed any other activity involving procurement, he/she shall not enter into a financial or employment relationship with the natural person, legal person, or economic entity that was a party to the contract during the period he/she was a public official. This restriction shall apply to the public official for a period of two years after termination of his/her employment in the state institution or municipal body.

**Article 14. Restrictions on the use of the resources of state institutions and municipal bodies**

14.1 No public official shall use the financial resources, computers, communication systems, transportation means, official stationery, material and technical equipment, and other types of property and resources of the state institution or municipal body where he/she serves for his private interests or for the purposes not connected to the execution of his official duties.

14.2 No superior public official shall request or compel another public official or his/her interested person to perform any activities if this affects the superior public official's private interests.

14.3 No public official shall be engaged in an advertisement activity for his/her private interests using his/her position at the state institution or a municipal body.

### **Article 15. Restrictions on political activities**

No superior public official shall request or compel another public official or the public official's interested person to engage in any activities, including, but not limited to, making any financial contributions or other types of gifts to support a political party, a block of political parties, other non-governmental organizations, or an individual's campaign for elective office.

### **Article 16. Restrictions after ceasing the service duties in state institution or municipal body**

16.1. After termination his/her employment at state institution or municipal body public official shall not take any action (inaction) to use opportunities from his/her previous position to gain any unlawful advantage.

16.2. If public official's duties include exercise of discretionary powers, he/she shall not discuss and negotiate any financial or employment relationship, or be involved in financial relationships with any natural person, legal person, or other economic entity if he/she used such powers with regard to these persons.

16.3. No former public official shall, within a period of two years after the termination of his or her employment with a state institution or municipal body, act as a lawyer, lobbyist, or any other representative for any natural person, legal person, or other economic entity in any matter before the state institution or municipal body that the former public official previously served.

16.4. If a public official worked on a contract, project, work or assignment during the performance of his/her official duties, he/she shall not work on such contract, project, work, or assignment after termination of his/her employment with the state institution or municipal body.

16.5. No public official shall allow proposals of other employment influence impartial and objective performance of his/her duties.

16.6. In cases where proposals of other employment may create conflicts of interest, public official must inform the head of the state institution or municipal body.

### **Article 17. Restriction on the use of information**

No public official shall use the information which is not available to the public, obtained as a result of the official duties, for the purposes beyond his/her official duties or for his/her or third persons' benefit. This restriction applies during the whole period of restriction on information after the termination of employment.

## **Chapter III. Enforcement of this Law**

Article 18. Control over the enforcement of this Law.

18.1 Control over the enforcement of this Law is implemented by:

18.1.1 Heads of state institutions and municipal bodies in service order, superior institution – on the basis of subordination;

18.1.2 Respective state institution, (hereinafter "Enforcement Agency") – according to the rules provided by this Law.

### **Possible options for the Enforcement Agency.**

**Option 1:** Commission on Combating Corruption under the State Council on Management of the Civil Service.

**Option 2:** Newly formed independent entity

**Option 3:** A respective executive body (for instance Commission on the issues of civil service under the President of the Republic of Azerbaijan)

### **Article 19. Control by the head of state institution and municipal body**

19.1. Public official bears personal responsibility for prevention or avoiding conflicts of interest while executing his/her duties. If any of the issues examined by a public official create conflicts of interest, he/she must immediately inform direct superior management or relevant state institution, cease his participation in the solution of such matters, and must take other necessary measures to prevent or eliminate the conflict of interest.

19.2. If head of a state institution or a municipal body discovers a conflict of interest in his/her subordination, he/she must take immediate steps in order to eliminate the conflict of interest, including through delegation fully or partially of a subordinate official's authority to another official. If delegation of such relevant authority to another official is impossible, their implementation is determined by the superior official or in a collegial order.

19.3. Public official may not incite another public official to violate this Law or assist or exercise any other influence over him/her. If faced with pressure over the implementation of his/her duties or with other unlawful influences public official must immediately inform a superior public official or the Enforcement Agency.

19.4. If while being appointed or elected to a position, and implementing after that his/her duties there is a conflict of interest between his/her official duties and private interests public official must inform a superior public official or Enforcement Agency.

19.5. Public officials shall sign a document in which they acknowledge that they became familiar with this and related Laws and that they will comply with these acts. This document is added to their personal files kept in the state institutions or municipal bodies where they are employed.

19.6. The heads of the state institutions and the municipal bodies are responsible for enforcing this Law and all related ethics laws, where applicable and for ensuring that their subordinates comply with these laws. They shall also comply with any directions given to them by the Enforcement Agency in enforcing these laws.

19.7. By 31 January of each year heads of state institutions and municipal bodies present plans over the enforcement of this Law to the Enforcement Agency. These plans shall be implemented upon confirmation of the Enforcement Agency. While confirming the plans the Enforcement Agency must provide a single implementation mechanism of this Law in all state institutions and municipal bodies. The form of the plans is determined by the Enforcement Agency.

### **Article 20. Control by the Enforcement Agency**

20.1. Enforcement Agency has authority over all the public officials indicated in article 1.1 of this Law.

20.2. Enforcement Agency shall cooperate with the heads of state institutions and municipal bodies and for this purpose give relevant instructions for the implementation of this Law.

## **Article 21. Functions of the Enforcement Agency**

21.1. For the implementation of this Law the Enforcement Agency shall:

- 21.1.1. give opinions (explanations) over the implementation of this and related laws in order to prevent and eliminate the conflicts of interest;
- 21.1.2. conduct investigations over the breach of this and related laws;
- 21.1.3. conduct hearings over the breach of this and related laws;
- 21.1.4. take actions to educate public officials and the public on the provisions of this and related laws, for this purpose implement various educational measures and assist state institutions and municipal bodies to conduct such measures;
- 21.1.5. provide proposals over the prevention and elimination of the conflicts of interest;
- 21.1.6. review received applications (appeals, complaints and information) and take respective measures according to the legislation;
- 21.1.7. implement other functions provided for by the legislation;

21.2. Opinion, investigation and hearing functions of the Enforcement Agency are conducted by separate and independent entities and persons.

21.3. The head of the Enforcement Agency for enforcing this Law shall appoint his agent to one or several state institutions and municipal bodies. The local enforcement agents shall be paid employees of the Enforcement Agency.

## **Article 22. Opinions (explanations) on prevention and elimination of conflicts of interest**

22.1. The Enforcement Agency shall give relevant instructions on observance of the requirements of this Law to public officials to avoid conflicts of interest. These instructions shall be considered confidential if the Law does not provide otherwise.

22.2. The Enforcement Agency shall give its opinions (explanations) over the provisions of this Law. The opinions (explanations) of the Enforcement Agency shall be given on the basis of inquiry of a public official or its superior official and shall be referred only to such persons. The inquiry shall be given in the form defined by the Enforcement Agency and shall be signed by the person providing the inquiry. The Enforcement Agency shall give its explanations (opinions) in accordance with the facts shown in the inquiry or the facts introduced in written form after receiving the inquiry.

22.3. Opinions (explanations) shall be given only in connection with future activities or actions of officials. Public official cannot be held responsible for acting in accordance with the comment, excluding the cases when essential facts are elaborately hidden or distorted in the inquiry introduced for the opinions (explanations). The Enforcement Agency may make changes into given opinions (explanations) by informing the relevant official. Such changed opinions (explanations) shall be referred to the future activities and actions of the public official.

22.4. Inquiry and opinions (explanations) based on the inquiry shall be considered confidential. The Enforcement Agency may publish fully or partially the opinions (explanations) with the condition of not disclosing the identity of a public official and relevant third person.

22.5. Public official or his/her superior public official may ask the Enforcement Agency to investigate conflicts of interest in the former and future activities of that official and make relevant decision. Such appeals shall be investigated according to the rules on reviewing applications by the Enforcement Agency.

## **Article 23. Applications on conflicts of interest.**

23.1. The Enforcement Agency shall accept applications (appeals, complaints and information) over the alleged violation of this Law. Applications can be accepted in written form by post or by other electron communication means or by direct delivery.

23.2. The Enforcement Agency shall undertake one of the following measures within 10 days after receipt of the application:

23.2.1. dismiss the application if it is not grounded or if no further action is required.

23.2.2. refer the application to the relevant state institution or municipal body if the application alleging violation this Law and related laws deems to be minor or if related disciplinary charges are pending against the public official.

23.2.3. refer the application to investigation, if it is grounded, in order to determine what action is appropriate;

23.2.4. make an initial determination that there is probable cause to believe that a public servant has violated this Law or related laws.

23.3. Enforcement Agency may receive anonymous applications. Such applications may only be used to evaluate a general situation on the conflicts of interest.

23.4. Every public official shall have the obligation to report, directly, and without undue delay, to the direct superior public official or to the Enforcement Agency any information concerning conduct which he or she knows or should reasonably know to involve a violation of this Law and related laws. The intentional failure of a public official to make this required report shall constitute cause for disciplinary penalty.

23.5. State institution or municipal body which receives a complaint over a violation of this Law or related laws or reveals such a violation which is not within its discretion shall submit this information to the Enforcement Agency. Information received in this manner is investigated in the same manner as the complaints presented directly to it.

23.6. The Enforcement Agency shall defend all public officials who lodge complaints with, provide information to, or cooperate with the Enforcement Agency under this Law against any job-related retaliation by their state institutions, municipal bodies, and superior public officials. The Enforcement Agency shall give recommendations to management of state institution, municipal body or superior public official to take any action to protect such public officials, and reverse any act of retaliation against them.

## **Article 24. Investigation Procedures**

24.1. A special unit shall be established within the Enforcement Agency for conducting investigations related to the breach of this and related laws.

24.2. The basis for starting the investigation by the Enforcement Agency shall be applications received by the Enforcement Agency or information from mass media or disclosure of this information by the Agency itself.

24.3. While conducting investigation the Enforcement Agency may receive explanations from relevant persons, and in accordance with the legislation may require information from the banks and other credit organizations, telecommunications entities and other natural and legal persons and economic entities. State institutions and municipal bodies shall present documents and information required by the Enforcement Agency relating to the investigations.

24.4. Declarations submitted in accordance with the law on "Rules on presenting information of financial character by the public officials" shall be submitted to the Enforcement Agency by its request with the purpose of determining the breach of this and related laws.

24.5. The Enforcement Agency may require any public official, natural person or legal person, or other economic entity to answer questions concerning any matter relating to the investigation regarding the enforcement of this Law and the related laws.

24.6. Public officials shall cooperate with the Enforcement Agency. Public official who hinders, interferes with, or obstructs an investigation conducted by the Enforcement shall be subjected to liability determined by law.

24.7. In cases provided for in article 23.2.4 and based on investigation that there is a probable cause to believe that the public official has violated a provision of this Law or related laws, the Enforcement Agency shall notify the public official of its determination in writing. The notice shall contain a statement of the facts upon which the Enforcement Agency relied for its determination and a statement of the provisions of this Law and related laws allegedly violated. The notice shall also indicate procedural rules of the Enforcement Agency. Public official shall have 15 days to respond, either orally or in writing, and shall have the right to be represented by counsel.

24.8. Within 15 days after the receipt of the public official's response, the Enforcement Agency shall:

24.8.1. dismiss the matter and inform the public official in writing of its decision, if determines that there is no probable cause to believe that a violation has occurred of this Law or related laws; or

24.8.2. start a hearing on public official, if after the consideration of the response by the public official, the Enforcement Agency determines there remains probable cause to believe that a violation of the provisions of this Law or related laws has occurred.

24.9. The Enforcement Agency shall compile a confidential report based upon the investigation facts and adds explanations obtained from the public official over the course of the investigation into the report.

24.10. If elements of criminal or administrative violations are discovered in the course of investigation, the Enforcement Agency shall submit a report to a relevant law enforcement body.

## **Article 25. Hearings**

25.1. A special unit shall be established within the Enforcement Agency responsible for conducting hearings of alleged violations of this Law and related laws.

25.2. The Enforcement Agency shall adopt rules of procedure for hearings on alleged violations of this Law and related laws. These rules of procedure shall contain at least the following rights of public officials:

25.2.1. To study the materials of the hearings;

25.2.2. To be represented by representative of a personal choice and to have a right to defense;

25.2.3. To be informed about the date, time and the place of the hearings;

25.2.4. To protest to the person conducting hearings if there are sufficient grounds as to the impartiality and objectivity of the hearing officer;

25.2.5. To participate in the hearings, present explanations, petitions and documents;

25.2.6. To obtain a copy of the hearings' decision;

25.3. All hearings shall be conducted by hearing officers who shall be lawyers with five years of experience.

25.4. All hearings shall be open to the public, and a record of each hearing shall be made.

**Another option:** *Hearings of the board shall not be public unless requested by the public official. The order and the findings and conclusions shall be made public.*

25.5. The Enforcement Agency and the defendant-public officials shall have all the rights for the parties of a criminal process provided by the criminal procedural legislation of Azerbaijan Republic, including the right to present witnesses and other evidence; the right to review the evidence presented against them; the right to cross-examine the witnesses against them; and the right to appeal any decisions against them.

25.6. During the hearings facts confirming the violation of this or related laws are presented and defended by the investigative unit.

25.7. If public official has not been informed about the date of the hearing in an appropriate way or if he/she had a valid reason to miss the hearing, the review of the case shall be adjourned. If the public official has been informed about the date of the hearing and got familiarized with the materials and has not had a valid reason to miss the hearing, the Enforcement Agency shall hear the case without his presence. The official record shall be made about refusal to get familiarized with the documents or attend the session.

25.8. If the Enforcement Agency determines, after the hearing, that the defendant-public official has violated the provisions of this Law or related laws, it shall submit a written Report to the head of the state institution or municipal body served by the public official. The Report shall include a description of all of the evidence heard at the hearing, and a recommendation for the disposition of the case, including dismissal of the case or an appropriate disciplinary penalty. In the event that the defendant - public official was appointed by the President of the Republic of Azerbaijan or the Prime Minister of the Republic of Azerbaijan, this Report shall be submitted to the President or Prime Minister.

25.9. The President of Azerbaijan Republic, the Prime Minister of Azerbaijan Republic, the head of the state institution or municipal body, may either accept or reject the Report submitted by the hearing officer.

25.10. The head of state institution and municipal body shall justify its decision on rejection of the report and in writing shall inform the Enforcement Agency.

## **Article 26. Report of the Enforcement Agency**

26.1. Enforcement Agency shall draft an annual report on its activity and submit it to the President of the Republic of Azerbaijan.

26.2. The report of the Enforcement Agency shall include opinions, explanations and recommendations on prevention and elimination of conflicts of interest as well as information on its activities, awareness raising campaigns, investigations, hearings, statistic information, status of incoming complaints, information about other cases connected with implementation of law without disclosing confidentiality of private life of persons.

## **Article 27. The Responsibility for the violation of the Law**

If a public official's violation of the provisions of this Law creates civil-legal, administrative or criminal, liability, responsibility for that shall be imposed on him or her, as prescribed by relevant legislation of Azerbaijan Republic. If the violation of the provisions of this Law does not create administrative or criminal responsibility such violation is subject to disciplinary liability provided for by the legislation.



## **Article 28. Confiscation of unlawfully obtained property and compensation of unlawfully obtained privileges or advantages**

28.1 The property unlawfully obtained by officials and former officials as well as the costs of unlawfully obtained by them privileges or advantages shall be voluntarily compensated to the benefit of the State. In cases, where officials and former officials refuse to return the unlawfully obtained property or to compensate it as well as the costs of the unlawfully obtained privileges or advantages, the unlawfully obtained property or its costs and the costs of the unlawfully obtained privileges or advantages shall be compensated to the benefit of the State by a court decision on the basis of a lawsuit brought in by the State institutions or municipal bodies concerned.

28.2 Pending judicial examination, measures may be taken by a court against the property of the respondent as provided for in the Civil Procedure Code of the Republic of Azerbaijan .

## **Article 29. Nullification of acts adopted in violation of the Law**

Acts adopted in violation of the law may be revoked by state institutions, municipal bodies or by court pursuant to requests made by representatives of respective state institutions, municipal bodies and other persons.

## **Article 30. Transitional Provisions**

After confirmation of the plans envisaged in the article 19.7 of this Law state institutions and municipal bodies must present these plans within four months.

## **Article 31. Effective date of this Law**

This Law shall be effective on the date of its publication.

# The Law of the Republic of Azerbaijan

## RULES OF ETHICS AND CONDUCT OF CIVIL SERVANTS

This Law determines the norms of ethics and conduct that civil servants have to observe and legal mechanisms for their fulfillment.

### Chapter 1. General Provisions

#### Article 1. The scope of the Code

- 1.1 This Code applies to all individual who has the status of civil servant.
- 1.2 Every civil servant with respect to the rule of law, human rights, democratic principles and rules of ethical behavior shall observe the regulations of this Code.

#### Article 2. The objectives of the Code

- 2.0 The objectives of this Code are:
  - 2.0.1 to increase and strengthen the prestige of state bodies and civil servants and to increase the confidence of citizens to state bodies and civil servants;
  - 2.0.2 to increase the efficiency and transparency in the activities of civil servants and state bodies;
  - 2.0.3 to prevent corruption in state bodies and conflicts of interest in the activities of civil servants;
  - 2.0.4 to provide observance of rules of ethical behavior by civil servants;
  - 2.0.5 to inform the public on behavior expected from the civil servants;
  - 2.0.6 to broaden the scope of influence of citizens to the evaluation of the activities of state bodies and civil servants;

#### Article 3. Legal regulation of service conduct

- 3.1 Service conduct of a civil servant is the activity related to realization of the rights and execution of duties required by law.
- 3.2 Service conduct of civil servant is regulated by this law and other normative legal acts.

3.3 The norms for implementing the service conduct rules determined by this Code and provisions for their observance can be determined by other normative legal acts of state bodies. These normative legal acts should not contradict this Code.

## **Chapter 2. The rules of service conduct**

### **Article 4. Honest service conduct**

4.1. Service conduct that guarantees civil servants to fulfill their service duties more effectively for the sake of the interests of citizens, society and the state is called honest service conduct.

4.2. Civil servant should observe the rules of honest service conduct determined by this Code and other normative legal acts.

4.3. Civil servant shall be a good example of honesty in all cases for other civil servants and general public.

### **Article 5. Professionalism and increasing individual responsibility**

5.1. Civil servant should carry out his/her duties with the highest degree of professionalism in order to provide effective work of state body where he/she serves in accordance with the laws of the Republic of Azerbaijan and other normative legal acts.

5.2. Civil servant shall with his/her high ethical conduct build, support and strengthen faith of legal and natural persons toward state bodies and to his/her professional work.

### **Article 6. Loyalty**

6.1. Civil servant shall avoid critical public judgments and speeches about the work of state bodies and the work of their leaders and public assessment of their work (except for any illegal activity) if it is not included into his/her service duties.

6.2. Civil servant shall avoid any actions that will bring damage to his/her name and bring down the prestige of the state body.

6.3. Civil servant shall observe the rules on open public speeches determined within the state body.

6.4. Civil servant shall observe the restrictions determined by law in regard to civil service.

### **Article 7. Public Confidence**

7.1. Civil servant is obliged to strengthen the prestige of the Republic of Azerbaijan, the state body and civil service and to make his/her honor and name high.

7.2. Civil servant is obliged to eliminate the consequences of breaking the rules of honest service conduct by him/her, as well as shall take measures to regain public confidence.

7.3. Civil servant should have respect to representatives of mass media that are informing the public about the activities of state bodies and their public officials, as well as should assist them in getting true (correct) information in accordance with the legislation.

## **Article 8. Respect to the rights, freedoms and legal interests, honor and dignity and business reputation of individuals**

8.1. The activities of civil servants shall serve to the guarantee, defense and protection of rights and freedoms and legal interests of individuals.

8.2. Civil servant should avoid actions (or inactions) that would restrict the rights and freedoms and legal interests of individuals and offend their honor and dignity and damage their business reputation.

8.3. Except for the cases determined in legislation, civil servant should guarantee confidentiality of information which is obtained as a result of the official duties on private life, honor and dignity of legal or natural persons, as well as other civil servants.

## **Article 9. Courtesy**

Civil servant should be polite, kind, considerate and patient towards all legal and natural persons, as well as with his/her direct or superior supervisor and with employees working under his/her supervision.

## **Article 10. Implementation of orders, tasks or decrees**

10.1. Civil servant is obliged to carry out lawful orders or decrees issued by his/her direct or superior supervisor within their authorities.

10.2. In case where civil servant comes to a decision that any order or decree issued by his/her direct, or superior supervisor contradicts the law, or other normative legal acts, he/she should submit his/her grounds about it in a written form to his/her direct or superior supervisor and he/she should demand his/her immediate supervisor to pass these orders, or decrees in a written form. If after the civil servant gets this order or decree approved in a written form still continues to believe that they contradict the law, or other normative legal acts, he/she can refuse to carry out that order of decree.

## **Article 11. Impartiality**

11.1. Civil servant should be impartial when issuing decisions and while carrying out service duties he/she should not give any advantage to persons or a group of persons' according to their race, nationality, language, gender, social background, property and service status, attitude towards religion, faith, social unions, as well as to what society they belong to.

11.2. Civil servant is obliged to observe political neutrality while carrying out his/her service duties.

11.3. Civil servant should avoid any influence of his/her private interests or interests of interested persons in carrying out his/her service duties.

## **Article 12. Attitude towards material and other wealth, privileges or concessions**

12.1. Civil servant is not allowed to do any action (or inaction) or to issue any decision toward getting illegal material and other wealth, privileges or concessions.

12.2. Civil servant should take all measures to exclude any material and other wealth or privileges and concessions deriving from his/her actions (or inactions) and decisions.

12.3. Civil servant who serves individuals (persons) on a free of charge basis determined by legislation cannot request any payment for the same service (services).

12.4. Civil servant, who serves individuals (persons) or gives decisions on the basis of officially determined payment for this service (services), can not request more commission than what has already been determined for that service (services).

### **Article 13. Prevention of corruption**

13.1. If civil servant is offered illegal material and other wealth, privileges, or concessions, that civil servant should refuse taking them. If material, or other wealth, privileges or concessions are taken by civil servant because of the reasons not depending on him/her, he/she should inform his/her immediate supervisor about it and material, other wealth, privileges or concessions should be turned over with act to the state body where the civil servant works.

13.2. Civil servant can not be party to a contract with the state body where he/she serves.

### **Article 14. Restrictions on acceptance of gifts**

14.1 Civil servant shall not request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include minor gifts and use of conventional hospitality.

14.2 If civil servant can not come to a decision on taking, or refusing the gift, or benefiting from the hospitality or not, he/she should get his/her immediate supervisor's opinion about it.

### **Article 15. Prevention of conflicts of interest**

15.1 Civil servant should not let the conflicts of interest to occur while performing his/her service duties and should not illegally use his/her public authorities for his/her private interests.

15.2 In cases when conflicts of interest may occur between the service duties and private interests of civil servant he/she in conformity with the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including the period after that.

15.3 Civil servant should inform the head of the state body in cases where offers of new employment risk creating conflicts of interest. Civil servant can not be hired to any position at any of the organizations, enterprises or their branch offices that was under his/her control during his/her service time for the term determined in legislation.

15.4 Civil servant must carry out other measures determined in law in order to prevent conflict of interests.

15.5 Civil servant when appointed to office and after that shall get acquainted with ethics rules, legal normative and normative acts on combating corruption and prevention of conflict of interests. He/she must request his/her direct or superior supervisor for any questions regarding the observance of the requirements of these acts if they arise.

### **Article 16. Use of property**

16.1. Civil servant should economically and effectively use of state property, financial means, computer and other communication systems, transport means, organizational-technical, material and other means that he/she has authority to use.

16.2. Civil servant is not allowed to use state property, financial means, computer and other communication systems, transport means, organizational-technical, material and other means for private interests, as well as for other reasons inconsistent with the fulfillment of his/her duties.

#### **Article 17. Use of Information**

17.1. Civil servant should provide distribution and access to the information, which is at the disposal of the state body where he/she serves in conformity with the rules determined by the legislation.

17.2. Civil servant should respect the rules defined by the state body of access to service information.

17.3. Civil servant can not use the information obtained during his/her term of service for his/her private interests

#### **Article 18. Public and political activity**

18.1. Civil servant has the right to be a member of a public or political union if there is no any other rule determined by the Legislation.

18.2. Civil servant should not let his/her activity in public, political life, or his/her membership to any public, political union to create any doubt on fulfilling his/her duties impartially.

18.3. Civil servant should not involve other civil servants to the activity of political parties, public unions and religious organizations.

18.4. Civil servant is not allowed to create structural departments of political parties, other public unions (except for trade unions), religious organizations within state bodies, or assist creating above mentioned departments and structures within those bodies.

18.5. Civil servant is not allowed to abuse his/her post and use his/her authorities for his/her own benefit, or other candidates, political parties and election blocs during the elections.

### **Chapter 3. Provision of official conduct performance**

#### **Article 19. Provisions system**

19.0. Observance to the rules of official conduct performance by civil servant is provided as shown below:

19.0.1. by regular analysis of compliance of official conduct of civil servant by himself/herself, his/her direct, or top supervisor;

19.0.2. by performing actions stated in this chapter by civil servant, his/her direct, or top supervisor.

#### **Article 20. Control of observance of official conduct rules**

20.1 Control of observance of official conduct rules:

20.1.1. Head of state institution – as a service duty, superior body – on the basis of subordination;

20.1.2. Respective state body (hereinafter “Controlling body”) – carries out as determined in this law.

## **Article 21. Control by the head of state body**

21.1. Control of observance of official conduct rules in state bodies are carried out by respective units of those institutions.

21.2. The head of state body shall:

21.2.1. control the consistency of the official conduct of employees working under his/her supervision with the official conduct rules determined by this law and carry out its analysis;

21.2.2. be example for official conduct with his/her official conduct;

21.2.3. determine the capacity of service authorities and responsibilities of employees working under his/her supervision with accuracy according to the positions they are holding;

21.2.4. not influence employees under his/her supervision to actions that are illegal and are not in compliance with generally accepted ethic norms;

21.2.5. observe the requirements of the law while recruiting personnel to the state bodies and their structures headed by him/her;

21.2.6. take preventive measures for the observance of official conduct rules;

21.2.7. explain the honest official conduct rules to civil servants working under his/her supervision, and give recommendations on the rules of honest official conduct to them if they ask for any;

21.2.8. draft normative acts within the frame of his/her authorities specifying the rules of honest official conduct determined by this Code and their observance provisions and approve them;

21.2.9. take measures for subjecting civil servants who breached official conduct rules to disciplinary measures;

21.2.10. take measures to educate citizens and organizations on official conduct rules and that they have right to demand civil servants to observe the rules of official conduct;

21.2.11. inform citizens, organizations and state bodies about measures taken related to inobservance cases of the rules of honest official conduct;

21.2.12. take measures to eliminate the consequences of the violation of the rules of official conduct, as well as measures to regain public confidence to state body;

21.2.13. perform other activities related to observance of official conduct rules determined by legislation.

## **Article 22. Control from the Controlling body**

22.1. Controlling body shall have the following authorities with the purpose of observance of official conduct rules determined by this law and coordination of the issues arisen from the enforcement of this law:

22.1.1. study the state of observance of official conduct rules determined by this law and generalize information in this regard;

22.1.2. receive information and complaints from civil servants and other persons related on the breach of the provisions of this law;

22.1.3. make proposals or recommendations arisen from the solution of issues mentioned in received complaints and information;

22.1.4. take measure for studying public opinion related to the issues of official conduct of civil servants and carry out public awareness in this regard;

22.1.5. carry out researches related to the issues of official conduct of civil servants and compile reports and recommendations in this regard;

22.1.6. cooperate with independent experts, media and NGO's related to the issues of official conduct of civil servants;

22.1.7. send received materials to respective bodies if any criminal elements appear in those materials;

22.1.8. make proposals related to the improvement of the law on issues of official conduct of civil servants;

22.1.9. carry out other authorities determined in the legislation;

22.2. Respective executive body (Controlling Body) can not interfere in any way into the disciplinary proceedings initiated against civil servant for breach of official conduct rules.

### **Article 23. Liability for inobservance of the rules of official conduct**

23.1. Breach of official conduct rule is the basis for involving civil servant into disciplinary liability measure.

23.2. Involving civil servant into disciplinary liability measure is carried out according to the rules and period determined in law.

23.3. Disciplinary measure can be proceeded in below mentioned cases:

23.3.1 Complaint or other information on the breach of the requirements of this law by civil servant is submitted by natural or legal persons;

23.3.2 Information on the breach of the provisions of this law by civil servant and occurrence of conflict of interests is published in media;

23.4. The head of the state body shall inform the criminal prosecution body if criminal elements are discovered in committed offence by civil servant while proceeding disciplinary measures.

23.5. Civil servant shall inform the relevant bodies according to legislation if he/she possesses information on the breach of the provisions of this law by other civil servant. Civil servant cannot be held liable in any other form for provision of such information.

### **Article 24. Effective date of this Law**

This Code shall be effective on the date of its publication