Fighting Corruption
in Transition Economies

Azerbaijan

EMERGING ECONOMIES TRANSITION

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Fighting Corruption in Transition Economies

Azerbaijan

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АЗЕРБАЙДЖАН

FOREWORD

The fight against corruption has only recently been placed on the international policy agenda, despite its long-known effects on democratic institutions and economic and social development. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption. The main contribution by the OECD has been in the area of fighting corruption in international business transactions. The 1997 *Convention on Combating Bribery of Foreign Public Official in International Business Transactions,* together with the 1996 *Recommendations* and 1997 *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* were adopted by all OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery.

The *OECD Guidelines for Multinational Enterprises* and *Principles of Corporate Governance* are non-binding tools that help level the competitive playing field for companies and ensure the integrity of business operations. The OECD also addresses the demand side of bribery through its work on public governance, which includes *Recommendations on Improving Ethical Conduct in the Public Service, Guidelines for Managing Conflict of Interest in Public Service* and *Best Practices for Budget Transparency*. The *Support for Improved Governance and Management Programme (SIGMA)* helps the EU candidate and new member countries to reform their public administration, and to strengthen their public procurement and financial control systems. The OECD also fights corruption in aid-funded procurement and has endorsed the *Recommendations on Anti-Corruption Proposals for Bilateral Aid Procurement*.

The OECD supports several regional initiatives to promote anti-corruption actions in non-member countries. The Anti-Corruption Network for Transition Economies — one such initiative — assists the countries of Central, Eastern and South Eastern Europe, Caucasus and Central Asia in their fight against corruption by providing a regional forum for exchanging experience and elaborating best practices. Ministers launched the Istanbul Anti-Corruption

Action Plan in 2003 to provide targeted support to Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine. Implementation of this Action Plan includes reviewing the legal and institutional framework for fighting corruption, identifying its achievements and weaknesses, and proposing further actions.

The review was based on the OECD methodology for self-assessment and peer review. Self-assessment reports were prepared by the governments of Istanbul Action Plan countries. International teams of experts reviewed the reports and provided their assessment and recommendations. The recommendations were endorsed at review meetings, which brought together national governments of Istanbul Action Plan countries, other transition economies and OECD countries, international organisations, international financial institutions, as well as civil society and business associations involved in fighting corruption in the region. The recommendations contain country specific actions in areas such as strengthening anti-corruption policy and institutions, reforming anti-corruption legislation according to international standards, and implementing preventive measures by ensuring an ethical civil service and effective financial control.

This report presents the first systematic international anti-corruption review of Azerbaijan. The results, presented in this publication, provide an important guide for this country in its anti-corruption efforts. The recommendations provide a benchmark for regular monitoring of Azerbaijan's progress. This report also serves as a reference for other partners involved in fighting corruption not only in transition economies, but also in other regions of the world.

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ACKNOWLEDGEMENTS

The review of the legal and institutional framework for fighting corruption in Azerbaijan was carried out within the framework of the Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Russian Federation, Tajikistan, and Ukraine.

Olga Savran, OECD Anti-Corruption Division, provided the general management for the Istanbul Action Plan, including the review process. Goran Klemencic, legal advisor to the Istanbul Action Plan, took the lead in designing the review framework, co-ordinated the expert review teams, and managed the review meeting. Nicola Bonucci, Acting Head of the OECD Anti-Corruption Division, chaired the review meeting and ensured effective discussions which resulted in the endorsement of recommendations by consensus of all the parties.

Eldar Nuriyev, Deputy Prosecutor General, led the Azeri delegation at the review meeting. The delegation included Azar Jafarov, Ministry of Justice; Inam Karimov, Administration of the President; Rufat Aslanli, National Bank; Kamran Aliyev and Elnur Musayev, Office of the Prosecutor General. Mr. Jafarov co-ordinated Azeri participation in the Istanbul Action and Mr. Musayev provided valuable expert support during the review.

The team of review experts who examined the self-assessment report for Azerbaijan and developed the draft assessment and recommendations included:

- Henrik Horn, Ministry of Justice and Police, Norway
- Valts Kalnins, Centre for Public Policy Providus, Latvia
- Igor Kamynin, General Prosecution, the Russian Federation
- Marizo Khalifaev, General Prosecution, Tajikistan
- Bostjan Penko, Office for the Prevention of Corruption, Slovenia
- Daniel Thelesklaf, TVT Compliance Ltd, Switzerland.

Sabit Bagirov, Transparency International Azerbaijan, presented the civil society position paper at the review meeting.

The review meeting, which examined the self-assessment report and endorsed the recommendations, brought together representatives from all Istanbul Action Plan countries, as well as selected OECD countries and transition economies (Canada, Moldova, Norway, Switzerland, Turkey and the US), international organisations (Council of Europe/GRECO, UNDP, UNODC, EBRD and OSCE), civil society and business associations (ABA CEELI, Transparency International, Open Society Institute and BIAC).

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INTRODUCTION

Istanbul Anti-Corruption Action Plan

The Istanbul Action Plan for Armenia, Azerbaijan, Georgia, Kazakhtan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed at the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in September 2003 in Istanbul. ACN Secretariat, based at the OECD Anti-Corruption Division, provides secretarial support for the Istanbul Action Plan. An Advisory Group was established to assist the Secretariat to develop, implement and assess the Work Programme of the Istanbul Action Plan; the Group brings together national coordinators from the Istanbul Action Plan countries, OECD members and donor agencies, international organisations, civil society and business groups.

The implementation of the Action Plan foresees several phases: review of legal and institutional framework for fighting corruption and endorsement of recommendations; implementation of the recommendations though national actions and international support; and review of progress in implementing the recommendations. The first phase – country review of legal and institutional frameworks for fighting corruption – has been conducted in 2004.

Country Reviews

The methodology of the review was based on the OECD practice of mutual examination, and took account of the experience of other organisations, such as the Council of Europe and its GRECO review programme. The Istanbul Action Plan review included the following elements: self-assessment carried out by the governments of examined countries; expert analysis of the self-assessment report by a team of peer reviewers; discussion of the assessment and recommendations developed by the experts during Istanbul Action Plan review meetings; and endorsement of country recommendations based on consensus.

To help the governments to carry out the self-assessment, the Secretariat developed Guidelines for Status Reports. The Guidelines included a series of questions with comments, covering the following areas: national anti-corruption strategy; promotion of accountability and transparency (ethics in the public service; public procurement; financial control; tax and customs systems; money laundering; corporate accounting and auditing; access to information; private sector and civil society involvement; political party financing); criminalisation of corruption (definition and elements of offences including active and passive bribery and other corruption related offices; sanctions; statute of limitations; definition of a public official; defences and immunities; jurisdiction; confiscation of proceeds; corruption in private sector and liability of legal persons); specialised service; investigation and law enforcement (distribution of powers between law enforcement agencies; mandatory and discretionary prosecution; investigative capacities; organised crime and corruption); international aspects and mutual legal assistance.

The self-assessment reports were developed by the governments of the Istanbul Action Plan countries, based on the inputs of their national institutions, involved in the prevention and combating corruption. The reports were supported by extracts from various legal acts. These reports provided the main basis for country examinations. Additional publicly available sources of information were used as well, such as reports developed by other international organisations. Reports specially prepared for this review by the civil society groups provided an important input.

Teams of review expert teams were established for each country. The experts were nominated by the governments of Istanbul Action Plan countries (excluding the examined country), other transition and OECD countries, international organisations and civil society groups participating in the Action Plan. The expert teams studied the reports and other available information, and developed draft assessments and recommendations for each country. The draft assessment and recommendations were presented at review meetings, which brought together some 80 participants, representing all the main stakeholders. The review meetings provided an opportunity for the national delegations to present their self-assessment report, the review team presented draft assessment and recommendations, and all the participants debated final recommendations. The recommendations were endorsed by consensus.

Assessments and Recommendations

The recommendations include general assessment and recommendations, followed by concrete recommendations in three broad areas: national anti-

corruption policy and institutions; legislation and criminalisation of corruption and transparency of the civil service. The assessment and recommendations vary among the countries reflecting different national situations. While it is impossible to summarise the findings for all the countries, a number of common issues emerged during the review.

Anti-Corruption Policies and Institutions

Many countries have declared the fight against corruption a key priority in the broader framework of economic and social reforms. At the time of the reviews, Georgia and Ukraine were entering the stage of updating their existing anti-corruption strategies; Armenia has adopted its anti-corruption strategy; Azerbaijan and Tajikistan were in the process of elaborating and adopting such policy instruments. While recognising these achievements, the recommendations stress the need to improve the analytical basis for such programmes, including the need to study the patterns and trends of corruption in each country, to identify sectors and institutions where the risk of corruption is particularly high. The recommendations call for reinforcement of implementation measures, and a balanced approach of repressive and preventive measures. They further underline the importance of a participatory process for the elaboration and monitoring of anti-corruption programmes and strategies, which should involve all branches of public authorities, civil society and private sector. Finally, the recommendations stress the importance of effective monitoring and reporting mechanisms to support the implementation of anti-corruption policies.

Armenia, Georgia and Ukraine have established anti-corruption councils or committees responsible for the elaboration and/or monitoring of the implementation of anti-corruption strategies. The recommendations call to strengthen these bodies by ensuring their independence and high moral of their members, promoting public involvement in their work and providing adequate resources for their effective operations. Establishing a national multi-stakeholder anti-corruption council was recommended for Tajikistan. In addition to these policy bodies, it was recommended for all countries to establish specialised anti-corruption law-enforcement agencies, responsible for detection, investigation and prosecution, as well as for the coordination among other law-enforcement agencies involved in the fight against corruption.

The recommendations for all countries stress the importance of awareness raising among the general public and public officials, and training at all levels, including corruption-specific training for policy, prosecutors, judges and other law enforcement officials.

Legislation and Criminalisation of Corruption

The assessment of national anti-corruption legislation confirmed that all reviewed countries have developed core legislation criminalising corruption and corruption related crimes, but national anti-corruption legal standards fall short of international anti-corruption standards, such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The recommendations in the field of anti-corruption legislation require from all countries of the Action Plan to reform national legislation and to bring in line with the international anti-corruption standards, including the following recommendations:

- Criminalise offer and promise of bribe, non-material benefits and trading in influence, and bribery though a third person; clarify provisions about gifts to officials;
- Ensure adequate sanctions for corruption and corruption related offences, strengthen sanctions for active bribery;
- Ensure effective responsibility of legal persons for corruption;
- Ensure mandatory confiscation of proceeds, value based confiscation, and confiscation from third persons; consider introducing legal provisions for checking and seizure of unexplained wealth;
- Ensure sufficient statute of limitation for corruption and corruption related offences;
- Ensure that definition of a public official is broad enough to include all levels of power, state representatives on boards of companies, foreign and international officials;
- Reduce scope of immunities and categories of officials who benefit from them, clarify criteria for lifting immunities;
- Ensure effective international mutual legal assistance;
- Ratify the Council of Europe and the UN Conventions against corruption.

The recommendations call the countries to harmonise their anti-corruption legislation in order to ensure that the provisions of Laws on the Fight against Corruption, which were recently adopted in many countries, are adequately reflected in the Criminal Code and other relevant legislation, and that disciplinary, administrative and criminal corruption offences do not contradict each other, and do not leave legal gaps.

The reviews stressed that more information was needed to assess actual interpretation and implementation of the legal texts. The recommendations call the countries to evaluate continuously the application of their national anti-corruption legislation, and to develop it further based on the analysis of its effectiveness.

Transparency of Civil Service

During the review of corruption prevention measure in civil service, countries have reported about their efforts in developing regulatory frameworks in such areas as merit-based civil service and management of conflict of interest; transparency and fairness in public procurement and taxation; financial control and anti-money-laundering; political party finance; and public access to information. The recommendations propose further reforms in these areas, including the following:

- Introduce unified merit-based system for appointments and promotion in the civil service, which would, to the extend practicable, limit discretional decisions;
- Elaborate and disseminate comprehensive practical guides for public officials on corruption, conflict of interest, ethical standards, sanctions and reporting of corruption; provide training on anti-corruption to officials; introduce codes of conduct for civil servants, particularly in the agencies where the risk of corruption is high; consider the introduction of an ethics supervision body/commissioner;
- Ensure effective implementation of Conflict of Interest legislation, including strengthening of monitoring of its implementation, empowering relevant institutions to verify the accuracy of submitted declaration of assets, sanctions for failure to comply with requirements; Improve the mandatory asset disclosure system for higher ranking public officials in all branches of government;
- Adopt measures for the protection of employees in state institutions and other legal entities against disciplinary action and harassment when they report legitimate suspicious practices within the institutions to law enforcement authorities or prosecutors, by adopting legislation or regulations on the protection of "whistleblowers"; improve the system of internal investigations in cases of suspected or reported corruption offences;
- Introduce measures to limit discretion in public procurement; introduce eligibility criteria to exclude from bidding companies,

which had been convicted for corruption; promote electronic contracting; enhance transparency of procedures and publishing public procurement information;

- Review the regulatory framework for taxation to reduce incentives for tax evasion and to limit the discretionary powers of tax officials;
- Pursue the implementation of the FATF recommendations; adopt and enact anti-money laundering legislation; establish and strengthen Financial Intelligence Units; build expertise necessary for financial investigations in corruption-related cases, ensure coordination and exchange of information with financial control/audit institutions;
- Consider establishing an office of an Information commissioner to receive appeals under the Law on Access to information; limit discretion of officials and the scope of information that could be withheld; enhance cooperation with civil society.

Implementation of Recommendations

While these recommendations are not legally binding, they represent the commitment of the participating states, and are expected be implemented as such by their governments. Implementation of these recommendations will not only support the objectives of the Istanbul Anti-Corruption Action Plan, but will also help the countries to meet their legally binding obligations under the United Nation's Convention on Corruption and the Council of Europe's Criminal Law Convention on Corruption.

Besides, the results of the reviews provide a framework for launching the second phase of the Istanbul Action Plan, which will focus at the regular monitoring of national actions to implement the recommendations and at thematic reviews on selected priority issues; they will also provide a benchmark for review of implementation of recommendations, planned under the third phase of the Action Plan.

Following the Introduction, the book presents the recommendations. Next section contains the full text of the national self-assessment report. Civil society report and the text of the Istanbul Action Plan are presented in Annexes. This publication was compiled by the OECD Secretariat; it is available in English and Russian languages. For more information, please refer to the web site of the Anti-Corruption Network for Transition Economies/OECD.

www.anticorruptionnet.org.

SUMMARY ASSESSMENT AND RECOMMENDATIONS

Endorsed on 18 June 2004

National Anti-Corruption Policy and Institutions

General Assessment and Recommendations

According to the draft Status Report, Azerbaijan is aware that corruption and a weak public administration have a corrosive impact on socio-economic development, on the development of a market economy and promotion of investment, as well as being detrimental to political and public institutions in a democratic state. Consequently, the country is committed to developing its anti-corruption strategy, taking into account best domestic and international practices. Transparency International's Corruption Perception Index ranked Azerbaijan 125th (in a list of 133) in 2003. Since then, however, it should be recognised that the country has made significant improvements in building and strengthening its anti-corruption institutions and the legal framework in this area.

The Republic of Azerbaijan has ratified several relevant international documents, amongst them the Council of Europe Convention on Mutual Assistance in Criminal Matters, Council of Europe Convention on Extradition, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, United Nations Convention on Transitional Organized Crime, as well as Council of Europe Civil Law and Criminal Law Conventions on Corruption. In 2004, Azerbaijan joined the Council of Europe's Group of States against Corruption (GRECO) and signed the United Nations Convention against Corruption.

A legal framework of the anti-corruption strategy, comprised of laws and regulations, was begun in 1994. The Decree "On the Enhancement of the Fight against Crime and Strengthening Law and Order" issued in 1994 provided specific instructions to authorities aimed at uncovering bribery acts. In addition, a specialized department for the fight against organized crime and corruption was established within the Ministry of the Interior.

To enhance legislation and public administration, the President signed a

decree "On Strengthening the Fight against Corruption in the Azerbaijan Republic" in June 2000. Under this decree, a special State program was elaborated to provide for a range of practical measures aimed at fighting corruption. In early 2004, a Law "On the Fight against Corruption" was passed in order to strengthen the capacities and powers of State institutions in the detection and suppression of corruption offences, to eliminate the negative effects of corruption, to guarantee social justice, human rights and freedoms, to create favourable conditions for economic development, to ensure the rule of the law, transparency and the effectiveness of the activities of State and local authorities and public officials. The law provides definitions of corruption, perpetrators of corruption offences, responsibilities of public officials, as well as of natural or legal persons. According to this law, the Commission for the Fight against Corruption at the Civil Service Executive Board level is responsible for the implementation of preventive measures.

The decree of the President "On the application of the Anti-corruption Law" of 3 March 2004 provides for the establishment of the Department for Combating Corruption under the Prosecutor-General. It is noteworthy that this Department has been established.

Despite the high level of Corruption Perception Index in Azerbaijan, the number of persons actually convicted for corruption-related criminal offences in the last years is low and which suggests a need for concrete measures in the area of law enforcement. At present, different law-enforcement and prosecution bodies are engaged in combating corruption-related offences. Pursuant to Article 1 of the law "On operative and detection activity" of 29 October 1999, one of the tasks is to protect against crimes which are in the act of preparation or are being committed, as well as detection of those crimes already committed. The President decree of 11 November 1999 on the application of the law "On operative and detection activity" defined the list of competent bodies engaged in operative and detection activity. According to Article 2 of this decree, these bodies include the Ministry of Interior, The Ministry on National Security, the Ministry of Justice, the Main Board for Security of State Administration Authorities, the Customs Committee, and the State Frontier Guards. Similar norms were included in relevant statutory laws. Each state body has issued regulations defining the divisions in charge of the struggle against corruption-related and other kinds of crimes. For instance, the Ministry of Interior approved on 17 March 2000 the creation of the department for the struggle against organized crime, responsible for the collection, processing, storage and realization of operative information on corruption. Preliminary investigation is conducted by the prosecutor's office and by investigative departments of the Ministries of Interior, National Security, Justice, Taxation, the State Customs Committee, and the State Frontier Guards. In addition, criminal investigation is divided in two phases: inquest and investigation.

This description indicates a complex and fragmented system of detection, investigation and prosecution of corruption and corruption-related offences. One solution could be the simplification of criminal laws and especially as pertains to pre-trial investigative proceedings. However, as a priority, the country should undertake measures to consolidate efforts to repress corruption. The department for combating corruption under the Prosecutor-General should be made operational as soon as possible. It is recommended that specialized bodies vested with concrete, investigative and prosecutorial powers as well as preventive and educational tasks be created. The recently created Department for Combating Corruption recently established should be independent within the organizational structure of the state prosecution service, it should exercise jurisdiction over the whole territory of Azerbaijan and its jurisdiction should be based on the law rather than on case by case arbitrary decisions.

It is difficult to tackle corruption in all public agencies at the same time, even more so in a country with limited financial resources. Focusing efforts at a few selected institutions could demonstrate the possibility of positive changes. Such focused measures should comprise a review of regulatory and institutional settings of such agencies and their operational practices in order to identify and minimize factors which favor corruption (*e.g.* by limiting discretionary powers of civil servants, strengthening internal controls, introducing preventive measures, recruiting and promoting new staff through transparent procedures, measuring and reporting improvements). Accordingly, one or two pilot projects covering preventive and repressive aspects could be undertaken in one or two selected corruption-prone public institutions.

The country should also conduct additional specialized surveys on corruption in the public and private sectors, using special expert methods (possibly in co-operation with civil society) to better understand the actual level of corruption, its reasons and trends. Indeed, it is necessary to involve private sector and civil society in the fight against corruption to the largest extent possible and the Government of Azerbaijan should support and encourage the activities of nongovernmental organizations. It should clearly state that no prosecution will follow if nongovernmental organizations openly criticize, for example, high ranking public officials for unethical or corrupt behaviour. All allegations of corruption coming from the private sector and/or civil society should be dealt with seriously if there is substantial violation behind the allegations and legal action from a competent State body should follow systematically and with no exemptions.

Specific Recommendations

1. Speed up efforts to adopt a comprehensive Anti-Corruption Program (Special State Program for Fighting Corruption) aimed at strengthening the implementing anti-corruption measures. The Program should build on an analysis of the patterns of corruption, 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, it should ensure that the adopted strategy is widely disseminated within the civil service and among the general public.

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

3. Speed-up activities to implement the President's Decree "On the 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. In addition to working on actual corruption cases, one of the main tasks of this Department should be to enhance inter-agency cooperation between law enforcement, security and financial control bodies working on corruption investigations (*e.g.* by adopting clear guidelines for reporting and exchanging information, introducing a team-work approach in complex investigations) and to increase the 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.

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

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 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.

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.

7. Ratify the UN Convention against Corruption.

Legislation and Criminalisation of Corruption

General Assessment and Recommendations

The Criminal Code of Azerbaijan criminalizes the major forms of corrupt activities, such as receiving a bribe ("passive" bribery) and giving a bribe ("active" bribery). However, bribery offences do not fully comply with 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). Namely, the definition of the prohibited acts, the nature of the bribe, and the intervention of third persons appear insufficient.

Under the current legislation, for instance, offering a bribe is connected with receiving a bribe and is not a criminal offence. Accordingly, it is considered only as an attempt to give a bribe if the official, for whatever reason, does not receive the bribe. However, a crime seems to be committed if the official accepts the bribe but does not deliver the expected action or inaction. The bribe must be given in the interest of the official or persons that he

represents; this excludes other third parties, which the official does not necessarily represent, such as political parties. The current criminalization of active and passive bribery is limited to material benefit. The receipt of non-material benefits could under certain circumstances only be qualified only as abuse of an official position. This approach cannot be regarded as adequate for the following reasons: (a) it may rule out the responsibility of a person providing non-material benefit, but because he is an official, this person cannot be regarded as the subject of office abuse; (b) material and non-material benefit, being by nature identical benefits granted for one and the same purpose, cannot entail different legal evaluations and sanctions differing in severity.

However, draft legislation has already been prepared and after consideration by the Government shall be submitted to the Parliament in the near future. The aim of this legislation is to ensure compliance of the criminal legislation in the area of corruption with the above mentioned international standards.

The sanctions for passive bribery seem proportionate and dissuasive, but the sanctions for active bribery are not dissuasive enough as they fall under the category of less serious crimes. Consequently, the statute of limitation allows for prosecution only up until five years after the crime has been committed. This period is suspended for restricted reasons.

The Criminal legislation envisages a number of corruption related offences such as malfeasance in office, forgery in office and abusing official powers. However, corruption in the private sector and trading influence are currently not criminalized and the liability of legal persons for corruption and corruption-related offences committed by the representatives and/or employers for the legal person or on its behalf is not envisaged in the law.

It appears that anticorruption legislation as well as the perception of corruption in Azerbaijan is concentrated mainly on public sector corruption and generally covers the areas of public-public and public-private relationships and activities. Corruption-related activities in the private sector are not perceived as corruption and therefore not treated with the same seriousness as public sector corruption. As corruption in the private sector deserves equal attention, new incriminations need to be considered in this regard, such as giving and accepting gifts related to business activities and insider trading.

Article 308 of the Criminal Code includes a definition of the public official. Although the Status Report claims otherwise, it seems that the notion of "official" does not cover foreign officials and officials of international organizations.

The Deputies of Parliament, the President, the Prime Minister and the human rights Ombudsman enjoy immunity during their office term; their immunity can be lifted under restrictive conditions. Judges also enjoy immunity and their immunity can only be lifted after their suspension. However, there is a need for reviewing the procedures for lifting immunity.

Confiscation of property is done only in cases set forth by relevant articles of the Criminal Code. Under Articles 311 and 312, confiscation is only possible in aggravated cases. Confiscation is seen as an additional penalty only. An efficient confiscation regime should allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of the domestic law. Furthermore, it appears that value-based confiscation is not possible.

The investigative authorities seem to have access to all major forms of investigative techniques. When conducting investigations of corruption offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

Little is known about possible links between corruption and organized crime.

Specific Recommendations

8. Speed up the adoption and implementation of the draft legislation to 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).
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.
10. Take steps to make the actual period of limitation for corruption

cases longer and consider increasing the punishment for active bribery.

11. Ensure the criminalisation of bribery of foreign and international public officials, either by widening the definition of an "official" or by introducing separate criminal offences in the Criminal Code.
12. Introduce procedures and clear criteria for lifting immunities enjoyed by judges.
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 the confiscation regime allows for the confiscation of the proceeds from 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.
14. 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 in accordance with international standards.
15. Recognise 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.

Transparency of the Civil Service and Financial Control Issues

General Assessment and Recommendations

The regulatory framework in Azerbaijan appears to be adequate for the operation of merit-based civil service. However, the procedures for recruitment allow for some discretionary decisions of such nature as to allow for abuse. For example, chief executives of authorities may select one of several candidates for

employment who have already passed tests and interviews, *i.e.* the competition does not result in finding a single best candidate. In view of such problems, the Government is preparing amendments to the recruitment system to enhance merit-based recruitment.

As for the prevention of corruption, Azerbaijan like most states has its strengths and weaknesses. Apart from "The Code of Honor of Judges in the Azerbaijan Republic" there are no uniformed codes of ethics for public officials. It is nevertheless commendable that officials are required to present information on their income, assets and debts. Civil servants also have a number of incompatibility rules, although there appears to be no concept of conflict of interests applied. There seems to be no legal obligation in Azerbaijan to report corruption unless it constitutes a grave or especially grave crime. There is also no procedure for the protection of whistle blowers.

It must be noted positively that both tax and customs bodies in Azerbaijan have individual programs against internal corruption. Nor does the legislation of Azerbaijan provide for direct or indirect deductibility of paid bribes from the total taxable amount.

Azerbaijan, as a member of the European Organization of Supreme Audit Institutions (EUROSAI), has done much to fulfil objectives as defined in Article 1 of the Organization's Statutes: to promote the exchange of information and documentation, to promote the study of public audit, to stimulate the creating of university professorships in this area, and to ensure the unification of terminology in the field of public audit. This is very important for country with an economy in transition. However, the financial sector is not very active. The securities market is not well developed in Azerbaijan and as regards the insurance sector, very small amounts of money circulate in this area. Consequently, the economy of Azerbaijan is heavily cash-based. However, the number of bank accounts for salaries has recently started to increase.

According to the Article 21 of the Law on Budget System, control over implementation of the republican budget is to be carried out by the National Council, the Ministry of Finance, and the Chamber of Accounts of the Azerbaijan Republic. These authorities fulfil, within the limits of their powers, accounting of incomes, ways and means of budget appropriations for both the national budget and over the territory as a whole, and provides the National Council with the corresponding information. The law determines the order of presentation, the terms and the forms of accounting. Current control over budget implementation is to be fulfilled by the Ministry of Finance and the Chamber of Accounts. The National Bank can exercise the usual supervisory competences, including obtaining access to all information relating to the activities of the

banks, including information on specific accounts. The powers of the National Bank to sanction credit institutions in case of non-compliance with the legislation and the orders issued by the National Bank seem appropriate and far-ranging. There also seems to be in place appropriate powers for the Securities Committee. In accordance with the regulation of the National Bank on Organising Internal Control and Audit in Banks, banks must establish programmes that include internal control procedures and policies, law compliance, employee training, and an audit function of the internal system.

Overall, Azerbaijan has a limited legal framework against money laundering. Corruption offences are not predicated offences to money laundering in Azerbaijan, which falls short of international standards. Azerbaijan has no financial intelligence unit either.

Azerbaijan's constitution provides ample guarantees for citizen access to information. Nevertheless, the procedures and mechanisms, as well as actual implementation of the legislation in the area of access to information, need to be improved.

The number of registered non-governmental organizations in Azerbaijan is allegedly up to 1 600 and NGOs even enjoy certain tax-exemptions. Moreover Azerbaijan has a largely adequate legal framework in the area of NGOs.

Azerbaijan has a system of financial reporting of political parties where the parties must disclose their revenue and sources thereof as well their expenditures. This is a mechanism which, if enforced in a proper and non-discriminatory manner, is a potent tool against corruption.

Specific Recommendations

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.

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 requirements to declare income, assets and liabilities. Consider disclosing publicly the declarations of certain groups of public officials.

18. Adopt a uniformed Code of Ethics / Code of Conduct for Public Officials modelled on international standards (e.g. 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, and accountants. 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.

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.

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".

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.

22. Introduce legislation that adheres to international standards concerning money laundering; namely, criminalize the laundering of proceeds of all serious crimes (including corruption). Establish a financial intelligence unit.

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

24. Revise the access to information legislation to determine more precisely procedures and mechanisms for access to information and ensure that in practice the discretionary powers of public officials are reasonably limited.

SELF-ASSESSMENT REPORT

National Anti-Corruption Plan (Strategy) Against Corruption

The Government of the Azerbaijan Republic is aware that corruption and structural weaknesses in the public administration system are detrimental to democratic institutions, that they have a negative impact on investment, socio-economic growth, as well as on the development of both a market-based economy and political institutions.

In many respects, corruption in Azerbaijan is due to its transition from a planned to a market economy, to socio-economic difficulties caused by the break-up of the country's economic infrastructure following the disintegration of the USSR, to military aggression and the occupation of one fifth of the country's territory by Armenian military units, to ethnic cleansing in this territory that resulted in a million migrants and refugees whose resettlement has become too great a strain on the country's weakened economy, as well as to chronic military confrontations with Armenia that result in a significant waste of material resources. However, the Government is committed to pursuing its anti-corruption strategy incorporating best domestic and international practices.

Information on Research into Corruption Issues

General trends in corruption perception have been studied nationally under the Transparency International project. According to the Corruption Perception Index, Azerbaijan ranked 95th and 125th in 2000 and 2003, respectively.

Statistical Information on Corruption Offences

According to statistical data:

- For acts punishable under Article 308 of the Criminal Code of the Azerbaijan Republic (abuse of official powers), 9 individuals were convicted in 2000, 22 in 2001, 24 in 2002, and 15 in 2003.

- For acts punishable under Article 309 of the Criminal Code (excess of official powers), no one was convicted in 2000, but four individuals were convicted in 2001, 11 in 2002, and 8 in 2003;
- For acts punishable under Article 311 of the Criminal Code (bribe-taking), one individual was convicted in 2000, 6 in 2001, 7 in 2002, and 6 in 2003;
- For acts punishable under Article 312 of the Criminal Code (bribery), four individuals were convicted in 2000, 7 in 2001, 5 in 2002, and 5 in 2003.

Legal Framework and Anti-Corruption Strategy Perspective

The development of a legal framework for an anti-corruption strategy comprised of laws and other regulations began in 1994. The decree "On Enhancement of the Fight against Crime and the Strengthening of Law and Order" issued in 1994 provided specific instructions to authorities aimed at uncovering acts of bribery. A department for the fight against organized crime and corruption was established within the Ministry of the Interior.

With an objective of preventing corruption from retarding the development of private entrepreneurship, police inspections in the economic sphere were banned entirely by special Presidential decrees. Such provisions were reflected in the laws "On Office of Prosecutor", "On Police", "On Banks", "On Appealing to Courts against Violations of Human Rights", "On Indemnification to Citizens for Damage Caused by Illegitimate Actions of Investigative and Judicial Authorities", in the Criminal and Procedural Code and other regulations. As a result, structural units in the office of prosecutor and police directly or indirectly involved in economic inspections were either abolished or stripped of their powers. Economic agent inspection and audit functions were granted only to the National Bank and the Ministry of Finance and Taxes, which can carry these out only after specifying their grounds and procedures.

A new criminal code was introduced on 1 September 2000. It established a new *corpus delicti* for corruption offences, such as illegal or false entrepreneurship, illegal receipt of loans, deliberate dodging of the payment of arrears on loans, monopoly actions and restriction of competition, violations of the rules of securities issue, deliberate or fictitious bankruptcy. Definitions of "traditional" corruption offences, such as "abuse of power" and "bribe-taking", were amended as well.

A state procurement agency was established in 1996 to provide expert evaluation of contracts on procurement of goods and services financed from the state budget. In accordance with the law "On Tendering" passed in 1997, large-scale procurements of goods and services should be subject to tender a procedure, which considerably constrains potential for abuse.

Serious steps have been taken to form an independent judicial system. Laws "On Constitutional Court", "On Judges and Courts", and both the Civil Code and the Code of Criminal Procedure have established principles of judges' independence with respect to legal procedures and financial support, determined procedures of appealing and cassation against judgements delivered by courts, and suppressed the prosecutor's control of courts.

With the assistance of the World Bank, a special judicial and legal council under the President organized examinations to ensure a transparent selection of judges on a test basis in compliance with international law standards.

Salaries of judges and prosecutors have been increased. They receive the highest salaries in the country, several times the average salary of a civil servant. Plans have been made to provide for a further increase in salaries of judges and prosecutors, and the use of alternative sources for funding courts, such as court fee revenues.

With the objective of improving the fight against economic crime, corruption, bribery, and abuse of power, and to enhance legislation and public administration and remove running by orders and decrees, the President signed a decree "On Strengthening the Fight against Corruption in the Azerbaijan Republic" in June 2000. Under this Decree, a special state program for fighting against corruption has been elaborated to provide for a range of practical measures aimed at rooting out corruption. One of the main areas covers the reform of finance management in the public sector, centralization of the treasury system, transfer of all budget accounts and non-budgetary funds to the treasury system. This decree also seeks to improve budget relations in view of the need to ensure transparency of financial and investment flows, budget spending, restriction of mutual settlements, transfer to non-cash payment settlements, establishment of a competitive state procurement system, and the use of an effective audit mechanism. In this respect, an important role is assigned to the Audit Chamber with broad functions of control of budget implementation.

In addition, by early 2004 a law "On the Fight against Corruption" was passed which is designed to detect and suppress corruption offences, eliminate their negative effects, guarantee social justice, human rights and freedoms, create favourable conditions for economic development, ensure lawfulness,

transparency and effectiveness in activities of state or local authorities and public officials. The law defines corruption, perpetrators of corruption offences, responsibilities of public officials, as well as natural or legal persons for corruption, and regulates some other issues.

Under this law, all state and public officials acting within their competence are to fight against corruption, and the Commission for the Fight against Corruption at the Civil Service Executive Board carries out functions that are specially targeted at the prevention of corruption.

The Republic of Azerbaijan has signed and ratified the United Nations Convention on Transitional Organized Crime, as well as Council of Europe Civil Law and Criminal Conventions on Corruption.

A special supervisory board composed of representatives of relevant state authorities and non-governmental organizations exercises general control over the formation and spending of assets of the State Oil Fund, which is an extra-budgetary state institution concentrating all revenues generated in the country from the sale of crude oil and oil products. A special provision provides for publication of the Fund's annual financial statements and reports on use of assets. These and other institutional methods ensure full transparency of the Fund's operations.

Close attention is paid both to restricting state intervention in economic management and to upgrading tax administration. In this context, it should be stressed that the Tax Code passed for in 2000 contains provisions designed to prevent tax evasion and ensure the transparency of tax authorities.

A law "On Civil Service" provides for the competitive recruitment of personnel to the civil service on a competitive basis, attestation of civil servants and their rotation, increase in salaries, compulsory filing of tax returns, and reduction of the bureaucracy.

To secure transparency and effectiveness, privatization of companies is conducted using competitive bidding procedures consistent with international rules, rather than the old method of privatization through auctions. There is an active process underway to reduce the number of ministries, state committees, agencies, and administrative apparatus with simultaneous invalidation of some of their powers to regulate economy. An important component of the program comprises measures to support public institutions, such as access to mass media and running public general educational programs, and encouraging and promoting independent studies.

With the objective of reforming the public sector, a project on restructuring the Cabinet of Ministers has been launched jointly with the European Commission within a TACIS project. The project is designed to revise, upgrade, and reshape the internal structure and functions of the Cabinet of Ministers, as well as the decision-making and consultation procedures.

A state program of economic development and poverty reduction has been passed and will develop the measures to be taken for further development of the national economy and to significantly reduce poverty. Implementation of this program is another practical step that contributes to the commitment in the fight against corruption.

A national public sector reform strategy has been drafted with the assistance of and in consultation with the World Bank, TACIS, the German Society of Technical Assistance (GTZ), Council of Europe, and the United Nations Development Program. In accordance with the Law "On the Fight against Corruption", it is planned that a special anti-corruption commission with the Civil Service Executive Board will be established.

It should noted that all these reforms are implemented in extremely difficult conditions with military aggression from neighbouring Armenia occupying over 20% of our territory and with over one million refugees and forced migrants, most of whom live in inhuman conditions in tents and temporary shelters. Unemployment and social problems that have been caused by this forced migration consume a sizable share of state funds.

Transfer of illegal capital to other countries for laundering or appropriation is one of the forms of corruption activity. To this end, different methods are applied, from simple transportation of currency funds by individuals across the border to complicated schemes of fictitious export and import operations.

A decree of the President of 6 August 1998 cancelled censorship of the mass media.

Azerbaijan efficiently co-operates with such international organizations as the United Nations, Council of Europe, Organization of Economic Co-operation and Development.

Azerbaijan intends to accede to the UN Convention against Corruption, which reflects a consolidated opinion of the international community on basic areas, forms, and methods of fighting against corruption.

Promotion of Accountability and Transparency

Ethics in the Public Service

Main Civil Service Laws and Other Regulations which apply to Civil Servants

A legislative framework has been established that regulates fairly well procedures of recruitment and appointment to civil servant positions, career advancement, and an institutional structure of civil service administration. Basic legislative acts regulating the civil service are as follows:

- Law On Civil Service of 21 July 2001;
- Labor Code of the Azerbaijan Republic of 1 February 1999.

In addition, public service is regulated by the following normative and legal acts. Laws of the Azerbaijan Republic:

- On Judges and Courts of 10 June 1997;
- On the Notary Service of 26 November 1999;
- On the Municipal Service of 30 November 1999;
- On the Office of the Prosecutor of 07 December 1999;
- On Approval of Statute of Service in Customs Authorities of 7 December 1999;
- On Court Supervisors and Marshals of 28 December 1999;
- On the Civil Service of 21 July 2000;
- On the Diplomatic Service of 08 June 2001;
- On the Approval of Statute of Service in State Tax Authorities of 12 June 2001;
- On Serving in Prosecutor's Offices of 29 June 2001;
- On Approval of Statute on Service in Interior Authorities of the Azerbaijan Republic of 29 June 2001;
- On Approval of Statute of Civil Service Executive Board of the Azerbaijan Republic of 29 March 2002;
- On the Constitutional Court of 23 December 2003.

Presidential Decrees of the Azerbaijan Republic:

- On Approval of Statute of Rules for Holding Competition in the Course of the Recruitment of Candidates for Positions with the Prosecutor's Office of 19 June 2001;
- On Approval of Rules for Drafting and Adoption of Test Specimens for Test Exams Held in Connection with Recruitment for Civil Service Positions of 9 August 2001;
- On Approval of Rules for the Recruitment of Civil Service Personnel through a Competition, Rules for the Preliminary Checking of Skills of Individuals Recruited to Civil Service Position, Rules of Appealing against Disciplinary Punishments Applied to Civil Servants, Rules of Awarding Qualification Ranks to Civil Servants of 3 September 2001; and
- "On Approval of Statute of Forms and Rules for Rewarding Civil Servants" of 24 August 2002.

The Process of Recruitment and Appointment of Public Officials and the Career Advancement Practices

Under the Law of the Azerbaijan Republic "On Civil Service", the right of admission to the civil service is granted to citizens 16 years and over, irrelevant race, nationality, language, sex, social and economic status, place of residence, religion, beliefs, affiliation with civic and other associations, but who have professional training consistent with requirements for a relevant position.

No individual may be admitted to a civil service position in the following cases: a court judgement that a person is incompetent or partially competent; a court judgement on revocation of rights of the person to hold public positions for a certain period; a close relative or direct family relationship (spouses, parents, brothers, sisters, children) with a public official under whose direct command or control the person is to work; and in cases specified by the law.

The eligibility of a person recruited to a civil service position can be verified in advance. Verification procedures are set by rules of preliminary testing of the candidate's skills required for a position in civil service. Details of private (family) life are subject to examination.

Citizens of the Azerbaijan Republic are recruited to civil service on a competitive basis or by interviewing. In case of vacancies in offices

corresponding to the 6-9 classification of administrative positions, a relevant administrative body of the civil service announces a competition via the media. Within 30 days of the announcement, applicants must submit documents to the relevant administrative body of the civil service.

A competition, consisting of tests and interviews, is held within ten days after the deadline for submitting documents. Procedures for announcing and holding the competition, as well as for taking a relevant decision based on its results, are set by rules of recruitment for civil service positions through a competition.

Individuals who have successfully passed the tests are admitted to interviews. Test specimens are prepared and approved in compliance with rules for drafting and adopting test specimens for test exams held in connection with the recruitment for civil service positions.

Candidates who have successfully passed the interviews are introduced to the chief executive of an authority except when otherwise required by the statute. After selecting one of the candidates, the chief executive of the authority issues a resolution on employing the candidate as a trainee and appoints him to the vacant position. An advisor assigned by the chief executive of the authority supervises the trainee's work and upon completion of the probation period makes a recommendation on whether it is practical to admit the candidate to the civil service. In case of a positive recommendation, the trainee is employed by means of a contract to a two-year trial period, except when otherwise required by law. The contract specifies terms of work within the trial period and is approved according to the procedures set by law. Provided that the contract has not been terminated within the trial period, upon its completion the chief executive of the authority issues an order on the permanent employment of the person in civil service based on contractual terms, and a corresponding contract is concluded with such person. Laws determine other issues related to the trial period. Employment in the civil service is approved by a document of a relevant authority on behalf of the Azerbaijan Republic.

The filling of positions corresponding to the 1st to 5th classification of administrative positions is carried out by means of interviews and career advancement. Positions corresponding to the 6th to 9th classifications of administrative positions are filled based on the recommendations of a corresponding administrative body of the civil service following the results of the competition. The process of selection depends on the candidate's qualification rank and his/her successfully completing retraining and skill improvement courses consistent with the requirements of the vacant position.

Civil servants working in a different branch may take part in a competition as well.

A corresponding administrative body of the civil service introduces to the chief executive of the authority no less than 3-4 candidates for filling a vacant position. Having selected one candidate, the chief executive appoints him/her to the position. In case of disagreement between the chief executive of the authority and the recommendation presented by the administration body of the civil service, differences of opinions are resolved in a manner as set by the Civil Service Executive Board of the Azerbaijan Republic (the recommendation remains in force and one of the candidates is appointed or rejected). In the event that the recommendation of the administration body of the civil service remains in force, the chief executive of the authority is obliged to appoint one of the candidates to a vacant position. With the rejection of the recommendation for filling a vacant position, a competition is announced and held in compliance with a procedure specified by the President of the Azerbaijan Republic and with account of the provisions of said Law.

The competition is open to civil servants with a qualification rank no more than two ranks lower than the qualification rank for the vacancy.

A civil servant can be promoted in the civil service by being assigned to a higher position or awarding him/her a higher qualification rank, or following the results of the competition.

Promotion of a civil servant depends on the successful and honest performance of his/her responsibilities, existing vacancies, results of practical work, and the taking of courses for training or improvement of skills matching the vacancy.

Denial of a civil servant's promotion can be appealed by statutory order; in other words, only in cases associated with violation of rules for carrying out a competition or performance appraisal.

Appointment to a new position is made on behalf of the Azerbaijan Republic and endorsed by a document (identification card) of the relevant authority.

Every civil servant in administrative or auxiliary position should undergo a service rating at least once every five years. Based on the results of the civil servant's performance appraisal, a service rating commission can make one of the following appraisals:

- Competent for the position;
- Competent for the position but needs improvement of performance and compliance with commission's recommendations contingent on passing a second examination in a year;
- Incompetent for the position.

Following the appraisal and recommendations and according to the relevant laws, decisions are taken on pecuniary and moral compensation of civil servants' performance by establishing, changing or cancelling surpluses to their salaries, recommending civil servants for extension courses, assigning them to a lower or higher position, removing civil servants from office based on results of a service rating proving their incompetence in office, or the attention of individuals undergoing service rating is drawn to deficiencies in performing official duties or to poor performance. A civil servant may appeal the results of a performance appraisal with a higher administrative body of the civil service.

Under the Presidential Decree of the Azerbaijan Republic of 17 January 2000, a resolution was adopted on the election of judges following a transparent procedure for carrying out tests, exams and interviews. To this end, and in view of electing candidates to the office of a judge, a Judicial and Legal Council under the President of the Azerbaijan Republic was ordered, within ten days, to approve rules for conducting examinations on the basis of tests and interviews, and to ensure the holding of such examination in a three-month term.

The law of the Azerbaijan Republic "On Service in Prosecutor's Office" regulates terms and conditions for doing service in the prosecutor's office. Provisions of the law "On Civil Service" on the right of citizens recruited in the civil service in a competitive and transparent way are extended to persons doing service in prosecutor's office.

Candidates for service in prosecutor's office submit a standard application to the Prosecutor General of the Azerbaijan Republic. Documents of candidates who have applied for employment in the prosecutor's office are to be verified as prescribed by the Prosecutor General of the Azerbaijan Republic. The prosecutor's office does not employ:

- individuals with dual citizenship;
- individuals with obligations to other States;
- church officials;
- individuals whose disability or partial ability has been confirmed by

court, as well as individuals who are not capable of performing functions of a prosecutor or a prosecutorial investigator because of a physical or a mental deficiency stated in medical certificates;

- individuals who are addicted to alcohol, drugs or toxic substances, or who are ill with other severe diseases (provided there's a doctor's opinion);
- individuals who have been previously convicted or individuals against whom criminal proceedings were not terminated on rehabilitation grounds; and
- individuals dismissed from office for gross violations committed earlier or for actions inconsistent with the tenure of office of a prosecutor or investigator.

Upon acceptance of documents, candidates who have applied for employment in the prosecutor's office shall take part in an open competition held transparently. Such competition consists of qualification exams and interviews. To hold a competition, the Office of the Prosecutor General shall establish a competition committee composed of seven persons (hereinafter referred to as "the committee"). Based on the candidatures for the positions of chairperson, deputy chairperson, executive secretary and other members of the committee by the Board of the Office of Prosecutor General, its composition is then approved by the Prosecutor General. To achieve its goals, the committee can hire lawyers, scholars, and experts.

Admission to the prosecutor's office is certified by an order, a copy of which is presented to the newly employed person.

Individuals who already have jobs in the prosecutor's office are exempted from examination if they have had experience in judicial or law enforcement fields, or held positions related to co-ordination, legislative or institutional support, or hold a scientific degree from a relevant faculty. In such event, they are obliged only to pass interviews.

Civil Service Executive Board

A Civil Service Executive Board (hereafter "the Board") exercises control of the implementation of the Law on Civil Service, provides normative and methodological support to the civil service, and draws up a list of persons classified as civil servants in the Azerbaijan Republic. The Board consists of 18 members. The President of the Azerbaijan Republic, the Head of the Milli

Mejlis, and the Head of the Constitutional Court appoint six members each to the Board. The above statute establishes the board's powers. The Board is not a state authority and its members who are independent in their activity carry out their powers on a voluntary basis.

The President, the Chairman of the Milli Mejlis, and the Head of the Constitutional Court ensure the binding nature of decisions adopted for civil servants.

The Board takes part in forming an integrated state personnel policy, analyses the conditions and effectiveness of the civil service, carries out the forecasting and planning of civil service personnel support, prepares drafts of regulations and methodological recommendations on the organization and carrying out of civil service, co-ordinates civil service in state authorities and methodological work of personnel departments, examines claims of civil servants in cases provided for under the Law "On Civil Service", analyses and prepares proposals on issues of training, retraining, and skills improvement of civil servants, carries out control of the compliance with restrictions and support to civil servants, evaluates conditions for the implementation of labour and civil service legislation, including issues of labour discipline and disputes, drafts proposals on how to enhance the effectiveness of civil servants' work, and participates in international co-operation on the organization and effective functioning of the civil service. For this purpose, the Board may request and obtain documents from relevant authorities.

A chairman of the Board is responsible for the management and organization of its activity. The Board's chairman is elected from among its members by simple majority vote.

The Meetings of the Board are conducted on a regular basis, but at least once every two months. Extraordinary meetings may be held if required. The Board's meetings are considered qualified if attended by one third of its members. The Board adopts its decisions on issues discussed by simple majority vote of those members attending the Board's meeting. During the voting, a Board member who has a particular opinion may enclose it to a resolution that has been passed.

The Board approves its rules of procedure and establishes a secretariat for arranging its record keeping. A secretary elected at the Board's meeting by simple majority vote is responsible for organizing the Board's record keeping. The secretariat is funded from the state budget.

Public Administration's Training Capacities

Civil servants have ample opportunities for vocational training. There are specialized educational institutes, training centres, etc., established by different public administration bodies. Moreover, there is a centralized Institute of Public Administration under the President which has been created for training public administration specialists to improve their professional skills, organize academic studies, and enhance information and analytical support of public administration.

The following regulations govern issues for the establishment and functioning of such institutes or centres:

- Regulation of the Cabinet of Ministers of the Azerbaijan Republic of 22 March 1989, "On Organizing Lawyers Skill Upgrading Institute at the Ministry of Justice of the Azerbaijan Republic";
- Presidential Decree of the Azerbaijan Republic of 3 January 1999, "On Establishing Public Administration Academy under the President of the Azerbaijan Republic";
- Presidential Order of the Azerbaijan Republic of 14 May 1999, "On Establishing Legal Training Center at the Ministry of Justice of the Azerbaijan Republic" and Regulation of the Cabinet of Ministers of the Azerbaijan Republic of 9 December 1999, "Statute of Legal Training Center at the Ministry of Justice of the Azerbaijan Republic";
- Regulation of the Cabinet of Ministers of the Azerbaijan Republic of 6 September 2000, "On Establishing Training Center of the Central Administration for Judgment Enforcement of the Ministry of Justice of the Azerbaijan Republic";
- a Presidential Decree of the Azerbaijan Republic of 19 June 2001, on approving the creation of a training center within a newly established structure of the State Customs Committee;
- Regulation of the Cabinet of Ministers of the Azerbaijan Republic of 5 May 2002, "On the Statute of Training Center of the Ministry of Taxes of the Azerbaijan Republic" and Regulation of the Cabinet of Ministers of the Azerbaijan Republic of 5 June 2002, "On Establishing Financial Research and Training Center at the Ministry of Finance of the Azerbaijan Republic".

Codes of Conduct for Public Officials

The Code of Honour of Judges in the Azerbaijan Republic approved by a resolution of a joint meeting of the Plenary Session of the Supreme Court of the Azerbaijan Republic and the Judicial and Legal Council under the President of the Azerbaijan Republic held on 12 December 2002, clearly states that judges should not accept any intervention by their relatives, friends, or acquaintances with judicial proceedings. A judge should not fall under the influence of persons representing any public administration and management authorities or influence of other persons on the whole. Regarding the matters of court proceedings, judges should not establish any procedural relations with persons taking part in court proceedings. Judges should not accept gifts or gratuities in connection with the proceedings in court. Judges should avoid services that might influence the settlement of cases considered by them in court. Private activity of judges should not cast suspicion on their justice and objectiveness.

In accordance with the Law of 7 December 1999 "On Statute of Service in Customs Authorities", customs officials shall have no right to use their power to provide any assistance that is not prescribed by the laws of the Azerbaijan Republic to third parties or to receive rewards, services or privileges. A similar provision on officials of state tax authorities is set forth in the sub-clause of the Law of 12 June 2001 "On Statute of Service in State Tax Authorities".

Under the Law "On Civil Service", civil servants should comply with the following key requirements: to commit no actions that could complicate the work of other civil servants or undermine the reputation of an authority where they work; to disclose no information which has become known to them due to their tenure of office and which is related to the private life, honour, and dignity of citizens; to demand no provision of such information, except in cases required by law; to present to the chief executive of an authority where they are employed annual financial statements on income and financial condition with specification of sources, forms and amounts of additional income; to comply with standards of official ethics.

According to the Law "On the Fight against Corruption", officials should present the following information as prescribed by the Anti-Corruption Commission at the Civil Service Executive Board:

- annual income with the specification of sources, forms, and amounts;
- taxable assets;
- deposits, securities, and other financial instruments in credit institutions;

- participation as stakeholders or founders in companies, foundations, or other economic entities, and shares in such enterprises;
- debts exceeding 5000 times the amount of a conventional financial unit;
- other financial and property liabilities exceeding 1 000 times the amount of a conventional financial unit.

The above data are presented to relevant authorities and constitute commercial or banking secrets. Their disclosure implies statutory responsibility. Access to such information may be required in connection with corruption offence only by the Commission or authorities in charge of criminal prosecution for such offences. However, the information is provided based on court decisions.

Non-compliance of officials with the above requirements, in particular the untimely provision of information without proper reasons or the deliberate provision of incomplete or false information may cause disciplinary punishment of such persons. Persons with respect to whom the Constitution and laws of the Azerbaijan Republic provide for a special procedure of disciplinary responsibility may be brought to this responsibility in accordance with such rules. The Anti-Corruption Commission at the Civil Service Executive Board can publish information about such persons in an official government newspaper.

Gifts with a value in excess of 50 times the conventional financial unit and which are related to the tenure of office are considered to be the possession of a central or local authority in which the individuals perform their functional duties (powers). In the event where gifts are designed for personal use, individuals who have received them may retain them provided that they pay the value that exceeds the specified limit to the central or local authority in which they perform their functional duties (powers).

Officials may not use their tenure of office to receive any benefits or privileges in concluding or implementing civil law transactions with physical or legal persons.

Infringement on the rules specified in the last two paragraphs entails liability under the Law "On the Fight against Corruption".

System and Procedures of Financial Investigations

Civil servants may not occupy an additional paid position; engage in pedagogical or other paid for activity, except for an academic or creative one,

without permission of the executive chief of an authority, where they work; be an attorney of a central or local authority in matters related to third parties; use information on issues related to their official activity and constituting state or other secrets protected by law to the advantage of third parties after resignation, dismissal, or retirement within a period specified by laws of the Azerbaijan Republic; take part in demonstrations and other actions disrupting the functioning of authorities.

Non-compliance or insufficient compliance with responsibilities imposed on civil servants, as well as non-compliance with the above listed restrictions, shall entail a disciplinary responsibility except when otherwise provided by statute.

In case of violation of provision on responsibilities, the following disciplinary measures may be applied against civil servants:

- a reprimand;
- reduction of the salary by 5-30% for the term up to one year;
- assignment to a position within the same rank but with a lower salary;
- assignment to a position of a lower rank;
- decrease of a qualification rank;
- deprivation of a qualification rank; and
- dismissal from the civil service.

To reverse a disciplinary measure, civil servants may present an appeal to a higher civil service executive body within seven days. In this event, a disciplinary measure should either be cancelled or preserved by such body within ten days. A procedure of appealing against the disciplinary measure is set forth by a statute of procedures on appealing against disciplinary measures taken in relation to civil servants.

In cases of and pursuant to procedures defined by statute, civil servants may be liable for administrative and criminal responsibility.

In the event of disagreement with a resolution of a higher executive body of the civil service, the civil servant or the head of an authority that has applied the disciplinary measure may submit an appeal in writing to the Civil Service Executive Board of the Azerbaijan Republic within seven days.

The Civil Service Executive Board of the Azerbaijan Republic considers an appeal within 15 days of its official receipt and takes a relevant decision on

annulling or preserving the disciplinary measure and the decision on the issue made by the higher civil service administrative body. Implementation of the decision is binding both for an authority who has applied the disciplinary measure and the higher civil service administrative body.

In case of disagreement with the decision of the Civil Service Executive Board, civil servants can appeal to the court. Civil servants can directly appeal to courts if they believe their rights and laws have been infringed upon in taking disciplinary actions against them.

Judges may be brought before a disciplinary board on the following grounds:

- gross violation of statutory provisions on court proceedings;
- violation of judge's ethics;
- gross violation of court labor discipline;
- an unworthy deed that has smeared the title of judge.

Disciplinary proceedings against judges may be initiated by the head of the Supreme Court or by the Ministry of Justice within six months of the date of disclosure or within two years of the date of the discipline violation. Only the Chairman of the Supreme Court may initiate disciplinary proceedings against judges of the Supreme Court, Economic Court, Court of Appeals, and Supreme Court of the Nakhichevan Autonomous Republic, as well as against other judges of Azerbaijan regarding gross violations of legislation or infringement on judicial ethical norms.

Judges may be brought before a disciplinary board based on the resolution of a disciplinary panel of the Supreme Court. Within a month from the date of the disciplinary proceeding, a disciplinary panel conducts investigation, usually with the participation of the judge concerned and passes with respect to him/her one of the following decisions:

- terminate the disciplinary proceeding due to the absence of violation in the action or due to the expiration of the term of proceeding;
- to make a reproof; or
- to declare a reprimand.

Provided that no appeal has been made against the decision of the disciplinary panel, it comes into force nine days after the date it is announced and is submitted to the Chairman of the Supreme Court. Within this period, an

appeal against the decision of the disciplinary panel may be submitted to a commission established by a plenary session of the Supreme Court.

Upon consideration of the appeal within ten days, the commission may preserve, annul, or amend the decision of the disciplinary panel and propose its decision to the Chairman of the Supreme Court. The decision of the commission is final. Provided that judges are not once again held responsible within one year since the date of the punishment, it is considered that no disciplinary responsibility action was taken.

Where an honest attitude of judges with respect to their official duties is evident, a disciplinary measure may cancel the punishment after a period of six months and before the punishment has gone to its full term.

For violating an official discipline, one of the following disciplinary measures may be applied against an employee in the prosecutor's office:

- reproof;
- reprimand;
- severe reprimand;
- demotion in office;
- demotion in special rank;
- discharge from office (in this case an employee of the prosecutor's office may stay for three months while waiting for an assignment to another position. If no reasons emerge for dismissing him/her from the prosecutor's office, he/she is appointed to a position in the prosecutor's office);
- dismissal from the prosecutor's office;
- dismissal from the prosecutor's office and deprivation of a special rank.

Responsibility for Failure to Report on Crime

Under criminal law, failure to report on known, imminent, or committed grave or especially grave crimes constitutes a criminal offence and is punishable by fine in the amount from 500 to 1 000 of the minimum wage, or corrective labour for a term up to two years, or imprisonment for a term of up to two years. This offence provides criminal responsibility for any person from the age of 16 years and over, including civil servants and employees in the private sector

except persons who have failed to report on crimes prepared or committed by a wife (husband), children, parents or close relatives as specified by statute.

Protection of Proper Conduct

The law "On State Protection of Persons Taking Part in Criminal Proceedings" of 11 December 1998 determined the following measures to ensure the security and social protection of victims, witnesses, or other persons participating in criminal proceedings:

- protection of persons, as well as their dwellings and property;
- provision of individual means of protection to persons, warning them about the existing danger;
- non-disclosure of information about protected persons;
- temporary accommodation of protected persons in secure places;
- a closed court session with the participation of protected persons, etc.

Public Procurement and Public Subsidies, Licences, or Other Public Advantages

Normative and regulatory acts in the public procurement area are called upon to facilitate a more efficient allocation of resources due to the promotion of competition, procurement of goods, services (works) of a better quality, budget saving and, eventually, prevention of corruption.

The Law "On Public Procurement" of 27 December 2001 spells out the economic, legal, and organizational principles of public procurement in the Azerbaijan Republic, stipulates principles and rules for the efficient and sound use of public funds for procurement activities, for creating an equitable competitive environment for all commodity (goods) suppliers (contractors) on the basis of competition and glasnost principles; said law also determines the range of participants in the public procurement process, various procurement techniques, rules for placement of procurement notices, need for internal procedures for challenging tender outcomes in the court, and also the role of a monitoring authority in the public procurement process.

According to said Law, a definition of a procurement organization extends to state-owned enterprises and organizations (institutions) as well as enterprises and organizations, in whose statutory capital the State holds a share of 30% and more.

Public procurement methods and criteria are dealt with in the following articles (which are given in an abridged form) of the above-mentioned law.

Article 16. Procurement Methods

16.1. Depending on the application conditions stipulated by Articles 17 through 21, public procurement of goods, works, and services in the Azerbaijan Republic shall be performed using the following techniques: open tender, two-stage tender, limited tender and closed tender, request for proposal, request for quotations and single-source procurement.

16.2. Apart from open tender procedures, during the procurement of goods (works) a procuring agency may use procurement techniques only based on terms and conditions envisaged by Articles 18, 19, 20 and 21 of the Law.

16.3. In procuring services, a procurement organization shall use the procurement method stipulated by Section V, except for the following cases: given a practical opportunity to detail peculiarities and subject to the soundness of implementing open tender procedures owing to the technical character of the procured services with account of the practicality to use procurement methods provided for by Articles 18-21 of the Law and also subject to the fulfilment of conditions for the use of these methods.

16.4. In using a specific procurement method under Articles 16.2 and 16.3 of the Law, a procurement organization shall also include commentary on the circumstances underlying the selection of a given method in the Report on Procurement Procedures.

Article 17. Open Tender

17.1. If the expected price of goods (works and services) exceeds the minimal amount established by a relevant executive authority, the procurement of said goods (works and services) shall be performed through an open tender.

17.2. If the expected price of goods (works, services) is below the amount envisaged by Article 17.1of the Law, the procurement agency shall use any procurement method. The procurement agency cannot, for purposes of the enforcement of this Article, split the procurement of goods (works,

services) into separate contracts (i.e. into separate parts) in order to circumvent the constraint on the procurement amount.

17.3. The purchase of goods (works, services) whose assumed price is above the amount envisaged by Article 17.1 through the use of other procurement methods may be effected only contingent of the approval of these methods by a relevant executive power agency;

Article 18. A Two-Stage Tender and a Request for Proposal

18.1. A procurement organization may use two-stage tender procedures; if this organization cannot determine in sufficient detail the peculiar features of goods (works, services, it shall, for purposes of making the most acceptable decision to meet its demand for procurement, attract tender bids, send requests for proposal or price offers in connection with various methods of meeting its demand; conduct negotiations with suppliers of goods (contractors) about the technical nature of goods (works) or services.

18.2. If a procurement agency wishes to sign a contract to conduct research, experiments, surveys or development (except for cases envisaging the production of goods sufficient for generating profit or recovery of losses incurred in the research and development).

18.3. In addition to the foregoing provisions, a procurement organization may also use the request for proposal method in the course of procurement if there arises an urgent demand for the purchase of goods (works, services) under conditions where said demand is not the result of an intentional prolongation by a procurement agency of the procurement process and when it is impossible to foresee the emergence of such a situation and when it is not practical to apply the open-tender procedure or of other procurement methods;

Article 19. Limited Tender and a Closed Tender

19.1. A procurement agency shall hold a limited or a closed tender.

19.2. A limited tender shall be held in cases where potential suppliers have a limited stock of relevant goods (works and services) owing to their extreme complexity or special nature and when there is a mismatch between the time and costs required for the examination and evaluation of

numerous tender bids and the value of goods (works and services).

19.3. If the goods (works, services) are intended for defence and national security purposes, a procurement agency shall use the closed tender. Procurement of clothes, food, articles, stock, medical equipment, medicinal preparations, service transport vehicles, repair and construction works for these purposes shall be performed by the open tender method;

Article 20. Conditions for Using the Request for Price Quotations

20.1. A procurement agency may use the request for price quotations method to procure goods (works and services), of which there is an operating market and whose price is lower than the price established by a relevant executive power agency.

20.2. Reference to Article 20.1 of the Law cannot constitute the grounds for a procurement agency on which the procurement contract is split into separate agreements (or for the division of goods, works, and services in separate parts);

Article 21. Conditions for Using the Single-Source Procurement Method

21.1. Subject to the approval of the relevant execrative power agency, a procurement agency may use the single-source method in the following circumstances:

- *if the procured goods may be purchased only from sole specific supplier (contractor) or if a specific supplier (contractor) enjoys the right to said goods (works and services) in the absence of their substitutes or alternatives.*
- *if there is an urgent demand for goods (works, services) and if it is not practical to hold tender procedures or if it is impossible to foresee in advance factors underlying the urgency of said demand or if similar cases are not the result of a delay in the procurement organization activities;*
- *if there is an urgent demand for the given goods (works, services) due to an emergency situation, if it is impractical to use other procurement methods in terms of time costs;*
- *if, following procurement of goods, equipment, technology or*

services from a specific supplier (contractor), the procurement agency makes a decision to purchase them from this supplier (contractor) to ensure the latter's conformity with considerations of standardization or with the existing goods, equipment, technology or services.

Rules for the placement of procurement notices are established by Article 25 of the above-mentioned Law. Under this Article:

- the open tender notice shall be published in state newspapers and other mass media disseminated internationally no later than 20 banking days before opening tender bids;
- a notice on holding a two-stage tender shall be published in State newspapers no later than 60 banking days and for the second time, no later than 40 banking days before opening tender bids;
- in addition to the open-tender notice publication, a procurement agency may send suppliers (contractors) a personal invitation to take part in the tender;
- to attract proposals, bids, price offers, and quotations in case of other procurement methods the tender committee shall draw up a list of a sufficient number of potential suppliers (contractors) and shall send them a personal invitation.

The procedure for challenging the tender results pursuant to the administrative and judicial process has been determined by the following (abridged) Articles of the Law:

Article 55. The Right to Lodge a Complaint

55.1. A supplier (contractor) who has declared that it has incurred or shall incur losses or damage as a result of the failure by a procurement agency to comply with duties set by the Law, shall have the right to lodge a complaint pursuant to the procedure established by the legislation.

55.2. A complaint objects shall not include:

- *selection of the procurement method;*
- *limitation of procurement procedures in terms of limiting procurement procedures depending on the bidder nationality;*

- *a decision of a procurement organization to decline all tender proposals, bids, or quotations;*

Article 56. Complaint to a Procurement or Approving Agency

56.1. A complaint in writing shall be submitted to the director of a procurement agency prior to the effectiveness of the procurement contract (in case a complaint is related to a specific action or a decision of a procurement agency or to the procedure used by the latter and if said action, decision or procedure have been confirmed by a specific agency, the complaint shall be filed with the director of this agency).

56.2. If the complaint is lodged upon expiration of 15 days since the moment the supplier (contractor) has come or should have come to know the circumstance underlying the complaint, a procurement agency director (or the director of the approving agency), shall not examine it.

56.3. If it is impossible to resolve the complaint through mutual agreement between the complaining supplier (contractor) and the procurement agency, the procurement agency director (or the director of the approving agency) shall, within 20 banking days since the moment of lodging said complaint, make a decision in writing validating its reasons, and in case the complaint is fully or partially satisfied - indicating measures to be taken to rectify the situation.

56.4. If the procurement agency director (or director of the approving agency) fails to make said decision within 20 banking days since the moment of the submission of the above-mentioned complaint, the complaining supplier (contractor) shall be immediately thereafter entitled to lodge the complaint subject to the administrative or judicial procedure. Upon submission of such a complaint, the director of a procurement agency (or of an approving agency) shall lose the mandate to examine the complaint.

56.5. Should a complaint fail to be submitted under Articles 57 or 60, the decision of the procurement agency director (or that of an approving agency) shall be deemed final;

Article 57. Lodging the Complaint Pursuant to the Administrative Procedure

57.1. A supplier (contractor) having the right to lodge a complaint under Article 55 of the Law may lodge a complaint with a relevant executive power body in the following circumstances:

- *if a complaint cannot be filed under Article 56 due to the entry into force of the procurement contract or cannot be examined under said Article (provided the complaint has been submitted upon the expiration of 15 banking days since the supplier (contractor) has come or should have come to know the circumstances underlying the complaint);*

- *if the procurement agency director omits to examine the complaint due to the coming into force of the procurement contract (on condition that the complaint has been filed within 15 banking days following the adoption of a decision on its examination);*

- *under Article 56.4. of this Law (provided that the complaint has been lodged within 15 banking days since the expiration of the term indicated in Article 56.3.);*

- *if the given supplier (contractor) maintains that he/she has incurred losses as a result of the decision made by procurement agency (or the approving agency) director (provided that the complaint has been filed within 15 banking days since the decision-making day).*

57.2. Upon the receipt of the complaint, a relevant executive power body shall immediately notify the procurement (approving) agency about it.

57.3. If a relevant executive power body does not reject the complaint, it may recommend one or several legal remedies:

- *set legal provisions or principles governing the issues referred to the complaint object;*

- *prohibit the procurement agency from taking illegal actions or adopting illegal decisions or applying illegal procedures;*

- *obligate the procurement agency, which has implemented illegitimate actions or procedures or has adopted illegal decisions, to put in place measures or to apply legal procedures or to make a legal decision;*

- *suspend an illegal action of a procurement agency or fully or partly annul its illegal decision;*

- *review an illegal decision of a procurement agency or adopt its own decision instead;*

- *bring up an action on the compensation of losses;*

- *issue an ordinance on the termination of procurement procedures.*

57.4. A relevant executive power body shall, within 20 banking days, make a decision in writing on said complaint stating the reasons for it and legal remedies (if they are proposed).

57.5. If the judicial action is not brought up, this decision shall be considered to be final;

Article 58. Individual Provisions Applied in Examining Complaints Lodged Under Articles 56 and 57 of the Law

58.1. Immediately upon the submission of a complaint, procurement (approving) agency director shall, under the Law, send a notice on the complaint and on its content to all suppliers (contractors) participating in the procurement procedures and affected by said complaint.

58.2. An individual supplier (contractor) or a state agency whose interests may be affected by the complaint filing procedure, shall have the right to lodge a complaint. A supplier (contractor) who has failed to file a complaint shall be consequently stripped of the right to forward the same requirement.

58.3. One copy of the decision passed by the procurement (approving) agency director or of a relevant executive power body shall, within 3 banking days since the making of said decision, be sent to the complaining supplier (contractor), procurement agency, and all other suppliers (contractors), which took part in complaint examination, or to the state body;

Article 59. Staying Procurement Procedures

59.1. Provided that the complaint lodged under Articles 56 and 57 is validated and submitted in a timely manner, the procurement procedure shall be suspended during 7 banking days for purposes of complaint examination. The complaint shall be examined during the period of suspension of procurement procedures.

59.2. For purposes of examination of a lawsuit based on the complaint

lodged in a timely manner under Articles 57 and 59.1 upon the entry into force of a procurement agreement, procurement agreement enforcement shall be suspended for 7 banking days.

59.3. To protect the rights of a supplier (contractor) who has filed a complaint or to commence the procedures for the examination of a complaint, a procurement (approving) agency director may extend the period for the suspension of procurement procedures under Article 59.1 of the Law, while the director of a relevant executive power authority may prolong the complaint submission period under Article 59.2 pending completion of a complaint filing procedure but not longer than by 15 banking days.

59.4. All the decisions of the procurement agency, adopted hereunder, as well as grounds and conditions for the adoption of these decisions shall be included in the report on procurement procedures;

Article 60. Judicial Consideration of Complaints

The courts of the Republic of Azerbaijan are empowered to examine, subject to a judicial procedure, lawsuits brought up under Article 55 of the Law, complaints lodged in relation to decisions of bodies examining the complaint or decisions of said bodies, which were not passed within the term established by Articles 56, 57 and 59 of the Law.

State policy in the area of the protection of goods (works and services) at the expense of State Budget funds shall be enforced by State Agency of the Azerbaijan Republic for Procurement, which is a central executive power body. To this end, the Agency shall:

- *take part in creating and improving the legal framework for public procurement in the Azerbaijan Republic. The Agency shall draft rules, instructions, and other documents on public procurement and shall submit them to relevant executive power bodies for approval;*
- *monitor the legality of a competitive procurement of goods (works, services) with state budget funds as well as the enforcement of contracts; resolve disputes, suspend procurement procedures for the period of up to 7 banking days in case violations of legislation have been revealed and, when required, bring up the issue on the cancellation of tender results for consideration by a procurement agency;*

- *examine disputed issues related to public procurement procedures and adopt measures in accordance with the provisions of the Law on Procurement in case of a breach of legislation on procurement;*
- *offer methodological and organizational assistance to procurement organizations by way of holding and organizing public procurement activities, provide recommendations to these organizations, hold training events to raise the professional level of specialists, hold seminars and conferences, prepare relevant training and educational aids;*
- *set the rules for the compilation of public procurement reports, ensure the publicity of normative and regulatory acts, documents, and data on the regulation of public procurement;*
- *draft and submit annual reports on state procurement for consideration by relevant executive power bodies.*

Agency officials and other responsible employees shall be liable for failure to properly carry out their official duties under the relevant legislation.

Under The Law of the Azerbaijan Republic "On the Antimonopoly Activity" of 4 March 1999, deals concluded between economic agents shall be realized subject to the approval from the Ministry of Economic Development in the following circumstances:

- if the total book value of the assets owned by economic agents indicated in paragraph one of the present Article exceeds 75 000-fold minimum wages;
- if a relevant commodity market share of an economic agent exceeds 35%;
- if an economic agent purchasing shares controls the activity of an economic agent alienating these shares.

Financial Control / State Audit

Institutional Framework for State (Internal) Audit

Audit Chamber

The Law "On the Audit Chamber" of 2 July 1999 stipulates that the Audit Chamber shall operate on the basis of the Constitution and shall be a State budget-and-financial control agency reporting to the Milli Mejlis (Parliament)

of the Azerbaijan Republic. It is a legal entity which carries out its functions in accordance with the Milli Mejlis Statute as well as the Law "On Standing Commissions of the Milli Mejlis of the Azerbaijan Republic".

The audit Chamber Chairman, Chairman Deputies, and Chamber auditors shall be appointed to their office for a term of seven years. The procedure for the appointment and discharge shall be implemented by the Milli Mejlis of the Republic based on the motion of the Milli Mejlis Chairman.

The Audit Chamber, in its organisation and functions, shall act independently and shall:

- provide opinion on draft state budget and budgets of extra budgetary state funds (institutions);
- monitor the timely execution of state budget revenue and expenditure items as well as the items of budgets of extra-budgetary state funds (institutions) in terms of volume, structure, and purpose, approval and execution of state budget, management and disposal of state assets and remittal of privatization proceeds to state budget, and use of state budget funds allocated to legal entities and municipalities;
- provide an opinion on the annual report on the state budget execution and on relevant draft laws;
- analyze state budget financing as established by the approved state budget, prepare and submit to the Milli Mejlis proposals on the elimination of the revealed irregularities and on the improvement of the budget process as a whole;
- inform the Milli Mejlis on a quarterly basis on the execution of state budget revenues and expenditures;
- on instructions from the Milli Mejlis of the Azerbaijan Republic and its standing commission, conduct financial evaluation of draft laws related to state budget and extra budgetary state funds (institutions), international agreements approved by the Milli Mejlis of the Azerbaijan Republic;
- analyze the conformity between the accrual of revenues to the Treasury account, use of state budget funds, and indicators established in the approved state budge, and inform the Milli Mejlis about it;
- receive data on the movement of state budget funds and those of extra budgetary funds (institutions) on bank accounts from the National Bank of the Azerbaijan Republic, authorized banks, and lending

organizations, analyze these data and submit relevant proposals to the Milli Mejlis of the Azerbaijan Republic;

- submit data to the Milli Mejlis of the Azerbaijan Republic on offences uncovered as a result of conducting audit measures;
- exercise activities in co-operation with other state audit institutions.

The Audit Chamber shall hold and regulate its activity on the basis of the internal statute approved by the Law of the Azerbaijan Republic of 5 March 2002. In their activities, the Audit Chamber auditors shall abide by said statute and carry out the instructions of the Audit Chamber in accordance with it.

The Audit Chamber shall carry out the financial-and-budgetary evaluation, prepare a relevant opinion, and submit proposals on the basis of inquiries of the President of the Azerbaijan Republic, Milli Mejlis, standing commissions of the Milli Mejlis. These inquiries shall be examined and accepted for execution within three days after they have been received. Rules for conducting audits, compiling and submitting audit reports on the financial and budgetary evaluation shall be stipulated by the internal Statute of the Audit Chamber.

In analyzing revenues and expenditures of state budget and extra-budgetary funds (institutions), the Audit Chamber may, if required, conduct the audit at enterprises and organizations.

The Audit Chamber opinion and statement shall reflect only the findings from the financial-and-budgetary evaluation. These shall be included in reports submitted to the Milli Mejlis and brought to the attention of the leadership of the audited agencies, enterprises, institutions, and organizations.

In the course of a financial and budgetary evaluation, officials of the Audit Chamber shall have no right to interfere with the operations of entities being inspected and to announce their findings prior to the audit completion and presentation of these findings in the form of the report. Auditors and specialists involved in an audit may use data obtained in the process of the financial and budgetary evaluation only in the course of accomplishing the assignment of the Audit Chamber.

It shall be prohibited to perform the financial-and-budgetary evaluation in addition to the work plan of the Audit Chamber without the instructions of the President of the Azerbaijan Republic or of the Milli Mejlis. However, during the period between parliamentary sessions, the Chairman of the Milli Mejlis may instruct the Audit Chamber to perform an audit in addition to the Chamber's work plan.

The Ministry of Finance

Pursuant to Decree of the President of the Azerbaijan Republic of 7 January 1999, the function of state financial control of state budget expenditures and the responsibility for conducting audits of the financial and economic activity of ministries, departments, and organizations funded from the state budget, were imposed on the Ministry of Finance. Internal audit entities in other central executive power agencies (except for the "force" agencies, *i.e.* Ministry of Defence, Ministry of Interior, and Ministry of National Security) have been liquidated pursuant to the same Presidential Decree. In addition, Ministry of Finance Treasury bodies are monitoring the financial transactions performed with budget funds.

In compliance with “Instructions on the Rules for State Financial Control by the Ministry of Finance of the Azerbaijan Republic”, approved by Order of the Ministry of Finance of 27 June 2001, audit and inspection statements drawn up by auditors of the Ministry of Finance shall reflect the facts on financial violations without any conclusions and wording such as corruption, embezzlement, abuse of official position, etc. The nature of actions committed by persons guilty of grave financial violations and the liability of these persons shall be determined by law-enforcement and judicial bodies.

The organisation of the Ministry of Finance includes a Main Financial Control Department, which is not an independent entity. All the employees of this department are appointed and dismissed by the Ministry of Finance. According to the provisions approved by Order of the Ministry of Finance of 25 October 2000, auditors are not obliged to report to law-enforcement agencies on their suspicions concerning probable corruption offences. Professional training of staff enabling them to perform an effective financial control (audit) may be considered as efficient. The Main Financial Control Department shall maintain normal constructive relations with the media.

Independent Audit

The Law of the Azerbaijan Republic "On Audit Service" of 16 September 1994 stipulates the organization of audit services, legal principles for its activity, auditor functions, rights and obligations, and also envisages the creation of an independent financial control system protecting property rights of owners in the Azerbaijan Republic.

The law extends to all enterprises, organizations, and institutions operating in the territory of the Azerbaijan Republic (hereinafter referred to as "economic

agents"), irrelevant of their ownership form and organizational-legal subordination. This law stipulates all the relations with the audit service as do other legislative acts of the Azerbaijan Republic, its international treaties and agreements.

In cases provided for by the Civil Code and also in the event of the excess of the amount of capital of a legal entity above the norm established by said Code, the annual balance sheet of this legal entity plus all its annexes shall be inspected by an auditor. Based on the audit results, an auditor shall draw up a statement, in which it should be expressly indicated whether the accounting system, annual balance sheet and annexes thereto conform to legal provisions and also whether the empowered representatives of said legal person have provided explanations and corroborative documents requested by an auditor. The audit statement shall be signed by an auditor and submitted to persons responsible for the legal person's governance.

An annual sheet auditor shall be selected by the legal persons for a term that goes to the end of the business year to be checked by said auditor. Immediately after the election of an auditor, persons responsible for the legal person's governance shall assign the auditor the task to perform said audit.

Auditors may include independent auditors and audit organizations authorized to engage in audit activity in the Azerbaijan Republic. A legal person's auditors shall not be persons which, have direct or indirect — such as managers of someone else's property — shares in the legal person or which had taken part in the activity going out of the scope of the audit when compiling legal person's books or his annual balance sheet subject to an audit. An auditor, his/her assistants and representatives of the review firm taking part in the audit shall conduct said audit in good faith, in unbiased manner, and shall keep the confidentiality of the obtained information. They shall not use commercial secrets they have come to know in the process of their work. In so doing, persons who have intentionally or carelessly violated their obligations shall compensate the legal person concerned for damage they have inflicted.

Under Regulations on the Audit Chamber (hereinafter referred to as "Chamber") of the Azerbaijan Republic approved by Resolution of National Assembly of the Azerbaijan Republic of 19 September 1995, the Chamber shall be an independent financial agency discharging the function of the organization of state regulation and development of audit service, protection of property rights of owners, economic agents and auditors, monitoring the compliance of independent auditors and audit organizations with requirements stemming from the legislative acts of the Azerbaijan Republic. In its activity, the Chamber shall abide by the Law "On Audit Service", the above-mentioned Provisions, and by

other normative and regulatory acts.

Audit services shall be paid for on the basis of agreements concluded between independent auditors, audit organizations, which have undergone state registration, as well as by enterprises and organizations, and when auditors are involved by law-enforcement agencies in performing audits on enterprises and organizations by said agencies subject to the established procedure.

The key objective of the Chamber is to organize the work of the audit service and to put in place measures to improve its activity in accordance with the effective legislation to ensure accurate financial accounting and bookkeeping by all economic agents whatever their ownership form. The Chamber shall carry out the following functions:

- organize and direct the activity of audit services in the Azerbaijan Republic, issue licenses to independent auditors and audit organizations in the territory of the Azerbaijan Republic, monitor their work and the compliance of their statutes with the Law "On the Audit Service"; maintain the recording of independent auditors and audit organizations;
- develop and approve the rules for taking licensing examinations entitling the licensees to engage in audit activities in the territory of the Azerbaijan Republic;
- prepare and approve the make up of the examination board for the issue of audit licenses, establish the examination fee;
- prepare and approve the format of the audit opinion on the financial and commercial statements of an economic agent as well as various forms of reports on the work of independent auditors and audit organizations;
- advise independent auditors and audit organizations on issues concerning the aggregation of audit experience and enforcement of effective legislative acts, prepare proposals on the development and improvement of audit service and monitor their implementation;
- draft instructions, recommendations and methodological guidelines on the audit;
- draft normative and regulatory acts on forms and methods for the provision of audit services, prepare relevant recommendations on the basis of the continuous study of domestic and international experience;

- ensure the examination of customer lawsuits against independent auditors and audit organizations in accordance with the existing legislative acts for failure to properly fulfil their professional functions;
- put in place relevant measures to protect the rights and legitimate interests of independent auditors and audit organizations;
- inspect the compliance of financial and economic activities of a stand-alone audit organizations, stand-alone foreign auditors as well as branches and offices of foreign audit organizations with provisions of Law "On Audit Service" and shall monitor their work;
- carry out a repeat audit, issue an audit opinion concerning the accuracy of the appraisal of economic agent's assets in connection with the privatization of state enterprises and for other purposes.

The Chamber shall have the mandate to:

- check the quality of audit performed by independent auditors and audit organizations, and recall the auditor license in the event of the violation of the law during the audit;
- receive statements draw up in compliance with a standard format;
- provide independent auditors and audit organizations with binding instructions and methodological guidelines within its mandate, resolve various disputes between independent auditors and audit organizations and their customers, examine and resolve complaints about the actions of auditors;
- establish co-operation with international audit organizations and represent the interests of the Azerbaijan Republic abroad in the audit are with the purpose of training its specialists and supporting their experience exchange;
- train and promote audit personnel, address other issues of audit service within its competence;
- provide services to legal and natural persons in the audit and financial-commercial relations area, render audit services on the basis of the concluded contracts with economic agents,
- institute audit organizations.

Chamber Chairman and his/her Deputy shall be appointed by the Milli Mejlis (Parliament) of the Azerbaijan Republic. They are vested with the

authority of directors of central executive power agencies established by the legislation of the Azerbaijan Republic. The Chairman shall administer the activity of the Chamber. He/she shall bear personal responsibility for the implementation of tasks imposed on the Chamber and for the enforcement of its duties and functions.

Organization, staff layout, wages and budget of the Chamber, within the limit of its own funds, shall be approved by the Chairman of the Chamber. Under the existing labour legislation, the Chairman of the Chamber shall recruit and dismiss employees, reward them and impose disciplinary sanctions on them.

The Chamber shall set up its Management Board intended for implementation current activities and execution of practical service functions. Composition of the Board shall include Chairman of the Chamber, his/her Deputy, directors of two leading divisions, one representative of audit organizations, independent auditors, and Ministry of Finance of the Azerbaijan Republic. Board members shall be introduced by the Chairman.

Examination for the title of an auditor shall be taken by the examination commission (hereinafter referred to as "commission") appointed by the Chamber. Sitting in this Commission shall be three representative of the Audit Chamber, one representative of the Ministry of Finance, Ministry of Taxes, National Bank of the Azerbaijan Republic, economics researchers, independent auditors and audit organizations. The composition of the commission shall be announced by the Chamber's Chairman at the beginning of each year. A Commission member will have a vast experience in the audit services delivery area, and at least a 10-year practical experience in one of the accounting, finance, economics, and law specialties.

Rules for the organization of internal control and internal audit were approved pursuant to Decision of the National Bank of Azerbaijan Board of 29 December 1999; these Rules were prepared in compliance with the requirements of the Law On the National Bank of the Azerbaijan Republic and On Banks and Banking in the Azerbaijan Republic (which became -invalid as of January 2004 with the passing of the new law), and they stipulate mechanisms for organizing internal control and internal audit for all commercial (joint stock/commercial) banks in the Azerbaijan Republic.

Annual laws of the Azerbaijan Republic on the national state budget are published in official printed editions of the *Azerbaijan* newspaper and in the *Collection of Legislative Acts of the Azerbaijan Republic*" (details of the procedure for publicizing normative and regulatory acts are specified in the Law

"On Normative and Regulatory Acts" of 26 November 1999). These legal documents are publicly available. In addition, data on the budget may be also obtained from the Ministry of Finance's monthly bulletins, the magazine *Finance and Accounting*, whose founders include the Ministry of Finance, and from the internet site of this same Ministry. Monthly and yearly information about state budget revenue and expenditures across economic, functional, and administrative budget classifications is regularly provided to the State Committee for Statistics for publication in statistical bulletins and the public press.

Tax and Custom System and Fiscal Treatment of Bribes

Legislation does not envisage special provisions for detecting and responding to offences committed by tax and customs bodies. General investigation rules apply to such offences. Said entities may co-operate and exchange relevant information both with domestic criminal prosecution agencies and tax/customs bodies of other countries. All of these issues are regulated by criminal-procedural legislation and by relevant interstate agreements. Thus, the Government of Azerbaijan has signed an agreement with the Government of the Russian Federation "On Interaction and Information Exchange in Fighting Tax Legislation Violations". Similar agreements were signed with the Government of Georgia on 18 February 1997, the Government of the Republic of Moldova on 27 November 1997, the Government of the Republic of Kazakhstan on 10 June 1997, the Government of the Republic of Uzbekistan on 18 June 1997, and the Government of Ukraine on 14 February 2002. In 2003, the Azerbaijan Republic acceded to the Strasbourg Convention of 25 January 1988 "On Mutual Administrative Assistance on Tax Issues".

In addition, within the framework of the Commonwealth of Independent States, the Government signed the Agreement of 04 June 1999 which envisages co-operation and mutual assistance on issues of tax compliance and fighting violations in this area.

Both tax and customs bodies of the Azerbaijan Republic pursue individual programs aimed at preventing internal corruption and which are implemented by relevant units of these bodies.

For specific offences committed by staff members of tax and customs bodies, a procedure has been envisaged for in-service investigations based on the relevant decisions made. If signs of abuse of an official position are found in the actions of tax and customs officers, materials for conducting a preliminary investigation shall be handed over to the prosecutor's office.

In recent years, recruitment of personnel in these bodies has been performed on a competition basis. Attestations to verify the compliance of a tax/customs officer with the requirements of his/her position are conducted on a regular basis.

Under relevant provisions of normative and regulatory acts governing the activity of tax and customs bodies, officials thereof are prohibited from engaging in any outside activity for a fee, except for research, pedagogical, and creative activities.

The "Honor Code of Customs Official of the Azerbaijan Republic," the provisions of which envisage combating any indication of corruption, was approved by decision of the Collegium of the Customs Committee of the Azerbaijan Republic on 15 May 2001.

Criminal legislation carries provisions providing for liability for bribe-giving and bribe taking. At the same time, tax legislation contains no norms or provisions "which directly or indirectly envisage the deductibility of bribes paid from the total taxable amount".

Money Laundering

On 30 December 1999, the legislature introduced to the Criminal Code the offence of the legalization of financial resources or other assets acquired through illegal drug traffic or circulation of psychotropic agents *(legalization of proceeds or other assets obtained as a result of illegal traffic or circulation of psychotropic agents - Article 241)*, as follows:

> *241.1. Performing financial transaction or enforcing other contracts involving the use of proceeds from illegal traffic of drugs or psychotropic agents with the purpose of entrepreneurial or other economic activity — shall be punishable by a penalty of from two to five thousand minimal wages, or by corrective labor for the term of up to two years, or deprivation of freedom for the term of up to four years.*
>
> *241.2. Same offences committed:*
>
> *241.2.1. by the group of persons who have entered into prior collusion;*
>
> *241.2.2. repeatedly;*
>
> *241.2.3. by a person using his/her official position — shall be punished by*

deprivation of freedom for the term of from four to eight years with the confiscation of property or without such a confiscation.

241.3. Actions covered by Articles 241.1 and 241.2, if they have been committed:

241.3.1. by an organized group;

241.3.2. in a large amount — shall be punished by deprivation of freedom for the term of from seven to twelve years with the confiscation of property or without it.

To prepare proposals in order to implement relevant measures in the domain of fighting money laundering and the financing of terrorism, on 13 May 2003 the Cabinet of Ministers created an Expert Group composed of the representatives of the Ministry of Justice, Ministry of Interior, Ministry of National Security, Ministry of Foreign Affairs, Ministry of Economic Development, Taxes, Finance, State Customs Committee, State Committee for Securities with the President of the Azerbaijan Republic, General Prosecutor Office, and the National Bank.

Articles 311 and 312 of this Code define the following types of corruption as crimes.

Article 311. Bribe-Taking

311.1. Receipt by an official, either personally or through an intermediary, of a bribe in the form of money, securities, other property or benefits of a pecuniary nature for an action (inaction) in favor of a bribe-giver or persons represented by a bribe-giver if such an action (inaction) is part of official duties of said official or if said official can, by the token of his/her official position, facilitate such an action (inaction), and also for the general protection or for general connivance in respect of service duties - shall be punished by deprivation of freedom for the term of from two to seven years with the denial of the right to hold certain positions or to engage in certain activities for the term above three years or without such a denial.

311.2. Bribe-taking by a public official for an illegal action (inaction) — shall be punished by deprivation of freedom for the term of from five to ten years with the denial of the right to hold certain official positions or engage in certain activity for the term of up to three years.

311.3. Actions covered by Article 311.1 or 311.2 of the present Code and committed:

311.3.1. by a group of persons on a prior collusion or by an organized group;

311.3.2. repeatedly;

311.3.3. in a large amount;

311.3.4. with the use if threats — shall be punished by the deprivation of freedom for the term of from seven to twelve years with the confiscation of property.

Note: A large bribe amount shall be recognized as a money amount, value of securities, property or property benefits exceeding five thousand minimal wages.

Article 312. Bribe-Giving

312.1. Bribe-giving to an official personally or through an intermediary shall be published by the penalty of one to two thousand of minimal wages or by the deprivation of freedom for up to five years plus the penalty of five hundred to one thousand minimal wages or without such a penalty.

312.2. Bribe-giving to an official for his committing or not committing knowingly illegal actions (inaction) or for the repeat committing of said offence shall be punished by a penalty of between two and four minimal wages or by deprivation of freedom for the term of from three to eight years with the confiscation of property or without such a confiscation.

Note: The bribe-giver shall be exempted from criminal responsibility if this offence occurred as a consequence of threats from the official or if said person has voluntarily reported to a relevant state agency on the bribe-giving.

In addition, according to the Law "On Banks" of 16 January 2004, banks shall be obligated to establish the identity of each client to whom services are provided. In making payments, banks shall demand that clients indicate the recipient (beneficiary) of the funds. Opening anonymous accounts, including anonymous saving accounts, shall be disallowed.

In addition to the above-mentioned legislation, other requirements may be

stipulated to combat money laundering.

Corporate Accounting and Auditing Standards

Legal Framework for Finance Accounting

In the fourth and fifth paragraphs, called "Inventory Description, Annual Balance and Audit of Legal Persons" and "State Register of Legal Persons", respectively, the Civil Code of the Azerbaijan Republic established the rules for keeping the inventory, description of legal persons, requirements for preliminary and annual balance of a legal person and annex to this balance, performance statement and audit statement, the form for the compilation of the balance sheet and profit and loss account, list of documents to be kept, etc.

Procedure for state regulation of accounting in the Azerbaijan Republic, including general principles for accounting organization and keeping, rights, objectives and liability of enterprises, institutions, organizations and other economic agents in this area, procedure for publishing accounting (financial) statements, guarantee of the credibility of accounting data shall be established by the Law ”On Accounting” of 24 March 1995.

Under the Law ”On Non-Government Organizations (community-based associations and funds)” of 13 June 2000, the amount and structure of revenue of a non-governmental organization, as well as its property, expenses, numeric strength, and information about wages, cannot constitute a state or commercial secret. A fund shall be obliged to publish annual statements on the use of its assets.

Under the Law “On a Joint-Stock Company” of 12 July 1994, a financial and revision commission shall monitor the financial and economic activities of a joint stock company. The financial and revision commission shall compile an opinion on annual statements and balance sheets, and without this opinion the general meeting of shareholders cannot approve the annual report.

The “Rules for Simplified Accounting by Small Businesses” approved by the Regulation of the Cabinet of Ministers of the Azerbaijan Republic on 18 January 2003 was prepared in accordance with the Decree of the President “On Forbidding Interventions that Prevent the Development of Entrepreneurship” of 28 September 2002, Resolution of the Cabinet of Ministers of the Azerbaijan Republic of 2 October 2002, the law “On State Support of Small and Medium Businesses,” the “Tax and Civil Code of the

Azerbaijan Republic", and extended to small economic agents who conduct activities under the Tax Code in the capacity of simplified taxpayers recognized as legal and natural entities irrelevant to the organizational and legal form and ownership pattern (except for lending organizations).

The program for the development and enforcement of national accounting standards for the period of 2003-2007 to implement the transition to international accounting standards was approved pursuant to the Regulation of the Cabinet of Ministers of 20 February 2003.

The "Provisions on the Accounting Policy of Enterprises" approved by Order of the Ministry of Finance on 23 January 1997 under the Law "On Accounting" shall establish the basis for the formation and publication of accounting policy for all institutions, enterprises, organizations and other economic agents obliged to maintain accounting (hereinafter referred to as "enterprises"). These Provisions are one of the normative and regulatory acts effective in the Azerbaijan Republic for regulating the accounting system.

The "Accounting and Reporting Rules in the Credit Organizations of the Republic," approved by Decision of the Board of the National Bank of the Azerbaijan Republic of 21 May 1997 determined the general accounting procedures for all banks of the in lending organizations, their rights, responsibilities, and liability in this area, the procedure for compiling and publishing accounting statements, ensuring credibility of accounting data, and intra-bank monitoring of transactions and documents.

The "Rules of Accounting for Fixed Assets in All Lending Organizations of the Azerbaijan Republic" of 18 December 2000 were prepared under the Law "On the National Bank of the Azerbaijan Republic" and other legislative acts. These rules stipulate the policy for the accounting for fixed assets in all lending organizations of the Azerbaijan Republic. They regulate accounting transactions on fixed assets and are used for the purpose of reflecting fixed assets in financial statements.

The "Rules for Recording Intangible Assets in Lending Organizations of the Azerbaijan Republic" of 31 January 2001 were also prepared under the Law "On the National Bank of the Azerbaijan Republic" and other legislative acts of. These rules determine the policy for recording intangible assets in all the lending organizations of the Azerbaijan Republic, regulate accounting transactions on intangible assets, and are used to reflect intangible assets in financial statements. Banks performing transactions on intangible assets shall use the provisions of the Tax Code for taxation purposes.

The "Rules for Accounting for Low-Value and Fast-Wear Articles in Lending Organizations of the Azerbaijan Republic" of 31 January 2001, prepared in accordance with the Law "On the National Bank of the Azerbaijan Republic" and other legislative acts shall determined the policy for accounting for low-value and fast-wear articles in all the lending organizations of the Azerbaijan Republic. These rules regulate accounting operations on low-value and fast-wear articles and are used to reflect these articles in financial statements. Tax Code provisions shall be used when banks perform transactions on low-value and fast-wear articles for taxation purposes.

The "Accounting Rules for Conducting Transactions by the Estimation Method in the Banking System of the Azerbaijan Republic" of 20 February 2001 shall stipulate the policy for conducting transactions by the estimation method of the banking system. In conducting these operations, banks shall use the Tax Code provisions for taxation purposes.

The "Rules on Internal Procedures for Provision of and Accounting for Bank Credits" approved by decision of the Board of the Azerbaijan Republic of 03 April2001 determines the minimum requirements and methodological guidelines of the National Bank of the Azerbaijan Republic with respect to internal procedures for lending, as well for maintaining the credit accounting system.

The Accounting Rules for the Banking System of the Azerbaijan Republic", approved by Decision of the Board of the Azerbaijan Republic of 18 January 2003, determines the accounting procedures for payment settlement transactions in the banking system. The legal relations involved in conducting settlement transaction shall be regulated on the basis of the requirements of the Civil Code of the Azerbaijan Republic.

In connection with the enforcement of the Law "On Banks", the Presidential Decree of 26 March 2004 instructed the National Bank of the Azerbaijan Republic to approve jointly with the Ministry of Finance accounting rules, accounting statement forms, their content and periodicity in banks.

Liability for Financial Offences

The Code of the Azerbaijan Republic on administrative offences contains the following provisions on financial offences.

Article 211. Violation of the rules for conducting securities transaction
Violation of the rules for conducting securities transactions shall entail the

imposing of a penalty on an official in amount from forty-five to ninety conventional financial units, and on legal persons from one hundred fifty to two hundred conventional financial units;

Article 213. Refusal to submit a report or evasion from submitting a report: If a stock market participant refuses to submit reporting his statutory statements on his activities envisaged by the legislation to the State Committee for Securities with the President of the Azerbaijan Republic this shall entail the penalty imposed on officials in the amount of sixty to eighty conventional financial units, and between two hundred and three hundred on legal entities.

Article 247. Failure to submit accounting statements and tax return: Failure to submit or untimely submission to the Ministry of Taxes of the Azerbaijan Republic of accounting reports, balance sheets, tax returns, documents related to the assessment and payment of taxes with minor tax evasion purposes (up to two thousand conventional financial units), this shall entail a penalty on a natural person of twenty five to thirty, and on legal persons of forty to sixty conventional financial units;

Article 257. Failure to submit accounting data and reports or the violation of the rules for their submission: Failure to present data on the consolidated accounting balance with account of the insurer's branches or the violation of the rules for compiling statements and other financial sustainability and solvency data of an insurer during the compilation of quarterly and annual reports shall entail a penalty of between thirty five and fifty conventional financial units.

Similar offences are also treated by the Criminal Code of the Azerbaijan Republic. They are as follows.

Article 191. Registration of illegal deals with land: Registration of knowingly illegal deals with land, distortion of recording data of State Land Cadastre as well as intentional underestimation of the amount of payments for land if these actions have been committed out of mercenary or other lucrative interests of an official using his/her official position shall be punished by a penalty of up to five hundred times the minimum wage or by the deprivation of his right to occupy certain positions for a term of up to two years or by corrective labour for a term of up to two years.

Article 213. Tax evasion

213.1. If natural entities evade paying taxes or making other mandatory payments in a significant amount, refusing to submit, where envisaged by legislation of the Azerbaijan Republic, an income tax return or indicating knowingly false data on income and expenses in the tax return, this shall entail the penalty of from one to two thousand times the minimum wage or by corrective labor for up to one year.

213.2. Same actions:

213.2.1. which have inflicted major damage;

213.2.2. committed with the receipt of income in a large amount;

213.2.3. committed by an organized group shall be punished by a penalty of between two and five thousand minimal wages or by corrective labour for the term of up to two years or by deprivation of freedom of up to six months.

213.3. Major tax or other mandatory payment evasion with the introduction of knowingly false data on income or expenditures to the books of an organization shall be punished by corrective labor for the term of up to two years or deprivation of freedom for the same period or deprivation of freedom for the term of up to one year with denial of the right to occupy certain positions or to engage in certain activities for the term of up to three years or without such a denial.

213.4. Actions envisaged by Article 213.3 of the Criminal Code involving large amounts shall be punished by deprivation of freedom for the term of up to three years or deprivation of freedom for the term of three years with the denial of the right to occupy certain positions or engage in certain activities for the term of up to five years or without said denial.

Notes:

Articles 213.1 and 213.2 of the present Code shall be understood to treat "a large amount" as an amount of two to five thousand, and "a major amount" as that in excess of five thousand conventional financial units.

Articles 213.3 and 213.4 of the present Code shall be understood to treat "a significant amount" as an amount over fifteen thousand conventional financial units, and the "a major size" as an amount over twenty five thousand conventional financial units.

A person who has committed an offence envisaged by Articles 213.1-213.4 of the Criminal Code shall be exempted from criminal responsibility if he/she has compensated in full for the damage caused by the offence;

Article 313. Forgery of Official Documents;

Article 326.1. Theft, destruction, damaging or concealing official documents, seals or stamps committed out of mercenary or other personal interest shall be punished by a penalty in amount of up to five hundred times the minimum wage or by corrective labour for the term of up to one year or by deprivation of freedom for a term of up to six months.

Development of the Strategy for Detection of Offences in the Accounting Area

Pursuant to Decree of the President "On the Enforcement of the Law of the Azerbaijan Republic on State Budget of the Azerbaijan Republic in 2002", the Government was instructed to draft and to submit to the President a draft state program of accounting reforms and the new law "On Accounting". This draft law is pending consideration by National Parliament.

It should also be noted that work is being done with the participation of accountants and auditors to align national accounting standards with international accounting standards so as to prevent corruption. The result of this work was the "Program for the Development and Application of National Accounting Standards for 2003-2007" approved by Regulation of the Cabinet of Ministers of Azerbaijan Republic of 20 February 2003.

Access to Information

Under the Constitution, every citizen shall have the freedom to seek, obtain, transfer, compile and distribute information in accordance with the prescribed legal procedure. Citizens shall have the right to apply to public bodies and send written individual and collective applications to them. Pursuant to the procedure established by law, a reply should be given to each application.

The Law On Information, Computerisation and Protection of Information of 3 April 1998 established that users should have equal access to work with information resources and should not have to explain to the owner or the holder of information resources the necessity to use such information, apart from documented information which is limited by type of circulation according to the

legislation and decisions of the Interagency Commission on State Secrecy Protection under the President of the Azerbaijan Republic.

The following articles of the Law "On the Freedom of Information" of 19 June 1998 also provide for citizen access to information.

Article 5. Basic Principles of Exercising the Freedom of Information

Basic principles of exercising the freedom of information are as follows: securing the freedom of information; openness of information and free information exchange; objectivity, completeness and truthfulness of information; legality of searching for, obtaining, using, distributing, and protecting information; keeping the privacy of individual and family life of each person; ensuring the security of individual, society and state.

Article 6. Guarantees of Obtaining Information

The obtaining of information is ensured through:

- issue of information on the activity and adopted decisions by bodies of state power and municipalities;
- establishment of information services for obtaining information from bodies of state power;
- free use of statistical data, library stocks, archives and museums as well as information systems;
- immediate provision of information to the population on extraordinary cases, natural disasters and catastrophes threatening their life and health;
- immediate provision of information to the population on emergency circumstances threatening the security of the state;
- banning state censorship in mass media, including that of the press;
- familiarizing the population with regulatory documents in accordance with the prescribed legal procedure.

Article 8. Obtaining the Information

Information shall be obtained subject to the procedure and method established

by relevant legislation. Depending on the method of obtaining information, it is divided in "open information" and "information obtained with a restriction".

Article 9. Obtaining Open Information

Obtaining open information shall be secured through regular official publications, dissemination of mass media and provision of information to natural and legal persons.

The procedure and terms for obtaining open information shall be determined by said Law or agreement (if information is provided on the basis of an agreement). The agreement on the issue of information shall be concluded in accordance with civil legislation. Bodies of state power and municipalities should not reject a request for information due to the absence of an agreement.

Article 10. Information Obtained with a Restriction

Information obtained with a restriction shall include information about state, professional (advocate, notarization, and medical), service, bank, commercial, investigation and judicial secrecy, facts about private and family life, and terrorist actions. Information about environmental conditions shall be classified as information, obtaining which involves restrictions in cases established by relevant legislation.

Relations arising in connection with information in respect of state, professional (advocate, notarization, medical), service, bank, commercial, investigation and judicial secrets, facts about private and family life, terrorist actions, and environmental conditions shall be governed by relevant legislation.

Article 11. Application for Information

Consideration of applications for information is governed by the Law of the Azerbaijan Republic "On the Procedure for Consideration of Applications from Citizens".

Should said information lose its importance as a result of the consideration of an application for information within the period of time stipulated by the Law of the Azerbaijan Republic "On the Procedure for Consideration of Applications from Citizens", this application should be considered immediately and, failing this, not later than 24 hours.

The requirement for validating the necessity to obtain information shall be disallowed. Should the required information relate to the information obtained with a restriction referred to hereunder, the application may be rejected.

Article 12. Right to Appeal in Connection with Obtaining Information

A refusal to issue information may be appealed in the court. To prove the legality of refusal to issue information is the duty of the defendant.

According to the Law of the Azerbaijan Republic "On Mass Media" of 12 December 1999, the mass media shall have the right to obtain operational and reliable information on the economic, political, public, and social situation in the society, activities of public bodies, municipalities, institutions, enterprises and organizations, public associations, political parties, and officials. This right cannot be restricted, except for cases specified in the legislation of the Azerbaijan Republic.

An inquiry about obtaining information may be both in writing and in a verbal form.

A written inquiry on obtaining information shall be considered pursuant to the procedure and timeframe established by the legislation of the Azerbaijan Republic. Should this information lose its operational importance within the time stipulated by the law, the response to the inquiry should be provided immediately, and failing this, not later than 24 hours.

Public bodies, municipalities, institutions, enterprises and organizations, public associations, political parties, and officials shall present information about their activities based on an inquiry of mass media as well as by means of arranging press conferences or in another form. The requested information should be provided by heads of said bodies, organizations and public associations, deputy heads, press-service employees or other authorized persons.

Pursuant to the legislation of the Azerbaijan Republic, mass media officials shall have the right to lodge a complaint against public bodies, municipalities, institutions, enterprises and organizations, public associations, political parties and officials who refused to provide information.

Under the Law of the Azerbaijan Republic "On the Procedure for Consideration of Applications from Citizens" of 10 June 1997, it is also prohibited to require that an applicant should present a substantiation of the need to obtain said information in the course of the acceptance of an application for consideration.

Private Sector Initiatives and Involvement of Civil Society

The Law "On State Registration and State Register of Legal Persons" shall specify the procedure for the application of an entity wishing to obtain a legal person status; the list of documents, required for registration, and the procedure for submitting these documents; peculiar features of state registration of missions and affiliates of foreign legal persons and agencies with foreign investment; procedure for registration of changes introduced to constituent documents and of subsequent changes of registered facts; new registration as well as basic principles and the procedure for keeping State Register of Legal Persons.

Under the Law "On State Registration and State Register of Legal Persons" and the Civil Code, it is required that the following documents should be submitted for the registration of a newly established legal person:

1. Application signed by the founder (by all founders, if there are several of them) or his (their) legal representative and certified by the notary. The application should contain the following information:

- if the founder (or founders) is a natural person – name, surname, place of residence, identification card number and date of issue;
- if the founder (or founders) is a legal person – name, legal address and registration number;
- if the application is signed by an authorized person – name, surname, and information about warrant;

2. Document proving the payment of state tax;

3. Statute of newly established legal person certified by the founder (or founders) or his (their) legal representative;

4. Decision on the foundation of a legal person and on the approval of the statute (if a legal representative was appointed, the decision should contain information about the legal representative and his authority) to be signed by the founder or all founders;

5. Document about the payment of the authorized capital;

6. Notarized specimens of signatures of a legal representative, and a document certifying the authority of the representative and containing information about the representative (name, patronymic, surname and place of residence);

7. Document about the legal address of a newly established legal person;

8. Should the founder be a legal person – notarized copies of the state registration certificate (extract from the State Registry) and statute;

9. Notarized constituent agreement;

10. Should the foreign founder be a legal person – the document certifying his registration, extract from the Trade Register, registration certificate legalized in accordance with legislation at the Azerbaijan Republic Mission in the founder host country or at the mission of another country representing the interests of the Azerbaijan Republic in the founder host country (in the absence of consulates — as an exception — at the relevant executive body of the Azerbaijan Republic);

11. If the founder is foreigner or a person without a citizenship — a copy of the identification card and the document about economic activity in the country of citizenship or permanent residence of the foreign founder, or in any third country legalized in accordance with legislation at the Azerbaijan Republic Mission in the foreign founder host country or at the mission of other country representing interests of the Azerbaijan Republic in the founder host country (in the absence of consulates — as an exception — at the relevant executive body of the Azerbaijan Republic);

12. Seal and stamp sketch.

Under the Law "On State Language in Azerbaijan Republic", the name of the legal person is written according to the norms of Azerbaijan language, whereas constituent documents shall be executed in the state language.

Application is submitted together with a copy. The original application is kept with the Ministry of Justice, whereas the copy is returned to the applicant with the mark specifying the date of acceptance of the original application by a relevant body of executive power of the Azerbaijan Republic. Acceptance of the application may also be confirmed in any other form.

State registration of missions and affiliates of a foreign legal person shall also require the submission of the following documents:

1. Application signed by the founder or a legal representative and certified by a notary. The application must contain the following information:

- name, legal address and registration number of a foreign legal person;

- if application is signed by an authorized person — name, surname, patronymic, place of residence, number and date of issue of an identification certificate as well as information about power of attorney.

2. Decision of a foreign legal person on the establishment of an affiliate or a mission;

3. Regulations of an affiliate or a mission certified by the founder or a legal representative (the regulations must contain information about name, legal address, registration number and date of foundation of the affiliate as well as rights and duties, the procedure of management and liquidation of the affiliate or the mission and other information);

4. Document on the payment of state tax stating its amount;

5. Document on legal address of an affiliate or a mission;

6. A power of attorney in the name of said representative or a notarized copy of the power of attorney submitted by a foreign legal person;

7. Notarized decision or a copy of decision of a foreign legal person on the appointment of the affiliate/mission head;

8. Power of attorney and notarized specimens of signatures of the affiliate/mission head;

9. Charter, extract from registry, registration certificate of a foreign legal person. These documents should be legalized in accordance with the legislation at the Azerbaijan Republic Diplomatic Mission in the legal person host country or at the diplomatic mission of other country representing interests of the Azerbaijan Republic in the founder host country (in the absence of consulates — as an exception — at the relevant executive body of the Azerbaijan Republic);

10. Seal and stamp sketch.

Under the Law "On State Language in the Azerbaijan Republic", the name of the mission or affiliate is written according to the norms of Azerbaijan language, whereas the²foundation documents are executed in the State language.

The Tax Code of the Azerbaijan Republic of 11 June 2000 established that the revenue of charitable organizations — except for revenue from

entrepreneurship activity – and gratuitous transfers, membership fees and donations received by non-profit organizations shall be tax-free. Exempt from estate tax shall also be public organizations of the disabled. At present, more than 1 500 non-governmental organizations are registered in the Azerbaijan Republic.

Political Party Financing

As specified in the Law "On Political Parties" of 3 June 1002, activities of political parties shall be financed by the funds of these parties with no allocations from the state budget, except for financing of election campaigns under the Law on Election. Financing of parties by foreign states as well as by legal and natural persons of foreign states shall be disallowed.

Revenue of a political party includes receipts in the form of money or valuables in money terms. Benefits obtained as a result of a party's exemption from common liabilities are also recognized as receipts. Revenues of political parties are considered to be:

- membership fees;
- property income, proceeds from party actions, dissemination of printed editions and publications, and other similar activities connected with revenues as well as income in the form of donations;
- receipts in the form of the compensation of expenses on election campaigns;
- payments of subordinate organizations;
- other income.

Expenditures are considered to be:

- expenditures of current affairs, operating expenses of political party institutions and on information;
- expenses on public relations and elections;
- payments to subordinate organizations;
- interest on loans;
- personal expenses;
- other expenses.

Control over income sources, size of receipts and tax payments in accordance with tax legislation shall be exercised by taxation bodies.

Parties shall have the right to receive additional support. Stripped of the right to provide additional support to political parties shall be:

- government institutions;
- agencies that according to their statutes (foundation documents) by nature of their real activities serve exceptionally and directly to accomplish public, charitable and religious goals;
- trade unions;
- mass movements.

In addition, parties shall not be eligible for additional support provided with a view to obtaining economic and political benefits. Amounts of additional support in favour of political parties must be included in the financial report specifying names (surnames), addresses of a supporter and sums of additional support.

Parties should keep accounting documentation on revenues and expenditures, for which they must report, as well as the status of their property. A financial report of political party consists of revenue and expenditure sections as well as a statement of party property. It includes territorial organizations' reports. A report drawn up at the end of each calendar year must indicate the number of party members paying membership fees.

Issues of financing, spending of funds allocated for preparation and holding of elections, pre-election candidate campaigns, registered candidates, political parties, their blocks or political candidates as well as issues of repayment of moneys of candidates, registered candidates, political parties, their blocks or political candidates were laid out in the Election Code.

The Law "On mass media" established that the production and dissemination of mass media may be financed at the expense of sponsorship of legal and natural persons. Sponsorship of producers of goods whose advertising is prohibited, and persons who sell these goods is disallowed.

Legal and natural persons of foreign states may partially sponsor mass media (special issues of a printed edition or a broadcast). Sponsorship for mass media cannot influence the independence of an announcer and a journalist. Periodicals prepared using financial support of a sponsor should contain information about this, broadcasts should have captions or open information

through the announcer's text. The agreement concluded between the parties should also specify other methods of sponsor announcement.

Azerbaijan national legislation does not provide for the division of political parties in national and regional (local) parties.

According to the Code of Azerbaijan Republic of Administrative Behaviour non-submission or non-publication by candidates, registered candidates, political parties, blocks of political parties, referendum promotion groups of reports on the spending of funds allocated to the preparation and holding of elections entails imposition of fines in amount of twenty through thirty conventional financial units.

Criminalisation of Corruption

Active and Passive Bribery

Elements of offence and sanctions

The most socially dangerous type of corruption in Azerbaijan is taking and giving bribes. Contrary to the European Convention on Criminal Responsibility for Corruption of 27 January 1999, the United Nations Anti-Corruption Convention and other international legal instruments, Azerbaijan's legislation does not contain the concept of "bribery of a (national, foreign, international public) official". Criminal legislation has criminalized bribe taking and bribe-giving. In the national theory of criminal law, receiving a bribe is defined as passive corruption, while giving a bribe is an active form of corruption activity.

Bribery-related offences are defined by the legislator in Articles 311 and 312 of the Criminal Code (paragraph 144 herein).

The object of receiving a bribe is a combination of social relations in the sphere of regular activity of bodies of state power, local self-government bodies of the Azerbaijan Republic in conformity with the provisions of the Constitution of Azerbaijan Republic, laws and secondary legislation.

The objective side of the offence is manifested through the receipt by an official in person or through a third person of a bribe for activities (inactivity) in favour of the bribe giver, or persons whom he represents, if such activities (inactivity) are part of the official powers of an official, or said official by virtue of his official status, may assist in such activities (inactivity) as well as for the general protection or connivance in terms of service duties.

The term "official powers" used in the disposition of the Article is defined as a combination of the rights and duties as well as functions delegated to said person to accomplish official tasks, and procedures of implementing them.

The term "official status" is defined as a combination of legal and real possibilities of an official within his area of competence. "Official status" as a contributing factor to certain activities in favour of the bribe giver on the part of officials is understood to mean the importance and authority of the position held by an official, subordination of other officials, with respect to whom the bribe taker exercises a leadership role. Use of personal relations, provided that they are not connected with the position held, is not considered to be using one's official status. Official status of a person shall determine not only his/her legal possibilities connected with a range of rights and duties with respect to the position held, but also real possibilities that emerge from the authority of the position held in a public body, a local self-government body, a public or municipal institution, Armed Forces, other forces and military units, as well as from official ties. Using these positions, an official may for remuneration exert an influence and in one way or another assist in committing (or not committing) an activity beneficial to the bribe giver by another official who may be unaware of this remuneration. Such persons may be consultants, advisors, secretaries, assistants to high-ranking officials, heads of clerical offices, inspectors and similar officials who themselves do not make final decisions on issues, but which the decision adopted by another official may depend considerably on the performance of their official activities, preparing documents, and other information. In this case, the use by an official of only family-based relations, friendly or family-based ties to reach a result desirable for the person who had delivered the remuneration is not considered to be using one's official status, *i.e.* it excludes the fact of receiving a bribe.

Illegally receiving material values and benefits of proprietorial nature for the general protection and connivance of a person delivering these values or providing a proprietorial service, persons whom said person represents shall be also recognized as bribery. As such, general protection usually includes activities connected with undeserved remuneration or promotion, performance of other activities which are not caused by the necessity, while connivance is understood to mean the failure of an official to take measures to cope with neglect or violations on duty on the part of the bribe giver or persons whom he represents, and failure to respond to such illegal activities. Bribery of a similar nature may take place when an official receives remuneration (gifts) on a regular from subordinate employees or employees under his control, as the official decides on issues affecting their interests and the latter are interested in a favourable treatment by the bribe taker.

Receiving a bribe for protection or connivance is typical of corrupt staff of public and municipal bodies and various power structures, specifically in cases when representatives of the organized crime allegedly support officials to rely on them to act in their interests. Sometimes an official using his official status shall perform an activity for a bribe, which in itself is a crime. For example, an official may issue a forged document, may illegally exempt a person from criminal responsibility, may deliberately pass an illegal sentence or decision, falsify evidence, aid theft, smuggle, or violate rules of selling drugs,. In this case, the responsibility shall arise not only for bribe taking, but also for these illegal, criminal activities (inactivity).

Article 311 of the Criminal Code defines the proprietorial nature of the object of bribe. Under this Law, the object of a bribe, along with the money, securities and other property, may be benefits or services of a proprietorial nature provided for free, but subject to payment (provision of tourist vouchers, repair of an apartment, construction of summer houses, etc.). Benefits of a proprietorial nature specifically mean the underestimation of the cost of transferred property, privatized objects, rent reduction, and interest on bank loans. Material values (services) may be transferred (presented) to both an official – the recipient of the bribe and his family members — or other persons close to the person receiving the bribe or directly placed in the account of the recipient.

The act of an official receiving a variety of services of a non-material nature is not recognized as bribery. In some cases these activities may be considered as abuse of official powers and a corrupt crime.

It is of no importance when exactly the bribe was delivered to an official – whether it was before or after the activity was committed and for which a bribe was received or whether the nature of the official activities were specified before or after receiving illegal remuneration. Therefore, the bribe may have a nature of bribery because of the delivery of the remuneration *per se* or an agreement on it determines the relevant behaviour (activity or inactivity) of an official, but may also be an illegal material remuneration for past activities in the absence of any prior agreement about this remuneration when its recipient performed an official activity (inactivity) with no reliance on subsequent remuneration.

Receiving a bribe is a crime with so-called *corpus delicti*. It is recognized as completed if there is acceptance by an official of at least a part of the bribe. When the preconditioned bribe was not received due to circumstances, which do not depend on the bribe taker, the committed activity is evaluated as an attempt to receive the bride.

Under the Criminal Code, by attempt at crime is meant deliberate acts (activities or inactivity) of a person aimed at committing a crime, but in so doing the crime was not brought to a full end due to circumstances, independent of the will of said person. In this case, the term or type of punishment should not exceed three-quarters of the maximum limit of the most serious punishment stipulated in the relevant part of the Criminal Code for the committed crime. Therefore, the subject will bear responsibility for passive bribery, even if he fails to perform a promised activity due to circumstances that do not depend on his will. If an official was aiming in advance to seize someone else's property or to receive the right to someone else's property by means of fraud or abuse of confidence, he will be brought to criminal responsibility for fraud using his official status (CC Art. 178.2.3). The subject of the crime may only be an official. Qualified as types of receiving a bribe are:

- an official receiving a bribe for illegal activities (inactivity), *i.e.* commitment of this crime in aggravating circumstances shall entail imprisonment for five to ten years with deprivation of the right to take certain positions or to be engaged in a certain activity during three years (CC Art. 311.2). In so doing, illegal activities of an official are understood to mean illegal acts that followed from his official powers or were performed contrary to the service's interests as well as acts containing indications of a crime or another offence;
- activities stipulated in CC Articles 311.1 or 311.2 as committed by: a group of persons through prior collusion or by an organized group (CC art. 311.3.2); repeatedly (CC art. 311.3.2); in a large amount (CC 311.3.3); using threat (CC 311.3.4), *i.e.* committed in especially grave circumstances shall entail imprisonment for seven to twelve years with the seizure of property.
- The bribe should be recognized as received by prior collusion by a group of persons if in advance the participators in a crime were two or more officials, *i.e.* who agreed about this before the crime. Collusion of criminals includes the fact that they will receive illegal remuneration (services) for specific activities (inactivity) in the interests of the bribe giver or legal and natural persons whom he represents using their official status, or for general protection or connivance. The crime is recognized as completed with the acceptance of the bribe by at least one of these persons.
- Complicity in a crime shall mean a deliberate mutual participation of two or more persons in committing a deliberate crime (CC art. 31, 32). Accessories to a crime along with the performer (a person who directly committed a crime or indirectly participated in its committing

together with other persons (complicity) as well as a person who committed a crime using other persons who are not subject to criminal responsibility in view of circumstances stipulated in the criminal law) shall be an organizer (a person who organized a crime or led to its commitment as is a person who created an organized group or a criminal association (criminal organization) or led them), an instigator (a person who induced other person to commit a crime by means of persuasion, bribery, threat. etc.) and an accomplice (a person who assisted in the commission of a crime using advice, instructions, provision of information, means or instruments of crime, or by removing obstacles as well as a person who promised in advance to conceal a criminal, means or instruments of crime, traces of crime or criminally acquired items as well as a person who promised in advance to acquire or sell such items).

- Criminal responsibility of a third person in bribery, depending on concrete circumstances of the case and his role in giving or receiving the bribe, shall arise only in cases specified in the CC article on the types of complicity.
- Repeated receipt of the bribe includes commitment of activities stipulated in CC Article 311 (see paragraph 144 hereof) two or more times irrespective of whether an official was convicted of an earlier crime or not. If holding persons responsible for criminal responsibility of earlier crimes is impossible due to the statute of limitations or if the conviction of an earlier similar crime was served or expunged, it is not considered a repeated receipt of the bribe.
- Receiving the bribe in several payments for performance or non-performance of activities to ensure that the desirable result as is giving the bribe or the item of bribery to a group of officials or persons exercising managerial functions in commercial or other organization committing the crime by prior collusion or as an organized group should not be considered as a repeatedly committed crime. Regular transfer of values and provision of services of a proprietorial nature to an official in exchange for general protection or connivance on duty, when there is no indication of a repeated action, is qualified as a "continued" crime.
- Receiving the bribe in large amounts is calculated in financial terms. The cost of the item of bribery is determined on the basis of the prices of the goods, rates and tariffs for services, exchange rate (if the bribe was given in the foreign currency) at the moment of committing the crime, and if they are absent – based on experts' opinion. According

to CC Art. 311, a large bribe is an amount of money, value of securities, property or benefits of a proprietorial nature exceeding five thousand times the amount of conventional financial units. One financial unit is equal to five thousand and five hundred manats or, based on the current exchange rate, about one USD 1.10.

- Receiving the bribe through by way of threats usually means bringing a person into a situation where he must give a bribe to prevent detrimental consequences to himself and his interests as protected by law. In the context of such a crime, "threat" means applying to a person any psychological influence (for example, discharge, causing damage to property, dissemination of information known to be false, tarnishing the victim's honour and respect, and undermining the victim's personal reputation, etc.).
- The object of giving a bribe is similar to that of receiving a bribe.

The objective side of giving a bribe consists in illegal delivery, transfer of material values or giving benefits of a proprietorial nature to an official in person or through a third party for committing activities (inactivity), which are a part of the official powers of that official in favour of the bribe giver or persons whom he represents, or assisting on the part of an official by virtue of his status in committing activities (inactivity) by other officials either for general protection or connivance on duty with respect to the bribe giver or persons whom he represents.

Giving the bribe is inseparably connected with receiving it. The bribe cannot be received without a bribe being given. Accordingly, no finished crime of giving a bribe can take place if material values or benefits of a proprietorial nature being the subject of the bribe was not accepted by an official. Therefore, offering material values to an official, leaving values on the table or in the clothes of an official, mailed in a letter or a parcel, and even their transfer to relatives of an official, if this is not followed by acceptance of the bribe by the latter it shall be qualified as an attempt to give the bribe, rather than as a finished crime. Therefore, giving the bribe is complicity in receiving the bribe, unlike other cases of complicity against the interests of the public service classified as independent *corpus delicti*.

By giving the bribe, the subject may force an official to commit a knowingly illegal activity (inactivity) on duty, which is a crime *per se*. In these cases, he should bear responsibility not only for giving the bribe, but also complicity (instigation) in the crime committed by the official.

As the bribe givers may be private persons, persons exercising managerial

functions in a commercial or other organization and officials, this is of no importance for qualifying the bribe-giving. An official or a person exercising managerial functions in a commercial or other organization who suggested that his subordinate employee should seek a desirable activity or inactivity by giving the bribe shall bear responsibility as the bribe giver, while the employee who agreed to perform the conditioned activity for the bribe and delivered the bribe should bear responsibility as an accessory to bribe-giving.

The subjective side of this crime is characterized by direct intent. The culprit realizes that he delivers the subject of bribe to an official, *i.e.* receives remuneration in exchange for the performance of desired activities (inactivity).

The motives behind giving the bribe and objectives sought by the bribe giver may vary. These can be for selfish and personal motives, the desire to evade the law, to release oneself from responsibility, the desire to show one's gratitude to an official for a decision adopted in the bribe giver's interests, etc. However, the bribe is always given for official activities (inactivity) of an official on behalf of the bribe giver *per se* or persons whom he represents. These latter may be family members, other relatives or close persons of the bribed giver as well as interests of commercial and non-commercial organizations, public and municipal bodies, or institutions which are managed by or whose authorized person is the bribe giver. The motives and purpose of giving the bribe are not an obligatory characteristic of the subjective side.

A person who gave the bribe shall be exempt from criminal responsibility if the bribe-giving was a result of a threat on the part of an official or if a person voluntarily informed a relevant public body of giving the bribe. Exemption from criminal responsibility due to a threat on the part of an official or due to voluntary information about giving the bribe does not mean there is no *corpus delicti* in the activities of these persons. Hence, they cannot be recognized as victims and shall not have the right to the recovery of values delivered as the bribe, which shall be transferred to the revenue side of the government.

The ultimate purpose of active bribery is the receipt of any illegal benefits in one's own or other persons' favour, and passive bribery which is the illegal receipt of money, securities, other property or benefits of a proprietorial nature.

As criminal law does not distinguish between a foreign public official and an international public official, the latter shall bear responsibility under these Articles 311 and 312on par with domestic public officials. Foreign citizens and persons without a citizenship committing a crime outside the Azerbaijan Republic may be held criminally responsible in cases where the crime is directed against citizens and interests of Azerbaijan as well as in cases stipulated by international

agreements if they were not convicted in a foreign state. Those persons who have committed military crimes, terrorist crimes, financing of terrorism, hijacking, taking hostages, piracy on high seas, illegal turnover of drugs and psychotropic substances, production or sale of counterfeits or securities, assault on persons or organizations enjoying international protection, crimes connected with radioactive materials as well as other crimes, the punishment for which follows from international agreements concluded with Azerbaijan Republic are subject to criminal responsibility and punishment under the Criminal Code of Azerbaijan irrespective of the place the crimes were committed.

Criminal legislation in Azerbaijan shall define criminal punishment as a measure against acts of a criminal and legal nature and which is applied by the court through sentencing. It is applied with the aim of restoring social justice, punish the convict and prevent new crimes from being committed by convicts and other persons, and consists in the establishment of the deprivation or restriction of the rights and freedoms of this person under the Criminal Code.

The Criminal Code of Azerbaijan stipulates 13 types of criminal penalties: fine, deprivation of the right to drive a transportation means, deprivation of the right to hold specific positions or to be engaged in certain activities, public works, deprivation of a special, military or honorary titles and government awards, corrective labor, restrictions on military service, seizure of property, deportation, restriction of freedom, confinement to a disciplinary military unit, imprisonment for a certain period, and life-long imprisonment.

These penalties are divided into principal and supplementary penalties. Public and corrective labor, restrictions on military service, confinement to a disciplinary military unit, restricted freedom, imprisonment for a certain period and life-long imprisonment shall be applied exceptionally as principal types of penalties. Fine and deprivation of the right to hold specific positions or to be engaged in a specific activity shall be qualified as both principal and supplementary penalties. Deprivation of a social, military or honorary title, government awards, deprivation of the right to drive a car, confiscation of property and deportation shall be applied only as supplementary types of penalties.

Only be penalties established by criminal legislation and stipulated in sanctions defined in the articles of the Criminal Code prescribing responsibility for a specified crime can be applied to persons who committed crimes.

Depending on the nature and the degree of the threat to society, activities (inactivity) under the Criminal Code shall be subdivided into the following types of crimes: those that do not pose a considerable threat to the society; and less grave crimes, grave crimes and seriously grave crimes.

Crimes that do not pose a considerable threat to society are treated as deliberate and careless activities whose commitment shall not entail imprisonment or for which maximum punishment shall not exceed two years of imprisonment under the Criminal Code. Less grave crimes shall cover deliberate and careless activities whose commitment entails no more than seven years imprisonment, *i.e.* a maximum punishment for this category. Grave crimes are recognized as deliberate or careless activities whose commitment entails a maximum penalty, which is no more twelve years of imprisonment. Especially grave crimes shall be deliberate activities, whose commitment entails more than 12 years of imprisonment or a harsher punishment. Hence, receiving (CC Art. 311.1) and giving (CC Art. 312.1) a bribe in the absence of aggravating circumstances are less grave crimes, while qualified crimes, *i.e.* committed under aggravating (CC Art. 311.2 and 312.2) and especially aggravating circumstances (CC Art. 312.3), are grave crimes.

The Criminal Code requires that the penalty imposed should take due account of the nature of crime and the degree of its social danger, the personality of the culprit, including circumstances that attenuate and aggravate punishment, and the impact of the imposed penalty on the punishment of the convict and his family living conditions. The extenuating circumstances are as follows:

- commitment of a crime which does not constitute a big social threat or a lesser crime committed for the first time as a result of coincidence of circumstances;
- commitment of a crime by a person under age;
- commitment of a crime by a pregnant woman;
- provided a person, who committed a crime, maintains juveniles;
- commitment of a crime as a result of coincidence of hard life circumstances or due to compassion;
- commitment of a crime as a result of physical or mental pressure or as a result of material, official or another kind of dependence;
- commitment of a crime with violation of the right to self-defense, detention of a person who performed a socially dangerous act, absolute necessity, justified risk, execution of order or instruction;
- commitment of a crime as a result of illegal or amoral actions of a victim or in a fit of passion (affect) caused by such actions;
- giving oneself up to authorities, active support of crime solution, exposure of other accomplices in crime, retrieval of the property obtained as a result of crime;

- provision of medical and other kind of assistance to a victim right after commitment of a crime, voluntary compensation for or removal of material and moral damage caused as a result of a crime, the attempt to come to terms with a victim, or other actions aimed at decreasing the harm done to a victim.

Other circumstances that are not indicated in the above list may be classified as extenuating ones.

The aggravating circumstances are as follows:

- recidivism;
- grave consequences resulting from a crime;
- commitment of a crime by a group of persons in collusion with an organized group or a criminal society (a criminal organization);
- particularly active participation in commitment of a crime;
- involvement in commitment of a crime with persons having serious mental disorders or who are in a state of alcoholic intoxication, and persons who have not reached an age of criminal discretion;
- commitment of a crime on the grounds of national, racial, religious hatred or fanaticism, the vengeance for legitimate actions of other persons, in order to meet one's selfish interests or foul motives, also with the aim of concealing another crime or facilitating its commitment;
- commitment of a crime against a pregnant woman whose pregnancy was known to the offender, or against a juvenile, elderly or helpless person or the person who depends on an offender;
- commitment of a crime against a person or his/her relatives in connection with the performance by this person of his/her official or public duties;
- commitment of a crime with extreme cruelty, causing suffering by the victim or torture;
- commitment of a crime with the use of fire-arms, explosives, and other dangerous means and technical facilities;
- commitment of a crime under the conditions of the state of emergency, natural or social calamities, mass-scale unrest;

- commitment of a crime while using an official uniform or documents of representatives of state authorities;
- commitment of a crime using the trust placed in the offender due to his/her official position or agreement.

Said list is complete and the circumstances not included into it shall not be classified as aggravating ones when inflicting the punishment.

Provided an extenuating or an aggravating circumstance is defined by a relevant article of the Criminal Code, such circumstances shall not be taken into account more than once when inflicting the punishment.

Criminal legislation in Azerbaijan includes such provision as "the release from criminal liability due to expiry of the statute of limitations". On the expiry of periods of limitations no legal actions are taken against a person. Limitation is understood as the expiry of the period after a crime has been committed, fixed by criminal law which exempts the offender from criminal liability. The statute of limitations depends on the crime category. The person shall not be brought arrested when the following time periods have expired:

- two years after commitment of a crime that does not constitute a big social threat;
- five years after commitment of a lesser crime;
- ten years after commitment of a grave crime;
- fifteen years after commitment of an extremely grave crime.

The statutes of limitation are fixed from the day the crime was committed to the time when the court's verdict enters into force. If a person commits a new crime, said periods are fixed separately for each crime. The statute of limitations are suspended of an offender hides from the investigation or court. In this case, the statute of limitations is resumed from the moment of detention of the offender or when he gives himself up to the authorities.

Other Corruption and Corruption-Related Offences

The criminal legislation of Azerbaijan envisages a number of other offences related to corruption. A special place among them belongs to malfeasance in office [office abuse].

Article 308. Malfeasance in Office

308.1. Malfeasance, that is, the deliberate, contrary to the service interests, use by a civil servant of his/her official duties to meet his/her selfish or other kinds of personal interests, provided such actions did a considerable harm to the rights and legitimate interests of citizens or institutions or to the interests of society and the state protected by law, shall be punished in the form of penalty ranging from one to two thousand minimal amounts of wages and salaries, or by deprivation of the right to hold certain positions or to conduct a certain kind of activity for a period of up to three years, or by deprivation of freedom for a term of up to three years.

308.2. The actions, defined by Article 308.1 of the Criminal Code, that led to grave consequences, shall be punished by deprivation of freedom for a term from three to seven years with deprivation of the right to hold certain positions or to conduct certain kinds of activity for a term of up to three years.

The object of this offence involves all social relations in the sphere of normal relations, corresponding to the provisions of the Constitution of the Azerbaijan Republic, laws and enactments, activity of state and local self-government authorities.

The objective aspect of malfeasance includes three obligatory indicators: the use by a public official of his/her official powers contrary to the interests of the service interests; the consequences in the form of a significant violation of the rights and legitimate interests of citizens or institutions or the interests of society and the state protected by the law; and the causal relationship between an act and its consequence. The compulsory element of the objective aspect of malfeasance is doing considerable harm to the rights and legitimate interests of citizens or institutions, or the interests of society and the state protected by the law. Malfeasance shall be considered as an effectively committed offence only in case of the emergence of such consequences. A significant violation is to a large extent subjective and, therefore, in law enforcement practice it is motivated in the investigative and court documents.

Only a public official may be the subject of malfeasance. In the articles covered here, public officials shall be understood to be the persons who, permanently or temporarily, carry out the functions of representatives of state authorities or fulfil organizational-managerial or administrative-economic functions in state and local self-government bodies, state and municipal institutions, enterprises or organizations, also at commercial and non-

commercial institutions. Civil servants and employees of local self-government bodies, not classified as public officials, shall be criminally liable as per the articles of this chapter in the cases specially defined by relevant articles of the Criminal Code.

As far as the subjective aspect is concerned, malfeasance shall be understood as the offence being committed with direct and indirect intent. The guilty public official understands the social danger his/her actions (inaction), can foresee the possibility of socially dangerous consequences, yet knowingly permits such occurrence. Compulsory indicator of subjective aspect of malfeasance is the motive defined by the law as a selfish or another kind of personal interest.

The offences under consideration also include such "forgery in office".

Article 313. Forgery in Office

Forgery in office, that is, public officials, civil servants or employees of local self-government bodies who are not public officials, who put into official documents deliberately false information, as well as putting into said documents corrections that distort their real content, provided such actions were made in for selfish or other kinds of personal interest, shall be punished in the form of a penalty ranging from five hundred to one thousand the times the minimum amount of their wages and salaries, or by public works for a term of two hundred forty hours, or by corrective labor for a term of one or two years, or by deprivation of their freedom for up to two years with deprivation of the right to hold certain positions or to conduct certain kinds of activity for a term of up to two years.

The object of this offence is the same as in the case of malfeasance in office.

The objective aspect of forgery in office may involve one of the two actions indicated in the law: putting deliberately false information into official documents or introduction into said documents of corrections [amendments) distorting their real content. Thus, forgery can be material, that is, introduction of various amendments into an authentic document, and intellectual, that is, drawing up the document which is false as regards its content but authentic in terms of its form. The essence of forgery is formal, and the offence is recognized as committed from the moment of making said actions regardless of the fact whether such actions led to any consequences or whether the forged document was used or not.

Putting deliberately false information into official documents is in fact the recording of false information in an official document that, in doing so, preserves all the features and essential elements of an authentic one. This action can also involve the drawing up of a completely forged document, relating both to its form and content. This kind of forgery also includes marking the document by a date other than the date of the drawing up or issuing of the document, forged signature of a public official, etc.

Putting into the official document corrections [amendments] distorting its real content can be done by means of erasure, additions and by other means. Erasure means elimination by different means of previous records or requisites in an authentic document with possible replacement by forged ones.

A compulsory condition for the recognition of an action as a forgery is taking the relevant actions relating to official documents by a public official or an employee in connection with the performance of their official duties (within or outside their official competence). If a person who is a public official or an employee forges an unofficial document or, in doing so, does not use his official powers, such actions are not classified as forgery in office. In relevant cases such actions may be classified as the forgery of a certificate or another official document that provide the right or the release from obligations made by a private person as an offence against management.

The subjective aspect of forgery in office is characterized by direct intent. The guilty person knows for sure that he puts the deliberately false information into official documents and performs other actions relating to forgery. In doing so, such person should be guided by selfish or other kinds of personal interests. The availability of any other motive when taking the actions, defined in Article 313 of the Criminal Code, excludes the liability for forgery in office. The law does not define the aim of forgery of official documents by public officials. However, provided a forgery is done with the aim of further use of forged documents for the commitment of another grave or lesser crime, such actions are classified as forgery in office and preparation for commitment of a grave or a lesser offence.

The use by public officials or civil servants of deliberately fictitious documents prepared by them for embezzlement of property not belonging to them through fraud, misappropriation or misapplication is classified as embezzlement and forgery in office. In the same manner, the total number of offences is applied to qualify the actions of public officials or employees that use the official documents forged by them for commitment or concealment of any other kind of offence. A forgery does not require independent qualification only in the case where it is a constructive indicator of another offence (for instance, smuggling).

If forgery in office is done to assist another person in the commitment of an offence, the offender shall be brought to account under Article 313 of the Criminal Code and for complicity in commitment of another offence. For instance, provided a public official, a civil servant or a municipal employee commits forgery and issues a forged document, being well aware of the fact that this document will be used for embezzlement of property, the guilty person will be liable for both forgery and complicity in embezzlement.

According to the law, forgery in office is not classified as an offence that constitutes a significant social danger. The person who committed a forgery may be punished by a penalty ranging from five hundred to one thousand times the amount of a conditional financial unit, or by public works for a term up to two hundred forty hours, or by corrective labor for a term from one to two years, or by deprivation of freedom for a term of up to two years without the right to hold certain positions or to conduct certain kinds of activity for a term of up to two years or without it. Proceeding from this, no legal actions should be taken against the person who committed forgery provided two years have passed from the date of commitment of such offence.

The subject of this kind of offence may include only the public officials, or civil servants and employees of local self-government bodies who are not classified as public officials.

Misappropriation or misapplication is among the most widespread corruption offences.

Article 179. Misappropriation or Misapplication.

179.1. Misappropriation or misapplication, that is, embezzlement of the property entrusted to the guilty person shall be punished in the form of penalty ranging from one hundred to five hundred of conditional financial units, or by public works for a term from one hundred eighty to two hundred forty hours, or by deprivation of freedom for a term of up to two years.

179.2. The same actions, taken: by a group of persons in collusion; repeatedly; by a person using his official position; entailing a considerable damage; - shall be punished in the form of penalty ranging from two thousand to three thousand amounts of a conditional financial unit, or by deprivation of freedom for a period from three to seven years with confiscation of property or without it.

179.3. The actions, defined in Articles 179.1 or 179.2 of the Criminal Code, provided they have been taken by : an organized group; in large amount; by the person previously tried two or more times for embezzlement of extortion, - shall be punished by deprivation of freedom for a term from seven to twelve years with confiscation of property or without it. This article envisages the liability for individual, though rather similar, forms of embezzlement.

In so far as the objective aspect is concerned, misappropriation is the illicit free of charge appropriation of the entrusted property in favor of a guilty person through the separation, retention and establishment of possession of such property. In the event of embezzlement, there exists no period of time between legal possession and illegal disposal of the property entrusted to the guilty person during which such person illegally possesses this property. The person immediately alienates the property to the third persons, spends and uses the property.

Property can be entrusted to the guilty person in connection with his work (for storage, shipment, temporary use, etc.). The guilty person, due to his official position, may dispose of the property entrusted to him or managed by him. The transition from legal possession of other people's property to illegal possession, with the presence of other objective and subjective elements of embezzlement, fixes the moment of commitment of offence.

Although misappropriation (misapplication) is similar to theft, it has some peculiar features. Misappropriation or misapplication of the property entrusted to or managed by the guilty person also include the illegal free of charge appropriation in the guilty person's favor or in favor of another person of the property legally entrusted to the guilty person who, due to his official duties, contractual relations or special instruction, performs the functions of disposal, management, delivery or storage of such property (store keeper, forwarding or supply agent, salesman, cashier and other persons). Embezzlement of another entity's property by the person without said powers but having access to them due to his job or duties is classified as theft.

Misappropriation, as a form of embezzlement, differs from temporary borrowing of property by the person that disposed of it. Provided the entrusted property was used illegally but without the intent to appropriate the property in one's own favor or in favor of the third persons, such actions shall not be regarded as embezzlement. Given the relevant elements of offence, these actions may be qualified as arbitrariness or office abuse provided the guilty person is a public official. The intention to return the seized property or its equivalent may testify to the absence of selfish aspirations.

The subject of offence is a natural person who has reached the age of 16 and to whom the property, embezzled by such person, was entrusted.

As far as the subjective aspect is concerned, these offences are characterized by direct intent and selfish ends.

Misappropriation (misapplication) will be regarded as committed by a group of persons in collusion, provided it was done by the persons that agreed in advance to commit the offence.

According to the law, the persons who committed the group misappropriation in collusion are accomplices since each of them participates in the actions directly included into the objective aspect of offence. Joint participation in offence does not exclude the possibility of distribution of roles among the participants in theft. Each accomplice shall be liable for the offence in the full amount of the stolen property, regardless of the share given to him.

At the same time, misappropriation (misapplication) committed by a group of persons in collusion does not exclude the possibility of involvement of other accomplices (instigators) who did not directly participate in the objective aspect of offence. It is worth mentioning that in case of commitment of this offence by a group of persons in collusion, individual participants in misappropriation (misapplication), who are neither the public officials nor the persons to whom the property was entrusted or transferred for management, shall be liable under this article referring to the norms pertaining to the kinds of complicity (Article 32 of the Criminal Code).

Misappropriation (misapplication) is classified as committed repeatedly provided it was preceded by one or more offences of such kind as theft, fraud, misappropriation or misapplication, robbery, banditry, extortion, theft of valuable articles, infliction of property damage by means of deception or abuse of power, illicit possession of car or another kind of transportation facility without the intent of theft, also banditry, theft or extortion of radioactive materials, theft or extortion of arms, ammunition, explosives and explosive devices, theft or extortion of narcotic and psychotropic substances, precursors.

Recurrence of offences means the commitment of two or more offences defined by one article in the Criminal Code. The commitment of two or more offences, defined by different articles of the Criminal Code, may be classified as the repeated one only in the cases defined by the relevant articles of a special part of the Criminal Code. As far as embezzlement is concerned, the element of recurrence not only covers it, but also other selfish offences related to property.

The element of recurrence exists not only in the case where offences were repeated and effectively completed, but also when they were not completed due to circumstances independent of the guilty person (preparation, attempt). It exists as a qualifying element of embezzlement not only when a person was previously convicted for previously committed offences (recidivism) but also provided the person was not convicted before and is called to account for the offences listed in Item 267. In order to establish the element of recurrence it does not matter whether embezzlement was committed by the actual doer or the accomplice.

An offence is not recognized as a repeated one provided, for a previously committed offence, a person was exempt from criminal liability or the previous conviction was cancelled. The element of recurrence is also absent provided the theft was committed simultaneously from several victims but by single method and with a single intent.

A distinction should be made between the recurrence of offence, including the embezzlement, and the offence of several transactions. The embezzlement of property, committed repeatedly, at different periods of time from different sources and by different methods, shall be classified as a repeated offence but not as the offence of several transactions.

The use of an official position in misappropriation (misapplication) means in particular, that a public official performs illicit actions falling within his competence, explains them by service interests or the authority of a state body, or, by means of state coercion or on the basis of the information available at a state body or, using his official position, such person conducts additional checks, cancels privileges, licenses and causes other unfavourable circumstances. The subject of the offence, performing different functions as regards the property entrusted to him due to his official position (team leader, forwarding or supply agent, official, etc.), appropriating the values transferred to him, always uses his/her official position being well aware of the fact that without his position he would not be able to dispose of and manage these values. This criminal situation is covered in Part 2, Article 179 of the Criminal Code in terms of the element of misappropriation or misapplication by a person using his official position. The offenders of this kind may include both public officials and employees who, nevertheless, performed the functions pertaining to the property entrusted to them.

Definition of a "Public Official"

In accordance with the note to the above stated Article 308 of the Criminal

Code, the public officials involved in the offences against the state power, civil service interests and local self-government bodies, and other commercial and non-commercial institutions (Article 33 of the Code includes such offences as malfeasance, abuse of power, misappropriation of official powers, bribe taking, bribe-giving, forgery in office and negligence) shall be the persons who permanently, temporarily or by special order perform the functions of state representatives or organizational-managerial or administrative-economic functions at the state and local-self-government bodies, state and municipal institutions, enterprises, also at commercial and non-commercial institutions. Civil servants and employees of local self-government bodies, also other commercial and non-commercial organizations shall be liable under the articles of said chapter of the Criminal Code in the cases specially defined by relevant articles.

The norms of criminal law do not specify the content of each function of a public official. This is done in the norms of other branches of law and by judicial practice. For instance, a representative of state power is provided, within his competence, with the right to make requirements and to take the decisions binding for citizens or enterprises, institutions and organizations irrespective of the forms of their subordination and the forms of ownership. They interact with the persons not subordinate to them. Sometimes they do not have subordinates at all.

Pursuant to the Constitution of the Azerbaijan Republic, the state power in this country is based on the principle of division of power: legislative power is exercised by the Milli Mejlis (MPs); executive power belongs to the President of the Azerbaijan Republic (it is exercised by the government, heads of local self-government bodies, employees of state institutions in charge of fire and other kinds of safety, mining, industrial, architectural and construction supervision); judicial power is exercised by courts (by judges of the Constitutional, Supreme, Appeal and territorial courts, also economic and military courts [court martial] at all level).

Representatives of state power are the persons exercising the legislative, executive or judicial power, and the employees of state, supervisory of controlling bodies provided with administrative powers as regards the persons who are not officially dependent on them, or with the right to take decisions binding on all citizens and institutions irrespective of their departmental subordination.

The persons, who temporarily or by special order, carry out the functions of representatives of state power, include various representatives of the public who, pursuant to the law, are officially engaged in performance of the functions

aimed at the struggle against crime or in performance of different supervisory and control functions. Performance of said functions by special order means that a person carries out certain functions vested on such person by the law (recruits of police, public prosecutor's office, etc.), decree, order or instruction of a superior official or the body or the official authorized to do so. Such functions may be performed within a certain period of time or for one occasion only or be combined with person's job (assessors, jurors and the like).

Organizational and managerial functions involve performance of duties relating to the management of a working collective, section of work or a team of workers. As a rule, these are the persons who have other employees subordinate to them. They run and organize the work of their subordinates.

Administrative and economic functions are the powers of management and disposal of property belonging to other entities (state, municipal, private): establishment of the procedure for keeping the property, its disposal, realization, accounting and control over the use of material values, receipt and issuance of funds, documents, etc.

According to the Code of Administrative Offences of the Azerbaijan Republic (note to Article 16), the public officials are the persons who carry out said functions, indicated in the note to Article 308 of the Criminal Code, in the Armed Forces of the Azerbaijan Republic, other kinds of military formations, established pursuant to the law, at the government and non-governmental organizations and enterprises, or the persons who perform such duties due to special powers, also natural persons who fulfil such duties and conduct private business activity [entrepreneurship] without establishment of a legal entity.

Note: The Anti-Corruption Law of Azerbaijani Republic dated 13 January 2004, which came into force in January 2005, significantly expands the meaning of the term "public official". According to this law, the following persons can be subject to liability for corruption-related crimes:

- persons elected or appointed to public agencies according to procedures established by the Constitution and legislation of Azerbaijani Republic;
- persons specially authorized to represent public agencies; state employees in managerial positions;
- persons occupying administrative or managerial positions in appropriate structural units of public agencies, in public offices, companies or organizations, as well as in public entities where the controlling block of stock is owned by the state;

- persons who are registered candidates for elective public offices according to the procedures established by the legislation of Azerbaijani Republic;
- persons elected to local self-governments according to the procedures established by the legislation of Azerbaijani Republic;
- persons performing administrative or managerial functions in local self-governments;
- persons performing administrative or managerial functions in non-governmental agencies authorized to act on behalf of the state, in cases specified by the legislation;
- persons who received material and/or other benefits and privileges in exchange for illegally impacting a decision made by a public official, using their influence or connections;
- individuals or legal entities who illegally offered or promised or gave a public official material and/or other benefits and privileges, as well as persons who acted as intermediaries in implementing such acts.

For the purpose of this law, persons listed in the first eight sub-paragraphs of this Note are considered public officials. Currently a law is being drafted that will amend and modify appropriate legislative acts in conjunction with the above innovations.

Defences and Exceptions

During the prosecution of corruption offences, all prosecuted persons have equal procedural rights as the persons subject to criminal prosecution for other kinds of offences. In accordance with the Constitution, all are equal before the law and the court. This provision is also included in the criminal legislation, according to which the persons who committed offences are equal before the law and are subject to criminal liability irrespective of their race, nationality, attitude to religion, language, sex, origin , property and official position, convictions, membership in political parties, trade unions, other public associations, and other circumstances.

In the course of criminal proceedings, each person has the right to defend his/her rights and freedoms fixed in the Constitution by all legal means. According to the Code of Criminal Procedure, during the criminal prosecution the investigator, prosecutor or court shall take due measures to protect the right of the victim, the suspect or the defendant to receive qualified legal aid. The

authority in charge of criminal proceedings shall observe the right of the victim (private prosecutor), civil plaintiff or his/her authorized representative, the authorized representative of a suspect or a defendant, or civil defendant to use the legal aid of the representative invited by them in the course of criminal proceedings. At the same time, this authority has no right to prohibit, in the course of interrogation, participation of the lawyer, in the presence of a suspect or a witness, invited by them as their representative. Participation of a defence attorney and legitimate representative of a suspect or a defendant shall not limit the rights of such suspect or defendant.

The defence attorney in criminal proceedings may be represented only by the lawyer who has the right to practice in Azerbaijan. The defence attorney shall not be equated with the personality of a suspect or a defendant, or the criminal case being considered with his/her participation. A suspect or a defendant has no right to have several defence attorneys. Non-participation of one of the defence attorneys of a suspect or a defendant in the proceedings requiring such participation shall not be considered as grounds for the recognition of such proceedings as illegal.

Pursuant to the Code of Criminal Procedure, the defence attorney who was permitted to participate in criminal proceedings has the right to submit evidence and collect information essential for legal aid, to receive explanations from individuals, and to request relevant references and documents from different institutions and associations.

Any person accused of committing an offence shall be acquitted unless his guilt is proved as per the Code of Criminal Procedure and until the relevant court's verdict enters into force. Conviction of a person is inadmissible even given strong suspicions of his guilt. According to criminal procedure law, the doubts that cannot be lifted within the framework of the relevant legal procedure shall be resolved in favour of the defendant (suspect). The same holds for the doubts not lifted in the case of application of criminal and criminal procedure laws.

The person accused of committing an offence has the right not to prove his/her innocence. It is the duty of the prosecutor to prove the necessity of taking legal actions.

The law does not contain any provisions relating to the criminal and procedural differences in the cases involving the bribery of local and foreign officials.

The principle of equality of all before the law is fixed in Article 6 of the

Code of Criminal Procedure which declares the following:

The persons who committed offences are equal before the law and are criminally liable irrespective of their race, nationality, attitude to religion, language, sex, origin, property and official position, convictions, membership in political parties, trade unions and other public associations, also other circumstances.

Application of the criminal law relating to the persons, who committed offences outside the territory of Azerbaijan, is specified in Article 12 of the Code of Criminal Procedure given below:

12.1. Citizens of the Azerbaijan Republic and the stateless persons, permanently residing in the Azerbaijan Republic, who committed an act (action or inaction) outside the territory of the Azerbaijan Republic, shall be criminally liable under this Code provided such act has been recognized as an offence in the Azerbaijan Republic and in the foreign state where it was committed, and provided these persons were not convicted in a foreign state.

12.2. Foreign nationals and stateless persons, who committed offence outside Azerbaijan, may be criminally liable under this Code in the cases when the offence is directed against the citizens of the Azerbaijan Republic and its interests, also in the cases defined in an international treaty of the Azerbaijan Republic, provided these persons were not convicted in a foreign state.

12.3. Citizens of the Azerbaijan Republic, the foreign nationals and stateless persons, who committed the crimes against peace and humanity, war crimes, terrorism, financing of terrorism, hijacking of aircraft, taking of hostages, tortures, piracy on the high seas, illegal traffic of narcotic and psychotropic substances, manufacture or sale of counterfeit money or securities, attack against the persons or institutions under international protection, the crimes connected with radioactive materials, also other crimes that are punishable pursuant to international agreements of the Azerbaijan Republic, shall be criminally liable and punished under this Code irrespective of the place of commitment of said crimes.

12.4. Servicemen of the Armed Forces of Azerbaijan Republic, who serve in peace-keeping units and who committed crimes outside this country, shall be criminally liable under this Code unless otherwise specified by an international treaty of the Azerbaijan Republic.

12.5. When convicting by the courts of Azerbaijan the persons listed in Articles 12.1-12.4 of this Code, the punishment shall not exceed the upper limit of sanctions specified by the law of the foreign state where the crime was committed.

Immunities

Deputies of Milli Mejlis, the Prime Minister and the Ombudsman in charge of human rights in Azerbaijan enjoy immunity during their term in office. During this time, no legal actions may be taken against them, they cannot be detained or be subject to administrative liability by courts, it is prohibited to search them or to make them undergo customs examination excluding the cases when said persons are captured during commitment of offence. In this case, the authorities that detained a Deputy or Prime-Minister shall immediately inform the Prosecutor-General. The immunity of a Mejlis deputy and Ombudsman may be cancelled only by decision of the Milli Mejlis, while the immunity of the Prime-Minister can be cancelled by the President in all three cases as submitted by the Prosecutor-General (Articles 90, 123 of the Constitution and Article 6 of the Constitutional Law on Ombudsman as of 28 December 2001). In addition, the deputies shall not be criminally liable for their activity, voting and statements in Milli Mejlis. No authorities have the right to demand, without their consent, that they provide explanations and evidence to this effect.

Article 106 of the Constitution establishes that the President of the Azerbaijan Republic shall enjoy the right of immunity. His honour and dignity are protected by law. The issue of removal [impeachment] of the President from his position may be submitted to Milli Mejlis only in the case where he committed a grave crime. This procedure is initiated by the Constitutional Court on the basis of conclusions provided by the Supreme Court and submitted within 30 days. The President may be removed from his position by the decision of Milli Mejlis taken by the majority of 95 votes (125 votes in total) within two months from the day of submission of this request by the Constitutional Court to the Milli Mejlis. The decision should be signed by the Chairman of the Constitutional Court within a week after its adoption. The charge made against the President is dismissed if the Milli Mejlis fails, within said period of two months, to take a decision. This decision will not become valid if, within said period of one week, the Constitutional Court does not request to sign it.

The immunity of judges is guaranteed by the Constitution. (Article 128). Pursuant to the Laws "On the Constitutional Court," "On courts and judges," the judges shall not be subject to criminal or administrative liability, shall not be

detained, arrested, brought to court, searched or examined by customs officials. In the event where offences are committed by judges, the President of Azerbaijan may, on the basis of conclusions made by the Supreme Court, address the Milli Mejlis and initiate the removal of judges from their position. The relevant conclusion of the Supreme Court shall be submitted to the President of Azerbaijan at his request within 30 days after making such a request. The decision on the dismissal of judges of the Constitutional Court, the Supreme Court, and the Courts of Appeal shall be taken by the Milli Mejlis by a majority of 83 votes. The decision on dismissal of other judges shall be taken by the Milli Mejlis by a majority of 63 votes.

Jurisdiction

The basic principles of establishment of the jurisdiction over criminal offences are defined in the second chapter of the Criminal Code called "force of criminal law" (Articles 10-13). Criminality and punishment of the act (action or inaction) are specified in the criminal law that was in force when the act was committed.

Nobody shall be criminally liable for an act that was not recognized as a crime when it was committed. Such time is the time of commitment of a socially dangerous act (action or inaction) regardless of the time the consequences of that act occurred.

The criminal law removing the criminality of an act (action or inaction) and its punishment, mitigating the punishment or in another way improving the position of a person who committed a crime, has a retroactive effect, that is it applies to the persons who committed a relevant act (action or inaction) prior to entry of such law into force, and to persons who are serving or have completed their sentence but whose conviction has not been suspended or cancelled. The criminal law, establishing the criminality of an act (action or inaction), enhancing the punishment or in any other way aggravating the position of a person who committed a crime has no retroactive effect.

The person who committed a crime in Azerbaijan Republic shall be criminally liable under the Criminal Code of Azerbaijan. The crime that commenced, continued or ended in Azerbaijan is recognized as the crime committed in Azerbaijan Republic. The same is true for the crime committed in the territorial waters of Azerbaijan Republic, the sector of the Caspian Sea belonging to Azerbaijan, in the airspace of Azerbaijan, and its economic zone.

The person who committed a crime on a ship or in an aircraft belonging to

the Azerbaijan Navy or Air Force shall be criminally liable under the Criminal Code regardless of the place or location of such ship or aircraft. The same is true for the person who committed a crime in a ship or aircraft registered at a seaport or airport of Azerbaijan located on the high seas or in open airspace outside Azerbaijan but bearing the flag or state symbol of the Azerbaijan Republic.

The issue of criminal liability of diplomatic representatives of foreign states and other citizens enjoying immunity is resolved pursuant to international law provided such persons committed a crime in Azerbaijan.

Citizens of the Azerbaijan Republic and stateless persons permanently residing in Azerbaijan who committed the act (action or inaction) outside Azerbaijan shall be criminally liable under the Criminal Code of Azerbaijan, provided such act is recognized as a crime in the Azerbaijan Republic and in the state where the crime was committed, and provided these persons were not convicted in a foreign state.

Legal actions may be taken against citizens and stateless persons under the Criminal Code provided the crime is directed against the citizens of Azerbaijan, its interests, and in the cases defined in an international treaty signed by the Azerbaijan Republic provided such persons were not convicted in a foreign state.

Foreign citizens and stateless persons guilty of crimes against peace and humanity, military crimes, terrorism, financing of terrorism, hijacking of aircraft, capture of hostages, tortures, piracy on the high seas, illicit traffic of narcotic and psychotropic substances, printing or sale of counterfeit money or securities, attack against the persons or institutions under international protection, and other kinds of crimes that are punished as per international treaties of the Azerbaijan Republic shall be criminally liable and punished under the Criminal Code of Azerbaijan irrespective of the place these crimes were committed.

Servicemen of the Armed Forces of Azerbaijan serving in peace-keeping units and who committed crimes outside Azerbaijan shall also be criminally liable under the Criminal Code of Azerbaijan unless otherwise specified by an international treaty of the Azerbaijan Republic.

When convicted by the courts of Azerbaijan, the persons indicated in this report, the punishment shall not exceed the upper level of the sanction specified by the law of a foreign state where the crime was committed.

Citizens of the Azerbaijan Republic who committed a crime in the territory of a foreign state, shall not be subject to extradition to this state. The issue of taking legal actions against such persons shall be resolved in accordance with the procedure defined in this report.

Foreign nationals or stateless persons staying in Azerbaijan, but who committed crimes outside Azerbaijan, may be extradited to a foreign state for prosecution or for serving the sentence established under the law "On extradition of the persons who committed crime", and other legislative acts of Azerbaijan and its international treaties.

Provided the persons who committed a crime outside Azerbaijan are not extradited to a foreign state and such act (action or inaction) is recognized as a crime under the Criminal Code of Azerbaijan, such persons shall be criminally liable in the Azerbaijan Republic.

Provided the international treaties of Azerbaijan fix other provisions as to the persons who committed the crime such provisions shall apply.

Corruption in the Private Sector

Legislation of Azerbaijan criminalized bribe-taking and bribe-giving (active and passive bribery) in the private sector. Such actions are prosecuted in accordance with the procedures that are applied in public sector.

Chapter 33 of the Criminal Code of Azerbaijan, called "The crimes against the state authorities, the interests of civil service and the service at local self-government bodies, other commercial and non-commercial institutions", covers not only the crimes against the state authorities and the interests of civil service and the service at local self-government bodies, but also the crimes against the interests of service at commercial and non-commercial institutions (some articles are considered this report).

Confiscation of Proceeds from Corruption

One of the punishments defined by the Criminal Code (Article 42.0.8) is the confiscation of property which, according to article 51 of the Code, means the forced, free of charge seizure in favour of the state of the facilities and means used by the offender during commitment of a crime, also the property obtained by criminal way. Confiscation of property is done only in the cases set forth by relevant articles of special part of the Criminal Code. Confiscation of

property is also done for such crimes as giving or taking a bribe under aggravating circumstances.

The Law "On execution of court's decisions" as of 27 December 2001 specifies that one of the measures of forced execution of the court's decisions includes recourse on debtor's funds and property possessed by the third persons. Seizure of the debtor's property possessed by third persons shall be done only on the basis of a court decision. The same is true for entry on the premises of third persons, and search, opening and examination of places of storage.

Seizing property is usually imposed by a court decision. The court decides on property seizure in the following cases:

- In the case where a well-grounded request by an investigator is received and relevant submission of the prosecutor in charge of procedural management of preliminary investigation;
- In the case where the persons who turned to the court provide sufficient primary evidence and substantiate the necessity of property seizure.

In emergency cases, the investigator may, in terms of the declared civil suit, seize property without the court's decision provided he has authentic information giving grounds to suggest the destruction, damage, concealment or alienation of property or facilities illegally obtained by the persons who committed the crime.

The seizure of a debtor's property is imposed no later than on the expiry of one month from the day of giving the resolution on judicial proceedings to the debtors and, if necessary, simultaneously handing over the resolution. Seizure of property includes the property inventory, prohibition of the right to dispose of the given property and, if necessary, limitation of the right to use the property. As a rule, when the seizure of a debtor's property was not imposed prior to submission of an executive document, in the case of taking recourse upon the debtor's property during execution of said document, the property is seized by court decision on the basis of a well-grounded request of a law-enforcement officer. In emergency cases, provided the law-enforcement officer possesses authentic information that the debtor can destroy, damage, conceal or alienate the property, the officer may seize the property without a court decision, notifying the court about this within 24 hours.

The debtor's property is seized to ensure the safety of the property subject to transfer or realization, and to execute the court's decision on confiscation of the debtor's property.

The failure to observe the limitations imposed by the law-enforcement officer on the right to dispose of or to use the debtor's property shall entail the liability under the law of Azerbaijan.

Depending on specific circumstances, the law-enforcement officer, while simultaneously seizing the property, may seize the debtor's property or certain articles of this property (not exceeding the limit of enforcement).

Perishable goods shall be confiscated and realized immediately. The funds (in local and foreign currency), jewellery and other articles made of gold, silver, platinum and the metals from the platinum group, precious stones and pearls, also the scraps from such articles, that were found during the inventory of the debtor's property under arrest, shall be seized, and kept according to the procedure established by a relevant executive body.

Other seized articles are packed, sealed and transferred for storage to the representative of a relevant state body with due warning about the liability fixed by the law. Real estate and large-size property, whose seizure is not possible and on which the arrest has been imposed shall be sealed and transferred for storage to the debtor or an adult member of his family with due warning about the liability for alienation, damage or destruction of such property.

If there are grounds to suggest that the property is concealed by the debtor, the law-enforcement officer may, on the basis of a court decision, conduct the search (opening and examining the places of storage) under the Code of Criminal Procedure. In accordance with the Code of Criminal Procedure, the property is seized during execution of court verdicts and decisions relating to seizure of property.

The Law "On banks" effective as of 16 January 2004 specifies that, pursuant to the Civil Code, the information that constitutes a banking secret shall be disclosed only to the clients or their representatives and, in the course of the banking control, to inspectors of the National Bank, independent auditors and, pursuant to this law, to the credit register.

State bodies and officials may receive such information only on the basis of a valid court decision in connection with the investigation of a criminal case, an arrest, bringing a new action against the funds and property of a bank's clients kept at a bank and their confiscation.

In connection with forced execution of documents, the information on account balances is disclosed to law-enforcement officers on the basis of information obtained from the sources fixed by the law.

The information about bank accounts and transactions of any legal or natural person, that is a taxpayer, and that uses the bank's services shall be submitted to the tax authorities only in accordance with the procedure established by the Taxation Code of Azerbaijan.

The information about funds transferred to a special election account and spent funds are submitted by the Central Election Commission to banks according to the procedure fixed by the Election Code of Azerbaijan.

The funds and other valuables of legal and natural persons kept at a credit organization may be seized by court decision and by decision of law-enforcement officers as prescribed by the law. The organization shall, immediately after receiving the decision on the seizure, terminate all accounts and deposit transactions (within the amount of funds under arrest).

The recourse upon said funds and values may be taken only on the basis of executive documents submitted pursuant to the law.

Confiscation of funds and other values may be done on the basis of court's decision that has entered into force. It is used in terms of the civil suit and confiscation of property in the cases defined by the criminal law; it consists of inventory of property and prohibition to dispose of this property or its use by the property owner. Seizure of bank accounts shall entail termination of any operations thereon.

In connection with the solution of the issue relating to material evidence, the court arriving at the verdict and the authority engaged in criminal proceedings and deciding on termination of criminal prosecution shall observe the following rules:

- crime instruments belonging to the convicted persons and the articles prohibited for circulation shall be confiscated and transferred to relevant institutions; provided said instruments and articles have no value, they shall be destroyed.

- the money and valuable articles obtained illegally or which are the object of a crime shall, by a court decision, be used to compensate for the damage caused as a result of a crime or, provided the victim is unknown, they shall be transferred to the state budget.

Liability of Legal Persons

In accordance with the law "On combating corruption," the legal persons who committed the corruption-related offences shall be penalized or their activity shall be terminated pursuant to the law.

Civil administrative liability of legal persons is also fixed by the Civil Code of Azerbaijan (Articles 17 and 17.2) and by the Code of Administrative Offences (Article 52).

Legal persons are subject to administrative liability regardless of the form of ownership, location, organizational and legal status and subordination. They, like foreign legal persons, shall be administratively liable on general terms for the offences specified by the Code of Administrative Offences.

Legal persons are liable for all property belonging to them. A founder (participant) of a legal person shall not be liable for the commitments of a legal person, likewise a legal person shall not be liable for the commitment of a founder (participant), excluding the cases specified by the Civil Code or the statute of a legal person.

Azerbaijan legislation does not envisage the criminal liability of legal persons. Criminal liability is applied only to sane natural persons who have committed a crime and reached the age fixed by the Criminal Code of Azerbaijan.

Specialised Services

The decree of the President of the Azerbaijan Republic "On application of anti-corruption law" as of 3 March 2004 makes provisions for establishment of the Agency for combating corruption under the Prosecutor-General of the country. In order to execute the decree, the proposals are elaborated concerning the powers and functions of this agency and also other issues essential for its activity.

At present, all law-enforcement and prosecutor bodies are engaged in combating corruption-related offences. For instance, pursuant to Article 1 of the law "On operative and investigative activity" in effect as of 29 October 1999, one of the tasks of such activity is the struggle against crimes which are prepared or being committed, as well as the detection of already committed crimes. The President's decree of 11 November 1999 "On application of the Law of Azerbaijan On operative and investigative activity"" defined the list of

competent bodies engaged in operative and investigative activity. According to Article 2 of this decree, these bodies include the Ministry of Interior, The Ministry on National Security, the Ministry of Justice, the Main Board for Security of State Administration Authorities, the Customs Committee, and the State Frontier Guards. Similar norms were included in relevant statutory laws. Each state body has issued regulations defining the divisions in charge of the struggle against corruption-related and other kinds of crimes. For instance, an order of the Ministry of Interior of 17 March 2000 approved the provision on the Agency for the struggle against organized crime, according to which the collection, processing, storage and realization of operative information about the facts of corruption is included in the jurisdiction of this Agency.

In accordance with the Code of Criminal Procedure, the preliminary investigation of criminal cases involving the offences, specified by Articles 308-314 (Chapter 33) of the Criminal Code (office abuse, excess of power, bribe-giving and receiving, forgery in office, negligence) shall be done by the Prosecutor's office.

At the same time, pursuant to the President's decree "On application of the Law On approval, entry into force of the Code of Criminal Procedure of the Azerbaijan Republic and related legal regulation issues and approved by said law of the Code of Criminal Procedure of Azerbaijan" of 25 August 2000, it has been established that provided that in the course of preliminary investigation by the Ministry of Taxation of criminal cases relating to the facts of illegal entrepreneurship, pseudo-entrepreneurship and tax evasion, the elements of crimes indicated in this report have been established, then the preliminary investigation of said cases shall also be conducted by the Ministry of Taxation.

Provided that in the course of pre-trial proceedings there is jurisdiction over the case of several investigation bodies, the Prosecutor-General or his deputies will make the following decision in order to guarantee the comprehensive and unbiased preliminary investigation:

- the prosecutor's offices, the Ministry of Justice, the Ministries of Interior, National Security, Taxation, the State Customs Committee and the State Frontiers Guards shall set up joint investigation groups headed by a prosecutor or an investigator of prosecutor's office;

- the investigators of several executive bodies listed above shall, depending on the decree of a crime, set up a joint investigation group and appoint the head of this group (Article 215/6 of the Code of Criminal Procedure).

Investigation and Enforcement

Distribution of Powers and Responsibilities Among Police and Prosecutor in the Investigation

The powers of the police, the prosecutor's office and other investigative bodies in the course of preliminary investigations are distributed under the Code of Criminal Procedure.

Preliminary investigation of a criminal case is conducted as a pre-trial stage of criminal proceedings in the form of an inquest. An inquest is held by the following authorities and persons:

- as regards the criminal cases falling within the jurisdiction of the bodies of internal affairs, national security, frontier guards, tax and customs authorities – by investigators of relevant bodies and authorities;
- as regards the cases involving the crimes committed in the territory (from the territory) of military units, military institutions, penitentiaries, places of detention and arrest, sea ships – by commanders of military units, heads of military institutions, heads of penitentiaries or places of detention and arrest, captains of sea ships and by other authorized persons acting as investigators;
- as regards the cases falling within the jurisdiction of security departments in military units, military institutions in charge of counterintelligence – by investigators of counterintelligence departments.

The inquest in the form of urgent investigative actions is held in order to establish and to register the traces of a crime, while the inquest in the form of simplified pre-trial proceedings is held on the basis of obvious crimes that do not constitute a significant social threat.

Preliminary investigation is mandatory for all kinds of criminal cases, excluding the inquest being held in the form of simplified pre-trial proceedings related to the crimes that do not constitute a significant social threat.

Preliminary investigation is conducted by the prosecutor's office mainly in the cases defined by the criminal law, that is the cases specified by the relevant articles of the Criminal Code, including corruption-related offences (Articles 308-314), criminal cases against the President of the Azerbaijan

Republic, deputies of Milli Mejlis, Prime-Minister, Ombudsman, judges, staff of the prosecutor's office, employees of diplomatic institutions abroad, offices of foreign states in Azerbaijan, and cases involving abuses of office by employees of the police, justice, security, taxation and customs bodies. As for the cases involving a military crime and crimes against military service, in addition to crimes committed by servicemen are concerned, preliminary investigations are conducted by the military procurator's office (where said crimes were committed with the participation of a person who is not a serviceman, the preliminary investigation concerning his criminal case is also conducted by military procurator's office).

In all other cases, preliminary investigation of criminal cases is conducted by the investigative departments of the Ministries of Interior, National Security, Justice, Taxation, the State Customs Committee, and the State Frontier Guards.

Procedure and Grounds for Criminal Prosecution

In accordance with the Code of Criminal Procedure, an inquest official, investigator or prosecutor in charge of procedural management of preliminary investigations, in each case of receiving the information on the committed crime or the crime under preparation, shall take one of the following decisions:

- initiate proceedings;
- reject initiation of proceedings;
- send information in terms of jurisdiction;
- send information about the crime being prosecuted in a private manner and in accordance with jurisdiction.

Having received the information about the committed crime or the crime under preparation, the court, excluding cases of private prosecution, shall immediately submit all available data for consideration to the prosecutor in charge of the preliminary investigation. In the cases set forth by criminal law, the inquest official, investigator or prosecutor in charge of the preliminary investigation shall, within the limit of their powers, decide on initiation of criminal proceedings which shall indicate:

- the grounds and reasons for initiation of proceedings or the fact proving it;
- the article of the criminal law that defines the crime causing the initiation of criminal proceedings;

- acceptance of criminal case for proceedings or its transfer for proceedings for conducting the preliminary investigation after initiation of proceedings.

A copy of the decision to initiate proceedings shall, within 24 hours, be sent by the persons who have made the decision, to the legal or natural person or official who notified the crime, and to the prosecutor in charge of procedural management of the preliminary investigation.

Simultaneously with the initiation of criminal proceedings, measures shall be taken to suppress the crimes being committed and repeated crimes, to preserve and to guard the traces of the crime, as well as the articles and documents that could be essential for the case.

After initiation of criminal proceedings:

- the prosecutor, in charge of procedural management of the preliminary investigation shall send the criminal case to the investigator for consideration and preliminary investigation, or he shall personally take the case for proceedings and preliminary investigation;
- the investigator or inquest official, having informed the prosecutor in charge of procedural management of preliminary investigation, shall respectively personally conduct preliminary investigation or inquest.

Procedural management of preliminary investigation, supervision over observance of the law during preliminary investigation, inquest and in the course of operative and investigative activity shall be done by the prosecutor. The prosecutor in charge of procedural management of preliminary investigation of a given case shall be liable for execution and application of provisions of the Code of Criminal Procedure during the pre-trial investigation of the case.

When supervising the inquest and preliminary investigation of a criminal case, the prosecutor in charge of procedural management of preliminary investigation shall:

- verify the proper observance of the law in the case of acceptance, registration and consideration by an inquest and investigating bodies of the notifications and other kinds of information about the committed crimes or the crimes under preparation;
- demand that the inquest official or investigator provide him with the materials and documents of the criminal case, the information about

preliminary investigation, and verify said materials and documents, immediately familiarise himself with the course of the preliminary investigation;

- with the exception of the cases of handing over the criminal case from a preliminary investigative body to another, and in order to guarantee a comprehensive and unbiased investigation, the prosecutor shall withdraw from the proceedings any inquest official or investigator the criminal case being investigated in violation of the law, and hand it over to other inquest officials or investigators;
- charge the investigative group with preliminary investigation and determine the group's composition;
- remove the lawyer from participation in criminal proceedings in the cases excluding the lawyer's participation in a trial;
- consider the rejections relating to an inquest official or investigator and the refusal to perform their duties;
- give written instructions to inquest officials or investigators on the investigation of accidents, selection, change or cancellation of preventive punishment, qualification of an action, search for the offender, the content of the indictment, the adoption of resolutions relating to investigative or other procedural actions;
- cancel illegal decisions made by an inquest official or investigator;
- consider the complaints against decisions or actions taken by an inquest official or investigator;
- should the necessity arise to criminally prosecute the person enjoying immunity, the prosecutor shall submit to the Prosecutor-General a request for depriving such a person of the right to immunity;
- request the court to arrest the defendant as a preventive punishment to prolong the term of arrest, also to receive the court's permission for the forced investigative actions if this is dictated by the Criminal Law;
- present to the court the authority in charge of criminal proceedings;
- provided there exist circumstances excluding the criminal prosecution or making it possible not to conduct such prosecution, the prosecutor shall terminate or reject it;
- approve the indictment, also, in the cases specified by the Code of Criminal Procedure, the decisions of inquest official or investigator, or

rejecting it, return the criminal case to investigator with binding instructions;

- submit to the court the criminal cases or other materials connected with criminal prosecution;
- personally issue the relevant resolutions relating to the criminal case, carry out individual investigative or other procedural actions;
- order to take the operative and investigative measures to clear the crime, to find the missing person or property, receive the information about the measures taken to this effect;
- demand to provide the documents and materials about the offences and the persons involved in them.
- supervise the legitimacy of detention, arrest or other measures of procedural coercion by inquest official or investigator, also charge the investigative bodies with taking of procedural actions;
- take measures to ensure the safety of victims, witnesses and other persons taking part in criminal proceedings;
- release the suspect or the defendant or the persons under arrest who were detained without legal grounds or within a term exceeding that fixed by the law;
- use other rights as per the Code of Criminal Procedure (Article 84.5).

Mandatory Versus Discretionary Prosecution

Depending on the nature and degree of crime, the criminal prosecution is conducted in accordance with provisions of the Code of Criminal Procedure as the private, public-private or public prosecution (Articles 37.1 and 37.6).

Criminal prosecution in the form of private prosecution [charge] shall be conducted only given the victim's application relating to the offences specified in Articles 147 (slander), 148 (insult), 165.1 (violation of author's rights without aggravating circumstances) and 166.1 (violation of inventor's and patent rights without aggravating circumstances) of the Criminal Code. The prosecution shall be terminated provided the victim comes to terms [reconciles) with the defendant prior to discussion of the case by court members in a special room. [jury room] (Article 37.2)

Criminal prosecution in the form of public-private prosecution [charge]

shall be conducted given the victim's application or in the cases, specified by the Code of Criminal Procedure on the prosecutor's initiative regarding certain crimes against personality, sexual inviolability and sexual freedom, constitutional human rights and freedoms, persons under age and family relations, property, also regarding certain crimes in the area of economic activity, like prevention of legal entrepreneurship without aggravating circumstances, illegal use of trade mark, coercion of making a transaction or withdrawing from it (Article 37.3).

Criminal prosecution relating to other crimes, not indicated in Articles 37.2 and 37.3 of the Code of Criminal Procedure, including the bribe-taking and bribe-giving, shall be done as a public prosecution.

Inquest official, prosecutor or investigator, having received the information about the committed acts or the acts under preparation, containing the elements of crime, or having directly found the event of crime, shall take measures to register and to withdraw the traces of crime, also immediately conduct the inquest or investigation within the limits of their power.

When confirming the commitment of crime, the public prosecutor shall expose the defendant to the court and demand that the defendant be duly punished. Criminal prosecution shall be conducted prior to finding the circumstances, excluding the criminal liability, or prior to the refusal of the public or private prosecutor from criminal prosecution in the cases and according to the procedure fixed by the Code of Criminal Procedure.

Criminal prosecution and proceedings shall not be initiated, while the initiated prosecution and proceedings shall be terminated provided:

- there is no crime;
- the act has no *corpus delicti*;
- expiry of the periods of limitation (excluding the cases of suspension of such periods);
- at the moment the offence was committed, , the offender has not reached the age of criminal discretion (excluding the cases when it is necessary to take coercive measures against such a person);
- after an offence was committed, the offender died (excluding the cases when it is necessary to acquit the deceased);
- there exists a valid court decision, relating to the same charge, or an decision not cancelled of another court excluding the criminal prosecution;

- regarding the same charge, there exists an uncancelled decision by an inquest official, investigator or prosecutor on rejection of initiation or termination of criminal proceedings;
- there is no complaint by the victim (when conducting the criminal prosecution in the form of a private prosecution, and provided there is no initiative by the prosecutor at the beginning of the criminal prosecution, during the prosecution and in the form of the public-private prosecution);
- the victim and the defendant have come to terms (only in the case of private prosecution);
- the act specified by the criminal law has been committed by a mentally insane person (excluding the cases when coercive measures of a medical character are taken against such person)
- there exist grounds for releasing the person from criminal liability as prescribed by criminal law;
- the person shall be released from criminal liability on the basis of amnesty.

Said circumstances exclude criminal prosecution.

Criminal prosecution against any person shall be terminated in the case of person's non-participation in the commitment of a crime or provided the person's guilt has not been proven.

Availability of circumstances, fixed by the criminal law, that release persons from criminal liability and punishment makes it possible not to conduct criminal prosecution. Criminal proceedings are not initiated, while the initiated proceedings may be terminated on the basis of an investigator's decision, agreed with the prosecutor and given on due grounds essential for the exemption from criminal liability as fixed by the Criminal Code, provided:

- the person has really repented;
- the person has come to terms with the victim;
- the situation has changed.

These circumstances make it possible not to conduct a criminal investigation.

The defendant or his defence attorney, the victim, the civil plaintiff, the

civil defendant or their representatives may file an appeal against termination of criminal proceedings and submit it to the prosecutor in charge of procedural management of preliminary investigation or to the court, performing the judicial control functions within ten days from the moment of they receive the copy of such decision. The appeal may be also submitted to this court against the refusal of the procurator in charge of preliminary investigation to satisfy the complaint relating to termination of criminal proceedings (Article 282 of the Code of Criminal Procedure).

Investigative Capacities

Special Methods of Investigation

When finding the circumstances, preventing the receipt of evidence, the authority in charge of criminal proceedings may take other coercive measures for judicial proceedings in addition to such measures as detention, arrest, home arrest, bail, written undertaking not to leave a place, handing over for supervision of police or military commanders, personal guarantee and a guarantee by an institution, dismissal. In other words, in order to ensure the normal course of an investigation, this authority may conduct such investigation in a forced manner.

The investigation of corruption offences is conducted on general grounds. Special procedures and methods of investigation relating to these categories of cases are not defined by the law. Taking into account a high degree of latency of corruption offences, in order to find and prove the guilt of persons, of special importance is taking such coercive investigative actions as arrest of mail, telegraph and other kinds of correspondence, interception of telephone conversations and data transmitted through the channels of communication and other technical channels, interception of messages that constitute personal, family, state, commercial or professional secret, including the data on financial transactions, bank accounts, tax payment, also taking the operative and investigative measures. According to the Criminal Law, the records of these and other investigative actions may be used as evidence.

The mail, telegraph and other kinds of correspondence may be seized, as a rule on the basis of a court decision. Provided there exist sufficient reasons to believe that the mail, telegraph or other correspondence of the suspect or the defendant, sent by him or addressed to him, contains information of evidential significance, the court, on the basis of a well-grounded request by the investigator or the prosecutor in charge of procedural management of preliminary investigation, shall decide on seizing said correspondence.

Interception of telephone conversations or data, transmitted through communication and other kinds of technical channels, is done in accordance with said procedure, that is on the basis of a court's decision. Provided there exists sufficient grounds to believe that the information, transmitted by the suspect or the defendant to other persons (or the information being transmitted to the suspect or the defendant) can contain the information having the evidential significance in terms of criminal proceedings, the court, on the basis of a well-grounded request by the investigator or the prosecutor in charge of preliminary investigation, shall decide on the interception of telephone conversations or data being transmitted through communication or other kinds of channels. Such interception shall be done with due observance of the Code of Criminal Procedure. In doing so, the interception of said conversations and data shall not be done for more than six months.

Interception of the information that contains the personal, family, state, commercial or professional secret, including the data on financial transactions, bank accounts and payment of tax, shall be done only pursuant to court's decision.

At the same time, in the case of urgent circumstances, in order to find the evidence relating to a grave or extremely grave crimes against a personality or the State, the investigator may seize the mail, telegraph, and other kinds of correspondence, intercept telephone conversations and data being transmitted through communication and other technical channels without a court decision but on the basis of his own decision. In these cases, the investigator shall, within 24 hours, report such investigative actions to the court, fulfilling the judicial control functions, and to the prosecutor in charge of preliminary investigations. The investigator shall also, within 48 hours submit to said court and prosecutor the materials relating to the investigative actions to check the legitimacy of these actions.

According to the Criminal Law, the materials, obtained due to operative and investigative activity, may be used as evidence in criminal prosecution, if they were obtained under the Law "On operative and investigative activity", and provided they were presented and checked pursuant to the Code of Criminal Procedure.

The prosecutor, investigator and inquest official have the right to issue the instructions on taking operative and investigative measures for clearance of a crime, detection of a missing person or property and for obtaining information on the measures taken (Articles 84, 85, 86 of the Code of Criminal Procedures).

At the place of taking the coercive investigative actions, procedural

coercion or operative and investigative measures, the court of first instance shall exercise the judicial control within its jurisdiction. To do this, the court shall consider the following:

- the requests and submissions relating to the coercive, investigative, procedural and operative measures that limit the right of each person to freedom, inviolability of home, privacy, the right to preservation of privacy (including the privacy of family life, correspondence, telephone conversations, postal, telegraph and other messages), also those connected with information containing the state, professional or commercial secret;
- the complaints against the procedural actions or decisions of the bodies engaged in criminal proceedings.

The following operative and investigative measures are taken on the basis of a court decision:

- tapping of telephone conversations;
- checking postal, telegraph and other types of messages;
- interception of information from communication channels and other technical facilities;
- entry into buildings, including the living premises, fenced construction installations, land plots and their inspection;
- surveillance of buildings with the use of technical facilities or installation in them of audio, video, photo, cinema and other kinds of recording facilities.
- surveillance of people.

In the cases specified by the Law "On operative and investigative activity", said operative and investigative measures may be taken without a court decision on the basis of a well-grounded decision of the authorized person of the institution engaged in the operative and investigative activity. In this case, after termination of a relevant operative and investigative action, this person shall, within 48 hours, submit a well-grounded decision on taking an operative and investigative measure to the court performing the judicial control functions and to the prosecutor in charge of procedural management of preliminary investigation.

Protection of Participants in Criminal Proceedings

The criminal procedure law defines, within the framework of the investigation of criminal cases, involving the corruption cases, the grounds and procedure for the application of the measures of state protection of victims, witnesses, defendants and other participants in criminal proceedings. The relevant norm is also specified in the Law "On the state protection of persons participating in criminal proceedings" as of 11 December 1998.

Having found that the victim, witness, defendant or other person participating in the criminal proceedings needs or may need protection, the authority in charge of criminal proceedings, pursuant to the Code of Criminal Procedure, at the request of such persons shall decide on taking due measures to provide state protection. The measures of safety relating to the persons participating in criminal proceedings shall be taken according to the procedure and in cases defined by law.

The system of measures, essential for the safety and social protection of the persons who reported the crime to law enforcement bodies or participated in the detection, prevention or solution of a crime, the victims, the victims, the suspects, public plaintiffs, witnesses, experts defendants and other persons, participating in criminal proceedings, and the kinds of safety measures being taken with respect to these protected persons are defined in the Law "On the state protection of persons participating in criminal proceedings" as of 11 December 1998.

The safety measures include protection of the person, his/her apartment and property, providing such person with special self-defence facilities, warning the person about an existing threat, temporary placement of the person in a safe place, due observance of confidentiality of information about the person under protection, the person's transfer to another place of work or study, moving the person to another place of residence, changing of person's documents and appearance, holding the court session in camera with participation of the person under protection as prescribed by the law.

The safety of servicemen is also ensured in accordance with the procedure established by said law. The safety measures may include sending the serviceman to another military unit or institution or his/her transfer to another place of military service.

Provisions of said law also cover the safety of the person under protection who is kept in preliminary confinement investigation institutions or penitentiaries in connection with the investigation of a criminal case or the

criminal case being considered by court. In order to ensure the safety of these persons, it is also possible to transfer them from one confinement institution or penitentiary to another, to keep them separately or in solitary cells, to change the degree of preventive punishment as prescribed by the criminal procedure law of the country.

In addition, the following persons are protected by the state pursuant to the Law "On the state protection of employees of judicial and law enforcement bodies" as of 11 December 1998:

- judges of all courts, assessors;
- prosecutors;
- investigators;
- persons holding an inquest;
- persons engaged in operative and investigative activities.
- employees of the Ministries of Interior, National Security and Justice, the State customs committee in charge with the protection of public order and national security, executing the court's verdicts and decisions, or the decisions of investigative bodies and prosecutors, also exercising the customs control;
- close relatives of said persons.

The safety measures, relating to the employees of judicial and law enforcement bodies in case of their dismissal or transfer to another job, connected with execution of their former official duties, shall be used provided there is the threat to their life, house, property.

The kinds of safety measures relating to the protected persons indicated in the Law "On the state protection of employees of judicial and law enforcement bodies" are similar to the safety measures defined in the Law On the state protection of persons participating in criminal proceedings". In addition, in order to ensure the safety of servicemen who are members of the chambers of court martial, the Court Martial of the Azerbaijan Republic considering the grave crimes, the Court of Appeal and the Supreme Court of Azerbaijan considering the cases of court martial and military procurator's office, it is permitted to take such measures as sending the servicemen to another military unit or institution and their transfer to a new place of service.

The Criminal Code defines the criminal liability for disclosure of the information on safety measures taken with respect to the persons that

participated in the criminal proceedings. In accordance with Article316 of this Code, disclosure of the information on safety measures being taken with respect to the persons who informed the relevant bodies about the crime or who participated in the detection, prevention or clearance of the crime against the victim, his/her representative, the suspect, the defendant, their defence attorneys and representatives, public plaintiffs and defendants in criminal proceedings, their representatives, witnesses, experts, specialists, translators, and their close relatives, provided such action has been committed by the person for whom such information was entrusted or became known due to his official position, shall be punished in the form of a penalty ranging from five hundred to one thousand times the minimum amounts of conditional financial units, or by corrective labor for up to one year, or by deprivation of freedom for a term of up to six months. The same actions, that entailed grave consequences, shall be punished by deprivation of freedom for a term of one to five years.

Evidentiary Value

The claims submitted to the preliminary investigation bodies in the course of preliminary investigation or inquest shall not be used as evidence in court in the absence of the witness. The following evidence shall be accepted during criminal proceedings pursuant to the criminal procedure law:

- evidence of the suspect, the defendant, the witness and the victim;
- expert's conclusion;
- material evidence;
- records of investigative and judicial actions.

Other Documents (Article 124.2)

The submitted claim and the procedural decision on circumstances having significance for relevant criminal prosecution confirms the fact of such submission and for taking the procedural decision, but cannot be accepted as evidence. For this purpose, they shall be registered during the preliminary investigation as testimonial evidence. The claims, registered in such a manner, may be accepted by the court as evidence and in the absence of the witness.

In case of non-appearance of any witnesses, experts, specialists in session, the court, having heard in turn the opinions of each party of the criminal proceedings, decides either to continue or to postpone the proceedings. The proceedings may be continued provided the non-appearance of any of said

persons does not prevent the comprehensive and unbiased consideration of all circumstances connected with criminal prosecution.

Reading the evidence, provided by the witness in the course of pre-trial proceedings during the previously held session in the course of judicial proceedings or during the current court session without witness participation in the session, and reproduction of audio records, demonstration of video materials are permitted for the reasons excluding the witness appearance in court, and in other cases under the Code of Criminal Procedure. Demonstration of audio and video records of testimonial evidence is permitted only after reading the record of interrogation or court session where testimonial evidence has been registered.

Collaborators of Justice

The criminal law specifies the grounds for release from criminal liability and punishment. Collaboration with law enforcement bodies and courts become, according to the law, the legally significant exposure of other accomplices in crime provided such collaboration is conducted as active support towards the solution of a crime.

The person, who for the first time committed a crime not constituting a significant social threat may be exempted from criminal liability provided such a person voluntarily confessed his guilt, actively assisted in a crime solution, and compensated for damage or in any other way removed the harm caused by crime. The person who committed the crime in another category, with said conditions at hand, may be released from criminal liability only in the cases directly defined by the relevant articles of the Criminal Code.

In accordance with the legislation of Azerbaijan, the person involved in corruption is released from criminal liability only in a single case. The note to Article 312 of the Criminal Code (bribe-giving) says that the person who gave a bribe is released from criminal liability provided the bribe-giving was the result of threats on the part of a public official or provided the person voluntarily reported the fact of bribe-giving to a relevant state authority.

In other cases, the person who collaborated with investigative and judicial authorities can only count on mitigation of the punishment. In accordance with criminal law, active support of a solution to the crime, exposure of other accomplices and retrieval of the property obtained by crime, is considered as an extenuating circumstance.

Such forms as the talks on making the deal, involving the confession of a

person's guilt in the commitment of a lesser crime, the immunity from prosecution, reduction of the sentence term, special protection are not usually defined by criminal law, judicial or investigative practices of Azerbaijan.

Confidentiality of Investigation

The country's criminal procedure law envisages the norms and rules essential for confidentiality of the investigation. The Code of Criminal Procedure contains the chapter called "Protection of confidentiality in the course of criminal proceedings" consisting of three articles. They guarantee the protection of privacy and family life, state secret, professional and commercial secrets.

These guarantees include the following: the measures shall be taken during criminal proceedings to protect the data constituting the personal and family, state, professional or commercial secrets defined by the Code of Criminal Procedure and other laws of the Azerbaijan Republic. In the course of criminal proceedings it is prohibited to conduct the unnecessary collection, disclosure and use of the data that constitute professional or commercial secrets, that concern the person's private life, and other data of a personal nature which the person considers as secret. At the request of the investigator, prosecutor or court, the participants in investigative and judicial action shall give a written undertaking not to disclose the following information:

- provided the authority, conducting the criminal proceedings, in accordance with relevant court's decision, suggests that any person should report or submit the information on person's private life, that contains the state, professional or commercial secret, such person has the right to be sure of the necessity of collection of such information relating to the initiated proceedings, and otherwise to refuse to provide this kind of information. When demanding that the person should report or submit this information, referring to the necessity of doing so, the authority conducting the criminal proceedings shall make entry into the record of interrogation or another investigative action, confirming the entries relating to the necessity of receiving such information;
- the evidence, disclosing the private or family, state, professional or commercial secrets shall be considered at the court session in camera;
- the damage caused to a person through violation of inviolability [immunity] of privacy, through disclosure of personal or family secret shall be compensated under the law;

- civil servants or employees of enterprises or institutions shall immediately inform in writing the head of a relevant state authority about giving the evidence relating to the data entrusted to them that constitute the state, professional or commercial secrets provided by the authority in charge of criminal proceedings has not been registered in the record of interrogation or another kind of investigative action where such entries are prohibited;
- the criminal proceedings involving the information constituting the state secret shall be entrusted to the investigators, the prosecutors or the judges who have given the written undertaking not to disclose such information. The commitment on nondisclosure of the information containing the state secret shall be also undertaken by the assessors prior to court consideration of the criminal case containing this information. The assessors who refused to give the written undertaking shall be released from participation in criminal proceedings.
- other persons for whom the information containing the state secret is submitted in any other way or is provided for familiarization in the interests of criminal proceedings shall give the preliminary written undertaking not to disclose such information. In case the defence attorney and another representative, with the exception of legal representative, refuse to give the undertaking, they shall be deprived of the right to participate in the criminal proceedings, while the information constituting a state secret is not submitted to other persons. The assumption of the commitments by participants in criminal proceedings not to disclose the state secret shall not prevent them to demand that the information containing the state secret shall be heard in camera.

The law defines the limits of disclosure of the data of preliminary investigation prior to trial.

The criminal procedure law also envisages the norm relating to the inadmissibility of disclosure of preliminary investigation data, according to which:

- the preliminary investigation data relating to a criminal case may be disclosed prior to trial only in so far as it does not contradict the interests of the preliminary investigation, and provided this action does not violate the rights and legitimate interests of other participants in the criminal proceedings;

- disclosure of preliminary investigation data is allowed only by permission of the person conducting the preliminary investigation, the prosecutor in charge of procedural management of preliminary investigation or the court;
- preliminary investigation data may be disclosed by participants in the criminal investigation and by journalists only by permission of the investigator, inquest official or the prosecutor in charge of procedural management of preliminary investigation or the court provided such disclosure does not contradict the interests of preliminary investigation and does not violate the rights and legitimate interests of other participants in the criminal proceedings;
- in the course of the preliminary investigation, the investigator or the inquest official, in order to guarantee the observance of said provisions, shall warn in writing the witness, the victim, the public plaintiff and defendant, defence lawyers, experts, translators and other persons about the inadmissibility of disclosure without their permission of preliminary investigation data;
- provided that as a result of violation of privacy, moral or material damage was inflicted on a person, the investigator, the inquest official, the prosecutor in charge of procedural management of preliminary investigation or the judge that permitted such violation, also any person, warned about the inadmissibility of disclosure of preliminary investigation data, shall be liable pursuant to the law of Azerbaijan.

The criminal law of Azerbaijan envisages criminal liability (Article 300 of the Criminal Code) for disclosure of inquest and preliminary investigation data. According to this article, disclosure of inquest or preliminary investigation data by the person, warned, pursuant to the law, about the inadmissibility of their disclosure, that resulted in the infliction of moral or material damage to another person, provided the disclosure was done without permission of the investigator, the prosecutor or the judge, performing the functions of judicial supervision shall be punished by the penalty ranging from five hundred to one thousand times the minimum amount of a conditional financial unit, or by corrective labour for up to two years, or by deprivation of freedom for a term of up to six months.

Organised Crime and Corruption

On the basis of the data of law enforcement and judicial activity in Azerbaijan, it is not possible to draw the conclusion proving the strong relationship between the

organized crime and corruption, also the corruption influence upon the different segments of the process of taking administrative and political decisions. The main areas of activity of the organized crime in Azerbaijan are: kidnapping (Article 144 of the Criminal Code), theft (Article 177 of the Criminal Code), misappropriation or misapplication (Article 179 of the Criminal Code), robbery (Article 180 of the Criminal Code), banditry (Article 181 of the Criminal Code), and extortion (Article 182 of the Criminal Code).

International Aspects

The Azerbaijan Republic is a party to a number of international treaties on mutual legal assistance, including:

- European Convention on Mutual Assistance in Criminal Matters as of 20 April 1959 and Additional Protocol to it as of 17 March 1978 (The Law on Accedence as of 1 May 2003);
- European Convention on Extradition as of 13.12.1957 and Additional Protocols to it as of 15 October 1975, and as of 17 March 1978 (The Law on Accedence as of 31 May 2002);
- European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as of 8 November 1990 (The Law on Accedence as of 1 May 2003);
- European Agreement on the Transmission of Applications for Legal Assistance of 27 January 1977 (The Law on Accedence as of 17 March 2000);
- Minsk Convention on Legal Assistance and Legal Relations in Family, Civil and Criminal Cases as of 22 January 1993 (The Law on Accedence as of 1 September 1995); 01 September 1995);
- Moscow Convention on Extradition of Convicts for Further Service of Sentence as of 6 May1998 (The Law on Accedence as of 4 December1998).

In addition, the Azerbaijan Republic has concluded treaties on legal assistance and extradition with such countries as Turkey, Bulgaria, Iran, Russia, Georgia, Lithuania, Kazakhstan, Uzbekistan, and Kyrgyz Republic.

To a certain extent, said treaties and agreements establish the procedure for transmitting the applications for mutual legal assistance, the conditions of extradition of criminals and other kinds of cooperation intended for combating

corruption. The provisions of said documents may be also applied to corruption-related offences.

It is worth mentioning that, pursuant to Article 148 of the Constitution "the international treaties signed by the Azerbaijan Republic are an integral part of the legislation of the Azerbaijan Republic." In the event of a contradiction between the legal acts of Azerbaijan, (excluding the Constitution and the acts passed by referendum) and the international treaties signed by Azerbaijan, the provisions of these treaties shall apply.

According to the Code of Criminal Procedure of the Republic of Azerbaijan, and the country's laws on legal assistance and extradition, the provision of legal assistance shall be regulated by the Constitution, criminal procedure law, other legislative acts of the Azerbaijan Republic and the international treaties signed by Azerbaijan.

In the event of absence of a relevant treaty on legal assistance or extradition between the Azerbaijan Republic and the requesting foreign state, the provisions of this law shall apply with due observance of the principle of mutual assistance.

In accordance with Article 2 of the law on legal assistance in criminal matters, the provision of such assistance involves the actions to be taken as prescribed by the legislation of the Azerbaijan Republic:

- receipt of testimonial evidence and explanations;
- submission of court documents;
- search or seizure;
- examination of installations, living accommodations or other places;
- submission of materials, data or material evidence;
- submission of experts' conclusions;
- submission of originals or officially approved copies of documents, including the banking and financial documentation;
- identification of persons or the place of residence;
- search or arrest of property;
- detection of illicitly obtained proceeds, property and the facilities used for commitment of crime;
- taking other actions pursuant to the law.

No limitations relating to provision of mutual legal assistance in corruption matters are fixed by the law or international treaties.

Banking secrecy shall not constitute a reason for rejecting requests for mutual legal assistance.

In order to take procedural actions where there is no act of a criminal and legal nature, the relevant data on legal persons may be submitted.

The following conditions are fixed pursuant to the Law on extradition:

- the person, whose extradition is requested by a foreign state, may be extradited only provided the action committed by this person is classified as a crime pursuant to the law of Azerbaijan and the requesting state and provided the punishment is imposed for commitment of such action in the form of deprivation of freedom for a term of not less than one year or more severe punishment;
- the person, convicted by the court of a foreign state for a committed crime by way of deprivation of freedom or a more severe punishment, may be extradited for the execution of punishment. In this case, the term of the sentence in the form deprivation of freedom shall not be less than six months.

Extradition is rejected in the following cases:

- if the requested person is citizen of the Azerbaijan Republic during resolution of the issue on his extradition;
- in the event of granting, pursuant to the law, political asylum in the territory of Azerbaijan to the person whose extradition is requested;
- provided the action, serving as the grounds for extradition committed by the person whose extradition is requested is classified as a political crime by the Azerbaijan authorities;
- in the event of commitment of the crime, serving as the grounds for extradition, in the territory of the Azerbaijan Republic;
- in case of passing, in the territory of the Azerbaijan Republic, the sentence (that has entered into force) for the crime serving as the grounds for extradition
- on the expiry, pursuant to the criminal law of Azerbaijan or the requesting state, of the terms of initiation of proceedings or execution of sentence;

- provided the crime, serving as grounds for extradition, is classified in the law of the requesting state as a crime against military service and does not contain the *corpus delicti* of another crime not connected with military service;
- provided the foreign state that requested the extradition of offenders fails to observe the principle of mutual legal assistance.

Extradition may also be rejected in the following cases:

- provided the law of the requesting foreign state envisages the capital punishment for the crime serving as the grounds for extradition;
- provided there exist sufficient reasons to assume that, as a result of extradition, the requested person will be subject, in the requesting state, to tortures or cruel, inhuman treatment or punishment, or to the treatment or punishment disgracing the person;
- provided there exist sufficient reasons to assume that, as a result of extradition, the requested person will be subject to prosecution in connection with his/her race, nationality, language, religion, citizenship, political convictions or sex;
- provided the crime, serving as the grounds for extradition, was committed outside the territory of the requesting state, and the law of Azerbaijan does not envisage the criminal prosecution for commitment of this crime;
- in the event of taking legal actions against the person in the territory of the Azerbaijan Republic as a result of commitment of the crime serving as the grounds for extradition of this person;
- provided there exist sufficient reasons to assume that person's extradition will be detrimental to sovereignty, security and other national interests of the Azerbaijan Republic.
- provided, pursuant to the law of the Azerbaijan Republic, it was decided to terminate criminal prosecution for the crime serving as the grounds for person's extradition.

Annex 1

COMMENTS BY TRANSPARENCY INTERNATIONAL AZERBAIJAN

Corruption in Azerbaijan and Efforts Towards its Restriction[1]

This report is drawn up on results of a basic survey on corruption conducted in Azerbaijan by Transparency-Azerbaijan in the period from December 2003 to May 2004. The survey consisted of the following components:[2]

- Analysis of the National Integrity System indicators based on the Transparency International methodology[3];
- Holding five focus-groups;
- Individual interviews with experts;
- Sociological survey of the population.

Corruption Level in the Country

According to the Transparency International's Corruption Perception Index, in 2003 Azerbaijan rated 124-128th (together with four other countries: Angola, Georgia, Cameroon, and Tajikistan) among 133 countries of the world.

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1 Report by Transparency-Azerbaijan at the OECD Conference on 16-18 June 2004, Paris, France.

2 A multi-component survey on corruption in Azerbaijan is presently not completed (see note 4 below). The summarized survey results will be available to the public in September 2004.

3 For details on the survey methodology see www.transparency.org. This project component was implemented with financial support of the OSCE office in Baku.

The high level of corruption in the country was confirmed by a poll[4] of 1000 respondents conducted recently (May 2004) by the Sorgu Centre for Sociological Studies. According to the returns of this sociological poll, over 86.9% of respondents evaluate the corruption level in the country as rather high (52.2%) or very high (34.7%). A high level of corruption was practically the unanimous opinion expressed by participants of five focus-groups[5] held in Baku in late April – early May this year and experts responding to questions of individual interviews.

Corruption Trend

According to Transparency International measurements, the Corruption Perception Index for Azerbaijan was changing insignificantly during the past years. However, in the opinion of over 53% of respondents participating in the aforementioned sociological survey, the situation with corruption has noticeably deteriorated in comparison with the Soviet period of early 1990's. The participants in the aforementioned focus-groups have displayed a considerably greater unanimity of opinions concerning the worsening of the situation with corruption. Moreover, the said participants believe that a significant worsening was observed since 1998. Most of the experts pointed to a more significant growth of corruption as compared to the early 1990's during their individual interviews.

Reasons of Corruption Growth

According to returns of the sociological poll, the respondents named as the main reasons of corruption growth such factors as the lack of a government anticorruption programme, decline in the population's income level, liquidation of the Soviet supervisory authorities (the Committee for Popular Control, the Communist Party Control, the Department for the Fight against Socialist Property Embezzlement (OBHSS), etc.), and difficulties of the transitional period.

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4 The sociological poll was conducted on request of Transparency-Azerbaijan – the national branch of Transparency International, and financed by BP Exploration (Caspian Sea Limited). This survey will be augmented with an opinion poll among entrepreneurs, which will be conducted with support of Statoil Apsheron A.S.

5 Nationally celebrated theorists and practicing lawyers, heads of nongovernmental organisations, mass media, businessmen and political scientists participated in the focus-groups. The project was implemented with financial support of the embassy of the United Kingdom in Azerbaijan.

Public Opinion on Corruption

According to the results of the aforementioned sociological poll, over 83.2% of respondents disapprove of the situation with corruption in the country (36.9%) or are indignant at its high level (46.3%). These results demonstrate that if the government launches an active fight against corruption, the population will support this fight. The respondents' replies to another question: "What do you think is the public opinion on corruption?" were "partially denouncing" (19.9% of respondents), while 72.0% of respondents believe that public opinion condemns corruption.

Corruption Identification

The sociological survey revealed that the overwhelming majority of the national population understand corruption as bribe. At the same time the majority of respondents do not consider such forms of corruption as gift, service, office abuse, to be corruptive manifestations. This shows that the national programme for the fight against corruption and anticorruption projects of nongovernmental organisations, as well as donor programmes, should focus on issues of educating the population.

The participants in focus-groups and individual interviews have demonstrated a much more qualified identification of corruption. This is easily explainable, because their participants were high-level experts.

Reasons Behind Corruption

According to the survey results, "corruption of the upper crust" was named as the main reason behind corruption. Among other important reasons of corruption the respondents mentioned "the imperfection of the laws," "lack of public control," "inefficient performance of government institutions."

A similar opinion was expressed by the overwhelming majority of participants in the focus-groups and individual interviews.

Relation of the Law and Corruption

A mere 14.2% of respondents agree that the laws contain explicit provisions preventing the emergence of opportunities for corruption, while 49.5% believe that the laws are imperfect and create conditions for corruption.

Another 20.6% are of the opinion that contradictive provisions opening the opportunities for corruption have been intentionally blended into legislative acts.

In the opinion of most experts participating in the focus-groups, Azerbaijani laws do envisage a possibility for fighting corruption, even in spite of certain shortcomings. The reason behind the high level of corruption in the country does not lie in the imperfections of the laws, but in their inefficiency, explained by a lack of true political will within the government and the remaining dependence of judicial authority on the executive branch, and also due to corruption of (in the opinion of the majority of experts, many) representatives of law-enforcement and judicial bodies.

Faith in Effectiveness of the New Anticorruption Law

A total of 42.9% of respondents believe in practical effectiveness of the new law, while 39.5% of respondents assume the law will not be effective.

The overwhelming majority of focus-group and individual interview participants expressed the opinion that the law will be effective if there is a political will of the national leadership to fight corruption.

Who Should Head the Fight Against Corruption?

The overwhelming majority of the respondents (90.5% gave the rates 7 and higher based on a 10-grade scale) said the fight against corruption in the country should be headed by the government. The respondents put law-enforcement bodies on the second place, and the courts – on the third.

The prevailing opinion of focus-group and individual interview participants was that success in the fight against corruption depended on the national president vested with huge power functions.

When Does the Fight Against Corruption Begin?

In the opinion of 17.9% of respondents, the fight against corruption will begin soon. 29.6% of respondents believe that the fight against corruption will begin in 3-5 years, 18.4% of respondents believe that the fight against corruption will begin in 10-20 years' time, and 23% think it will never begin. Thus, comparing the responses to this and the previous question, we can draw a

conclusion that the respondents are pessimistic about the prospects for beginning the fight against corruption by the present national leadership.

Measures to Lower the Level of Corruption

According to the survey results, the respondents suppose that the following measures may be the most effective: adoption and implementation of a nationwide programme, tightening criminal and administrative responsibility for corruption, enhancing transparency within the national governance system, replacing corrupt officials, reform of the state governance system.

Assessment of the National Integrity System Indices for Azerbaijan

Indices for the Executive Authorities

Citizens' right of court appeal against the government's actions. The citizens of Azerbaijan are granted such right by Art.60 of the national Constitution and the Law "On the Right of Court Appeal against the Violations of Citizens' Rights and Freedoms by Some or Other Decisions or Actions (on Inactions)." Citizens may appeal against decisions and actions (on inaction) of officials of governmental authorities, political parties, trade union organisations, and other public associations.

The referendum of 24 August 2002 and amendments introduced upon its results to the Constitution have granted citizens a right to appeal to the Constitutional Court. However, the Constitutional Law "On Regulation of Processes of Ensuring the Rights and Freedoms of Citizens in the Azerbaijani Republic" adopted on 24 December 2002 has slightly restricted these rights. Firstly, the list of entities has been reduced – citizens may complain against state and municipal authorities. Secondly, citizens may appeal against decisions and regulations, but not against actions or inaction.

According to the Code of Civil Procedure, citizens may contest decisions and actions (inaction) of officials of relevant executive authorities or bodies of local self-government. However, the presidential edict of 22 January 2000 putting this Code into force restricted the list of executive authorities, striking the Presidential Staff and the Cabinet of Ministers off that list.

Monitoring the property and assets of ministers and high-ranking officials. No such procedures exist. Their introduction can hardly be expected,

as the Law on the Fight against Corruption adopted in January 2004 does not contain explicit provisions on obligatory declaration of incomes, property, and other valuables by high-ranking officials. According to Art.5.1 of the Law, officials shall present the following information to the Commission for the Fight against Corruption:

- Their annual incomes, their type, amount, and sources;
- Taxable property;
- Deposits with credit institutions, securities, and other financial assets;
- Participation as a shareholder or founder in the activity of companies, funds, and other economic entities, as well as their share in the property;
- Debt in excess of 5,000 conventional financial units;
- Other liabilities in excess of 1,000 conventional financial units.

However, Art.5.2 stipulates that data listed in Art.5.1 shall be qualified as commercial or banking secret and are not subject to disclosure. It also stipulates that: (1) disclosure of these data shall be persecuted by law; (2) these data can be requested as evidence of corruption by the Commission for the Fight against Corruption or a relevant authority investigating a case of corruption. Moreover, the concluding provision of this article stipulates that these data may only be granted on the basis of a court decision.

Therefore, the Law on the Fight against Corruption adopted in January 2004:

- Does not allow to ensure transparency of public servants' incomes to the public, and hence, does not create conditions for public monitoring;
- Does not create legal frameworks for monitoring even by the Governmental Commission for the Fight against Corruption.

A number of provisions of the Election Code (Art.58) oblige candidates to present information on the size and sources of their incomes and their personal property to the election commission. However, since election commissions depend on the executive authorities (see below), one can hardly expect effective monitoring of candidates' incomes. Moreover, the number of candidates is much lesser than the number of public servants.

Existence of rules for preventing a conflict of interests for ministers and high-ranking officials. A number of laws contain provisions on non-admittance of a conflict of interests. For example, Art.13 (Conflict of Interests in Public Procurement) of the Law "On Public Procurement" prohibits the participation in procurement procedures of suppliers (contractors) legally, financially, or organisationally dependent on the organisation exercising the procurement procedures. It also bans the participation in procurement procedures of contenders whose employee (adviser, representative, or any other worker) had worked at the organisation exercising the procurement procedures during the past three years.

Art.7 of the Law "On the Fight against Corruption" envisages the inadmissibility of close relatives working together.[6]

Registering gifts and other benefits granted to ministers and high-ranking officials. The Law "On the Fight against Corruption" contains provisions regulating issues of restricting the acceptance of gifts. Art.8 of the Law stipulates that gifts exceeding in value 50 conventional financial units shall be considered the property of the body – employer of the official who received the gift. If the official wishes to keep the gift as personal property, he (she) shall pay in favour of the state the difference between the value of the gift and the maximum admissible value of a gift. The Law contains no provisions concerning the procedures for registering the gifts.

Employment restrictions of former ministers. The national law has no such restrictions. In practice, however, the career of a dismissed minister is generally completed if the top national leadership does not favour him.

Justifying decisions adopted by executive authorities. The law lacks specific provisions requiring justification of decisions adopted by the executive authorities. Art.149 of the Constitution contains a general provision that regulatory legal acts should be based on law and justice. Regulations should not contradict the Constitution.

According to Art.31 of the Law "On Regulatory Legal Acts," draft regulatory acts may be subjected to review (legal, economic, financial, technical, ecological, etc.). The decision on scientific review is taken by the head of the body preparing the draft. As a result, no reviews are usually conducted.

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6 The law enters into force as of January 2005.

Restriction of ministers' and high-ranking officials' rights to take individual decisions on contracts and licenses. Ministers and high-ranking officials can take decisions on contracts and licenses within the frames of their official powers. These powers are regulated by the Constitution, laws, presidential edicts, statutes of ministries and other governmental authorities. However, in expert opinion, ministers and other high-ranking officials are often guided by verbal agreements with an even higher ranking official rather than written regulations.

Control mechanisms over the lawfulness of decisions. Such mechanisms are in place. All ministries and other executive authorities generally have legal services responsible for reviewing various acts (mainly internal ones) to ascertain their compliance with effective law. However, these services, subordinate to top executives, are incapable of resisting their will.

Indicators for the Legislative Authorities

Parliamentary right of budgetary control. This right is guaranteed by the national legislation. According to Art.109 of the Constitution, the President shall submit the state budget for parliamentary approval. According to Art.13 of the Law "On the Budgetary System," the draft law on state budget for the next year shall be presented to the parliament together with the attached materials annually not later than 15 October.

However, the parliament is not empowered to introduce amendments to the draft budget. The draft may either be approved or returned for revision. In practice, everything proceeds quite smoothly and the parliament approved the budgetary draft submitted by the President in no time. So far, there has been no precedent of return for revision.

Art.23 of the Law "On the Budgetary System" envisages the possibility of parliamentary revision of the budget in the course of its execution if a relevant request is filed by the government.

Therefore, the parliament deals with the budget for a very limited period of time during the year, and no governmental expenses not approved by the parliament are envisaged.

Preventing a conflict of interests for members of parliament. Art.7 of the Law "On the Fight against Corruption" stipulates the inadmissibility of joint work of close relatives at governmental institutions. It contains a clause, however, that elected positions can make an exception.

Registering gifts and other benefits granted to deputies. The Law "On the Fight against Corruption" contains provisions regulating matters of restriction of the acceptance of gifts. Art.8 of the Law stipulates that gifts exceeding in value 50 conventional financial units shall be considered the property of the body – employer of the official accepting the gift. If the official wishes to keep the gift as personal property, he (she) shall pay in favour of the state the difference between the value of the gift and the maximum admissible value of a gift. The Law contains no provisions concerning the procedures for registering the gifts.

Restriction in employment of former deputies. The national law contains no provisions restricting the employment of deputies. But it also contains no provisions ensuring their employment at governmental bodies. In practice, the decisive role is played by the attitude of the national leadership to the former deputy.

Elections and Political Party Financing

Independence of election commissions. Election commissions are formed for a term of five years and constitute a single hierarchy. They are headed by the Central Commission for Elections (CCE). Territorial and district election commissions are formed by the CCE. According to the law, election commissions are considered as public institutions. Today, 125 district and over 4,000 territorial election commissions operate in the country.

According to Art.24 of the Election Code (EC), CCE members are elected by the parliament. CCE consists of 15 members (starting 2005, their number will be 18). Six of them represent the parliamentary majority party, three represent parties not represented in the parliament, and another three members represent independent parliamentary deputies.

According to Art.17 of the EC, all elections (presidential, parliamentary, municipal) and referendums are organised and held by these election commissions.

As the actual majority of CCE and other commissions' members are not independent people, the independence of these commissions is totally out of the question.

Appointment of the election commission head. The CCE chairman and his deputies are elected by members of parliament elected by multi-member constituencies. Most of such members are representatives of the ruling party. Therefore the heads of the CCE depend on the ruling party.

Political party financing. The national legislation contains no provisions on the issue of political party financing except Art.17 and Art.18 of the Law "On Political Parties." The state budget envisages no other expenses apart from the financing of election campaigns. Political parties may have the following sources of incomes:

- members' contributions;
- property income;
- revenues from events, publications, and other similar sources;
- donations;
- funds raised towards election campaigns;
- payments from subordinate entities.

Political party financing from foreign sources is prohibited.

According to the Election Code, political parties may create election funds and open election accounts.

Transparency of political parties' incomes. So far, information on political parties' incomes has never been published. The financing of political parties by business entities is closed by nature, as in the existing political conditions it may pose a threat to their activity.

Political party expenditures. According to Art.18 of the Law "On Political Parties," parties may have the following expenditures:

- current expenses;
- expenses on the activity of their staff and information resources;
- on public relations and the election campaign expenses;
- payments to subordinate entities;
- interests on credits;
- individual expenses;
- other expenses.

Information on political party expenses has so far never been published.

There are no general rules concerning political party expenses. In practice, the parties are guided by the regulations common for all legal entities. Art.21 of the Law stipulates that parties shall keep book records of incomes and expenditures, and the property status.

Political party expenditures from funds received from closed sources are also closed by nature.

In accordance with the EC, a report on expenses connected with the election campaign is to be submitted to the CCE not later than ten days after the publication of election results.

The rules regulating party expenses are reflected in their charters.

Openness of political party accounts. Information on all political party accounts, except information on election accounts, is closed. So far, not a single political party has proclaimed its accounts open to the public.

Independent control of political party accounts, publication of information on them and its submission to the parliament. According to Art.18 of the Law "On Political Parties," tax authorities shall exercise control over incomes and tax payment.

Control over financial reporting of a political party may also be exercised through audit procedures. According to the Law "On Audit Services," audit can be voluntary or forced. In the latter case, a relevant decision shall be taken by an authorised body.

The charters of political parties also envisage internal financial control by control and audit party commissions. However, information on the results of their activity is not published. The law contains no such requirements.

External Audit Authority

Independence of the general auditor (considering professional criteria during the appointment and guarantees against unjustified dismissal). The Chamber of Auditors plays the role of the supreme audit authority in Azerbaijan. The Law "On the Chamber of Auditors" was adopted by the national parliament on 2 July 1999. On 5 October 2001 and 7 December 2001, the parliament introduced a number of amendments to the Law. The Law determines the status, functions, organisational structure, forms, and principles of activity of the Chamber of Auditors. Art.19 of the Law stipulates: "The State

guarantees independence of professional activity of chairman of the Chamber of Auditors, his deputy, and auditors." However, the Law has no provisions explaining this regulation.

According to the national Constitution (Art.92), the Chamber of Auditors shall be set up by the national parliament – Milli Mejlis. According to Art.1 of the Law, the Chamber of Auditors is accountable to the parliament and is a standing body of public budgetary and financial control.

The Chamber of Auditors is headed by its chairman whose status is much less significant than the status of chief auditor in a number of other countries. According to Art.7 of the Law, persons who have liabilities to other states, persons convicted for grave and especially grave crimes shall not be the chairman, deputy chairman, and auditors of the Chamber. *"Citizens of Azerbaijan with higher education, with not less than 5 years experience in the sphere of public administration, public audit, economy, and finance may be chairman, deputy chairman, and auditors of the Chamber of Auditors."*

As we can see, professional requirements to the Chamber chairman and his deputy are not high and rather vague. In principle, the Law does not exclude the appointment to the post of Chamber chairman of a person not meeting criteria of control over public expenses. The Law has no provisions concerning the merits of the person appointed to the post of the Chamber chairman.

The same Art.7 stipulates: "Candidates to chairman and deputy chairman of the Chamber of Auditors shall not be directly related to chairman of the Azerbaijani Milli Mejlis, the Prime Minister of Azerbaijan, the Finance Minister of Azerbaijan, the Prosecutor General of Azerbaijan, Chairman of the Supreme Court of Azerbaijan, and board chairman of the National Bank." However, the Law does not rule out the appointment to the post of the Chamber of Auditors' chairman of a relative of the national president.

According to Art.7 of the Law, the Chamber of Auditors members, including its chairman, shall not engage in any other paid activity except scientific, educational, and creative activities. As we can see, the restriction is imposed on wages from other sources, as for incomes in general, e.g. dividends from securities, etc., the Law contains no restrictive provisions on this score. This can also become a source of conflict of interests.

Art.11 of the Law contains provisions on early dismissal of the Chamber of Auditors employees from position. According to this article, the Chamber of Auditors members, including its chairman, may be prematurely dismissed from position in the following cases:

- death;
- filing an application on release from position;
- committing a crime and entry into legal force of a court indictment;
- violation of requirements to members of the Chamber of Auditors stipulated in Art.7;
- impossibility of exercising official functions for over four months for health reasons;
- incapacity or restricted capacity, confirmed by the court;
- death or disappearance.

In practice, the head of state, considering the influence on the parliament, can initiate relevant procedures of dismissal of the Chamber of Auditors' chairman from position.

Possibilities for the audit of all government expenses. The Law does not restrict the audit of any types of government expenses. In practice, however, there still are certain spheres of expenditure the audit of which is not envisaged by annual audit plans (e.g. military).

According to Art.2 of the Law, the Chamber of Auditors shall:

- issue opinions on the draft state budgets and budgets of extra-budgetary government funds;
- supervise the execution of the incomes and expenditures items of the state budget and budgets of extra-budgetary government funds;
- inform the parliament of the execution of the state budget incomes and expenditures items on a quarterly basis;
- conduct financial reviews of the draft laws on the state budget and budgets of extra-budgetary government funds, as well as international treaties signed by the country, on assignment of the parliament;
- analyse revenues to the treasury accounts;
- analyse the movement of finances of the budget and budgets of extra-budgetary government funds on bank accounts.

Timely reports reflecting all budgetary expenses, compiled on the basis of information provided by the Milli Mejlis staff, are presented on a quarterly basis to the national parliament.

Judicial System

Rights of the courts to consider the complaints against the actions of the executive authorities (the Staff of the President, the Cabinet of Ministers, ministries, individual high-ranking officials). The courts are granted such rights by the Constitution (Art.60) and the Law "On the Right of Court Appeal against the Violations of Citizens' Rights and Freedoms by Some or Other Decisions or Actions (on Inactions)" (Art.2). However, according to the presidential edict on the rules of enforcement of the Code of Administrative Procedure, these rights were restricted and the courts are entitled to consider complaints against the actions (inaction) only of ministries, subordinate organisations, and officials. This legal provision does not allow considering complaints against decisions and actions (inaction) of the Presidential Staff and the Cabinet of Ministers in common law courts.

However, this right can be exercised in the course of review of constitutional compliance of the presidential edict. In keeping with the amendments introduced to the Constitution as a result of the referendum of 24 August 2002, any person may complain to the Constitutional Court against regulations issued by the legislative and executive authorities violating his (her) rights and freedoms in an attempt to restore the violated rights and freedoms.

Independence of courts. The courts are not independent and operate under full control of the executive authority headed by the Presidential Staff.

The past merits of persons appointed to the post of a judge are taken into account. However, this criterion is not decisive. The main criterion for election and appointment of judges is their loyalty to the executive authorities, i.e. the President and his entourage.

The legislation does not offer sufficiently broad guarantees for removal of judges from duty and dismissal. According to Art.128 of the Constitution, the official functions of a judge may be terminated only on legally justified grounds. Judges cannot be brought to criminal responsibility, detained or arrested, they are exempt from administrative penalties through court procedures, search, personal examination and commitment.

Disciplinary penalties can be imposed on judges of all courts only by chairman of the Supreme Court. Disciplinary penalties on judges of the first instance courts can also be imposed by the Justice Minister. This is possible in two cases:

- in case of gross violation of labour discipline by a judge;
- in case of indecent behaviour, which can damage the judge's reputation.

If a judge commits an offence, the President may appear before the Milli Mejlis with an initiative to dismiss him (her) from office on the basis of a proposal of the Supreme Court.

According to Art.127 of the Constitution and Art.97 of the Law "On Courts and Judges," judges shall be irreplaceable during the exercise of their duties. Judges shall not be transferred to another position without their consent. Official powers of a judge shall not be terminated otherwise than on grounds stipulated by law.

In practice, however, a judge can be removed from duty at any moment if the Presidential Staff wishes so. At the same time, judges grossly violating the rights and duties of citizens and legal entities can keep their positions for a long time, and even work their full time of appointment or election.

In reality, employment and career are based on loyalty to the authorities and unconditional fulfilment of their instructions (both legal and illegal) rather than professional merits. The merits are perceived and envisaged within this context as more than professional achievements.

Although the anticorruption law defining the term of corruption has not entered into force yet, the Criminal Code envisages corruption-related offences (bribery). However, during the past years there have been no cases of persecution and conviction of high-ranking officials in connection with corruption.

Public Service

The Law "On Public Service" was adopted by the national parliament on 29 December 2000. On 13 February 2001, 2 July 2002, and 3 December 2002, the parliament has introduced a number of amendments to the Law. According to Art.2, the Law shall regulate the activity of officials occupying public service positions at bodies of executive authority, the staff of legislative and judicial authorities. According to Art.4, the Law shall not regulate the activity of the national President, members of parliament, the Prime Minister, the Ombudsman, heads of the central executive authorities and their deputies, heads and members of the Central Commission for Elections, head and members of the Chamber of Auditors, heads of the local executive authorities, military personnel, and leaders of the Nahchivan Autonomous Republic – a constituent entity of Azerbaijan.

Laws envisaging criminal and administrative penalties for bribery. Criminal responsibility for bribe-taking is envisaged by Art.311 of the Criminal Code, and for bribe-giving – by Art.312. According to Art.311, a bribe-taker shall be penalised with imprisonment for a term from 3 to 12 years, depending on the nature and circumstances of the crime. As per Art.312, a bribe-giver shall be penalised with a monetary fine in the amount from 1,000 to 2,000 minimal salaries, or from 500 to 1,000 minimal salaries and/or imprisonment for a term from 3 to 8 years. If a bribe-giver has committed this offence under pressure by an official and has notified a relevant public authority thereof in advance, he/she shall be exempt from criminal responsibility.

The new Law "On the Fight against Corruption" also contains provisions (Art.10) on disciplinary, civil, administrative, and criminal responsibility for corruption.

Rules requiring political independence of public service. Such rules exist, but need to be developed in order to ensure their greater accuracy and detail. Art.4 (para 4.2) of the Law on Public Service contains the following provision: "Units of political parties and public associations shall not be created at public institutions." In addition, the same article (para 4.3) stipulates: "Public servants shall perform their official duties on the basis of the Constitution and laws of the Azerbaijani Republic, decisions of political parties and public associations shall not concern them."

However, there are numerous facts evidencing that the overwhelming majority of leaders of various levels at budget-financed organisations pressurise employees and frequently compel them to join the ranks of the ruling party under threat of dismissal.

It should also be mentioned that the law does not prohibit a public servant's membership in a political party. But the law bans the participation in the activity of political parties outside the period of fulfilment of official duties (Art.20, para20.1.6). According to the same article (para 20.1.7), a public servant shall not participate in strikes and other actions disrupting the work of public institutions.

According to Art.8 of the Law "On Political Parties," during the period in office, the national president, chairmen of all courts, their deputies and judges, the country ombudsman, military personnel, workers of the public prosecution office (except technical personnel), employees of the ministries of justice, internal affairs, national security, the border guard service, the customs committee, financial and tax authorities, the state press agency, the state television and radio broadcasting company, and religious figures shall not be members of political parties.

Enrolment and promotion. According to Art.28 (para 28.1) of the Law on Public Service, citizens shall be admitted to public service on the basis of a competition or interview. The procedure for low-rank positions (from sixth to ninth) consists in the following. A competition is announced for the purpose of employment of a worker within the said category ranks, and all persons willing are invited to participate in this competition and submit their documents within 30 days from the date of announcement of the competition. The competition consists of tests and a subsequent interview. Candidates who have passed the interview shall be presented to the head of the public institution. Having selected one of the candidates, the institution head shall accept him/her to service with a one-year trial period. Simultaneously a curator shall be appointed to supervise the work of the new appointee. Upon the completion of the one-year period, the curator shall submit a recommendation whether to accept the new worker to public service or not. If the recommendation is favourable, a new, two-year trial period shall be fixed.

The Law lacks any provisions concerning the procedures for enrolment of officials higher than the sixth qualification ranking category. This suggests the conclusion that a public servant can occupy a position above the sixth qualification level only as a result of promotion (career growth). As a matter of fact, it is possible to step over two qualification ranks (para 29.5).

Qualification requirements to new public service recruits are set out in the Law in very general wordings. According to Art.27 (para 27.1), public service recruits shall have professional skills meeting relevant service requirements. The Law does not make any mention of any special merits as an enrolment condition.

Protectionism prevention rules. Art.7 of the Law "On the Fight against Corruption" prohibits joint work of close relatives at public institutions. However, it stipulates that elected positions could be an exception.

In practice, protectionism is quite commonly spread.

Rules and registers of gifts and hospitality. The Law "On the Fight against Corruption" contains provisions regulating issues of restricting the acceptance of gifts. Art.8 of the Law stipulates that gifts exceeding in value 50 conventional financial units shall be considered the property of the body – employer of the official who received the gift. If the official wishes to keep the gift as personal property, he (she) shall pay in favour of the state the difference between the value of the gift and the maximum admissible value of a gift. The Law contains no provisions concerning the procedures for registering the gifts. According to unofficial information obtained from a number of ministries, no

such registers have been created yet. There are no formal restrictions concerning the employment of former ministers. Procedures and criteria of administrative decision-making are not published, with the exception of individual facts that have become subject of journalist investigations.

Mechanisms of appeals for public servants and measures in protection of "whistle-blowers." If the "whistle-blower" is a public servant, according to Art.26 (para 26.2) of the Law on Public Service, a public servant expressing protest against an assignment issued to him/her by his/her superior, but having fulfilled it after the superior has left the assignment in force, shall be exempt from responsibility.

According to Art.25 (para 25.4) of the Law on Public Service, a public servant may file an appeal to a superior institution within a period of seven days to cancel the imposed disciplinary penalty measure. In such case, the disciplinary penalty measure shall be either cancelled or left in force within ten days from the date of its imposition.

Appeals opportunities for the population. Such opportunity exists. Citizens can appeal against some or other decision of a public institution, administration, organisation, enterprise, or official to a direct superior body or official. This right of citizens is regulated by the Law "On the Order of Considering Citizens' Appeals" adopted by the national parliament on 10 June 1997. In addition, citizens may appeal against decisions and actions of public authorities, bodies of local self-government, enterprises, public organisations, and officials in court, as prescribed by the Law "On the Right of Court Appeal against the Violations of Citizens' Rights and Freedoms" adopted by the parliament on 11 June 1999. Moreover, decisions of individual public officials may be subjected to administrative inspections, and if any complaints are filed, erroneous decisions can be cancelled.

Police and Public Prosecution Offices

Independence of authorised police officers. According to para 5, Art.109 of the Constitution, the right of appointment and dismissal of members of the Cabinet of Ministers belongs to the President. The legislation, including the Law "On Police," does not define criteria of appointment of ministers. Art.121 of the Constitution stipulates in general terms that a citizen of Azerbaijan aged 25 years or older, with higher education, with a right to participate in elections and having no liabilities to another country, can be appointed to the post of a minister.

In reality, professional skills and merits are taken into consideration during the appointment of the chief of police. The main criterion, however, is loyalty to the national president and the existing authority, and this circumstance always weighs more compared to any professional characteristics.

Police officers are guaranteed against removal from position without a valid justification. Art.34 of the Law "On Police" regulates the grounds for removal of a police officer from position. Moreover, the Law has it that a police officer may appeal to a higher-ranking authority or the court concerning his/her dismissal from job.

The chief of police has no special guarantee against being removed from office without a valid justification. A decision on his/her dismissal shall be taken by the President. According to law and in practice, a minister is usually dismissed from office without any justification by a presidential edict. This is usually connected with the formation of a new cabinet following presidential elections or with mistakes committed by the minister.

Independence of public prosecutors. According to Art.133 of the Constitution, the public prosecution office is a single centralised body, with subordination of territorial and specialised public prosecutors to the Prosecutor General. According to Art.16 of the Law "On the Public Prosecution Office," the public prosecution office operates on the basis of the principle of subordination of lower-ranking public prosecutors to higher-ranking ones. Subordinate prosecutors and other workers of the prosecution offices must fulfil all legal requirements and instructions of superior public prosecutors.

In practice, the Prosecutor General is always a person subjected to very significant influence of the presidential staff. Therefore independence of the public prosecution office is out of the question.

Special body for corruption-related investigations and criminal persecution. According to the new Law "On the Fight against Corruption" (Art.4), the top public authority for the fight against corruption shall be the Commission for the Fight against Corruption at the Council for Public Service Management. It is noteworthy that despite the adoption of the Law "On Public Service" in 2000, the aforementioned Council held its first session only recently, on 21 April 2004. A list of eleven members of the Commission for the Fight against Corruption was made public at that session.

A special department for the fight against corruption was recently created at the Public Prosecution Office of the country.

Rules regulating the status and activity of those bodies have so far not been made public.

Independence of the mechanisms of police officers' handling of corruption-related complaints. Participation of the civil society in these mechanisms. There are no special mechanisms of this sort. The Interior Ministry has an Internal Investigations Department within its system. This department investigates the facts of violation of the law by police officers and when necessary issues a recommendation to a relevant authority or official to impose responsibility on the guilty persons. Public prosecution bodies are authorised to handle the issues connected with corruptive crimes. Information on facts of investigation of any corruptive offences committed by police officers during the past five years is lacking. There is also no information on facts of investigation of any corruptive cases versus the employees of the public prosecution offices during the past five years.

Legal instruments of the police and public prosecution officer for investigating corruptive cases and legal proceedings on them, and their employment. The legislation contains provisions envisaging criminal responsibility only with respect to bribery. The new Law "On the Fight against Corruption" contains provisions regulating responsibility for various financial offences.

Art.204-211 of the Code of Criminal Procedure regulates the grounds for initiating a criminal case. These grounds include written or verbal data provided by physical or legal persons (officials), mass media information on crimes committed or being prepared. In addition, information about a crime can also be detected by bodies investigating the crime (including during operative investigation). A criminal case can be initiated on the detected elements of a crime.

The employment of the existing legal provisions for the fight against corruption is incidental.

Legal punishment for corruption among private sector entities. The legislation contains no special provisions on this issue. But anticorruption measures envisaged by law are applicable to all sectors, including the private sector. Regardless of the type of property, an official of any organisation can become the subject of a crime involving bribery. According to note 308 to the Criminal Code, officials are recognised as persons exercising the functions of representatives of the authority temporarily or on special assignment, or carrying out organisational or administrative functions at public agencies, bodies of local self-government, at public and municipal enterprises, directorates and organisations, as well as other commercial and non-profit organisations.

Persons carrying out organisational functions are regarded as competent persons heading a labour collective, or the production activity of individual workers at particular areas of work (heads of ministries, committees, departments, heads of scientific, cultural, and educational institutions, etc.).

The administrative function means the authority to manage and dispose of property (determining the rules of storage, processing, and sale of property, utilisation, accounting valuables, and control over them, receipt and issuance of finances and documents, labour remuneration, etc.). Such powers are granted to heads of business, financial departments, supplies departments, their deputies, and other similar officials.

There are no known cases of corruption among private entities.

On the whole, the number of such cases is much lesser as compared to the actual cases of corruption, and this has no serious explanation of any sort. The matter is that there is practically no fight against corruption underway in the country.

Public Procurement

The Law "On Public Procurement" was adopted by the national parliament on 29 January 2002. On 22 November 2002, the parliament introduced a number of amendments to the Law.

Rules regulating public procurement on a competition basis. According to Art.16 of the Law, public procurement of goods (jobs) and services in the Azerbaijani Republic based on the terms stipulated by the Law is exercised by methods of open tender, two-tier tendering, limited tendering, closed bidding, request for proposals, request for quotations, and single sourcing. These rules are open to the public.

Formal requirements restricting single sourcing. The law envisages restrictions to single sourcing. According to Art.21 of the Law on Public Procurement, the method of single sourcing shall be admitted in the following cases:

- if the procured goods are available only from one source;
- in the event of urgent demand for some goods and services and inexpediency of going through the tendering procedures;

- in the event of urgent demand for some goods and services due to an emergency situation;
- in order to ensure succession for considerations of standards, technological requirements, etc.

However, as there are no independent mechanisms of control over these circumstances, in expert opinion, their violations are quite frequent.

Experts believe that the information level of the private sector and the population on decisions taken on public procurement issues is quite low.

Procedures for revision of procurement-related decisions. The Law on Public Procurement contains a special section dealing with complaints. This section consists of provisions regulating the right of filing complaints, the procedures for filing complaints to a procurement organisation or a body confirming the procurement, to a relevant executive authority or the court, and procedures for suspension of procurement procedures. The law does not envisage a possibility of court revision of an unfavourable decision.

In reality, no one ever complains. Tender participants who have lost one tier hope to win the next and try to avoid conflicts with the public authorities. There is so far no public monitoring of public procurements.

Rules and procedures for preventing cronyism/conflict of interests in public procurement. Art.13 (Conflict of Interests in Public Procurement) of the Law "On Public Procurement" prohibits the participation in procurement procedures of suppliers (contractors) legally, financially of organisationally dependent on the organisation exercising the procurement procedures. Moreover, the law prohibits the participation in procurement procedures of contenders whose employee (adviser, representative or other worker) had worked in the organisation exercising the procurement procedures during the past three years. The law contains no provisions regulating the monitoring of property, incomes, and lifestyle of officials engaged in public procurement.

Ombudsman

Presence of the institution of Ombudsman. On 28 December 2001, the Law "On the Authorised Human Rights Representative (Ombudsman) in the Azerbaijani Republic" was adopted. The Ombudsman started his activity on 28 October 2002.

Independence of the Ombudsman (merit-based appointment, guarantees against unjustified dismissal). According to Art.3 of the Law, a citizen of the Azerbaijani Republic aged 30 years or older, with higher education and experience in the sphere of human rights, who is a person with high moral qualities, can be elected to the post of Ombudsman.

According to Art.2 of the Law, the Ombudsman shall be elected by the Milli Mejlis by a majority vote of 83 deputies (2/3 of the total) from among three candidates proposed by the President.

According to Art.7 of the Law, the powers of the Ombudsman can be terminated prematurely on decision passed by the Milli Mejolis by a majority vote of 83 deputies on the initiative of the Milli Mejlis or on presidential recommendation.

Opportunity for filing anonymous complaints to the Ombudsman institution. According to Art.9 of the Law "On the Authorised Human Rights Representative (Ombudsman) in the Azerbaijani Republic," a complaint against the violation of human rights shall indicate the name, given name, and address of the applicant. Appeals containing no such information shall be considered anonymous and not be considered. There is only one exception from this rule: if the facts disclosed in an anonymous complaint are confirmed by convincing evidence, such complaints may be accepted for consideration.

Publication of the Ombudsman's reports. According to Art.14 of the Law on the Ombudsman, the authorised human rights representative shall present an annual report on the human rights situation to the President of the Azerbaijani Republic not later than two months after the end of a current year and appear with this report before the Milli Mejlis of the Azerbaijani Republic. The report shall be published in the newspaper *Azerbaijan* and *Collected Laws of the Azerbaijani Republic*.

Following the Ombudsman's recommendations by the government. According to Art.14 of the Law on the Ombudsman, the Ombudsman's annual report shall be presented by the Cabinet of Ministers, the Constitutional Court, the Supreme Court, and the Prosecutor General. The first such report has recently been presented to the said bodies.

Investigation Authorities. Supervisory Commissions

Presence of special bodies or supervisory commissions for investigation of corruption-related cases. According to the new Law "On the Fight against

Corruption" (Art.4), the senior public authority for the fight against corruption shall be the Commission for the Fight against Corruption at the Council for Public Service Management. It is noteworthy that despite the adoption of the Law "On Public Service" in 2000, the aforementioned Council held its first session only recently, on 21 April 2004. A list of eleven members of the Commission for the Fight against Corruption was made public at that session.

A special department for the fight against corruption was recently created at the public Prosecution Office of the country.

Rules regulating the status and activity of those bodies have so far not been made public. The list of powers of a special body is on the stage of development, and the bodies themselves are largely influenced by the national President and the Presidential Staff. The Law "On the Fight against Corruption" does not envisage the special body's reports to the parliament.

Media

Guarantees of freedom of speech and freedom of the press. The freedom of speech is guaranteed to citizens by the national Constitution (Art.47). Only campaigning and propaganda instigating racial, ethnic, religious, and social dissention and strife are prohibited.

According to Art.57 of the Constitution, citizens of Azerbaijan are granted a right to criticise the activity or work of public authorities and their officials, political parties, professional unions, other public associations, as well as individual citizens. At the same time, according to the same article, insult or slander shall not be regarded as criticism. Legal provisions offering relevant explanations concerning insult or slander are envisaged in articles 148 and 147, accordingly.

The procedures for opening a new newspaper are very simple (this conclusion is made from analysis of Art.14 of the Law on Mass Media). In expert opinion, the reason behind this is that due to low solvency of the population their circulation is usually insignificant. The overall daily circulation of all oppositional and independent newspapers makes up some 50,000 copies with an electorate of 4.3 million people, or a little over 1%. Therefore the authorities are not seriously concerned about the newspapers, no matter what critical articles they may be publishing.

There are no independent and, moreover, oppositional television channels in Azerbaijan. Public television is not created yet either.

The procedures for obtaining a license to the opening of a television or radio channel are practically unfeasible for independent and, the more so, opposition-minded citizens and their associations.

Censorship of mass media. According to Art.6 of the Law "On Freedom of Information" adopted by the national parliament on 19 June 1998, governmental censorship of mass media shall be inadmissible. The inadmissibility of censorship is stipulated also by Art.7 of the Law "On Mass Media." It says: "Public authorities, municipalities, institutions, enterprises and organisations, public associations, officials, as well as political parties, are not entitled to demand their preliminary approval of information and materials circulated in mass media or prohibit their circulation, except cases when they are the authors of information or interviews."

Mass media ownership by a broad circle of owners. Newspapers belong to a broad circle of owners representing various political forces.

Besides two state-operated television channels, another four private channels operate in the country. Three of the latter belong to owners close to the authorities. The fourth private TV channel can hardly be described as independent, as it is strongly influenced by the authorities and, as we can see from political development of the past several years, during periods of rise in political activity expresses the point of view of the authorities much more often than that of the opposition. Oppositional newspapers, and often independent ones as well, systematically criticise the government in mass media.

Facts of physical influence on journalists writing about corruption. According to the information provided by the journalistic association Yeni Nesil, over the past three years there has been one case of beating of a journalist (Elnur Nuriev, *Aliller* newspaper) and one case of murder threat of a journalist (Aidyn Guliev, *Huriyet* newspaper) who have published materials on facts of corruption.

It should be mentioned, however, that for various reasons there are practically no serious journalistic investigations of facts of corruption. Oppositional and independent newspapers carry articles on corruption rather often. But their outreach to the population is quite insignificant. As for television channels, they publish such information seldom and very selectively. We have already mentioned that the opening of a new newspaper is a very simple procedure. Obtaining a license to start a new television channel, however, is practically unfeasible.

Civil Society

Public access to information and governmental documents. According to Art.18 (para 18.0.7) of the Law on Public Service, public servants shall: "keep state secret and any other secret protected by law, including after dismissal, resignation or retirement."

According to the Law "On State Secret" adopted by the parliament on 15 November 1996, state secret (Art.1) is legally protected information in the sphere of its military, foreign political, economic, scientific, intelligence, counter-intelligence, and operative investigative activity protected by the state, the distribution of which could damage the security of the Azerbaijani Republic.

There are a lot of problems with identifying the information which should be considered state secret and which should not. There are many facts of bureaucratic arbitrariness. New laws are presently being developed on freedom of information and state secret.

Cooperation of the authorities with civil society organisations. There are a number of facts of cooperation of the authorities with NGOs. There are signs of a positive trend in development of these facts in recent years. However, so far this cooperation has only been occasional. The activity of NGOs and mass media in the sphere of fighting corruption is so far rather uncoordinated. However, there are strong reasons to expect a consolidation of efforts of NGOs and mass media in the near future. Business groups are still apprehensive about participating in the fight against corruption. There is still no monitoring of the quality of work in the sphere of rendering services to the population and other areas by public groups. NGOs, mass media and political parties have recently stepped up their activities in the processes of discussion of effective laws and draft new laws.

Local Authorities

Local officials' appointment procedures. So far, there are no regional and local-level rules and procedures regulating information disclosure on cronyism, conflict of interests, gifts, and entertainments, as well as future employment of officials. The head of the executive authority is the principal figure in each administrative district and city of Azerbaijan. Therefore, the population does not elect its local leader. There are no rules prohibiting the presence of the public and mass media at the sessions of municipal and rural councils. So, a journalist or a public representative can, in principle, obtain permission to attend.

Government Strategy Progress

On 8 June 2000, the country's President issued an Edict "On Strengthening the Fight against Corruption in the Azerbaijani Republic." The President instructed the Prime Minister and the head of the Presidential Staff to prepare, within six months, a draft anticorruption law and the state anticorruption programme. The draft state anticorruption programme is ready, but not approved yet. In the opinion of a number of experts who participated in the round table to discuss the draft programme, this document requires serious revision.

Anti-Corruption Donor Initiatives

The donors of anticorruption initiatives in Azerbaijan include a number of international organisations and embassies of foreign countries functioning in the country, as well as transnational oil companies (e.g. BP, Statoil). The embassies of foreign countries and representative offices of international organisations are well informed of the corruption level in the country.

A number of ambassadors have been making periodical public statements in recent years on the need of decisive fight against corruption in Azerbaijan. There are also some examples of practical support of civil efforts aimed at the fight against corruption. E.g. in 2001, the British embassy supported the TA project on holding seminars for NGO representatives and publication of the first reference manual on problems of corruption. In 2002, the embassy supported the TA project on holding an international conference on corruption in Baku. The British ambassador was the moderator at the conference, and celebrated expert Mr. Pope made a report at the conference.

International organisations such as TI, CIPE (Washington, D.C.), OSI-Azerbaijan, and the American Eurasia Foundation also make their contribution to support of civil anticorruption efforts.

Perhaps, the first international organisation that started rendering assistance to a local NGO in its anticorruption activity was the US CIPE. This organisation supported some of the following projects implemented by the CIPE local partner – EDF:

- Conducting an expert survey on corruption in Azerbaijan;
- Monitoring of some 30 mass media on corruption problems during one year, from November 1998 to November 1999;

- Publication of the first book on corruption in the Azerbaijani language;
- Holding a conference on corruption in Azerbaijan;
- Conducting special training sessions on corruption for journalists writing on economic issues.

The implementation of these projects in Azerbaijan has prepared the necessary conditions for establishment of a national TI branch.

OSI-Azerbaijan was TI's main partner in creating Transparency–Azerbaijan. The Institute organised and held a competition for election of TA executive director, issued a special grant for organising the TA office, and is currently funding the public discussion of the draft anticorruption law and its international review. In addition, during the past two years OSI- Azerbaijan financed the publication of a special anticorruption bulletin, *ANCOR*.

In mid-2001, OSI launched the implementation of an extremely important project, Caspian Revenue Watch, and also came out with the slogan: "Publish what you pay."

The Eurasia Foundation financed the regional project of examining the problems of transparency at customs bodies of three countries of South Caucasus, and is presently financing the creation of a TA website jointly with BP.

The Nauman Foundation (Germany) has also made a weighty contribution to development of anticorruption thinking. With its financial support, a conference was held in Baku in 2001 on corruption problems, and seminars were held in 20 regions of Azerbaijan dealing with legal and economic aspects of the fight against corruption.

The Friedrich Ebert Foundation (Germany) has also held its first anticorruption conference in Baku recently.

It is also necessary to mention the contribution of the Azerbaijani branch of the US Chamber of Commerce. A seminar on problems of business ethics was held on its initiative in 2001.

Special seminars for businessmen organised by the US CDC in 2001 and 2002 were also devoted to problems of business ethics. In May 2003, COD jointly with TA conducted a business training session on business ethics for Azerbaijani businessmen.

In January-April 2003, TA with financial support of the embassy of Norway held two seminars for Azerbaijani businessmen on business ethics. The Norwegian embassy also sponsored the preparation and publication of a book on business ethics in three languages.

On December 2003, TA launched basic research on problems of corruption in Azerbaijan, with financial support of OSCE, the British embassy, the Eurasia Foundation, and BP.

As we can see, the contribution of foreign representations and international organisations to improvement of the corruption-related status is quite significant. However, considering the still high corruption level in the country, it would be desirable to enhance this contribution both in terms of financial and technical assistance to all anticorruption initiatives, regardless of whether they were generated by governmental or nongovernmental entities.

Future Research and Donor Assistance

Key areas and issues related to corruption requiring immediate attention. In expert opinion, such key areas include:

- Anticorruption review of laws;
- Adoption of the state programme for the fight against corruption;
- Creation of an effective coalition of public forces;
- Creating public television;
- Broad and persistent anticorruption campaigning in mass media;
- Examining the possible aspects of cooperation of public forces with the government.

The key areas and problems related to initiatives in the sphere of fighting corruption require donor assistance. We hope that this report will help donors identify priority areas that need support; contribute to persistency in donor activities, and result in their cooperation and coordination of effort.

Annex 2.

ANTI-CORRUPTION ACTION PLAN FOR ARMENIA, AZERBAIJAN, GEORGIA, THE RUSSIAN FEDERATION, TAJIKISTAN AND UKRAINE[1]

PREAMBLE[2]

We, the Heads of Governmental Delegations from Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine at the 5th Annual meeting of the Anti-Corruption Network for Transition Economies on the 10th of September, 2003, in Istanbul, Turkey:

BUILDING on the guidance of the Anti-Corruption Network for Transition Economies expressed at its 4th Annual meeting in Istanbul in March 2002 to develop a special sub-regional Anti-Corruption Action Plan for those transition economies not yet engaged in targeted sub-regional initiatives;

CONVINCED that corruption is a widespread phenomenon and is inimical to the practice of democracy, erodes the rule of law, hampers economic growth, discourages domestic and foreign investment, and damages the trust of citizens in their governments;

ACKNOWLEDGING that corruption raises serious moral and political concerns and that fighting corruption requires strong action by governments as well as the effective involvement of all elements of society including business and the general public;

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1 The Action Plan is open for endorsement by other transition economies not engaged in targeted sub-regional initiatives; Kazakhstan and the Kyrgyz Republic joined the Action Plan at a later stage.

2 The Action Plan, together with its implementation plan, is a legally non-binding document which contains a number of principles towards policy reform which participating countries politically commit to implement on a voluntary basis and which can provide a basis for donor assistance.

RECOGNISING the value of co-operation and action-oriented knowledge sharing both among the countries participating in this Action Plan and with other countries active within the framework of the Anti-Corruption Network and other regional and international anti-corruption initiatives;

RECALLING that national anti-corruption measures can benefit from existing regional and international instruments and good practices such as those developed by the countries in the region, the Council of Europe (CoE), the European Union (EU), the Financial Action Task Force on Money Laundering (FATF), the Organisation for Economic Co-operation and Development (OECD), the Organisation for Security and Co-operation in Europe (OSCE), and the United Nations (UN);

WELCOMING the pledge made by donor countries and international organisations to support the countries of the region in their fight against corruption through technical cooperation programmes;

ENDORSE this Anti-Corruption Action Plan as a framework for developing effective and transparent systems for public service, promoting integrity in business operations and supporting active public involvement in reform; and commit to take all necessary means to ensure its implementation.

PILLARS OF ACTION

PILLAR 1.
Developing Effective and Transparent Systems for Public Service

Integrity in the Public Service

- Establish open, transparent, efficient and fair employment systems for public officials that ensure the highest levels of competence and integrity, foster the impartiality of civil service, safeguard equitable and adequate compensation and encourage hiring and promotion practices that avoid patronage, nepotism and favouritism;
- Adopt public management measures and regulations that affirmatively promote and uphold the highest levels of professionalism and integrity through the promotion of codes of conduct and the provision of corresponding education, training and supervision of officials in order for them to understand and apply these codes; and
- Establish systems which provide for appropriate oversight of discretionary decision-making; systems which govern conflicts of interest and provide for disclosure and/or monitoring of personal

assets and liabilities; and systems which ensure that contacts between government officials and business services users are free from undue and improper influence, and that enable officials to report such misconduct without endangering their safety and professional status.

Accountability and Transparency

- Safeguard accountability of public service through, inter alia, appropriate auditing procedures applicable to public administration and the public sector, and measures and systems to provide timely public reporting on decision making and performance;
- Ensure transparent procedures for public procurement, privatisation, state projects, state licences, state commissions, national bank loans and other government guaranteed loans, budget allocations and tax breaks. These procedures should promote fair competition and deter corrupt activity, and establish adequate simplified regulatory environments by abolishing overlapping, ambiguous or excessive regulations that burden business;
- Promote systems for access to information that include such issues as political party finance, and electoral campaign funding and expenditure.

PILLAR 2.
Strengthening Anti-Bribery Actions and Promoting Integrity in Business Operations

Effective Prevention, Investigation and Prosecution

Take concrete and meaningful steps to actively combat bribery by:

- Ensuring the existence of legislation with dissuasive sanctions which effectively and actively combat bribery of public officials, including anti-money laundering legislation that provides for substantial criminal penalties for the laundering of the proceeds of corruption;
- Ensuring the existence and enforcement of universally applicable rules to ensure that bribery offences are thoroughly investigated and prosecuted by competent authorities. This includes the strengthening of investigative and prosecutorial capacities by fostering inter-agency co-operation, by ensuring that investigation and prosecution are free from improper influence and have effective means for gathering evidence, by protecting those persons who bring violations to the

attention of authorities and by conducting thorough examinations of all revelations of corruption; and

- Strengthening bi- and multilateral co-operation in investigations and other legal proceedings by providing (i) effective exchange of information and evidence, (ii) extradition where expedient, and (iii) co-operation in searching for and identifying forfeitable assets as well as prompt international seizure and repatriation of such assets.

Corporate Responsibility and Accountability

- Promoting corporate responsibility and accountability so that laws, rules and practices with respect to accounting requirements, external audit and internal company controls are fully applied to help prevent and detect bribery of public officials in business. This includes the existence and thorough implementation of legislation requiring transparent company accounts and providing for effective, proportionate and dissuasive penalties for omissions and falsifications for the purpose of bribing a public official, or hiding such bribery in the books, records, accounts and financial statements of companies;
- Ensuring the existence and the effective enforcement of legislation to eliminate tax deductibility of bribes and to assist tax inspectors to detect bribe payments; and
- Denying public licenses, government procurement contracts or access to public sector contracts for enterprises that engage in bribery or fail to comply with open tender procedures.

PILLAR 3.
Supporting Active Public Involvement in Reform

Public Discussion and Participation

Encourage public discussion of the issue of corruption and participation of citizens in preventing corruption by:

- Initiating public awareness campaigns and education campaigns at different levels about the negative effects of corruption and joint efforts to prevent it with civil society groups such as NGOs, labour unions, the media, and other organisations; and the private sector represented by chambers of commerce, professional associations, private companies, financial institutions, etc.;

- Involving NGOs in monitoring of public sector programmes and activities, and taking measures to ensure that such organisations are equipped with the necessary methods and skills to help prevent corruption;
- Broadening co-operation in anti-corruption work among government structures, NGOs, the private sector, professional bodies, scientific-analytical centres and, in particular, independent centres;
- Passing legislation and regulations that guarantee NGOs the necessary rights to ensure their effective participation in anti-corruption work.

Access to Information

Ensure public access to information, in particular information on corruption matters through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption
- Measures which ensure that the general public and the media have freedom to request and receive relevant information in relation to prevention and enforcement measures.
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

IMPLEMENTATION

In order to implement these pillars of action, participating governments of the region concur with the attached Implementation Plan and will endeavour to comply with its terms. Participating governments of the region will take measures to publicise the Action Plan throughout government agencies, NGOs engaged in the fight against corruption, and the media; and in the framework of the Advisory Group Meetings, to meet regularly and to assess progress in the implementation of the measures provided for in the Action Plan.

IMPLEMENTATION PLAN

Introduction

The Action Plan contains legally non-binding principles and standards towards policy reform which participating governments of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, and Ukraine voluntarily agree to implement in order to combat corruption and bribery in a co-ordinated and comprehensive manner and thus contribute to development, economic growth and social stability. Although the Action Plan describes policy objectives that are currently relevant to the fight against corruption in participating governments, it should remain flexible so that new ideas and priorities can be taken into account as necessary. This section describes the implementation of the Action Plan. Taking into account national conditions, implementation will draw upon existing instruments and good practices developed by participating countries, regional institutions and international organisations.

Identifying Country Mechanisms

While the Action Plan recalls the need to fight corruption and lays out overall policy objectives, it acknowledges that the situation in each country of the region may be specific. To address these differences, each participating country will identify priority reform areas which would fall under the three pillars, and aim to implement necessary measures in a workable timeframe.

Mechanisms

Advisory Group: To facilitate the implementation of the Action Plan, each participating government will designate a national coordinator who will be their representative on a Advisory Group. The Advisory Group will also comprise experts on methodical and technical issues to be discussed during a particular Steering Group meeting as well as representatives of participating international organisations and civil society. The Advisory Group will meet on an annual basis and serve three main purposes: (i) to review progress achieved in implementing each country's priorities; (ii) to serve as a forum for the exchange of experience and for addressing issues that arise in connection with the implementation of the policy objectives laid out in the Action Plan; and (iii) to promote a dialogue with representatives of the international community, civil society and the business sector in order to mobilise donor support.

Funding: Funding for implementing the Action Plan will be solicited from international organisations, governments and other parties from inside and outside the region actively supporting the Action Plan.

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Fighting Corruption in Transition Economies

Azerbaijan

What progress have transition economies made in fighting corruption? This book presents the outcomes of a review of legal and institutional frameworks for fighting corruption in Azerbaijan, which was carried out in the framework of the Anti-Corruption Network for Transition Economies based at the OECD. The review examined national anti-corruption policy and institutions currently in place in Azerbaijan, national anti-corruption legislation, and preventive measures to ensure the integrity of civil service and effective financial control.

The review process was based on the OECD practice of mutual analysis and policy formulation. A self-assessment report was prepared by the government of Azerbaijan. An international group of peers carried out expert assessment and elaborated draft recommendations. A review meeting of national governments, international organisations, civil society and business associations discussed the report and its expert assessment, and endorsed the recommendations.

This publication contains the recommendations as well as the full text of the self-assessment report provided by the government of Azerbaijan. It will provide an important guide for the country in developing its national anti-corruption actions and will become a useful reference material for other countries reforming their anti-corruption policy, legislation and institutions.

For more information, please refer to the Web site of the Anti-Corruption Network for Transition Economies ***www.anticorruptionnet.org*** as well as the Web site of the OECD Anti-Corruption Division ***www.oecd.org/corruption***.

Other editions in this series cover assessments of anti-corruption efforts in Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine.

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