



**Support to the anti-corruption strategy of Azerbaijan
(AZPAC)**

**TECHNICAL PAPER ON LEVEL OF COMPLIANCE OF THE
LEGISLATION OF THE REPUBLIC OF AZERBAIJAN WITH
INTERNATIONAL ANTI-CORRUPTION CONVENTIONS**

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Support to the Anti-corruption Strategy of Azerbaijan (AZPAC)

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1. Introduction

This technical paper has been prepared in the framework of the Support to the Anti-Corruption Strategy of Azerbaijan (AZPAC) project supported by the USAID and implemented by the Council of Europe (Economic Crime Division/Directorate of Co-operation/DG-HL). The aim of the paper is to assess the level of compliance of the legislation of the Republic of Azerbaijan with provisions of the United Nations Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption, and the Council of Europe Civil Law Convention on Corruption. The paper is based on the review of the relevant national legislation, and to some extent on interviews with competent professionals of various Azerbaijani agencies.

2. United Nations Convention against Corruption

2.1 *Criminalization, law enforcement and jurisdiction*

Article 15

Bribery of national public officials

Article 15 of the UNCAC requires the establishment of active and passive bribery of national public officials.

The Criminal code (Article 312) criminalizes giving of bribe (active bribery), i.e. giving of any material and other values, privileges or advantages, directly or indirectly, personally or by intermediary of third persons, to official person for himself (or herself) or third persons to act or refrain from acting in the exercise of his (or her) functions. In addition giving of a bribe to official for commitment of obviously illegal actions (inaction) by him or repeated presentation of a bribe is an aggravating circumstance and is punished by the penalty at a rate of from two up to four thousand of nominal financial units or imprisonment for the term from four up to eight years with confiscation of assets.

The Criminal code (Article 311) also criminalizes passive bribery, i.e. – requesting or receiving by official person directly or indirectly, personally or by intermediary of third persons, of any material and other values, privileges or advantages for himself (or herself) or third persons, for any act (inaction), as well as general patronage or indifference, in the exercise of his (or her) official functions.

Receiving of bribe by official for illegal actions (inaction) constitute an aggravating circumstance. Other aggravating circumstances are passive bribery committed on preliminary arrangement by group of persons or organized group; repeatedly; in the large amount; with use of threats.

These penal provisions adequately address the UNCAC requirements regarding active and passive bribery of national public officials.

Article 16

Bribery of foreign public officials and officials of public international organizations

Under article 16, paragraph 1, of the UNCAC, States must establish as a criminal offence active bribery of foreign public officials and officials of public international organizations. There is no provision directly criminalizing active bribery of foreign public in Azerbaijani legislation. However, the principle of territorial applicability of the Criminal code (Article 11) in conjunction with provisions of the Law on Combating Corruption (Article 3) defining applicability of the latter law in the territory of the Republic of Azerbaijan to all individuals, including foreigners and stateless persons envisage possibility of bringing to criminal liability foreign public officials. As to officials of public international organizations, note to Article 308 of the Criminal code provides that term “officials”, used in articles of the chapter 33, criminalizing corruption offences, includes also representatives of international organizations.

The above analysis also reflects the level of compliance of Azerbaijani legislation with respect to non-mandatory offence of passive bribery of foreign public officials and officials of public international organizations (Article 16, paragraph 2 of the UNCAC).

This means that Azerbaijani legislation is in the line with the requirements of article 16 of the UNCAC.

Article 17

Embezzlement, misappropriation or other diversion of property by a public official

Article 17 of the UNCAC requires the establishment of the offence of embezzlement, misappropriation or other diversion of property by a public official. Domestic legislation is quite compatible with the UNCAC standard. The Criminal code criminalizes misappropriation and embezzlement of property entrusted to the offender (Article 179) as well as swindle (Article 178), defining as abstraction of another person's property or buying another persons property by a deceit or breach of confidence. An aggravating circumstance for these offences is there commission by a person with use of his service position. The latter wording comprises public officials.

Moreover, according to Law on Combating Corruption (Article 9) obtaining by an official, in the course of performing his or her service duties (powers) of material and other values, privileges or advantages without payment or for price (tariff) lower than the market price or the prices regulated by the State is a corruption offence.

Abovementioned definitions of criminal offences have general character and include embezzlement of property by a person directing or working in a private sector entity.

Article 18

Trading in influence

Article 18 of the UNCAC requires the establishment of offences related to active and passive trading in influence. Regarding active trading in influence the Criminal code provides (Article 312-1.2) that giving to any person of any material and other values, privileges or advantages to exerting an improper influence over the decision-making official using his (or her) real or assumed possibilities of influence - is punished by the fine in the amount from one thousand up to two thousand nominal financial units or imprisonment from two years up to five years with confiscation of assets. Passive trading in influence is also criminalized in accordance with Article 312-1.1 of the code.

This means that Azerbaijani legislation is in the line with the requirements of article 18 of the UNCAC.

Article 19

Abuse of functions

Article 19 of the UNCAC requires that States parties consider the establishment as a criminal offence, when committed intentionally, of the abuse of functions or position. The Criminal code (Article 308) criminalizes abuse of official powers, i.e. in the exercise of his (or her) official functions using by the official of its official authorities in deliberate contradiction to the interest of service with the purpose of obtaining illegal advantage for himself (or herself) or third persons or failure to use these authorities when the official interests require to do so, if it caused substantial damage to rights and legitimate interests of natural and legal persons, or to the interest of the state or society protected by law. Paragraph 2 of the Article 308 constitute aggravating circumstance and criminalize abuse of official powers that entailed heavy consequences.

This means that Azerbaijani legislation is in the line with the requirements of article 19 of the UNCAC.

Article 20

Illicit enrichment

This UNCAC optional requirement has not yet translated into Azerbaijani legislation

Article 21

Bribery in the private sector

The definition of "official" (note to Article 308 of the Criminal code), which includes also persons carrying out organizational-administrative or administrative-economic functions in

commercial and noncommercial organizations implies that subjects of all corruption-related crimes including active and passive bribery are persons who directs or runs commercial organization.

This means that Azerbaijani legislation is in the line with the requirements of article 21 of the UNCAC.

Article 22

Embezzlement of property in the private sector

In analysis regarding the level of compliance of Azerbaijani legislation to Article 17 of the UNCAC was mentioned that definitions of criminal offences in Articles 178 and 179 of the Criminal code are of general character and include embezzlement of property by a person directing or working in a private sector entity. Therefore embezzlement of property in the private sector is also punishable under the Criminal code.

This means that Azerbaijani legislation is in the line with the requirements of article 22 of the UNCAC.

Article 23

Laundering of proceeds of crime

Article 23 the UNCAC requires that States parties establish the four offences related to money-laundering:

1. conversion or transfer of proceeds of crime,
2. concealment or disguise of proceeds of crime,
3. acquisition, possession or use of proceeds of crime, and
4. participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the foregoing offences.

Article 193-1.1 of the Criminal code includes 2 criminal acts related to money-laundering:

1. To give legal status to money resources and other property knowing that they have been obtained through criminal acts. This piece of criminal legislation corresponds to "conversion or transfer of proceeds of crime" requirement. However, there is no explicit indication to requirement to help "any person involved in the commission of the predicate offence to evade legal consequences for commitment of predicate offence";

2. To carry out financial operations or other acts with the purpose of concealment real source of money resources and other property obtained through criminal acts. This act corresponds the second money-laundering offence of Article 23, however the latter is broader, as includes not only the concealment of real source of property, but also location, disposition, movement or ownership of or rights with respect to property, i.e. almost any aspect of or information about property.

This criminal act of Article 193-1.1 also partly corresponds to the "acquisition and possession" requirement of Article 23. Financial operations or other acts include acquisition and possession. The Criminal code unlike the UNCAC indicates the necessity of the purpose concealment though.

As to the fourth offence in the Article 23 of the UNCAC, under Article 193-1.2.1 of the Criminal code legalization of money proceeds and other property obtained through criminal acts committed by group of persons on preliminary arrangement constitute an aggravating circumstance. Crimes committed by group of persons on preliminary arrangement constitute a type of complicity (Article 31 of the Criminal code).

Article 32 of the Criminal code indicates 4 forms of complicity: perpetrator, organizer, instigator, and assistant. Article 33.4 of the Criminal code provides that the person who is not a special subject of a crime, according to the appropriate article of the Special part of the Code, participating in commitment of the crime provide by this article, carries the criminal liability for the given crime as its organizer, instigator or assistant.

Pursuant to Article 33.5 of the Criminal code in a case of not completing by executor of a crime up to the end on circumstances not dependent on his will, other participator shall carry the criminal liability for preparation of a crime or attempt on a crime.

Under Article 23, para. 2 of the UNCAC States parties must also apply Article 23, para. 2 to a wide range of predicate offences. In accordance to definition of Article 193-1 of the Criminal code, the Article criminalizes laundering proceeds generated by any criminal act, i.e. it applies to all criminal offences.

Accordingly, domestic standards of Azerbaijan comply with the mandatory obligation arising out of article 23 of the UNCAC.

Article 24

Concealment

In accordance with article 24 of the UNCAC, States parties must consider establishing as a criminal offence concealment or continued retention of property in other situations besides those set forth in article 23, where the person knows that the property is the result of any of the offences established in the Convention.

The Criminal code (Article 307) criminalizes not promised in advance concealment of crimes. Retention of property, where the person knows that the property is the result of any offences, regarded as concealment of crimes.

Article 25

Obstruction of justice

Article 25 of the UNCAC requires the establishment of two offences relating to obstruction of justice. One is related to the use of physical force, intimidation or the promise and offering an undue advantage to obtain a false testimony in proceedings concerning UNCAC offences (article 25, subparagraph (a)). Another provision relates to the use of physical force or intimidation to interfere with the exercise of official duties by a justice or law enforcement official (article 25.b).

The Criminal code (Article 286) criminalizes intervention in any form with court activity with the purpose of obstruction of justice. This Article covers instances of the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding. Moreover, the Criminal code separately criminalizes (Articles 287 and 288) attempt on life as well as murder threat, causing of harm to health, destruction or damage of property concerning a judge, prosecutor, investigator, defender, expert, judicial supervisor, judicial executor, as well as on their close relatives

Accordingly, Azerbaijani legislation complies with the mandatory obligation arising out of article 25 of the UNCAC.

Article 26

Liability of legal persons

Article 26 of the UNCAC requires the establishment of criminal, civil or administrative liability for legal entities for the UNCAC offences. This obligation is mandatory, to the extent that this is consistent with domestic legal principles.

Article 11, para. 2, of Law on Combating Corruption provides that legal persons that have committed corruption offences as defined by Law on Combating Corruption shall be fined, as provided for by law, or liquidated. This entails civil liability. The latter is provided by Article 52 of Civil Code – legal person shall be liable for its obligations with its property. Except cases provided for by the code or the statute of the legal person, the founder(s) of legal person shall not be liable for the obligations of legal person and vice versa.

Article 27

Participation and attempt

Article 27, paragraph 1 of the UNCAC, requires that States parties establish as a criminal offence, in accordance with their domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with the Convention.

Article 32 of the Criminal code indicates 4 forms of complicity: perpetrator, organizer, instigator, and assistant.

Article 33.1 of the Criminal code provides that the responsibility of accomplices in a crime shall be determined by the character and the degree of the actual participation of each of them in the

commission of the crime. Moreover, pursuant to Article 33.3 criminal responsibility of an organizer, instigator, and assistant shall ensue under the Article of Special part of the code that provides for punishment for the perpetrator, with reference to Article 33, except for in cases when they simultaneously were co-perpetrators of the crime. Besides that, a person who is not a subject of a crime specially indicated in the respective Article of the Special Part of the code and who has taken part in the commission of the crime, stipulated by this Article, shall bear criminal responsibility for the given offence as its organizer, instigator, or assistant.

These articles of the Criminal code are of general application i.e., they apply to all offences in the code.

Article 28

Knowledge, intent and purpose as elements of an offence

Article 28 of the UNCAC provides that knowledge, intent or purpose required as an element of an offence established in accordance with the Convention may be inferred from objective factual circumstances. Generally the criteria to infer 'knowledge', 'intent' or 'purpose' is regulated in Azerbaijan by Article 25 of the Criminal code. The latter provides that act committed with clear or indirect intent shall be recognized as crime committed intentionally. A crime shall be deemed to be committed with clear intent, if the person was conscious of the social danger of his acts (action or inaction), foresaw the possibility of the onset of socially dangerous consequences, and willed such consequences to ensue. A crime shall be deemed to be committed with indirect intent, if the person realized the social danger of his acts (action or inaction), foresaw the possibility of the onset of socially dangerous consequences, did not wish, but consciously allowed these consequences.

Accordingly, domestic standards comply with the mandatory obligation arising out of Article 28 of the UNCAC.

Article 29

Statute of limitations

In accordance with article 29 of the UNCAC, States parties must, where appropriate, establish in their domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with the Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

In accordance with Article 78 of the Criminal code, a person shall be released from criminal responsibility if the following time-limits have expired since the day of commission of a crime:

- a) two years after the commission of a crime not representing big public danger;
- b) seven years after the commission of a crime of average gravity
- c) twelve years after the commission of a grave crime;
- d) fifteen years after the commission of an especially grave crime.

The code also provides that the limitation period shall be counted from the day of committing a crime to the time of the entry of a court's judgement into legal force. If a person commits a new crime, then the limitation period for each crime shall be counted independently.

As to "suspension of the statute of limitations" provision the code prescribes that the running of a limitation period shall be stopped if the person who has committed the crime evades the investigation or court trial. In this case, the running of the limitation period shall be resumed upon the time of detaining said person or his acknowledgement of guilt.

Accordingly, domestic standards comply with the mandatory obligation arising out of article 29 of the UNCAC.

Article 30

Prosecution, adjudication and sanctions

Article 30 of the UNCAC contains both mandatory and non-mandatory provisions. Paragraph 1 requires that States parties make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of that offence. States parties also required to establish or maintain an appropriate balance between any immunities or privileges accorded to their public officials and the possibility of effectively investigating, prosecuting and adjudicating UNCAC offences (Article 30, para. 2). They should also consider establishing mechanisms through which a public official accused of an UNCAC offence may be removed, suspended or reassigned (Article 30, para. 6). Moreover, States Parties should consider establishing procedures for the disqualification of persons convicted of an UNCAC offence from public office (Article 30, para. 7).

In Azerbaijani criminal legislation punishments prescribed for corruption related offences are proportionate to the gravity of offences. For example, offenders liable for passive bribery can be punished with imprisonment up to four to eight years of imprisonment with deprivation of the right to hold certain positions and be engaged in certain activities up to three years with confiscation of assets. If the bribe is received by the official for illegal (in) actions the punishment increased up to 5 to 10 years' imprisonment in addition to deprivation of the right to hold a certain post or engage in certain activities for a period of up to 3 years. If the bribe is received under aggravated circumstances, namely on preliminary arrangement by a group of persons or organised group, repeatedly, involving a large amount, or with the application of threats the punishment is further increased up to 7 to 12 years' imprisonment with confiscation of property.

Active bribery of an official is punished with a penalty of 1000 to 2000 nominal financial units or up to 5 years' imprisonment and a penalty of 500 to 1000 nominal financial units. If the bribe is presented in order to have the official engage in an obviously illegal act (or inaction) or in case of repeated presentation of a bribe, the sanction is increased to 2000 to 4000 nominal financial units or 3 to 8 years imprisonment with the possibility of confiscation of property.

Passive trading in influence is punished by a fine in the amount of 3000 to 5000 nominal financial units or 3 to 7 years' imprisonment and confiscation of property, whereas active trading in influence is punished by a fine in the amount of 1000 to 2000 nominal financial units or 2 to 5 years imprisonment and confiscation of property.

The scope of categories of officials enjoying immunities under the Constitution and different laws is reasonable (members of Parliament, President, Prime-Minister, Human Rights Commissioner, judges).

According to the legislation, immunities of all abovementioned categories except for the President and the Prime-Minister may be lifted by the Parliament upon the request of the Prosecutor General. Relevant decision of the Parliament with respect to Human Rights Commissioner (Constitutional Law on the Human Rights Commissioner (Ombudsman), Article 6.3) and judges of the Constitutional Court, the Supreme Court and Courts of Appeal (Constitution, Article 128, para. V) shall be taken with a majority of 83 votes. Parliamentary immunity (Constitution, Articles 90, para. II and 95 para. III) as well as immunity of judges of lower courts (Constitution, 128, para. V) may be lifted by a decision of the Parliament by majority 63 votes upon the request of the Prosecutor General. The immunity of the Prime-Minister may be lifted by the President upon the request of the Prosecutor General (Constitution, Article 123).

The Constitution with regard to these categories except for the President provides that they can be arrested only if s/he is caught in the act of crime. In such cases the Prosecutor General is to be immediately notified. As to judges, Article 101 of the law On Courts and Judges requires that judges may only be prosecuted with permission of the Judicial-Legal Council upon the request of the Prosecutor General.

Presidential immunity covers by Article 107 of the Constitution. An impeachment procedure may be initiated against the President for serious crimes. To this end the Constitutional Court can on the basis of a decision taken by the Supreme Court - request dismissal of the President to the Parliament, which has to take a decision with a majority of 95 votes (out of a total of 125 votes) within two months after the request was submitted by the Constitutional Court. If the Parliament fails to reach a decision within two months the President will not be removed from

office.

Limited immunity enjoyed by registered election candidates (at both the local and national level). Pursuant to the Election code (Article 70.4), from the day of registration until the day of official announcement of results of elections, registered election candidates (at both the local and national level) can not be indicted for a crime, detained nor be subject to administrative sanctions imposed by a court, without the permission of the relevant prosecutor (the Prosecutor General for candidates for election to the Parliament, the district prosecutor for candidates in local elections). The registered candidate can be arrested only if s/he is caught in the act of crime.

Article 30, para. 6 of the UNCAC provides that to the extent consistent with the fundamental principles of their legal system, States parties must consider establishing procedures through which a public official accused of an offence established in accordance with the Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

In Azerbaijan the Criminal Procedure code provides for several types of restrictive measure. The latter defined as coercive procedural measure intended to prevent unlawful behavior by the suspect or accused during criminal proceedings and to ensure the execution of the sentence. Article 155.2 of the code includes the following restrictive measures: arrest, house arrest, bail, restraining order, personal surety, surety offered by an organization, police supervision, supervision, military observation, removal from office or position. Removal from office or position may be applied as a principal restrictive measure or combined with another restrictive measure.

In accordance to Article 155.1 of the code, restrictive measures may be applied by the relevant preliminary investigator, investigator, prosecutor in charge of the procedural aspects of the investigation or court when the material in the prosecution file gives sufficient grounds to suppose that the suspect or accused has: hidden from the prosecuting authority; obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding material significant to the prosecution or engaging in falsification; committed a further act provided for in criminal law or created a public threat; failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment; prevented execution of a court judgment.

Article 30, para. 7 of the UNCAC provides that to the extent consistent with the fundamental principles of their legal system, States parties are required to consider establishing procedures for the disqualification of persons convicted of an offence established in accordance with the Convention from public office or office in an enterprise owned in whole or in part by the State. Such disqualifications could be executed by court order or other appropriate means. The duration of the disqualification is also left to the discretion of the States parties, consistent with their domestic law.

Passive bribery and service forgery is punished along with imprisonment by deprivation of the right to hold certain offices or be engaged in certain activities. Moreover, pursuant to Article 46.2 of the Criminal code, deprivation of the right to hold specified offices or to engage in specified activities may be imposed as an additional penalty also in cases where it is not provided for by the relevant Article of the Special Part of the code as punishment for the corresponding offence, if with due account of the nature and the degree of the social danger of the crime committed and the personality of the convict, the court deems it impossible to allow him to retain the right to hold specified offices or to engage in specified activities.

Article 31 (1-7)

Freezing, seizure and confiscation

The substantive obligations of States Parties arising out of article 31 of the UNCAC are confined in paragraphs 1, 3, 4, 5 and 6, while procedural powers to trace, locate, gain access to and administer assets are found in the remaining paragraphs. States Parties are required to take necessary measures to enable confiscation of proceeds of crime derived from UNCAC offences, property into which proceeds of crime are intermingled by way of transformation or conversion, and income or other benefits derived from proceeds of crime.

The Criminal code provides for confiscation of property as a type of punishment and defines it as compulsory gratuitous withdrawal to the property of State of instruments and means used by condemned at commitment of a crime, objects of crime and also a property obtained in criminal way (Article 51). Moreover according to the code, property obtained through criminal acts or objects of the crime if can't be taken into the benefit of state because of its usage, assignation to other person and other reasons, the money or other property equal to the amount of the same property belonging to the condemned shall be confiscated.

Confiscation of property is appointed only in the cases provided by appropriate articles of the Special part of the code. Provisions for confiscation of property are contained in corruption-related articles of the Criminal code.

Paragraph 3 of article 31 of the UNCAC introduces an obligation for States parties to regulate the administration of frozen, seized or confiscated property covered in paragraphs 1 and 2 of the article.

In accordance with the Criminal Procedure code frozen, seized or confiscated property constitutes material evidence. The latter defined as any item that can help to determine circumstances of importance to the prosecution because of its characteristics, features, origin, place and time of discovery or the imprints it bears may be considered to be (Article as 128.1).

The code also requires that material evidence shall be packed and kept in sealed form in the case file; if it is of a large size, it shall be given for safekeeping to an organisation, institution or appropriate person, subject to their consent.

During the prosecution, as soon as the following items have been examined, and no later than 7 (seven) days after they were obtained, the prosecuting authority shall deposit in the state bank: precious metals and stones, pearls and jewellery made from them; cash in national and foreign currency, cheques, securities, bonds and lottery tickets. Cash in national or foreign currency acquired during the investigation as well as other securities shall be kept with the prosecution file if it has or they have individual characteristics of significance to the prosecution.

The material evidence and other items acquired during the case shall be kept by the prosecuting authority until their allocation is settled by final decision of the court and by the decision of the prosecuting authority to discontinue the prosecution. In the circumstances provided for in this Code, a decision on the material evidence may also be taken before the conclusion of the prosecution.

Instances provided by paragraphs 4 and 5 of Article 31 of the UNCAC covered by Article 193-1 of the Criminal code.

The investigative capability needed to implement article 31 fully will depend to a large degree on non-legislative measures, such as ensuring that law enforcement agencies and prosecutors are properly trained and provided with adequate resources. In most cases, however, legislation will also be necessary to ensure that adequate powers exist to support the tracing and other investigative measures needed to locate and identify assets and link them to relevant crimes.

A wide scope of investigative techniques (powers) is provided in the Law On Operative-Search Activities, such as: telephone surveillance and tapping; monitor of mails, telegraphic messages and other postal consignments; information retrieval from the technical channels of communication; censorship of accuser's correspondence; inspection of transport vehicles; controlled purchase of goods; examination of objects and documents; taking samples for comparative examination; controlled delivery; instilment into the criminal groups and objects; and foundation of a cover organization. Before carrying out such operations as telephone surveillance and tapping, monitoring of the information of the technical channels of communication, and monitoring of the mail and postal consignments, the competent authority is required to obtain the decision of the court thereto and report to the latter within 48 hours on the results of these operations.

Articles 32 and 33

The UNCAC calls for the protection of witnesses, experts, victims (Article 32) and reporting persons (Article 33). While the arrangement for protection of witnesses, experts, victims is mandatory, that of reporting persons is non-mandatory. States parties are mandated by the UNCAC to take appropriate measures against potential retaliation or intimidation of witnesses,

victims and experts. States are also encouraged to provide procedural and evidentiary rules for strengthening these protective measures as well as extending similar protections to reporting persons.

In Azerbaijan there is a legal arrangement for protection of witnesses, experts, victims and reporting persons provided by the Law on State Protection of Persons Participating in Criminal Proceedings. In accordance with Article 3 of the Law persons with regard to whom the relevant state authority has made the decision on application of security measures is considered the protected persons. Among other participants of criminal proceedings the following persons are considered as protected persons: person, who informed law enforcement agency on the crime, or participated in the revealing, prevention or detection of crime, persons, who considered a victim under the criminal case, his authorized representative, witnesses, expert, specialist, and translator.

Security measures can also be applied toward close relatives of secured persons in the event of influence on close relatives in order to put pressure on protected persons.

Article 7 of the Law provides the following types of security measures protected persons:

1. Security of the protected person, his residence and property;
2. Provision of protected person with special individual protection means, warning him on existing danger;
3. Temporary placement of protected person in safe location;
4. Maintenance of confidentiality of information on protected person;
5. Transfer of protected person to another work, change of his study or work place, his relocation to other residence;
6. Replacement of the protected person's document and change of appearance;
7. Implementation in order stipulated under the legislation of closed court hearings in cases of event of protected person's participation in court hearings.

Article 35

Compensation for damage

The UNCAC requires that States Parties take such measures as may be necessary, to ensure that victims of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. This mandatory requirement as outlined in Article 35 does not require that victims should be guaranteed compensation or restitution, but legislative or other measures be provided whereby such compensation can be sought or claimed.

Criminal Procedure code (Article 181.2) provides that in the event of damage directly caused to a natural or legal person by a criminal offence law, he/it may apply for the following through a civil claim for compensation:

- Payment of the value of the lost or damaged property, or if possible, compensation in kind;
- Reimbursement of the cost of replacing lost property or repairing the quality and restoring the appearance of damaged property;
- Payment of lost earnings;
- Compensation for non-pecuniary damage.

Article 37

Cooperation with law enforcement authorities

Under article 37 of the UNCAC, States Parties are required to consider the options of immunity from prosecution and mitigation of sentences for such accomplices who have assisted in providing information relevant to the case. This obligation is non-mandatory.

Giving himself up, actively assisting in the exposure of a crime, exposure of other accomplices in a lie, or searching for property obtained through criminal acts constitute a circumstance mitigating punishment (Article 59.1.9 of the Criminal code). The code also provides that in the presence of abovementioned mitigating circumstance, and in the absence of aggravating circumstances, the term and scope of punishment may not exceed three-fourths of the maximum term or scope of the strictest penalty envisaged by the relevant Article of the Special Part of the code.

Azerbaijani legislation does not envisage the possibility of immunity from prosecution for corruption related offences (Article 72 of the Criminal code).

Article 40

Bank secrecy

Article 40 of the UNCAC requires that, in cases of domestic investigations of UNCAC offences, States Parties have appropriate mechanisms available within their domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

The law On banks prohibits the disclosure of banking information as a general rule, with the exception of the disclosure to tax authorities. However, information about financial transactions, bank accounts and tax payments may be obtained by the prosecution service when conducting a criminal investigation on the basis of a court order, pursuant to Article 177 of the Code of Criminal Procedure.

Moreover, article 16.1 of the draft Law on Combat against Legalization of Money Proceeds or Other Property Obtained through Criminal Acts and Financing Terrorism, adopted by the Parliament in first reading provides that refusal to provide information stipulated in Article 11.1 of the draft law to financial monitoring agency shall not be based on bank secrecy or protected by law any other secrecy protection regime.

Article 41

Criminal record

Article 41 of the UNCAC suggests that States Parties may wish to consider adopting such legislative or other measures as may be necessary to take into consideration any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an UNCAC offence. However, taking such measures is non-mandatory.

In accordance with Article 18.1 of the Criminal code the committing of an intentional crime by a person who has a record of conviction for an intentional crime committed earlier shall be classified as the recidivism of crimes. Recidivism considered, pursuant to Article 61.1.1 of the Criminal code, as mitigating circumstance.

Article 42

Jurisdiction

In accordance with article 42, paragraph 1 of the UNCAC, each State party must be able to assert jurisdiction over the offences established in accordance with the Convention when these are committed:

- (a) In its territory;
- (b) On board a ship flying its flag;
- (c) On board an aircraft registered under its laws.

Pursuant to Article 11.1 of the Criminal code, a person who has committed a crime in the territory of the Republic of Azerbaijan, shall be brought to criminal responsibility under this Code. The crime, which has begun, proceeded, or terminated on territory of the Republic of Azerbaijan, shall be considered as crime committed on the territory of the Republic of Azerbaijan. Moreover, Article 11.3 of the code provides that any person who has committed a crime on a ship or aircraft, registered in a sea or air port of the Republic of Azerbaijan, located on the open sea or in the air space outside the confines of the Republic of Azerbaijan, flying under the flag or a recognition symbol of the Republic of Azerbaijan, shall be brought to criminal responsibility under the code.

2.2 *International cooperation*

Article 43

International cooperation

Article 43, paragraph 2 of the UNCAC, requires that, whenever dual criminality is necessary for international cooperation, States parties must deem this requirement fulfilled if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States parties. The Convention makes it clear that neither does the underlying conduct of the criminal offence need to be defined in the same terms in both States parties, nor does it have to be placed within the same category of offence.

Pursuant to Article 2.1 of the Law on Extradition of the Republic of Azerbaijan, extradition shall be granted in respect of offences punishable under the laws of the requesting country and of its own by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty (Article 2.1). There is no requirement on sameness of definitions as well as placement of criminal offence in the same category of offence.

Article 44 *Extradition*

Mandatory requirements relating to legislative measures

Extradition must be granted with respect to the offences covered by the Convention, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting and the requested State parties (Article 44, para. 1 of the UNCAC).

Pursuant to Article 2.1 of the Law on Extradition of the Republic of Azerbaijan, extradition shall be granted in respect of offences punishable under the laws of the requesting country and of its own by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty (Article 2.1). This means that all corruption-related crimes are extraditable offences in Azerbaijan.

Article 44, paragraph 4 of the UNCAC, requires States parties to deem the offences described in paragraph 1 as automatically included in all existing extradition treaties between them. Moreover, this paragraph requires States parties whose law so permits not to consider any of these (corruption) offences as a political offence, when they use the Convention as the basis for extradition.

There is no information regarding first requirement of the paragraph, as far as bilateral agreements concerned. As to regional documents, relevant definitions of the European Convention on Extradition and The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention) means that corruption-related offence covered by these instruments.

Corruption offences are not considered political offences pursuant to note to Article 3 of the Law on Extradition.

Article 44, paragraph 6, does not apply to States parties that can extradite to other States pursuant to a statute. It applies only to States parties for which a treaty is a prerequisite to extradition. Such States are required to notify the Secretary-General of the United Nations as to whether or not they will use the Convention against Corruption as a basis for extradition. The notification should be provided to the United Nations Office on Drugs and Crime.

In accordance with sub paragraph "a" of paragraph 6 of Article 44 of the Convention, the Republic of Azerbaijan declared that it will use the Convention as the legal basis for cooperation on extradition with other States Parties to the Convention.

Article 44, paragraph 11, provides that where a requested State party does not extradite a person found in its territory on grounds that the person is its national, that State shall, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.

Pursuant to the Constitution (Article 53) and the Law on Extradition (Article 3.1.1) extradition of nationals shall be refused (Article 53). However, in accordance with the note to Article 3 Azerbaijanis national at the request of the State seeking extradition might be brought to criminal liability, i.e prosecuted. To carry out such prosecutions, the State party concerned will need to have a legal basis to assert jurisdiction over offences committed abroad, as required by

article 42, paragraph 3, of the Convention. Pursuant to Article 13.3 of the Criminal code, citizens of Azerbaijan, as well as residents of Azerbaijan without Azeri citizenship, who commit a criminal act outside the territory of Azerbaijan are subject to criminal liability provided that the offence committed is recognised as a crime in both Azerbaijan and the state where the offence was committed.

Article 44, paragraph 14, requires a State party to provide fair treatment to the fugitive during extradition proceedings it is conducting, including by allowing enjoyment of all rights and guarantees that are provided for by that State's law with respect to such proceedings. In essence, this paragraph mandates that States parties have procedures to ensure fair treatment of fugitives and that the fugitives are given the opportunity to exercise such legal rights and guarantees.

In accordance with Article 9.2 of the Law on Extradition right of defence and other rights of a person claimed guaranteed pursuant to laws of the Republic of Azerbaijan. In accordance with article 5 of the Criminal Procedure code criminal procedure relating to foreign citizens or stateless persons shall be carried out in accordance with the provisions of the legislation on criminal procedure of the Azerbaijan Republic. This means that fugitive during extradition proceedings enjoy all rights guaranteed by the code.

Article 44, paragraph 16, provides that States parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. States parties must therefore ensure that no such grounds for refusal may be invoked under their extradition laws or treaties.

There is no such a ground to refuse a request for extradition in Azerbaijani legislation.

Optional requirements relating to legislative measures

If their domestic law allows it, States parties may grant extradition for corruption offences even without dual criminality (Article 44, para. 2 of the UNCAC).

Domestic regime requires dual criminality in accordance with the Criminal code (Article 12) and Law on Extradition (Article 2.1).

Article 44, paragraph 3 of the UNCAC, addresses the eventuality of an extradition request for multiple offences, at least one of which is extraditable under the article and others that are non-extraditable on the grounds of their short period of imprisonment. If the latter are related to an offence established in accordance with the Convention against Corruption, requested States parties have the option to extend the application of the article to those offences too.

Requirement of Article 2.1 of the Law on Extradition length of imprisonment sufficient for extradition does not have any exceptions.

Article 44, paragraph 10 of the UNCAC, provides that the requested State party may take a fugitive into custody or take other appropriate measures to ensure his or her presence for purposes of extradition. Provisions on provisional arrest and detention pending extradition are standard features of extradition treaties and statutes and States parties should have an appropriate legal basis for such custody. However, the article imposes no specific obligation to take persons into custody in specific cases.

Pursuant to Article 7.1 in case of urgency based on request of foreign state relevant Azerbaijani authorities take necessary measures in accordance with criminal procedure legislation for search and arrest of a sought person before receiving a request to extradite him.

The request for arrest shall state on documents mentioned in Article 5.2.1 и 5.2.2 of the Law on Extradition and that it is intended to send an urgent request for extradition.

The request shall also state for what offence extradition will be requested and when and where such offence was committed and shall give a description of nationality and personality of a person sought.

Article 44, paragraph 12 of the UNCAC, provides the option of temporarily surrendering the fugitive to the State party requesting extradition for the sole purpose of conducting the trial, with any sentence to be served in the State party that denied extradition.

Pursuant to the Constitution (Article 53) and the Law on Extradition (Article 3.1.1) extradition of nationals shall be refused (Article 53).

Article 44, paragraph 15 of the UNCAC, provides that nothing in the Convention is to be interpreted as imposing an obligation to extradite, if the requested State party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

The Law on Extradition (Article 3.2.3) provides that request for extradition shall be refused if there is substantial grounds for believing that a person, whose extradition is sought, is being prosecuted on account of that person's race, ethnic origin, language, religion, nationality, political opinions or sex.

Article 45

Transfer of sentenced persons

In accordance with Article 45 of the UNCAC, States parties may wish to consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with the Convention against Corruption, in order that they may complete their sentences there.

Pursuant to the Law on Extradition such transfer is possible only if unexpired term of punishment is less than six months.

Article 47

Transfer of criminal proceedings

In accordance with Article 47 of the UNCAC, States parties are required to consider the possibility of transferring to one another of criminal proceedings when this would be in the interest of the proper administration of justice relative to corruption offences, especially those involving several jurisdictions.

There is no direct provision in Azerbaijani legislation regulating transfer of criminal proceedings to another State.

Article 50

Special investigative techniques

Article 50, paragraph 1 of the UNCAC, requires States parties to establish the special investigative technique of controlled delivery, provided that this is not contrary to the basic principles of their respective domestic legal system. Not mandatory but encouraged by article 50, paragraph 1, is the use of electronic surveillance and undercover operations. It must be emphasized that these techniques may be the only way law enforcement can gather the necessary evidence to obstruct the activities of mostly secretive corrupt actors and networks.

These investigative techniques (powers) are provided in the Law On Operative-Search Activities. Before carrying out such operations as telephone surveillance and tapping, monitoring of the information of the technical channels of communication, and monitoring of the mail and postal consignments, the competent authority is required to obtain the decision of the court thereto and report to the latter within 48 hours on the results of these operations.

2.3 *Asset recovery*

Article 52

Prevention and detection of transfers of proceeds of crime

Under Article 52, paragraph 1 of the UNCAC, without prejudice to article 14, States parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction:

- (a) To verify the identity of customers;
- (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and

(c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

Pursuant to Article 42.1 of the Law on Banks, banks shall identify each one of their clients who the bank renders services to. Banks also shall require each such client to provide information to the bank about the identity of any other person who is a beneficiary of the account. Moreover, no anonymous accounts, as well as anonymous deposit accounts shall be permitted and all accounts must be held in the name of the customer.

As to paragraph 1 (c), individuals who are, or have been, entrusted with prominent public functions and their family members and close associates are considered, in accordance with Article 4.1.1 of the Methodological Guide On prevention of legalization of money means or other properties appropriated by banks illegally, issued by the National Bank as high-risk clients.

In order to facilitate implementation of these measures, States parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required:

(a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts;

(b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

These requirements met by Articles 4.1.1-4.1.3 of the above-mentioned Methodological Guide, where all clients classified into 3 groups: high-risk, middle-risk, and low-risk. Moreover, in accordance with Article 4.1.1 may notify banks about persons to be considered as high-risk clients.

In accordance with Article 52, paragraph 3 of the UNCAC, States parties are required to implement measures ensuring that their financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1.

Pursuant to Article 39.2 of the Law on Banks, records relating to the identification of customers and documents confirming the customers' settlements and transactions must be stored by banks for a minimum period of five years after the relationships with the customers are terminated and payments are over.

In accordance with Article 52, paragraph 4 of the UNCAC, and with the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, States parties are required to implement appropriate and effective measures to prevent, with the help of their regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

In order to be licensed a bank shall submit with the National Bank, among other documents, a list of the proposed administrators of the bank and, for each of them: notarized copies of the documents confirming their professional qualification, education and work experience, form filled out by them; a list describing each of their qualifying holdings in the bank and in other enterprises and the size of each holding; and a notarized statement of civil integrity signed by them Article 8.2.8 of the Law on Banks). "Administrator" for the purposes of the Law means any person who is a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank, as well the bank's Internal Audit Department staff, chief accountant and executive officer of any office of a bank (executive officers or chief accountants).

Moreover, pursuant to Article 13.1 of the Law on Banks, banking licenses for domestic subsidiaries of foreign banks or foreign bank holding companies and for domestic branch offices of foreign banks and permits for domestic representative offices of foreign banks may be issued only following consultations between the National Bank and the competent foreign authorities that supervise the banking activities of the foreign bank or bank holding company concerned, and only

following a finding by the National Bank based on such consultations that the bank or bank holding company is adequately supervised on a consolidated basis by such foreign authorities.

Article 53

Measures for direct recovery of property

Article 53 of the UNCAC focuses on States parties having a legal regime allowing another State party to initiate for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

There is no provision in Azerbaijani legislation that directly prohibits a possibility for initiating civil litigation by a foreign state. On the other hand, pursuant to Article 161.2 of the Execution of Punishments code, dispute on property rights of confiscated by a judgment property shall be resolved in civil litigation. Civil Procedure code provides that in circumstances stipulated by law, civil case may also be commenced upon petition of individuals or institutions acting for protection of rights and interests of other person or persons as well as state interests (Article 5.2). Moreover, Article 50.1 stipulates that natural and legal persons, officials, state authorities and other institutions shall have the right to act as a claimant or a respondent.

Article 54

Mechanisms for recovery of property through international cooperation in confiscation

Under Article 54, paragraph 1 of the UNCAC, States parties, in accordance with their domestic law, are required to take necessary measures to allow their competent authorities to give effect to an order of confiscation issued by a court of another State party (art. 54, para.1 (a)) and to order the confiscation of such property of foreign origin by adjudication of money-laundering or other offences within their jurisdiction or by other procedures under domestic law (art. 54, para.1 (b)).

Pursuant to Article 458.1 of the Civil Procedure code, decisions of foreign courts shall be recognized and enforced in the Republic of Azerbaijan under circumstances provided in laws or international treaties which the Republic of Azerbaijan is a party to or on the basis of mutual understanding.

Pursuant to Article 346 of the Criminal Procedure code the following among other matters relating to the results of the court's hearing of the case shall be discussed by the court (or examined by the judge) in the deliberation room: whether the arrest of property, either for the purpose of confiscation or to pay for the damage caused by the offence, should be rescinded and what property to be confiscated, in case of impossibility of conversion into state proceeds of property obtained through criminal acts or objects of the crime what accused person's property and money to be confiscated.

Under Article 54, paragraph 2, in order for States parties to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55, they are required, in accordance with their domestic law:

(a) To take such measures as may be necessary to permit their competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State party that provides a reasonable basis for the requested State party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of article 54;

(b) To take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of article 54.

In accordance with the Law on Mutual Legal Assistance in Criminal Matters (2.3), mutual assistance consist in list of actions, to be conducted in accordance with Azerbaijani legislation, including searching and arrest of property.

Article 55

International cooperation for purposes of confiscation

Under Article 54, paragraph 1 of the UNCAC, States parties are required to take necessary measures to allow their competent authorities to give effect to an order of confiscation issued by a court of another State party and to order the confiscation of such property of foreign origin by adjudication of money-laundering or other offences within their jurisdiction or by other procedures under domestic law.

There is no direct provisions in Azerbaijani legislation relating to first conventional norm. However, the legislation implicitly affords measures, mentioned in the Article 54. In accordance with Article 2.3 of the Law on Mutual Legal Assistance in Criminal Matters list of actions to be afforded in the course of mutual is not closed as it completed by “implementation of other measures in accordance with the legislation of the Republic of Azerbaijan”.

As to order the confiscation of property of foreign origin by adjudication of money-laundering or other offences, relevant provisions of the Criminal code in conjunction with Article 346 of the Criminal Procedure code make this conventional requirement covered by Azerbaijani legislation

In accordance with article 55, paragraph 2 of the UNCAC, upon a request made by another State party having jurisdiction over an offence established in accordance with the Convention, the requested State party is required to take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of the Convention for the purpose of eventual confiscation to be ordered either by the requesting State party or, pursuant to a request under paragraph 1 of article 55, by the requested State party.

Pursuant to with the Law on Mutual Legal Assistance in Criminal Matters (2.3), mutual assistance consist in list of actions, to be conducted in accordance with Azerbaijani legislation, including searching and arrest of property.

Article 57

Return and disposal of assets

In accordance with article 57, paragraph 1 of the UNCAC, property confiscated by a State party shall be disposed of by that State party in accordance with the provisions of the Convention and its domestic law. This includes the disposal by return of property to its prior legitimate owners, pursuant to article 57, paragraph 3.

Pursuant to Article 160.1 of the Execution of Punishments code, upon entrance in force of the decision on confiscation of the judgment the copy of the judgment, instructions on execution of the judgment and the copy of a list of property are sent to an execution officer.

The latter upon receive these documents shall immediately verify availability of the property in the list. Confiscated property shall be sealed. Execution officer shall take all necessary actions for preservation of property to be confiscated (Article 162 of the code).

Paragraph 2 of Article 57 requires that State parties take the necessary measures to ensure that property they have confiscated can be returned to another State party upon request, in accordance with the Convention.

There is no direct provisions in Azerbaijani legislation relating to this conventional norm. However, the legislation implicitly affords measures, mentioned in paragraph 2 of Article 57. In accordance with Article 2.3 of the Law on Mutual Legal Assistance in Criminal Matters, list of actions to be afforded in the course of mutual is not closed as it completed by “implementation of other measures in accordance with the legislation of the Republic of Azerbaijan”.

Article 58

Financial intelligence unit

In accordance with article 58 of the UNCAC, States parties must cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with the Convention and of promoting ways and means of recovering such proceeds. To that end, article 58 requires States parties to consider the establishment of an FIU to serve as a national centre for the collection, analysis and dissemination of reports of suspicious financial transactions to the competent authorities.

A Financial Intelligent Unit has not been established yet in Azerbaijan. Its establishment related to adoption of the draft Law on Combat against Legalization of Money Proceeds or Other

Property Obtained through Criminal Acts and Financing Terrorism. The draft included in the legislation plan for the current parliamentary session.

3. Council of Europe Criminal Law Convention on Corruption

Article 2 – Active bribery of domestic public officials

The Criminal code (Article 312) criminalizes giving of bribe (active bribery), i.e. giving of any material and other values, privileges or advantages, directly or indirectly, personally or by intermediary of third persons, to official person for himself (or herself) or third persons to act or refrain from acting in the exercise of his (or her) functions. In addition, giving of a bribe to official for commitment of obviously illegal actions (inaction) by him or repeated presentation of a bribe is an aggravating circumstance and is punished by the penalty at a rate of from two up to four thousand of nominal financial units or imprisonment for the term from four up to eight years with confiscation of assets.

Article 3 – Passive bribery of domestic public officials

The Criminal code (Article 311) criminalizes passive bribery, i.e. – requesting or receiving by official person directly or indirectly, personally or by intermediary of third persons, of any material and other values, privileges or advantages for himself (or herself) or third persons, for any act (inaction), as well as general patronage or indifference, in the exercise of his (or her) official functions.

Receiving of bribe by official for illegal actions (inaction) constitute an aggravating circumstance. Other aggravating circumstances are passive bribery committed on preliminary arrangement by group of persons or organized group; repeatedly; in the large amount; with use of threats.

Article 4 – Bribery of members of domestic public assemblies

Pursuant to the note of Article 308 officials in articles of the Criminal code chapter, criminalizing corruption-related offences are to be understood as persons constantly, temporarily or on special power carrying out functions of authority representative either carrying out organizational - administrative or administrative-economic functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organizations, and also in other commercial and noncommercial organizations, representatives of international organizations, as well as other persons considered public officials for the purposes of the Law On Combating Corruption of the Republic of Azerbaijan (listed in Article 2). According to the latter Law persons elected or appointed to the State bodies within the procedure laid down in the Constitution and laws of the Republic of Azerbaijan (Article 2.1.1) and persons elected to municipal bodies within the procedure laid down in the legislation of the Republic of Azerbaijan (Article 2.1.6), shall be subjects of offences related to corruption.

Article 5 – Bribery of foreign public officials

There is no provision directly criminalizing active and passive bribery of foreign public officials in Azerbaijani legislation. However, the principle of territorial applicability of the Criminal code (Article 11) in conjunction with provisions of the Law on Combating Corruption (Article 3) defining applicability of the latter law in the territory of the Republic of Azerbaijan to all individuals, including foreigners and stateless persons envisage possibility of bringing to criminal liability foreign public officials.

Article 6 – Bribery of members of foreign public assemblies

There is no provision directly criminalizing active bribery of members of foreign public assemblies in Azerbaijani legislation. Even despite the relevant reservation of the Republic of Azerbaijan not to establish as criminal offence the conduct referred to in Articles 6, the principle of territorial applicability of the Criminal code (Article 11) in conjunction with provisions of the Law on Combating Corruption (Article 3) defining applicability of the latter law in the territory of the

Republic of Azerbaijan to all individuals, including foreigners and stateless persons envisage possibility of bringing to criminal liability members of foreign public assemblies.

Article 7 and 8 – Active and passive bribery in the private sector

The definition of “official” (note to Article 308 of the Criminal code), which includes also persons carrying out organizational-administrative or administrative-economic functions in commercial and noncommercial organizations implies that subjects of all corruption-related crimes including active and passive bribery are persons who directs or runs commercial organization. As a result, these persons are also punishable under Articles 311 and 312 of the Criminal code.

Article 9-11 – Bribery of officials of international organizations, members of international parliamentary assemblies and judges and officials of international courts

Note to Article 308 of the Criminal code provides that term “officials”, used in Criminal code articles, criminalizing corruption offences, includes also representatives of international organizations.

Regarding members of international parliamentary assemblies, bearing in mind that these assemblies perform legislative, administrative or advisory functions on the basis of the statute of the international organisation which created them, they come within the notion of “representatives of international organizations” used in the note to Article 308 of the Criminal code. The latter analysis should also be extended to judges and officials of international courts.

Article 12 – Trading in influence

Criminal code provides (Article 312-1.2) that giving to any person of any material and other values, privileges or advantages to exerting an improper influence over the decision-making official using his (or her) real or assumed possibilities of influence - is punished by the fine in the amount from one thousand up to two thousand nominal financial units or imprisonment from two years up to five years with confiscation of assets.

Article 13 – Money laundering of proceeds from corruption offences

Article 13 of the Criminal Law Convention by referring to Article 6 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime requires that States parties establish the four offences related to money-laundering:

5. conversion or transfer of proceeds of crime,
6. concealment or disguise of proceeds of crime,
7. acquisition, possession or use of proceeds of crime, and
8. participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the foregoing offences.

Article 193-1.1 of the Criminal code includes 2 criminal acts related to money-laundering:

3. To give legal status to money resources and other property knowing that they have been obtained through criminal acts. This piece of criminal legislation corresponds to “conversion or transfer of proceeds of crime” requirement. However, there is no explicit indication to requirement to help “any person involved in the commission of the predicate offence to evade legal consequences for commitment of predicate offence”;

4. To carry out financial operations or other acts with the purpose of concealment real source of money resources and other property obtained through criminal acts. This act corresponds the second money-laundering offence of Article 23, however the latter is broader, as includes not only the concealment of real source of property, but also location, disposition, movement or ownership of or rights with respect to property, i.e. almost any aspect of or information about property.

This criminal act of Article 193-1.1 also partly corresponds to the “acquisition and possession” requirement of Article 23. Financial operations or other acts include acquisition and possession.

As to the fourth offence in the Article 6 of the Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime, under Article 193-1.2.1 of the Criminal code legalization of money proceeds and other property obtained through criminal acts committed by group of persons on preliminary arrangement constitute an aggravating circumstance. Crimes committed by group of persons on preliminary arrangement constitute a type of complicity (Article 31 of the Criminal code).

Article 32 of the Criminal code indicates 4 forms of complicity: perpetrator, organizer, instigator, and assistant. Article 33.4 of the Criminal code provides that the person who is not a special subject of a crime, according to the appropriate article of the Special part of the Code, participating in commitment of the crime provide by this article, carries the criminal liability for the given crime as its organizer, instigator or assistant.

Pursuant to Article 33.5 of the Criminal code in a case of not completing by executor of a crime up to the end on circumstances not dependent on his will, other participator shall carry the criminal liability for preparation of a crime or attempt on a crime.

Under Article 6, para. 2(a) of the Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime States parties must also apply Article 6, para. 1 irrespective of whether predicate offence was subject to the criminal jurisdiction of the Party. In accordance to definition of Article 193-1 of the Criminal code, the Article criminalizes laundering proceeds generated by any criminal act, i.e. it applies to all criminal offences committed on and outside the territory of the Republic of Azerbaijan.

Article 6, para. 2(a) of the Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime provides that knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 may be inferred from objective factual circumstances. Generally the criteria to infer ‘knowledge’, ‘intent’ or ‘purpose’ is regulated in Azerbaijan by Article 25 of the Criminal code. The latter provides that act committed with clear or indirect intent shall be recognized as crime committed intentionally. A crime shall be deemed to be committed with clear intent, if the person was conscious of the social danger of his acts (action or inaction), foresaw the possibility of the onset of socially dangerous consequences, and willed such consequences to ensue. A crime shall be deemed to be committed with indirect intent, if the person realized the social danger of his acts (action or inaction), foresaw the possibility of the onset of socially dangerous consequences, did not wish, but consciously allowed these consequences.

Article 14 – Account offences

Pursuant to Articles 320 and 326 of the Criminal code the use of false or incomplete information in accounting records and the destruction or hiding of accounting records can entail criminal liability. If committed by an official, civil servant or employee of a local governmental body these actions may entail “service fraud” (Article 313 of the Criminal code). If done for the purpose of tax evasion this may also entail violation of Article 213 of the Criminal code.

Article 15 – Participatory acts

Article 32 of the Criminal code indicates 4 forms of complicity: perpetrator, organizer, instigator, and assistant.

Article 33.1 of the Criminal code provides that the responsibility of accomplices in a crime shall be determined by the character and the degree of the actual participation of each of them in the commission of the crime. Moreover, pursuant to Article 33.3 criminal responsibility of an organizer, instigator, and assistant shall ensue under the Article of Special part of the code that provides for punishment for the perpetrator, with reference to Article 33, except for in cases when they simultaneously were co-perpetrators of the crime. Besides that, a person who is not a subject of a crime specially indicated in the respective Article of the Special Part of the code and who has taken part in the commission of the crime, stipulated by this Article, shall bear criminal responsibility for the given offence as its organizer, instigator, or assistant.

These articles of the Criminal code are of general application i.e., they apply to all offences in the code.

Article 17 – Jurisdiction

Pursuant to Article 11.1 of the Criminal code, a person who has committed a crime in the territory of the Republic of Azerbaijan shall be brought to criminal responsibility under the code. The crime, which has begun, preceded, or terminated on territory of the Republic of Azerbaijan, shall be considered as crime committed on the territory of the Republic of Azerbaijan. Moreover, Article 11.3 of the code provides that any person who has committed a crime on a ship or aircraft, registered in a sea or air port of the Republic of Azerbaijan, located on the open sea or in the air space outside the confines of the Republic of Azerbaijan, flying under the flag or a recognition symbol of the Republic of Azerbaijan, shall be brought to criminal responsibility under the code.

In accordance with Article 12.1 of the Criminal code, citizens of the Republic of Azerbaijan and stateless persons who permanently reside the Republic of Azerbaijan and who have committed acts (action or inaction) outside the boundaries of the Republic of Azerbaijan shall be brought to criminal responsibility under the code, if their deeds have been recognized as crimes in the Republic of Azerbaijan and in the State on whose territory they were committed, and unless these persons have been convicted in the foreign State.

Article 18 – Corporate liability

Although Azerbaijani legislation does not provide for corporate criminal liability regime, relevant draft law was prepared by the legislative working group of the Commission on Combating Corruption.

Article 19 – Sanctions and measures

In Azerbaijani criminal legislation punishments prescribed for corruption related offences are proportionate to the gravity of offences. For example, offenders liable for passive bribery can be punished with imprisonment up to four to eight years of imprisonment with deprivation of the right to hold certain positions and be engaged in certain activities up to three years with confiscation of assets. If the bribe is received by the official for illegal (in) actions the punishment increased up to 5 to 10 years' imprisonment in addition to deprivation of the right to hold a certain post or engage in certain activities for a period of up to 3 years. If the bribe is received under aggravated circumstances, namely on preliminary arrangement by a group of persons or organised group, repeatedly, involving a large amount, or with the application of threats the punishment is further increased up to 7 to 12 years' imprisonment with confiscation of property.

Active bribery of an official is punished with a penalty of 1000 to 2000 nominal financial units or up to 5 years' imprisonment and a penalty of 500 to 1000 nominal financial units. If the bribe is presented in order to have the official engage in an obviously illegal act (or inaction) or in case of repeated presentation of a bribe, the sanction is increased to 2000 to 4000 nominal financial units or 3 to 8 years imprisonment with the possibility of confiscation of property.

Passive trading in influence is punished by a fine in the amount of 3000 to 5000 nominal financial units or 3 to 7 years' imprisonment and confiscation of property, whereas active trading in influence is punished by a fine in the amount of 1000 to 2000 nominal financial units or 2 to 5 years imprisonment and confiscation of property.

Corruption crimes, due to the punishments prescribed for and Article 2.1 of the Law on Extradition (providing that extradition shall be granted in respect of offences punishable under the laws of the requesting country and of its own by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty), are extraditable.

The Criminal code provides for confiscation of property as a type of punishment and defines it as compulsory gratuitous withdrawal to the property of State of instruments and means used by condemned at commitment of a crime, objects of crime and also a property obtained in criminal way (Article 51). Moreover according to the code, property obtained through criminal acts or objects of the crime if can't be taken into the benefit of state because of its usage, assignation to other person and other reasons, the money or other property equal to the amount of the same property belonging to the condemned shall be confiscated. Confiscation of property is appointed

only in the cases provided by appropriate articles of the Special part of the code. Provisions for confiscation of property are contained in corruption-related articles of the Criminal code.

Article 21 – Co-operation with and between national authorities

Pursuant to Article 4 of the Law on Combating Corruption all State bodies and officials shall, within their powers, carry out the fight against corruption.

In accordance with Article 205.1 of the Criminal Procedure code, information provided by a legal persons (or officials) concerning an offence committed or planned, which is deemed to constitute grounds for instituting criminal proceedings, shall be in the form of a letter, a confirmed telegram, telephone message, radio message, telex or other approved form of communication.

However, pursuant to Article 84.5 of the Criminal Procedure code, a prosecutor while supervising the preliminary investigation and the investigation shall exercise the rights to obtain on demand materials and documents on the criminal case and information about the progress of the investigation from the preliminary investigator or investigator, and to check the materials and documents on the criminal case and acquaint himself with the course of the investigation (Article 84.5.2) and to obtain on demand documents and other material on events and the persons connected with them (Article 84.5.18).

Moreover, in accordance with Article 207.6 of the Criminal Procedure code on receiving information about an offence committed or planned, a court shall immediately send all the information in its possession to the prosecutor in charge of the preliminary investigation so that he may examine it.

In accordance with section 27 (“Improving cooperation among the agencies conducting criminal investigation of the corruption related violations”) of the Action Plan for the Implementation of the National Strategy on Increasing Transparency and Combating Corruption (2007-2011) the following activities to be undertaken:

- Undertaking measures for the efficient organization of the mutual cooperation among the agencies;
- Ensuring efficient information and experience sharing among the agencies with the use of the new technology;
- Establishment of the single database of the corruption related crimes.

Integrated Database of Corruption Offences (IDBCO) launched and became operational recently will contribute to strengthening of cooperation between Department for Combating Corruption within the Prosecutor General’s Office and other law-enforcement agencies.

Article 22 – Protection of collaborators of justice and witnesses

In Azerbaijan there is a legal arrangement for protection of witnesses, experts, victims and reporting persons provided by the Law on State Protection of Persons Participating in Criminal Proceedings. In accordance with Article 3 of the Law persons with regard to whom the relevant state authority has made the decision on application of security measures is considered the protected persons. Among other participants of criminal proceedings the following persons are considered as protected persons: person, who informed law enforcement agency on the crime, or participated in the revealing, prevention or detection of crime, persons, who considered a victim under the criminal case, his authorized representative, witnesses, expert, specialist, and translator.

Security measures can also be applied toward close relatives of secured persons in the event of influence on close relatives in order to put pressure on protected persons.

Article 7 of the Law provides the following types of security measures protected persons:

1. Security of the protected person, his residence and property;
2. Provision of protected person with special individual protection means, warning him on existing danger;
3. Temporary placement of protected person in safe location;
4. Maintenance of confidentiality of information on protected person;
5. Transfer of protected person to another work, change of his study or work place, his relocation to other residence;
6. Replacement of the protected person’s document and change of appearance;

7. Implementation in order stipulated under the legislation of closed court hearings in cases of event of protected person's participation in court hearings.

Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds

In accordance with Article 177.2 of the Criminal Procedure code, if the person concerned does not consent to the investigative procedure and if a court order is requested for its compulsory conduct, the prosecutor in charge of the preliminary investigation shall apply to the court if he agrees with the investigator's reasoned request.

Pursuant to Article 177.3 of the Criminal Procedure code, as a rule a court order shall be required in order to conduct the following investigative procedures by force: examination, search or seizure and other investigative procedures in residential, service or industrial buildings; the body search of a person other than a detained or arrested person against his will; the arrest of property; the arrest of postal, telegraphic or other messages; the interception of conversations held by telephone or other means and of information sent via communication media and other technical means; the obtaining of information on financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets; exhumation.

The law On banks prohibits the disclosure of banking information as a general rule, with the exception of the disclosure to tax authorities. However, information about financial transactions, bank accounts and tax payments may be obtained by the prosecution service when conducting a criminal investigation on the basis of a court order, pursuant to Article 177 of the Code of Criminal Procedure.

Moreover, article 16.1 of the draft Law on Combat against Legalization of Money Proceeds or Other Property Obtained through Criminal Acts and Financing Terrorism, adopted by the Parliament in first reading provides that refusal to provide information stipulated in Article 11.1 of the draft law to financial monitoring agency shall not be based on bank secrecy or protected by law any other secrecy protection regime.

Article 26 – Mutual assistance

In accordance with Article 2.2 of the Law on Mutual Legal Assistance in Criminal Matters, the Law shall be applied in absence of relevant agreement on mutual legal assistance between Azerbaijan and requesting state.

Pursuant to with the Law on Mutual Legal Assistance in Criminal Matters (Article 2.3), mutual assistance consist in list of actions, to be conducted in accordance with Azerbaijani legislation. The Article provides the following actions: getting testimonial evidence, providing of judicial documents, conducting search and seizure, examining objects and sites, providing materials, information or items of evidence, providing experts evidence, providing original or certified copies of relevant documents, including banking and financial documents, locating and identifying of persons, tracing or arresting property, identifying derived from the commission of an offence and and instrumentalities of crime, implementation of other measures in accordance with the legislation of the Republic of Azerbaijan.

Pursuant to Article 3.1.1 of the Law on Mutual Legal Assistance in Criminal Matters the Republic of Azerbaijan shall refuse assistance if there are substantial grounds for believing that the provision of the assistance would affect the sovereignty, security, and other essential interests of the Republic of Azerbaijan.

The Law on Mutual Legal Assistance in Criminal Matters does not contain a provision allowing invocation of bank secrecy as a ground to refuse cooperation. Quite opposite, provision of original or certified copies of relevant documents, including banking and financial documents is one of actions to be conducted in the course of mutual assistance.

Article 27 – Extradition

The Republic of Azerbaijan is a party to European Convention on Extradition, Minsk and Chisinau Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters as well as relevant bilateral agreements. These instruments provide that in order to be

extraditable the offence shall be punished under the laws of the requesting and requested country by deprivation of liberty of at least one year.

Moreover, the Law on Extradition, that shall be applied where there is no relevant agreement on between Azerbaijan and requesting state, provides for a similar provision in Article 2.1 (extradition shall be granted in respect of offences punishable under the laws of the requesting country and of its own by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty).

The Law on Extradition (Article 3) sets both mandatory and optional grounds for refusal of extradition, which include:

- A person whose extradition is claimed is a national of Azerbaijan, or was granted a political asylum in Azerbaijan (mandatory);
- An offence, for which extradition is claimed is regarded by the Republic of Azerbaijan as a political offence (mandatory);
- An offence, for which extradition is claimed, has been committed on the territory of Azerbaijan (mandatory);
- If judgment on crime being basis for extradition has been passed and entered in force on the territory of the Republic of Azerbaijan (mandatory);
- Expiring of time established for the prosecution or execution of court sentence (mandatory);
- Extradition for military offences under legislation of requesting state (mandatory);
- Issuing a resolution on termination of the prosecution against the person whose extradition is claimed (mandatory);
- Noncompliance by requesting state of principle of mutual assistance (mandatory);
- If the offence for which extradition is requested is punishable by death under the law of the requesting Party (optional);
- If there is reasonable grounds to consider that extraditable person will be subjected in requesting state to torture or to inhuman or degrading treatment or punishment (optional);
- A person, whose extradition is claimed, is being prosecuted on racial, ethnic, language, religious, nationality or political grounds (optional);
- Extradition may be refused in respect of offence committed outside the territory of the requesting Party and this offence is not punishable under the laws of the Republic of Azerbaijan (optional);
- Extradition may be refused with respect to the person claimed if he is brought to criminal responsibility
- There are substantial grounds for believing that the extradition would damage sovereignty, security, public order and other essential interests of the Republic of Azerbaijan (optional).

Pursuant to the Constitution (Article 53) and the Law on Extradition (Article 3.1.1) extradition of nationals shall be refused. However, in accordance with the note to Article 3 of the latter Law, Azerbaijani nationals at the request of the State seeking extradition might be brought to criminal liability in accordance with Azerbaijani legislation, i.e. prosecuted. Pursuant to Article 13.3 of the Criminal code, citizens of Azerbaijan, as well as residents of Azerbaijan without Azeri citizenship, who commit a criminal act outside the territory of Azerbaijan are subject to criminal liability provided that the offence committed is recognised as a crime in both Azerbaijan and the state where the offence was committed.

Article 28 – Spontaneous information

There is no direct provision in the domestic legislation neither establishing mechanism for, nor prohibiting provision to another Party information that assist the receiving Party in initiating or carrying out investigations or proceedings concerning corruption offences. On the other hand, international treaty, ratified by the Republic of Azerbaijan, being pursuant to the Constitution

integral part of national legislation (Article 148), itself might be considered as a legal basis for such provision.

Article 30 – Direct communication

The Republic of Azerbaijan designates in its declaration as the central authority the Prosecutors' Office of the Republic of Azerbaijan.

According to information obtained from the relevant authorities (Department for Combating Corruption and International Relations Department of the Prosecutor General's Office) so far there have been no instances of communication on corruption-related crimes neither between central authorities nor between other authorities (courts, public prosecutors).

Article 31 – Information

As was explained in International Relations Department of the Prosecutor General's Office, it is there normal practice when requesting Party is informed on actions taken on it request and the final result of that actions as well as on circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

3 Council of Europe Civil Law Convention on Corruption

Article 2 – Definition of corruption

The word "corruption" in Article 2 of the Convention means "requesting, offering, giving or accepting directly or indirectly a bribe or any other undue advantage or the prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof".

Pursuant to Article 1 of the Law on Combating Corruption, Corruption defined as illicit obtaining by an official of material and other values, privileges or advantages, by using for that purpose his or her position, or the status of the body he or she represents, or his or her official powers, or the opportunities deriving from those status or powers, as well as bribery of an official by illicit offering, promising or giving him or her by individuals or legal persons of the said material and other values, privileges or advantages.

Article 3 – Compensation for damage

Article 3, paragraph 1 of the Convention, requires each Party to provide in its internal law for the right to bring a civil action in corruption cases. The judge, in the individual case, will decide whether or not the conditions for compensation are fulfilled. Paragraph 2 specifies the extent of the compensation to be granted by the Court.

Pursuant to Article 12.2 of the Criminal Procedure code the victim of a criminal act shall have the right ... to bring a civil action and to obtain compensation for non-material, physical and material damage as required by the Code. Moreover, in accordance with Article 180 of the code, if the person has not brought a civil action in criminal proceedings, he shall have the right to claim during the civil proceedings. A civil action brought in criminal proceedings but not heard by the court may be brought later as part of the civil proceedings.

Pursuant to Article 181.2 of the Criminal Procedure code in the event of damage caused to a natural or legal person by an act provided for in criminal law, he/it may apply for the following through a civil action for compensation: Compensation of the value of the lost or damaged property, or if possible, compensation in kind; reimbursement of the costs for redemption of lost property as well as repairing the quality and restoring the appearance of damaged property; compensation for loss of profits; compensation for non-pecuniary damage.

Pursuant to Article 181.5 of the Criminal Procedure code, in the event of the death of any individual who had the right to bring a civil action, that right shall be transferred to his heirs. If a legal person ceases to exist or is reconstituted, its right to bring a civil action shall be transferred to its legal heir.

In accordance with Article 21 of the Civil code, a person entitled to claim compensation for damages shall claim full recovery of damages provided that the amount of damages recoverable is not

limited to a lesser amount by law or contract. Damages are the expenses which a person whose right has been violated incurred or will incur to restore the violated right, loss or damage to his property (actual loss) as well as profits which the person would have earned under ordinary conditions of civil relationships had the right not been breached (loss of profits).

Pursuant to Article 1115 of the Civil code, allowing the damage claim, in accordance with the circumstances of the case, the court obligates the person responsible for the damage, to compensate such damage in kind (by providing the property of the same type and quality, or by improving the damaged property, etc.) or compensate inflicted damages.

Article 4 – Liability

Pursuant to Article 1096 of the Civil code a civil offence (delict) is defined as a culpable and unlawful act (action or inaction), causing to direct damage or loss to another person (victim), protected by law. The person committing the delict is subject to a civil law liability. In accordance with Article 1097.1 of the code, any damage caused to a person or property of a natural person, as well as harm caused to the property and business reputation of a legal person, as a consequence of a civil offence (delict), shall be subject to complete compensation by the person, causing such harm. The law may lay the obligation to compensate the harm to a person, who did not cause the harm

Article 5 – State responsibility

Pursuant to Article 191 of the Criminal code, the question of the payment to a victim of compensation out of the state budget of the Republic of Azerbaijan for the damage caused by criminal offence shall be resolved by a court upon application by the victim. When including the decision to award state compensation to a victim in its judgment convicting the accused, the court shall also state the amount which the convicted person shall contribute to the compensation.

In accordance with Article 1100 of the Civil code, damage caused to a natural or legal person as a consequence of unlawful actions (inaction) of the state authorities, local authorities (municipalities) or officials of these authorities, including issuance of an act of the state authority or the local authority, which is contrary to the law or other legal acts, shall be subject to compensation by the Republic of Azerbaijan or the relevant municipality. The right to compensation, is also secured by Article 4.1 of the Civil Procedure code, guaranteeing right to judicial protection (Every natural and legal person shall, in accordance with procedure specified by law, be entitled seize a court for protection and enforcement of their rights, freedoms as well as interests protected by law).

Article 6 – Contributory negligence

Pursuant to Article 458.1 of the Civil code, in the event both parties are to blame for the non-performance or improper performance of the obligation, the court shall accordingly reduce the extent of the debtor's liability. The court may also reduce the extent of the debtor's liability, when the creditor intentionally or negligently supported the increase of the losses, caused in result of for the non-performance or improper performance, or did not undertake reasonable measures to reduce the losses. The rules of Article 458.1 of the code shall also apply in cases, under the Code or the agreement, when the debtor is liable for the non-performance or improper performance of the obligation, irrespective of his own guilt.

Article 7 – Limitation periods

In accordance with Article 372.2 of the Civil code, period of limitation shall mean a period designed for protection of a right of a person whose right has been violated through his claim. Pursuant to Article 373 of the code, general period of limitation shall be 10 years.

Period of limitation shall commence on the day a person has become aware of should have become aware of violation of his right (Article 377.1).

Pursuant to Article 379.1 of the Civil code, continuity of period of limitation shall be suspended in the following circumstances: where submission of claim has been obstructed by extraordinary and non-preventable at that time circumstance (non-preventable force); where plaintiff or defendant are in armed forces transferred to military condition; where the relevant body of executive authority has established a deferral (moratorium) in respect of performance of obligation; where person without action capacity does not have legal representative; where an effect of law or other normative legal act regulating relevant relationships has been suspended.

Due to Article 380.1 of the Civil code, continuity of period of limitation shall terminate upon bringing a claim in an established order as well as upon undertaking by a debtor of actions acknowledging his debt.

Article 8 – Validity of contracts

Pursuant to Article 337.1 of the Civil code contract concluded with violation of conditions stipulated in this Code shall be invalid.

Moreover, the Civil code allows in Article 339 for the removal of the advantage obtained through active corruption offences, by providing that agreements reached by abuse of power or fraud, are invalid and all gains obtained in course of this invalid agreement have to be returned to the victim.

Article 9 – Protection of employees

There is no direct provision in Azerbaijani legislation regulating appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

However, right not to be unlawfully dismissed from the office implicitly guaranteed by exhausted list of grounds for termination of civil service (Article 33 of the Law on Civil Service). The list does not provide for possibility of dismissal on the ground of reporting of employees who have reasonable grounds to suspect corruption.

Article 10 – Accounts and audits

The Law on Accounting (Articles 8-10) creates four categories of reporting entities:

- Public Interest Entities (including credit organizations, insurance companies, investment funds, non-state social funds, publicly-traded companies), which are required to apply International Financial Reporting Standards;
- Commercial organizations other than Public Interest Entities and Subjects of Small Entrepreneurship, which are required to apply National Accounting Standards in their consolidated and legal entity financial statements;
- Non-commercial organizations, which are required to apply National Accounting Standards for Budget Organizations based on International Public Sector Accounting Standards; and
- Subjects of Small Entrepreneurship, which are required to apply simplified accounting rules.

In parallel with these requirements, the legislation defines the notion of accounting standards acceptable in Azerbaijan and sets the legal basis for their development. It designates the Ministry of Finance as the main regulator of accounting, charging it with the leadership and coordination role. In addition, it clearly states the requirements for the consolidation of financial statements, as well as rules for their submission and publication, thus securing transparency of financial information and its availability to users.

Chamber of Auditors issued national auditing standards based on a translation and adaptation of International Standards on Auditing. In addition, Law on Internal Audit sets legal standards, rights and responsibilities of internal auditors.

Article 11 – Acquisition of evidence

In accordance with Article 85 of the Civil Procedure code, persons participating in case, who have grounds for a caution that future submission of evidence by such persons may become impossible or difficult to accomplish, shall be entitled to request court to secure such evidence. Securing evidence before commencement of court proceeding shall be implemented by notary publics, officials of consular institutions and other persons performing notary duties under the procedures specified by law.

Pursuant to Article 87 of the code, Court shall secure evidence in particular through testimony of witnesses, appointment of an expert examination, request and examination of written and material evidence. In a decision on securing evidence the Court shall specify procedure and method of

execution of the decision. Protocols and all evidence collected by way of securing evidence shall be delivered to the court examining the case and persons participating in case shall be notified accordingly.

Article 12 – Interim measures

Pursuant to Article 157 of the Civil Procedure code, upon applications of person participating in case court shall take all measures for securing of claim. Securing of claim shall be permitted at any stage of hearing of case. Implementation of measures for securing of claim for the purposes of further securing future execution of resolution shall constitute a temporary action and shall not predetermine passing of a resolution on case in its merits.

In accordance with Article 158 the following measures are designated for the purpose of securing of claim: imposition of arrest upon property of respondent or other persons; prohibition of respondent from performance of certain actions; prohibition of other persons from performance of certain actions related to subject matter of dispute; suspension of sale of property in case of submission of claim petition on withdrawal of arrest over the property; suspension of recovery upon execution deed, which legality is being disputed by a debtor in court; suspension of recovery upon execution or any other deed on non-contested withholding, which legality is being disputed by claimant in the court.

Article 13 – International co-operation

The Republic of Azerbaijan, being not a member of the European Union and the Hague Conference on Private International Law, has not ratified so far Brussels and Lugano Conventions on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters of 1968 and 1988 respectively, the 1965 Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, the Hague Conventions on Civil Procedures of 1954 and 1980.

However, pursuant to Article 462 of the Civil Procedure code, decisions of foreign countries courts and arbitration tribunals may be enforced and recognized in the Republic of Azerbaijan in the event they are not contrary to legislation, legal order of the Republic of Azerbaijan and where the reciprocity is provided.

Moreover, the Republic of Azerbaijan is a Party to the Minsk and Chisinau Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters as well as relevant bilateral agreements with several states (Bulgaria, Georgia, Iran, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Russia, Turkey, UAE, Uzbekistan).