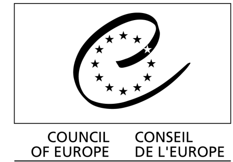

Support to the anti-corruption strategy of Azerbaijan (AZPAC)

Technical Paper on Compliance of the Legislation of the Republic of Azerbaijan with International Anti-corruption Conventions

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PC –TC (2009) 3

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1 Introduction

I have been requested by the Council of Europe to present an opinion and prepare this Technical Paper on the compliance of the Azerbaijan legislation with some internationa treaties in the anti-corruption field.. Views and opinions expressed in this work are personal, and do not represent official views or positions of the institutions I regularly work for in my country.

This Technical Paper is an oversight of the accuracy of the reviews conducted by the local Consultant. The aim of the paper is to assess the level of compliance of the legislation of the Republic of Azerbaijan with selected 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.

Technical Paper that was prepared by the local Consultant lays out a very good and extensive oversight on the compliance of the Azerbaijan legislation 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. However, some issues are still opened and the passed legislation in question has not been implemented yet in a way to fully and adequately cover all obligations under the above mentioned conventions. There are some conventions provisions which are by the opinion of the local Consultant adequatly implemented but the author of this text (we) assesses the level of implementation as inadequate. At those instances it is clear from the reviews what are the problems, lacks or gaps in implementation. There is no negative assessement included in this report without a comment from a substantive point of view. At other occasions where we can concord with the local expert fully or at least to tolerable level, we might have added to his opinion just a sentence or two to confirm or slightly modify his findings.

2 General observations

If we try to generalize our findings concerning the level of compliance of Azeri legislation with scrutinized 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, we can conclude the following:

1. There have been great efforts done in Azerbaijan recently in order to bring their internal legislation in line with the above mentioned international treaties.
2. As a consequence level of achieved harmonization on legislative level is already quite high. In certain instances actual implementation is still lacking also in areas where laws are already in place; however it was not the task within our mandate to review actual application of the laws and regulations of Azerbaijan. Therefore we satisfied ourselves with assessment of formal compliance and comparison of internal legal order with international treaties.
3. One of our general concerns is interrelation between The Law on Combating Corruption and criminal legislation in strict sense. There are several instances where local consultant is reffering to The Law on Combating Corruption. Hovewer this law is a legal tool for preventing of corruption and bestows the main framework and main principles, but it is not the legal tool which is applicable in criminal procedure and in criminal law in the way of criminal prosecution and trial. In practice definitions from preventive legislation of general character do not actually transfer international law into effective criminal law provisions – this task need to be done separately and independently from legislation aimed at prevention, strategic issues and issues of general character in fight against corruption.
4. Criminalization of different categories of foreign public officials as required by the UNCAC and CoE Criminal law Convention is still a problem of general nature in Azerbaijan; the problem that cannot be resolved by applying the principle of teritorial applicability of Azeri criminal law.
5. Incriminations in the area of private sector corruption need further attention – this issue is in our view understood only partialy and as a consequence of this lack of understanding elements of bribery in private sector are dealt with in the context of bribery in the public sector through expansion of the definition of an official.
6. Sooner or later Azerbaijan will have to deal with the issue of liability of legal persons for criminal offences included in the UNCAC and the CoE Criminal law Convention. These international norms are mandatory for the States Parties.
7. In the area of tracking, identifying, freezing, seizing, confiscating of proceeds and instrumentalities of crime and in the closely connected area of money laundering issues many constructive elements are still missing: only after setting up a coherent system in this area corruption related criminal proceedings can be justified also from the economic perpective.
8. It is also obvious that Civil law Convention on Corruption has not been taken into account as a document that requires amendments of internal legislation. We have noticed no instances where there was new legislation adopted or existing laws changed in order to comply with this treaty. The level of compliance concerning this convention is therefore lower than in some other environments where they recognized the full meaning and importance of the civil law measures against corrruption.

For specific comments see the compliance report.

3 Compliance report

3.1 United Nations Convention against Corruption (UNCAC)

Compliance observations on Article 15

Article 15.
Bribery of national public officials
Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The review conducted by the local Consultant indicates that the penal provisions adequately address the UNCAC requirements regarding 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.
We would like to draw the attention to the fact that Criminal Code (Article 312) criminalizes only giving of bribe to a public official. However, the Article 15 of the UNCAC also requests for criminalization of the promise and the offering of bribe to a public official as two independent ways of committing the act of bribery. According to the locals point of view the promise and offering of a bribe are covered by the institute of criminal attempt. Yet, Article 312 of the Criminal Code in not in full compliance with Article 15 of the UNCAC. The attempt to a crime according to the Criminal Code (Article 29) means deliberate action (action or inaction) by a person, directly directed to the committing of a crime. The promise and the offering of a bribe to a public official are not sufficiently covered by the provision dealing with attempt to a crime. It could be said that deliberate action directly directed to committing of a crime of bribe giving can also include the promise and the offering of the bribe, but the dilemma remains. The promise and the offering according to the UNCAC provision are meant as the stand alone elements - stand alone ways of committing the crime of bribery. Thus, the attempt to a crime of giving of bribe to a public official does not fully cover the promise and the offering. Although from legal point of view attempt to a crime of giving of bribe could also include the promise and the offering, the purpose of criminalizing the promise and the offering is the same - and that is to explicitly criminalize all three criminal grounds of bribery of national public officials.

Having in mind that the attempt to a crime shall be admitted as uncompleted crime, and the main focus of the UNCAC is to criminalize all three criminal grounds explicitly on the same level of importance; we have to conclude that Article 312 in conjunciton with the provision of Article 29 of the Criminal Code is not in full compliance with the UNCAC.
The Criminal Code (Article 312) adequately implements all other UNCAC requirements regarding active and passive bribery of national public officials.

Compliance observations on Article 16.1-2

Article 16.
Bribery of foreign public officials and officials of public international organizations
1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The local Consultant review indicates that there is no provision directly criminalizing active bribery of foreign public in Azeri 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 Chapter 33, criminalizing corruption offences, includes also representatives of international organizations.
The above analysis also reflects the level of compliance of Azeri 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).

As pointed out by the local Consultant there is no provision directly criminalizing active bribery of foreign public official in Azeri legislation. Although local review indicates that the principle of territorial applicability of the Criminal Code in conjunction with provisions of the Law on Combating Corruption envisages possibility of bringing to criminal liability to foreign public officials, in our opinion Article 16 of the UNCAC is not implemented in Azeri legislation.
The obligation under Article 16 of the UNCAC is very elucidative. The article can be implemented in Azeri legislation only within the scope of the Criminal Code.
Two possible methods are either to criminalize the act itself as delictum sui generis or to (even better) define the meaning of the term “foreign public official” and the “official of public international organization” in the Criminal Code. The principle of territorial applicability of the Criminal Code means only that the Criminal Code is applicable to every natural person (domestic or foreign) who commits the crime in Azerbaijan territory. But the issue remains open - the principle of territorial applicability does not mean that foreign public official would fall under the provisions and the meaning of the definition of the “public official” or “official” as defined in note to Article 308 of the Criminal Code.
On the other hand, the Law on Combating Corruption also does not represent appropriate legal tool to tackle this issue. The Law on Combating Corruption is a legal tool for preventing of corruption and bestows the main framework and main principles, but it is not the legal tool which is applicable in the strict criminal procedure and in criminal law in the way of criminal prosecution

and trial. This was also stated by the local representatives who indicated that within criminal justice system the main and only legal tools are the Criminal Code and the Criminal Procedure Code.
Our conclusion therefore is that domestic legislation is not compatible with this UNCAC standard.

Compliance observations on Articles 17-22

Article 17.
Embezzlement, misappropriation or other diversion of property by a public official
Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

By the opinion of the local Consultant, 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 person 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.

We can concord with the local Consultants review concerning the compliance of domestic legislation with the UNCAC standards. However, it must be emphasized that (as stated in the review to Article 16) the Law on Combating Corruption in not a legal tool within criminal justice system. The Law on Combating Corruption is quite satisfying and important "preventive law" but overlaps with Criminal Code and Criminal Procedure Code and therefore form some ambiguities – on the other hand it has no real meaning within the strict criminal matters. The Law on Combating Corruption is non self -executive law. This need to be taken into account in all instances where this law has been referred to.

Article 18.
Trading in influence
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;
(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

The local Consultant review indicates that Azeri legislation is in line with the requirements of article 18 of the UNCAC.
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.

Our analysis of relevant provisions shows that Azeri legislation is in line with the requirements of Article 18 of the UNCAC. The local Consultant review findings are correct despite some minor discrepancies between the UNCAC and Azeri legislation. Article 18 is not a mandatory provision and because of this reason and in spite of some minor discrepancies between the UNCAC and Azeri legislation, the Azeri legislation implemented Article 18 fully and correctly.

Article 19.
Abuse of functions
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

The local Consultant review indicates that Azeri legislation is in line with the requirements of article 19 of the UNCAC.
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.

In our view albeit Article 19 is not a mandatory provision, and because of this reason there is no immediate obligation to fully implement this provision in the Azeri legislation, some important discrepancies still exist between international and internal standards. Article 19 of the UNCAC criminalizes obtaining of an undue advantage, where Article 308 of the Criminal Code defines as criminal the obtainment of the illegal advantage. The meaning of the term undue advantage in broader than the meaning of the term illegal advantage – that means that UNCAC requires criminalization of deeds that are not necessarily illegal but need to be undue in the context of abusing one s functions.
Beside that, the dilemma of Article 308 is that the provision defines as one of the necessary constitutive elements of crime the obtainment of the illegal advantage, 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. The substantial damage to rights and legitimate interests of natural and legal persons, and the interest of the state or society protected by law are additional requirements (regarding the UNCAC) which need to be established by evidence and proved before the court or could be the part of the criminal intent which also has to be established before the court.
Having in mind that Article 19 is not a mandatory provision Azeri legislation is still within the scope of the requirements of the UNCAC.

Article 20.
Illicit enrichment
Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Local Consultant claims that the UNCAC optional requirement has not yet been translated into Azeri legislation.

Although that optional requirement has not yet been implemented into Azeri legislation we have to note that non-implementation of this article is quite understandable. Very few states implemented this provision in its strict meaning. Article 20 of the UNCAC introduces the reversed burden of proof where a significant increase in the assets of a public official had occurred, and a person cannot reasonably explain the assets in relation to his or her lawful incomes. The reversed burden of proof is eminently a controversial topic and is highly debated among scholars and legal experts in many countries and is often in direct conflict with national constitutions and also with the European Convention on Human Rights (i.g.: COE Article 6 – presumption of innocence; Protocol 1 – Article 1 – Protection of property).
However, we recommend that Azerbaijan seriously considers to study the topic and the possible implications of the implementation of this UNCAC provision and make the cost-benefit analysis having in mind provisions of the European Convention on Human Rights and the Constitution of Azerbaijan.

Article 21.
Bribery in the private sector
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

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 non commercial organizations implies that subjects of all corruption-related crimes including active and passive bribery are also persons who direct or run commercial organizations.

Although local Consultant review indicates that Azeri legislation is in the line with the requirements of the Article 21 of the UNCAC, the note to Article 308 of the Criminal Code in our view does not fully comprehend the requirements of Article 21 of the UNCAC.
The purpose of the Article 21 of the UNCAC is to extend criminal responsibility for bribery to the private sector. "Business activity" in private sector is to be interpreted in a broad sense: it means any type of commercial activity, particularly trading in goods and delivering services, including services to the public (transport, telecommunication etc).
Limiting the criminal liability only to persons constantly, temporarily, or on special power carrying out functions of authority representative either carrying out organizational - administrative or administrative-economic functions, does not correspond to the requirement from Article 21. Accoding to UNCAC law should prohibit bribing any person who "direct or work for, in any capacity, in private sector entities". Any person should be interpreted broadly as it covers the employer-employee relationship but also other types of relationships such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises, it should cover not only employees but also management from the top to the bottom.
The Azeri legislation covers the requirements of Article 21 of the UNCAC only to a certain extent, because it is limited to persons carrying out organizational-administrative or administrative-economic functions in private sector. Such definition does not adequately implement (optional) requirement from the UNCAC.

Article 22.
Embezzlement of property in the private sector
Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

Local Consultant review indicates that Azeri legislation is in line with the requirements of Article 22 of the UNCAC.
In analysis regarding the level of compliance of Azeri legislation to Article 17 of the UNCAC it 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.

Our comparison of Article 22 of the UNCAC with relevant articles of the Criminal Code shows that Azeri legislation is in line with the requirements of Article 22 of the UNCAC. Articles 178 and 179 of the Criminal Code actually are of general character - taking into account that Article 22 is not a mandatory provision, we believe that Criminal Code covers these issues adequately.

Compliance observations on Articles 23-34 (in conjunction with 52.1-4 and 58)

Article 23.
Laundering of proceeds of crime
1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
(b) Subject to the basic concepts of its legal system:
(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;
(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

By the Local Consultant review, domestic standards of Azerbaijan comply with the mandatory obligation arising out of article 23 of the UNCAC.
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.
Article 193-1.1 of the Criminal Code includes 2 criminal acts related to money-laundering:
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";
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.

Although Local Consultant review indicates that Azeri legislation is in line with requirements of Article 23 of UNCAC, analysis of Article 193, and 194 of the Criminal code, we do not share the sam opinion. Namely in accordance with Article 23 of the UNCAC, States Parties must criminalize the following offences as crimes:
- Conversion or transfer of proceeds of crime;
- Concealment or disguise of the nature, source, location, disposition, movement or ownership of proceeds of crime;
- Acquisition, possession or use of proceeds of crime;
- Participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of any of the offences mandated by article 23.
Close look at Articles 193 and 194 of the Criminal code shows that they only criminalize the "miss interprenership" and "purchase or selling of the property extracted obviously in the criminal way".Although that purchase or selling of the property extracted obviously in the criminal way in some way covers also the conversion or transfer of proceeds of crime and concealment or disguise of the nature, source, location, disposition, movement, or ownership of proceeds of crime, the purpose of Article 23 is to criminalize all specific situations as defined in Article 23 of UNCAC. Therefore, we conclude that Azeri legislation does not adequately address the requirements of UNCAC.

Article 24.
Concealment
Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

The local Consultant review indicates that 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 is regarded as concealment of crimes. In our view this provision adequately implements Article 24.

Compliance observations on Articles 25-26

Article 25.
Obstruction of justice
Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
(a) The use of physical force, threats or intimidation or 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 in relation to the commission of offences established in accordance with this Convention;
(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

By the local Consultant review Azeri legislation complies with the mandatory obligation arising out of article 25 of the UNCAC. 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.

The analysis of relevant provision shows that Azeri legislation is in line with recommendations of article 25 of UNCAC. We can agree with the Local Consultant review that domestic legislation is within standards of UNCAC. UNCAC requires measures ensuring the integrity of the justice process. Under Article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials, whose role would be to produce accurate evidence and testimony.
Article 25 requires the establishment of two offences. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. The second offence that States are required to establish is the criminalization of interference with the actions of judicial or law enforcement officials: the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with the Convention.
Azeri legislation covers this issue broadly and extensively through criminalizing intervention in any form with court activity with the purpose of obstruction of justice, not just the use of physical force, threats or intimidation, or the promise, offering or giving of an undue advantage.

Article 26.
Liability of legal persons
1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Local Consultant review stipulates that 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.

In our view Law on Combating Corruption is not a legal tool used in the area of criminal law. That means that it can not be used with regard to criminal offences established in accordance with the UNCAC. UNCAC requires setting up a system of liability of legal persons for criminal offences and not for administrative or civil violations. It is a fact that liability of legal persons may be criminal, civil or administrative, but that all relates to criminal offences that are part of Criminal Code of Azerbaijan. At the moment this type of liability does not exist in Azerbaijan. That means that Azeri legislation is not in line with Article 26 of the UNCAC.

Compliance observations on Article 27.1

Article 27.
Participation and attempt
1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

According to the Local Consultant review 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 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 provision of the special part of the code that provides for punishment of 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.
Our analysis of Articles 32 and 33 of the Criminal Code show that relevant provisions of the Criminal Code adequately implement all necessary elements of the criminal liability of the accomplice, assistant, and instigator. It is also true that they are of general application and therefore apply to all offences in the code - subsequently also to the offences implemented upon the UNCAC.

Compliance observations on Articles 28-29

Article 28.
Knowledge, intent and purpose as elements of an offence
Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

Local Consultant claims that domestic standards comply with mandatory obligation arising out of Article 28 of the UNCAC.
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.

Abide that we can accord with the Local Consultant claims that domestic standards comply with the mandatory obligation arising out of Article 28 of the UNCAC and that on the first look there are no legal impediments establishing knowledge, intent, or purpose required as an element of an offence, there are some questions still remaining unanswered.
First, it is self-evident that knowledge, intent, and purpose are more question of fact then question of law and the legislator, and are therefore resolved through courts, adjudication and legal practice. However, it has to be noticed and highlighted that from legislative point of view for countries which where part of the former Soviet legal system there are some legal impediments still common in the current legislation.
When the definition of criminal offence also includes criminal elements like awareness of public danger, substantial damage to rights and legitimate interests of the state or society protected by law, this type of criminal grounds needs to be established by evidence and proved before the court. This awareness or deliberate conduct is a state of mind (mens rea) and because of this very difficult to prove if regarded as criminal element of a specific criminal offence or a part of the knowledge, intent, or purpose.
This type of special intent could manifest itself as a serious problem if the requirement of the UNCAC is to be fulfulled. Is is difficult to imagine to what extent these elements of crimes can be inferred from objective factual circumstances regarding corruption and dealing with corruption related offences transferred from the UNCAC into Azeri legislation.

Article 29.
Statute of limitations
Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this 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.

According the Local Consultant review domestic standards comply with the mandatory obligation arising out of article 29 of the UNCAC.
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.

Although Azeri Criminal code includes a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and therefore fulfill obligations under UNCAC it has to be noted that current legal regulation - definition of provisions which cover statute of limitations could be and should be modernized. According to principle of legality and strict definitions in criminal law, new provision should define the unclear terms. Azeri Criminal code classifies crimes depending on nature and to the degree of action stipulated as public danger and therefore subdivide them into groups of crimes which represent a big public danger, less serious crimes, serious crimes, and especially serious crimes. In accordance with article 78 the statue of limitations is bound to classification of offences.
To avoid possible misinterpretations the statue of limitations should be more objective and not binding on the nature and degree of action stipulated as public danger but to specific crimes or to statutorily defined years of imprisonment. (for example: criminal prosecution is barred from taking place twenty-five years from the committing of a criminal offence for which a prison sentence of twenty years may be imposed under the statute).
Nevertheless, the Azeri Criminal code fulfills the standards of the UNCAC to establish long statute of limitations period in which to commence proceedings for any offence established and to 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.

Compliance observations on Article 30.1-2

Article 30.
Prosecution, adjudication and sanctions
1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

Compliance observations on Article 30.6-7

Article 30.
Prosecution, adjudication and sanctions
6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this 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.
7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:
(a) Holding public office; and
(b) Holding office in an enterprise owned in whole or in part by the State.

According to the Local Consultant 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.

We agree that these provisions are in line with the requirements of UNCAC.

According to the Local expert 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 above mentioned 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.

We cannot fully agree with the assessment of the Local Consultant concerning the issue of immunity. There is no obstacle for any state to rethink this issue with respect to limit the immunities to persons and situations where they are absolutely necessary for the proper functioning of the state bodies. There can be no other legitimate reason and having this aim in mind balanced solutions need to be found and introduced in constitutional and legal orders. No unfounded privileges may exist in an environment that wants to fight corruption truly and effectively.

According to the local expert the Criminal Procedure code provides for several types of restrictive measure. The latter defined as coercive procedural measure intended to prevent unlawful behaviour 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 and 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 with 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.

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.

We believe that this part of Azeri legislation is in line with the UNCAC.

Compliance observations on Article 31.1-7

Article 31.
Freezing, seizure and confiscation
1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:
(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;
(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

According to the Local Consultant review the Azeri 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.

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 are 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.

We agree with the opinion of the local expert that it is crucial in this area how laws are being applied and whether there is proper cooperation established between different institutions. We see no legal obstacle at the moment in the criminal legislation that would prevent competent authorities from acting in line with Article 31 of the UNCAC. However we do not dare to conclude that application of the existing measures actually enables effective and efficient freezing, seizure and confiscation of proceeds of crime and their derivatives. We have been informed that anti-money laundering system that is a constitutive segment of an effective identification and tracking of illegal finances has not yet been set up. Also according to our information bank secrecy provisions are an actual and serious problem in the early stages of the proceedings as well as the cooperation between authorities in the area.

Compliance observations on Articles 32-33

Article 32.
Protection of witnesses, experts and victims
1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33.
Protection of reporting persons
Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Local Consultant review stipulates that 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.

We are of the opinion that Article 32 has been properly transferred in internal legal order of Azerbaijan through the Law on State Protection of Persons Participating in Criminal Proceedings. Situation is different concerning Article 33 – see also commentary to relevant provision of the CoE Civil law Convention. As we have been informed there are no direct provisions in Azeri legislation that would provide for protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning corruption offences outside the scope of criminal legislation.

Compliance observations on Article 35

Article 35.
Compensation for damage
Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

According the Local Consultant review Criminal Procedure code (Article 181.2) provides that in the event of damage directly caused to a natural o 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 and compensation for non-pecuniary damage.

We can therefore conclude that the right to initiate legal proceedings has been established in Article 181.2 of the Criminal Procedure code, in line with Article 35 of UNCAC.

Compliance observations on Article 37.2-4

Article 37.
Cooperation with law enforcement authorities
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides

substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

The local Consultant review indicates that the Azeri legislation does not envisage the possibility of immunity from prosecution for corruption related offences (Article 72 of the Criminal Code). Since this UNCAC provision is not obligatory and may sometimes be contradictory to legal systems with mandatory, non-discretionary prosecution, we are satisfied with its partial implementation. Namely as follows from the report of a local expert, giving oneself 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.

Compliance observations on Articles 40-41

Article 40.
Bank secrecy
Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

According the to Local Consultant review 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.

We have already expressed our concerns regarding this issue in our commentary to Article 31 of the UNCAC (see above).

Article 41.
Criminal record
Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

Local Consultant review stipulates that in accordance with Article18.1 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 agravating circumstance.

The local expert assessment is not directly related to Article 41. Indirectly we can conclude that a conviction record database exists in Azerbaijan and that potentially exchange of information on

corruption related criminal offences between Azerbaijan and other states is possible in order to comply with Article 41 of the UNCAC.

Compliance observations on Article 42.1

Article 42.
Jurisdiction
1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:
(a) The offence is committed in the territory of that State Party; or
(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

According to the Local Consultant review, a person who has committed a crime in the territory of the Republic of Azerbaijan, shall be brought to criminal responsibility under Article 11.1 of the Criminal 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.

Our conclusion based on the local consultant assessment and our own review of the Azeri Criminal Code is that Azeri legislation is in line with Article 42 of the UNCAC.

Compliance observations on Article 43.2

Article 43.
International cooperation
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

The local Consultant review indicates that 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. That means that Azeri legislation is in line with Article 43 of the UNCAC.

Compliance observations on Articles 44-45

Article 44.
Extradition
1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, 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. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
15. Nothing in this Convention shall 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 these reasons.
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

According to the comprehensive assessment of the Local Consultant, 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. This means that all corruption-related crimes are extraditable offences in Azerbaijan.
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 Azeri 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.
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 Azeri 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, paragraph. 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 Azeri 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 Article5.2.1 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.
We can concord with all findings of the local expert concerning Article 44 of the UNCAC.

Article 45.
Transfer of sentenced persons

States Parties may 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 this Convention in order that they may complete their sentences there.

The local Consultant review indicates that according to the Law on Extradition such transfer is possible only if unexpired term of punishment is less than six months. Since Article 45 is optional for the States Parties also the modality from Azeri legislation described by the local consultant is acceptable.

Compliance observations on Article 47

Article 47.
Transfer of criminal proceedings
States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

The local Consultant review indicates that there is no direct provision in Azeri legislation regulating transfer of criminal proceedings to another State. That means that Azeri legislation is not in line with this optional provision of the UNCAC.

Compliance observations on Article 50.1

Article 50.
Special investigative techniques
1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

According to the Local Consultant review special 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.

Although local review indicates that Azeri legislation has investigative techniques (powers) as provided in the Law On Operative-Search Activities, very important obligation under UNCAC is still missing and that is to allow the admissibility of evidence derived from such special investigative techniques before the court.
According to the statements of the locals and according to our knowledge and perception, Law On Operative-Search Activities is not a legal tool for criminal prosecution. It is more a law enforcement intelligence service technique for obtaining the relevant information but not in the prosecutorial sense but in tactical sense of detection of criminal offences. Evidence derived from such special investigative techniques has no legal importance or value in the prosecution and are not admissible before the court.

This legal position also uncovers much bigger issue and that is the compliance with standards of Article 8 of the ECHR.
Paragraph 2 of Article 8 states that there shall be no interference by a public authority with the exercise of this right except when in accordance with the law and when necessary in a democratic society in the interests of national security, public safety, or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
The cardinal issue that arises is whether the interference so found is justifiable under this paragraph of ECHR. If the purpose of Law On Operative-Search Activities is not to obtain evidence admissable before the court in the legal sense of criminal prosecution, the question is if such regulation comply with the ECHR standards. ECHR case law is quite clear on this topic since it provides for an exception to a right guaranteed by Article 8, is to be interpreted narrowly.
While the ECHR recognizes that intelligence services may legitimately exist in a democratic society, it reiterates that powers of secret surveillance of citizens are tolerable under the ECHR only in so far as strictly necessary for safeguarding the democratic institutions (see the Klass and Others judgment).
The question is if the Law On Operative-Search Activities, which purpose is not to safeguard the democratic institutions in the sense of ECHR or to obtain admissible evidence, pursue a legitimate aim under paragraph 2 of Article 8 ECHR and, furthermore, be necessary in a democratic society in order to achieve that aim.
Azeri legislation therefore does not fully comply with the UNCAC standards especialy in the part of provision which obliges te state parties to allow for the admissibility of evidence derived from special investigative techniques before the court.

Article 8, since it provides for an exception to a right guaranteed by the ECHR, has to be narrowly interpreted. Powers of secret surveillance of citizens, characterizing as they do the police state, are tolerable under the ECHR only in so far as strictly necessary for safeguarding democratic institutions. In order for the "interference" established above not to infringe Article 8, it must, according to paragraph 2, first of all have been "in accordance with the law". This requirement is fulfilled since the "interference" results from Law On Operative-Search Activities.
However, according to the ECHR case law (the Klass and Others judgment), any individual measure of surveillance has to comply with strict conditions and procedures laid down in the legislation itself. The interference permitted by the legislation has to be "necessary in a democratic society in the interests of national security" and/or "for the prevention of disorder or crime". However Court ruled that, it has to be ascertained whether the means provided under the legislation for the achievement of the above-mentioned aim remain in all respects within the bounds of what is necessary in a democratic society.
Paragraph 2 of Article 8 of ECHR lays down for such powers certain limits which have to be respected in a democratic society in order to ensure that the society does not slide imperceptibly towards totalitarianism. In their view, the legislation need to have adequate safeguards against possible abuses.
ECHR accept that existence of legislation granting powers of secret surveillance over the mail, post, and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime. Nevertheless, the ECHR stresses that this does not mean that the Contracting States enjoy an unlimited discretion to subject persons within their jurisdiction to secret surveillance. The Court, being aware of the danger such a law pose of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not adopt whatever measure they deem appropriate. Therefore our advice for Azerbaijan situation would be to follow the requirements of UNCAC on one hand and on the other to fully take into account all aspects of the ECHR.

Compliance observations on Article 52.1-4

Article 52.
Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and 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. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.
2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:
(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and recordkeeping measures to take concerning such accounts; and
(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its 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.
3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.
4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

The local consultant review indicates that pursuant to Article 42.1 of the Law on Banks, banks shall identify each one of their clients whom 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 of Article 52 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.
The requirements from Article 52 paragraph 2 are in the view of the local consultant met by Articles 4.1.1-4.1.3 of the above-mentioned Methodological Guide, where all clients are 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.
The assessment of the local consultant in our view comprehensively and accurately reflects the situation and the level of compliance of Azeri legal order with the UNCAC.

Compliance observations on Articles 53-55

Article 53.
Measures for direct recovery of property
Each State Party shall, in accordance with its domestic law:
(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

The local Consultant review indicates that there is no provision in Azeri 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.
We can conclude that any foreign state can be considered an injured party and in that capacity initiate civil litigation in Azerbaijan. It is not entirely clear whether any additional measures are needed to actually enable effective position of a foreign state in a litigation, according to subparagraphs b and c of this Article.

Article 54.
Mechanisms for recovery of property through international cooperation in confiscation
1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:
(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;
(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and
(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:
(a) Take such measures as may be necessary to permit its 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 this article;
(b) 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 this article; and
(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

The local Consultant review indicates that 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.
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 Azeri legislation, including searching and arrest of property.
In our view above described is a normal legal framework in the area of international cooperation and mutual legal assistance. It still has to be determined to what extend this very specific UNCAC provision is actually implemented in Azeri legislation – it will be clear when Azeri court receives first confiscation order issued by a foreign court.

Article 55.
International cooperation for purposes of confiscation
1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall 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 this 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 this article, by the requested State Party.
3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:
(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;
(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.
4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.
5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.
8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

The local Consultant review indicates that there is no direct provisions in Azeri legislation related to this conventional norm. However, the legislation implicitly affords measures, mentioned in 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 implement this conventional requirement in Azeri 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 Azeri legislation, including searching and arrest of property.
Our opinion concerning the level of compliance of Azeri legislation with this Convention provision is similar to what we concluded in relation with previous Article of the UNCAC: legal framework in Azerbaijan is comparable to other states in this area; methods of its application will show the level of actual implementation of this specific UNCAC provision.

Compliance observations on Article 57.1-4

Article 57.
Return and disposal of assets
1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.
2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.
3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:
(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis
of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;
(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.
4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

The local Consultant review indicates that 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 are no direct provisions in Azeri 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".

For our review see last two articles above – what we said there is mutandis mutatis relevant for this provision too.

Compliance observations on Article 58

Article 58.
Financial intelligence unit
States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Local Consultant review indicates that a Financial Intelligent Unit has not been established yet in Azerbaijan. Its establishment is 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 of this law is included in the legislation plan for the current parliamentary session.
In our view this fulfils the second requirement from this convention provision – draft law on the agenda of the parliament always means serious considerations of issues in question. Level of actual cooperation can only be determined from practice and statistical data – this was not subject of current revision.

3.2 Council of Europe Criminal Law Convention on Corruption

Compliance observations on Articles 2-15

Article 2 – Active bribery of domestic public officials
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

The local Consultant review indicates that 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.

As we have already stated in the review to Article 15 of UNCAC, Azeri Criminal code (Article 312) criminalizes giving of bribe to a public official adequately regarding requirements on active bribery of domestic public officials. But, as Article 15 of UNCAC also Article 2 of Criminal Law Convention on Corruption criminalizes promise and offering of bribe to a public official as two independent ways of committing act of bribery. According to the locals point of view promise and offering is covered by the attempt to a crime. Yet, Article 312 of the Criminal code in not in full compliance with Article 2 of Criminal Law Convention on Corruption. An attempt to a crime according to Criminal Code (Article 29) means deliberate action (action or inaction) by a person, directly directed on committing of a crime. The promise and the offering of bribe to a public official should not be covered only by the attempt to a crime. It could be said that the deliberate action directly directed on committing of a crime can also include promise and offering of a bribe, but the problem remains. The promise and offering are stand alone elements - stand alone ways of committing the crime of bribery. Thus, attempt to a crime of giving of bribe to a public official does not fully cover the promise and the offering.

Although from legal point of view attempt to a crime of giving of bribe could also include the promise and the offering, the purpose (and the Convention requirement) of criminalizing the promise and the offering is the same - to explicitly criminalize all three criminal grounds of bribery of domestic public officials.

As stated in Explanatory Report to Criminal Law Convention on Corruption the material components of the offence are promising, offering, or giving an undue advantage, directly or indirectly for the official himself or for a third party. The three actions of the briber are slightly different. "Promising" may, for example, cover situations where the briber commits himself to give an undue advantage later (in most cases only once the public official has performed the act requested by the briber) or where there is an agreement between the briber and the bribee that the briber will give the undue advantage later. "Offering" may cover situations where the briber shows his readiness to give the undue advantage at any moment. Finally, "giving" may cover situations where the briber transfers the undue advantage. The undue advantage need not necessarily be given to the public official himself: it can be given also to a third party, such as a relative, an organisation to which the official belongs, the political party of which he is a member. When an offer, promise or a gift is addressed to a third party, the public official must at least have knowledge thereof at some point. Irrespective of whether the recipient or the beneficiary of the undue advantage is the public official himself or a third party, the transaction may be performed through intermediaries.

Having in mind this interpretation of Article 2 of Criminal Law Convention on Corruption, we have to conclude that Article 312 is not in full compliance with the Criminal Law Convention on Corruption.

Article 3 – Passive bribery of domestic public officials
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

The local Consultant review indicates that 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.
Our analysis of relevant provision shows that Azeri legislation is in line with Article 3 of Criminal Law Convention on Corruption. We can agree with the Local Consultant review that compliance of the domestic legislation in within standards of Criminal Law Convention on Corruption.

Article 4 – Bribery of members of domestic public assemblies
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

The local Consultant review indicates that pursuant to the note of Article 308 officials in all provisions of the Criminal Code 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.

Although the Local Consultant review indicates that Azeri legislation is in line with requirements of Article 4 of Criminal Law Convention on Corruption, in our view the note to Article 308 of Criminal Code does not fully comprehend the requirements of this provision of the Criminal Law Convention on Corruption.
Article 4 extends the scope of the active and passive bribery to members of domestic public assemblies, at local, regional, and national level, whether elected or appointed.
According to the Explanatory Report to the Criminal Law Convention on Corruption the definition of "public official" refers to the applicable national definition. It is understood that Contracting Parties would apply, in an analogous manner, their own definition of "members of domestic public assemblies." This category of persons should primarily cover members of Parliament (where applicable, in both houses), members of local and regional assemblies and members of any other public body whose members are elected or appointed and which "exercise legislative or administrative powers". This broad notion could cover, in some countries, also mayors, as members of local councils, or ministers, as members of Parliament. The expression "administrative powers" is aimed at bringing into the scope of this provision, members of public assemblies which do not have legislative powers, as it could be the case with regional or provincial assemblies or local councils. Such public assemblies, although not competent to enact legislation, may have considerable powers, for instance in the planning, licensing or regulatory areas.
Limiting the capacity of official persons only to persons constantly, temporarily, or on special power carrying out functions of authority representative either carrying out organizational - administrative or administrative-economic functions, does not meet the substance of Article 4. Corresponding provision should prohibit bribing of any person who is a member of any domestic public assembly exercising legislative or administrative powers and not just those members who carry out organizational - administrative or administrative-economic functions.
The Azeri legislation therefore covers the requirements of Article 4 of Criminal Law Convention on Corruption only partially.

Article 5 – Bribery of foreign public officials
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving a public official of any other State.

The local Consultant review indicates that there is no provision directly criminalizing active and passive bribery of foreign public officials in Azeri 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.

We can not agree with the Local Consultant claims that beside the fact that the there is no provision directly criminalizing active and passive bribery of foreign public officials in Azeri legislation, the principle of territorial applicability of the Criminal code (Article 11) in conjunction with provisions of the Law on Combating Corruption, envisage possibility of bringing to criminal liability foreign public officials.
Although Local Consultant speaks about possibility of bringing to criminal liability foreign public officials, it has to be emphasized (as already stated above) that the Law on Combating Corruption does not represent appropriate - efficient legal tool. The Law on Combating Corruption is a legal tool for the preventing corruption and gives the basic framework and covers main principles in the strategic combat against corruption. However, it is not the legal tool which is applicable in criminal procedure and in criminal law in the sense of criminal prosecution and trial. For these two reasons we are of the opinion that Azeri legislation is in not in line with the requirements of Article 5 of Criminal Law Convention on Corruption.

Article 6 – Bribery of members of foreign public assemblies
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any public assembly exercising legislative or administrative powers in any other State.

The local Consultant review indicates once again that there is no provision directly criminalizing active bribery of members of foreign public assemblies in Azeri 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 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.

We can only repeat here that although Local Consultant review indicates the possibility of bringing to criminal liability members of foreign public assemblies, Azeri legislation is in not in line with the requirements of Article 6 of Criminal Law Convention on Corruption - see review to previous article (Article 5 of Criminal Law Convention on Corruption).

Article 7 – Active bribery in the private sector
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8 – Passive bribery in the private sector
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

According to the local Consultant review 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 non commercial organizations implies that subjects of all corruption-related crimes including active and passive bribery are persons who

direct or run commercial organizations. As a result, these persons are also punishable under Articles 311 and 312 of the Criminal code.

Although internal review indicates that Azeri legislation is in line with requirements of Article 7 and 8 of Criminal Law Convention on Corruption, the note to Article 308 of Criminal code does not fully comprehend the requirements of Articles 7 and 8 of the Criminal Law Convention on Corruption.
The provisions of Articles 7 and 8 of the Criminal Law Convention on Corruption prohibit bribing any person who "direct or work for, in any capacity, private sector entities". Again, this sweeping notion is to be interpreted broadly as it covers the not only employer-employee relationship but also other types of relationships such as partners, lawyer and client and others in which there is no contract of employment. Within private enterprises it should cover not only employees but also the management from the top to the bottom, including members of the board, but not the shareholders. It would also include persons who do not have the status of employee or do not work permanently for the company - for example, consultants, commercial agents etc. - but can engage the responsibility of the company. "Private sector entities" refer to companies, enterprises, trusts and other entities, which are entirely or to a determining extent owned by private persons. This of course covers a whole range of entities, notably those engaged "in business activities". They can be corporations but also entities with no legal personality. The word "entity" should be understood as meaning also, in this context, an individual.
Limiting criminal liability only to persons who constantly, temporarily, or on special power carry out functions of authority either carrying out organizational - administrative or administrative-economic functions, does not meet the purpose of Articles 7 and 8 of the Criminal Law Convention on Corruption.
The Azeri legislation covers some requirements of Article 7 and 8 but not implement them in full respect and adequately as defined and recommended in the Criminal Law Convention on Corruption.

Article 9 – Bribery of officials of international organisations
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any official or other contracted employee, within the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents.

Article 10 – Bribery of members of international parliamentary assemblies
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Article 4 when involving any members of parliamentary assemblies of international or supranational organisations of which the Party is a member.

Article 11 – Bribery of judges and officials of international courts
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 involving any holders of judicial office or officials of any international court whose jurisdiction is accepted by the Party.

According to the local Consultant review note to Article 308 of the Criminal code provides that term “officials”, used in Criminal code provisions 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.

We have already discussed to what extent the note to Article 308 of Criminal code includes representatives of international organizations and addresses the requirements of Article 9 of Criminal Law Convention on Corruption - the dilemma of criminalizing only persons either carrying out organizational - administrative or administrative-economic functions, remains present.
Limiting criminal liability only to persons constantly, temporarily, or on special power carrying out functions of authority representative either carrying out organizational - administrative or administrative-economic functions in conjunction with representatives of international organizations, does not correspond to Article 9.
Secondly, the Azeri legislation does not correspond to Article 9 because term "officials" from the Convention includes not only regular officials but also other contracted employees who, under the staff regulations, can be either permanent or temporary members of the staff, but irrespective of the duration of their employment by the organization, have identical duties and responsibilities, governed by contract (they are not just representatives of international organizations as stated in note to Article 308 of the Criminal code).
Because of this, reason Azeri legislation does not fully comprehend the purpose of Article 9 of Criminal Law Convention on Corruption.

Criminal Law Convention on Corruption in Articles 10 and 11 criminalizes the bribery of members of international parliamentary assemblies and judges and officials of international courts. These are two separate criminal offences and therefore can not be pursued through the bribery of officials of international organizations.
The persons involved on the passive side are different: members of parliamentary assemblies of international (e.g. the Parliamentary Assembly of the Council of Europe) or supranational organizations (the European Parliament) - Article 10.
In Article 11 the persons involved are: "any holders of judicial office or officials of any international court". These persons include not only "judges" in international courts (e.g. at the European Court of Human Rights) but also other officials (for example the Prosecutors of the UN Tribunal for former Yugoslavia) or members of the registrar's office. Arbitration courts are in principle not included in the notion of "international courts" because they do not perform judicial functions in respect of States. That means that neither members of international parliamentary assemblies and judges and officials of international courts cannot be regarded as members of international organizations.
Therefore, we can conclude that Azeri legislation does not adequately address the requirements of Article 10 and 11 and is not compatible with these standards of the Criminal Law Convention on Corruption.

Article 12 – Trading in influence
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

The local Consultant review indicates that 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.

Our analysis of relevant provision shows that Azeri legislation is in line with the content of Article 18 of the Criminal Law Convention on Corruption.

Article 13 – Money laundering of proceeds from corruption offences
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation.

Local Consultant review indicates that article 193-1.1 of the Criminal code includes 2 criminal acts related to money-laundering:
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";
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.

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.
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.
Although Local Consultant review indicates that Azeri legislation is in line with requirements of Article 13 of Criminal Law Convention on Corruption, our analysis of Article 193, and 194 of the

Criminal code, show that Azeri legislation is not in line with the Criminal Law Convention on Corruption standards.
Articles 193 and 194 of the Criminal code do not adequately cover the obligations under Criminal Law Convention on Corruption. Here we refer to our comparison with relevant provisions of the UNCAC (see above).
The purpose of Article 13 is to criminalize all specific situations from Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime. Azeri Criminal code covers these issues incompletely and fragmentarily. Therefore we may conclude that Azeri legislation does not adequately address the requirements of Article 13 of the Criminal Law Convention on Corruption.

Article 14 – Account offences
Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:
a) creating or using an invoice or any other accounting document or record containing false or incomplete information;
b) unlawfully omitting to make a record of a payment.

According to the local Consultant review and 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.
Our comparison of relevant Article 14 of Criminal Law Convention on Corruption and relevant articles of Azeri Criminal code shows that Azeri legislation is not in line with the provisions of Article 14. Namely Criminal Code covers these issues adequately only in the field of official documents (Article 320 and 326). It remains unclear whether bussiness documentation reffered to in Article 14 that do not fall within the scope of official documents is at all covered by Azeri Criminal Code. Therefore, we can assume that Azeri legislation does not comply with relevant provision of the Criminal Law Convention on Corruption.

Article 15 – Participatory acts
Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

Local Consultant review indicates that 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.
Our analysis of Articles 32 and 33 of Criminal code confirms that these articles implement the criminal liability of the accomplice, assistant, and instigator adequately. Beside that these provisions of the Criminal code are of general application and therefore apply to all offences in the code - subsequently also to the offences implemented upon Criminal Law Convention on Corruption.

Compliance observations on Articles 17-19

Article 17 – Jurisdiction
1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with Articles 2 to 14 of this Convention where:

a) the offence is committed in whole or in part in its territory;

b) the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies;

c) the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals.

2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of this article or any part thereof.
3 If a Party has made use of the reservation possibility provided for in paragraph 2 of this article, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party, solely on the basis of his nationality, after a request for extradition.
4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with national law.

Local Consultant review indicates that 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.
In our view the requirements from Article 17 if regarded in a strict sense (notwithstanding our concerns expressed towards criminalization issues) are met in full.

Article 18 – Corporate liability
1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

– a power of representation of the legal person; or
– an authority to take decisions on behalf of the legal person; or
– an authority to exercise control within the legal person;

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.
2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

3 Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

Local Consultant review claims that although Azeri 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.

It is obvious that at the moment Azeri legislation is not in line with Article 18 of the Criminal law Convention on Corruption.

Article 19 – Sanctions and measures
1 Having regard to the serious nature of the criminal offences established in accordance with this Convention, each Party shall provide, in respect of those criminal offences established in accordance with Articles 2 to 14, effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.
3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds.

Local Consultant review claims that in Azeri 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.

In our opinion and following the analysis of the local expert we can conclude that Azeri legislation is in line with first and third paragraph of Article 19. For second paragraph see review to previous article (corporate liability).

Compliance observations on Articles 21-23

Article 21 – Co-operation between authorities
Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:

a) by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or

b) by providing, upon request, to the latter authorities all necessary information.

Local Consultant review indicates that 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 Implemenation 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.

Taking into account all relevant information provided by the local consultant and supplemented during our visit we can conclude that Azeri legislation does not prevent different authorities from exchange of information and effective cooperation. Further measures aimed at promoting and enhancing cooperation are highly desirable.

Article 22 – Protection of collaborators of justice and witnesses
Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for:

a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities;
b) witnesses who give testimony concerning these offences.

Local Consultant review indicates that 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.

Our assessment of this issue is the same as with regard to Article 32 of the UNCAC (see above).

Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds
1 Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.
2 Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of this article.
3 Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article.

Local Consultant review claims that 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.
We gave our opinion concerning the issues from this CoE Convention provision to relevant articles of the UNCAC – see above.

Compliance observations on Articles 26-28

Article 26 – Mutual assistance
1 The Parties shall afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with this Convention.
2 Mutual legal assistance under paragraph 1 of this article may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or ordre public.
3 Parties shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

Local Consultant review claims that 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 Azeri 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.

We already gave our opinion concerning the issues stemming from this convention provision to relevant articles of the UNCAC – see above

Article 27 – Extradition
1 The criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

2 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence established in accordance with this Convention.
3 Parties that do not make extradition conditional on the existence of a treaty shall recognise criminal offences established in accordance with this Convention as extraditable offences between themselves.
4 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.
5 If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.

Accordig to the local Consultant review 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 abd 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, Azeri nationals at the request of the State seeking extradition might be brought to criminal liability in accordance with Azeri 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.

We already gave our opinion concerning the issues stemming from this convention provision to relevant articles of the UNCAC – see above

Article 28 – Spontaneous information
Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on facts when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request by that Party under this chapter.

Accordig to the local Consultant review 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.
We therefore consider Article 28 of the convention in conjunction with Criminal Procedure Code of Azerbaijan as sufficient legal basis for spontaneous exchange of information between Azerbaijan and another state. Still this convention requirement should be promoted through positive legal language.

Compliance observations on Articles 30-31

Article 30 – Direct Communication
1 The central authorities shall communicate directly with one another.
2 In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
3 Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).
4 Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
5 Requests or communications under paragraph 2 of this article, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
6 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this chapter are to be addressed to its central authority.

The local Consultant review indicates that Republic of Azerbaijan designated in its declaration as the central authority the Prosecutors' Office of the Republic of Azerbaijan.
According to information obtained form 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).

We see no reason for negative assessment concerning the implementation of Article 30 for the moment. In spite of this it would be advisable to find out why there have been no instances of

communication on corruption-related crimes neither between central authorities nor between other authorities so far.

Article 31 – Information
The requested Party shall promptly inform the requesting Party of the action taken on a request under this chapter and the final result of that action. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

Local Consultant review indicates that as explained in International Relations Department of the Prosecutor General's Office, it is normal practice that 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. We have no reason to conclude differenly.

3.3 Council of Europe Civil Law Convention on Corruption

Compliance observations on Articles 2-13

Article 2 - Definition
For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or 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.

The local Consultant review indicates that pursuant to Article 1 of the Law on Combating Corruption, Corruption is 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.

Civil law convention on Corruption has a wide scope of application (see also below). The Law on Combating Corruption is a preventive law that has no direct impact on civil law legal regulation in Azerbaijan. Therefore the relevance of the above mentioned definition and its application in the area of civil law is at least questionnable. As there is no other definition of corruption that would correspond the definition from the Convention in the Azeri legislation the conclusions whether individual acts and deeds can be defined as corruptive and fall within the scope of Article 2 can be based only on comparisons of individual cases directly with the Convention provision. This is also possible due to the rule that ratified international treaties are part of internal law order of Azerbaijan but needs more awareness and attention from participants in legal proceedings.

Article 3 – Compensation for damage
1 Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.
2 Such compensation may cover material damage, loss of profits and non-pecuniary loss.

According to the local Consultant review and 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.

From the local review it is obvious that within criminal procedure compensation for damage as a consequence of a criminal offence is well regulated. But this is only partial answer to Article 3 – Convention requires for compensation of damages proceedings not only for those who have been subjected to corruption related criminal offences but for everybody who has suffered from any form of corruption as defined in Article 2. This is our first concern: Acts of corruption are not always defined as criminal offences – they may be proscribed as torts, contractual or administrative violations. Is corruption necessarily a civil delict? It is not clear if there are sufficient substantive, material grounds in Azeri legislation that establish legal ground to initiate compensation proceedings in above mentioned instances.

The intention of the Civil law Convention is to provide for the possibility for every person who had suffered from corruption (as defined in Article 2) for full damage compensation proceedings outside the scope of criminal law – from the procedural as well as from the substantive point of view. Convention requires for parallel, additional to criminal, proceedings that are not necessarily related to findings and conclusions from criminal proceedings. Of course there is always Civil Procedure Code available for initiating of damage compensation claims. In spite of that the main issue in question here still remains: Is everybody who had been a victim of an act corresponding Article 2 of the Convention de lege entitled to claim compensation in the sphere of civil law without initiating criminal proceedings? In our view this is not the case in Azerbaijan yet.

Article 4 - Liability
1 Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

i) the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

ii) the plaintiff has suffered damage; and

iii) there is a causal link between the act of corruption and the damage.

2 Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

Local Consultant review indicates that 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.

Our main considerations concerning Article 4 and its transformation into internal Azeri legislation are twofold: Firstly it is not clear if all acts of corruption falling within the scope of Article 2 can be defined as civil delicts according to the Civil Code of Azerbaijan. Secondly, criterion of »unlawfulness« from Article 1096 of the Civil Code implies that an act of corruption has to be strictly prohibited or determined as unlawful by a written law. If this is not the case, the substantive requirement for initiating the damage compensation proceedings is missing. We can only identify two instances where this requirement is met – corruption is unlawful in the criminal law context where it is included in number of criminal offences – but as we mentioned before, this Convention is aimed to deal with civil law aspects of corruption, outside or parallely to criminal law. What remains is definition of corruption and establishment of unlawfulness required by Article 1096 on the basis of the Law on Combating Corruption – since this is a preventive law of general character we are not sure that such interrelation exists.

Article 5 – State responsibility
Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities.

The Local Consultant review indicates that 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).
In our opinion internal law of Azerbaijan is in line with Article 5. There are appropriate procedures available in the civil as well as criminal legislation for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions. The right to claim for compensation is secured in the Criminal Code and in the Civil Code and the procedure is envisaged in their procedural counterparts.

Article 6 – Contributory negligence
Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

There is not much to add to the local Consultant review which indicates that 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. All these provisions adequatly implement Article 6 into Azeri legislation.

Article 7 – Limitation periods
1 Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.
2 The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

The local Consultant review claims that 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.
In our view above mentioned provisions fulfil all requirements from Article 7.

Article 8 – Validity of contracts
1 Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.
2 Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

The local Consultant review indicates that 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.
We are of the opinion that Article 337.1 only partially addresses the content and the essence of Article 8. The problem is that Civil Code stipulates as invalid only contracts concluded with violations of conditions stipulated in the code itself. Our concern is that not all instances of corruption are proscribed as violations of the Civil Code and as such fall outside the scope of Article 337.1 of the code. It would be in line with Article 8 if instead of referring to violations of the Civil Code, Article 337.1 referred to general rule that all contracts contaminated by corruption are null (and void).

Article 9 – Protection of employees
Each Party shall provide in its internal law for 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.

The local Consultant review claims that there is no direct provision in Azeri 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.
In our opinion Article 9 requires active attitude of the Parties to its fulfilment. States have to provide for protection for corruption-reporting employees. Special regulations dealing with this issue has to be not just passed but widely publicized and supported by all stake holders. Only then we can speak about appropriate protection system for whistle-blowers. At the moment Azeri legislation is not in line with the Convention.

Article 10 – Accounts and audits
1 Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.
2 With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

According to the local Consultant review 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.
It seems that legislation in this area is in line with the Convention standards.

Article 11 – Acquisition of evidence
Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

The local Consultant review claims that 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.
It seems that legislation in this area is in line with the Convention standards.

Article 12 – Interim measures
Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

The local Consultant review indicates that 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.
It seems that legislation in this area is in line with the Convention standards.

Article 13 - International co-operation
The Parties shall co-operate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international co-operation in civil and commercial matters to which they are Party, as well as with their internal law.

The local Consultant review explained that 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).
It is difficult to assess what does this legal framework actually mean in the sense of effective mutual cooperation and assistance between Azerbaijan and other Parties to the Convention. For the moment there is no reason to stay on positive side and state that legislation in this area is in line with the Convention.