



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

Technical Paper on Proposed National Strategy for Training on Ethics and Conflict of Interest for civil servants of the Republic of Azerbaijan

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I. Introduction/background

This document proposes an outline for a National Strategy for training civil servants of the Republic Azerbaijan, to be used by the Civil Service Commission (CSC). The proposed strategy has been formulated after studying the relevant legal documents of Azerbaijan, holding two meetings with CSC officials (on 30 January and 15 February 2008) and participating in a Workshop on drafting and assessment of training needs and modalities for the Civil Service Commission on 31 January 2008 in Baku.

The Law on Rules of Ethical Conduct of Civil Servants was passed in June 2007. A draft Law on Prevention of Conflict of Interest was at the time of writing under discussion in the Azerbaijan Parliament, according to senior officials from the Commission for Combating Corruption (CCC). This proposed strategy is therefore focused on training on the Rules of Ethical Conduct, as the implementation structure – including the agency responsible for enforcement – for the conflict of interest law are as yet unknown.

The Civil Service Commission has been developing a list of training modules for civil servants which government agencies may request, including a module on the rules of ethical conduct. The Council of Europe AZPAC project envisages the provision of three pilot trainings, which the expert believes should be provided to both CSC staff and senior officials from government agencies with responsibility for implementation and enforcement of ethics rules (hereinafter ‘agency ethics officers’).

II. Training needs: professional development and ethics enforcement

The Rules of Ethical Conduct are formulated as duties that may be invoked in disciplinary proceedings. However, reflecting the experience of other countries in implementing rules of ethical conduct, this strategy assumes that the primary purpose of a codes of ethic is to guide civil servants by clarifying the standards of behaviour expected of them, provide them with standards with which they may defend themselves against inappropriate offers or proposals, and equip them with the skills for resolving ethical dilemmas. An ethics strategy that relies only on negative incentives (sanctions) to secure compliance is based on an assumption both that public officials are inherently corrupt. This raises problems concerning the integrity of enforcement, and also a contradiction: if official behaviour can be altered by imposing certain incentives (for example through sanctions of violations), this in fact implies that different incentives can easily be used to corrupt the same officials. By contrast, if the aim of an ethics strategy is to increase the integrity of public officials then it should be designed to encourage the development of an official culture that is *resistant* to incentives, not susceptible to them – in short, that ethical behaviour becomes a matter of course and not something that officials adopt just because of the incentives for not doing so.

Moreover, if it is accepted that a plurality of values governs public administration and the conduct of public servants – and this is confirmed by the fact that the Rules of Ethical Conduct establish a number of different values – then one of the main tasks for civil servants is to decide how to resolve conflicts between different values in specific situations. The concept of enforcement in general becomes problematic in such situations, or must at least be employed with great care.

Enforcement of the rules through disciplinary proceedings is therefore assumed to be a mechanism of last resort, and the expert also wishes to emphasise the following risks inherent in enforcement:

- Unless the rules of ethical conduct are very clear, their enforcement will involve discretion in the interpretation of what constitutes a violation.
- If ethical rules are of a general nature, it may be easy for civil servants to appeal to the courts against sanctions imposed for violations. If such appeals are successful this may

damage the implementation of the ethics strategy, *inter alia* by exposing the frailties of enforcement.

- Impartial and fair enforcement also requires high integrity of the officials responsible for initiating and conducting disciplinary proceedings. The question 'Who will guard the guards' is highly relevant in this context. Under many circumstances enforcement may become a tool for intimidation of employees or the pursuit of other interests by those responsible for enforcement. Last but not least, enforcement may itself be subject to corruption.

III. Conditions necessary for implementation of ethical standards

The expert wishes to underline that the effective implementation of rules of ethical conduct is only possible given certain institutional conditions, including but not limited to the following:

- clear definition of responsibilities/job description
- salary
- job security
- career structure
- working environment
- example setting by superiors

The establishment, implementation and enforcement of ethical standards is also only one component of an effective corruption prevention strategy. The expert strongly recommends that the CSC draws attention to and encourages the establishment and implementation by the relevant authorities of the other components of such a strategy. A useful example of such a framework is the 2004 German Federal Government Directive concerning the Prevention of Corruption in the Federal Administration, which in particular mandates a number of measures including the identification of sensitive (corruption-vulnerable) positions and fields of activities (available at http://www.unodc.org/pdf/corruption/best_practice_ger_directive%20.pdf).

IV. Components of training

This proposed training strategy is divided into the following four components.

- Awareness-raising through communication and clarification of rules of ethical conduct.
- The development of skills to handle ethical dilemmas.
- The implementation of rules of ethical conduct at agency level.
- Enforcement of ethical rules.

These four components are elaborated in the following sub-sections.

1. Awareness-raising: communication and clarification of rules of ethical conduct

This training component should explain the legal background to the ethics framework (especially Articles 18-20 of the Civil Service Law) and be provided by the CSC to agency ethics officers and ordinary civil servants. It should be then divided into the following two parts.

Explanation of the Rules

This module should divide the Rules of Ethical Conduct into at least the following components and explain clearly the content of each component:

- General principles (Chapter I + Article 4, 5, 7)

- Civilised behaviour (art. 9)
- Loyalty (Art. 6)
- Obedience (Art. 10)
- Transparency (Art. 7.3, 17)
- Confidentiality (Art. 8.3, 17)
- Receipt of gifts and benefits (Art. 12)
- Conflict of interest prevention (Art. 15)
- Use of public property (Art. 16)
- Political activities (Art. 18)

As it stands, the Law on Rules of Ethical Conduct is a general document laying down general ethical rules. The exact meaning of a number of the rules is not entirely clear, and this component of training should pay particular attention to explaining such rules. For example:

- Regarding Article 10, it is necessary to define clearly who has the last word in determining whether an instruction given to a civil servant is legal or illegal.
- Regarding Article 16, there is a need for a closer definition of what counts as acceptable and unacceptable use of state property for private purposes.
- Regarding Article 17.3, it is essential to define what exactly is meant by and included within the concept of 'private interest'.

Explanation of the purposes of the Rules

This part of the training should explain the dual purpose of the rules as both a source of guidance for civil servants, and as a statement of duties whose violation may lead to sanctions. The implications of these two purposes will then be elaborated in the subsequent training modules.

2. Developing skills to handle ethical dilemmas

Having explained the rules of ethical conduct individually, a second and crucial component of training is to train civil servants in the skills they need to recognise and handle ethical dilemmas. This component of training should be based heavily around real-life examples, scenarios, and trainers should employ case studies involving role-play by the officials being trained. Training should be divided into two main parts focusing on the following issues.

Recognising ethical dilemmas

This part of the training should focus on helping civil servants to recognising situations that involve ethical risks, such as improper approaches by offers, hospitality and so on. Training should focus on borderline situations.

Conflicts between rules of ethical conduct

As Section IV.1.i makes clear, the current law contains a range of rules of conduct, not all of them related to ethics. These rules may both in principle and practice come into conflict with each other

or with other legal duties. For example, the duty of loyalty to the agency may conflict with the general duty to inform external agencies of suspected corruption, the duty of confidentiality may come into conflict with the duty to provide information to the public, and so on. This part of the training should:

- describe the possible conflicts that may occur;
- provide rules for resolving such conflicts in practice.

3. Implementation of the Rules of Ethical Conduct at Agency Level

The third component of training should be provided to CSC staff and agency ethics officers, and should cover the activities that government agencies need to carry out in order to implement the Rules of Ethical Conduct. Training should cover the following four issues:

Agency ethics officers and their responsibilities

The Rules of Ethical Conduct essentially allocate responsibility for implementation of the Rules to the heads of state bodies. If the Rules are to be implemented effectively, however, it will be necessary for government bodies (agencies) to designate at least one official who is responsible for implementation – an agency ethics officer. Agency ethics officers might be recruited and trained by the CSC before being seconded to agencies, although this is an issue for later resolution.

The elaboration of agency codes of conduct

A second and vitally important component of implementation of the rules of ethical conduct is the drafting of individual agency codes of conduct. Article 21.2.8 of the Law states that the head of each state body must “draft and approve standard legal acts (or standard acts) within his/her authorities specifying the ethics conduct rules determined by this Law and their observance provisions.”

It is strongly recommended that training of agency ethics officers and heads of state bodies is provided on what agency codes of conduct should contain. In particular, training should be focused on the following:

- The need for agency codes of conduct to elaborate the Rules of Ethical Conduct and specify what they mean in the specific agency context. Agency codes of conduct should not just be copies of the Rules of Ethical Conduct but should be more detailed. For example, the interpretation of what is acceptable hospitality under Article 14.2 may need to be different for a tax official than for an official in the Ministry of Culture, different for different officials within the same agency, and so on.
- The need to organise a process of consultation, whereby civil servants are given the opportunity to comment on and suggest changes to agency codes of conduct. This is a vital component of implementation, as it helps to create a sense among officials that a code of conduct belongs to them rather than being imposed on them.

Where agency codes of conduct have already been issued (as is the case in a number of state bodies), training should focus on these codes and identify where they should be altered or clarified.

Informing the public

Article 21.2.10 of the Rules states that heads of state bodies must “take actions on informing citizens and organizations on ethics conduct rules and their right to demand from civil servants to observe such rules”. The third part of training on agency implementation should provide guidance on how state bodies should inform the public on their rules of ethical conduct (agency code of

conduct) and the mechanisms available for citizens to complain if they believe an official or officials have violated the rules.

Other elements of corruption prevention

Ethics training of agency ethics officers and heads of agencies is also a valuable opportunity to underline the need for a holistic and integrated agency policy for corruption prevention, as mentioned in Section III. Training should also communicate to senior officials the need to ensure the broader conditions that are necessary to make implementation of an ethics policy possible, as well as the other policy measures that are necessary. Following the German example mentioned in Section III, these measures include but are not limited to:

- risk analysis to identify positions and areas of activity that are vulnerable to corruption;
- the design/alteration of work routines in risky areas to minimise the risks of corruption;
- good procedures for the selection (and rotation where appropriate) of staff;
- awareness by managers of warning signs in the behaviour of staff that may indicate corruption.

4. Enforcement of ethical rules

The fourth component of training, to be provided to agency ethics officers, other senior staff and ordinary civil servants, concerns the procedures for dealing with violations of the Rules of Ethical Conduct or of agency codes of conduct. Such training should clarify for staff the following areas.

Disciplinary proceedings

Staff should be given detailed information on the following, based on the legal framework regulating disciplinary proceedings (Civil Service Law Articles 25-26, Law on Rules of Ethical Conduct Chapter 3):

- On what basis may disciplinary proceedings be initiated in cases of suspected violations of ethical rules?
- Who will conduct such proceedings?
- How exactly are such proceedings conducted and what opportunity do officials who are subject to them have to defend themselves?
- What are the sanctions for different violations of ethical rules?

Problems and pitfalls of enforcement

Agency ethics officials in particular should be made aware of possible problems and pitfalls in enforcement of ethical rules – in particular the dangers of subjective, selective or arbitrary enforcement, or the likelihood of successful court appeals against decisions to impose disciplinary sanctions. The lessons of such problems should be clearly spelled out – for example that disciplinary proceedings should only be initiated in cases of blatant violations.

V. Pilot trainings

To assist the CSC in beginning ethics training of agency staff, the AZPAC project envisages the provision of three pilot trainings to CSC staff. Such trainings could also include senior agency human resources managers or the relevant agency ethics officers if these exist. It is intended that each of these trainings will be provided by a different trainer. While the AZPAC Workplan envisaged the pilot trainings being provided in February, June and November 2008, CSC officials have expressed the opinion that it would be more valuable for the trainings to be provided in a shorter time span. It is therefore proposed to provide one training in March, one in April and one in either April or May.

VI. Action Plan for Training

The proposed Action Plan for implementation of the National Training Strategy comprises the following phases:

1. March-June 2008: Pilot Trainings of CSC trainers and selected agency human resources managers, heads of the offices of state bodies and other relevant agency ethics officers.

- These trainings are being provided by as part of AZPAC, and will aim to provide the trainers with sufficient materials to develop and apply their own training modules.

2. July-December 2008: Preparation of training modules by the CSC.

- There should be four modules based on the breakdown of training elaborated in Section IV:
 - o Awareness-raising/communication of standards.
 - o Development of skills to handle ethical dilemmas.
 - o Implementation at agency level.
 - o Enforcement.

In parallel with subsections 1 and 2 of the training plan, the CSC should do the following:

- Clearly identify the relevant agency ethics officers. According to CSC officials these should be primarily the heads of the offices of state bodies, and as necessary senior human resource staff, heads of department and department sections. It is vital that lines of responsibility for implementation and training are clearly defined.
- Analysis/assess agency codes of conduct/ethical rules and advise on where they should be altered, elaborated further or clarified.

3. January-June 2009: Training of agency ethics officers

- This training should be provided by the CSC to agency ethics officials as identified above.
- The training should cover modules 1-4.
- After June 2009, the training should be conducted regularly and at least on an annual basis for each agency, as well as on request.

4. From July 2009 Training ordinary civil service staff

- This training should be provided by agency ethics officials to ordinary civil service staff on a regular basis, at least once annually and on request.
- The training should cover modules 1-2.