



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

Technical Paper on Compliance of the Azerbaijani legislation with its obligations under the United Nations Convention Against Corruption (UNCAC)

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Article 10**Public reporting**

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

ACTIVITY ON THE COMPLIANCE OF THE REQUIREMENTS OF THIS ARTICLE OF THE DOMESTIC LEGISLATION

According to the article 50 of the Constitution of Azerbaijan Republic, everyone is free to look for, acquire, transfer, prepare and distribute information. The Law "on acquiring information" approved on September 30, 2005 determines the legal principles of providing the right of acquiring information ascertained by the article 50 of the Constitution of Azerbaijan Republic freely, without any hindrance and with conditions equal for all persons, based on the principles of the open society and the democratic legal state. The Law provides the fundamental definitions and regulates the matters, inter alia: the fundamental principles of acquiring information, duties of the holder of information, providing of acquiring information based on the inquiry, the methods of execution of the information inquiry, disclosing of information, creating of the internet information resources, use the information services, individual information, acquiring information prescribed for the service use and terms of restrictions on acquiring information. As whole, this Law determines the procedures and rules allowing the citizens to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public in strict compliance with requirements of this article of the Convention.

Despite there was envisaged to establish an institution, i.e. the Attorney Institute on the Information Matters, undertaken to control on the fulfilment of the law at least within 6 month from the date of validity of the Law "on Acquiring information", this institution was not established as of drawing of the opinion. At the same time, the Law "on acquiring information" prescribed for the state authorities to form their information resources at least within 1 year after publication of this law and for the municipalities – at least within 3 years in order to disclose the public information. Despite coming into force of the Law "on acquiring information" more than 3 years, up to the day of preparation of the opinion, several central executive power authorities, the majority of the local executive power bodies and the municipalities, including the legal entities accomplishing the public functions, as well as the private legal entities and the individuals rendering services in the fields of education, public health, culture and society based on the normative legal acts or the agreement didn't create their internet information resources (the report issued by the Anti-Corruption Commission of Azerbaijan Republic for the first quarter of 2008 made an emphasis on establishing of the internet resources by the mentioned structures).

Conclusion

The domestic legislation conforms to the requirements prescribed by this norm of the Convention;

It is proposed to complete the process of foundation of the institution, being under obligation to accomplish the control on the execution of the Law “on the information freedom” – the Attorney Institute on the Information Matters;

The state, local self-governing authorities (municipalities) and the legal entities fulfilling the public functions, as well as the private legal entities and individuals rendering services in the fields of education, health, culture and society based on the normative legal acts or agreements have to complete the process of forming their internet resources.

It is proposed to adopt the separate law “on the individual information”.

Article 13

Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(b) Ensuring that the public has effective access to information;

**ACTIVITY ON THE COMPLIANCE OF THE REQUIREMENTS
OF THIS ARTICLE OF THE DOMESTIC LEGISLATION**

The Constitution of Azerbaijan Republic, the laws of Azerbaijan Republic “on acquiring information”, “on the rule of reviewing the appeals of the citizens”, “on the mass media means” and “on the administrative proceedings”, including the Regulations of Anti-Corruption Commission of Azerbaijan Republic, the Regulations of the anti-corruption administration under the Chief Public Prosecutor of Azerbaijan Republic, the National Strategy on Enhancing Transparency and Fight against the Corruption, the Conception of the State Support to NGOs, the Conception of State Support to the Mass Media Means prescribe corresponding procedures and mechanisms in connection with informing the community both on individual and collective basis, using information, carrying out the public control and participation in the decision making process in the state authorities.

Taking into account these factors, we can note that the domestic legislation makes available the compliance to the requirements foreseen by this norm of the Convention.

Article 9

Public procurement and management of public finances

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

ACTIVITY ON THE COMPLIANCE OF THE REQUIREMENTS OF THIS ARTICLE OF THE DOMESTIC LEGISLATION

The Law of the "Public Procurement" adopted on December 27, 2001 determines the economic, legal and organizational principles of public procurement in Azerbaijan Republic, including the principles and rules of creating of equal competitive milieu for all contractors while procurement based on economic and effective use the state owned funds, competition and publicity. This Law is applied to the procurement of the goods (works and services) by the public enterprises and organizations (administrations), the enterprises and organizations owned by 30 % or more by the state in Azerbaijan Republic at the expense of credits and grants received by the state or based on the state guarantee. According to the decree of the President of Azerbaijan Republic No: 668 of January 29, 2002 on the application of the Law "on the public procurement", all public procurement in the amount of 250 (two hundred fifty) million manat or more are carried out by the open tender, if the supposed price of goods (works and services) is lesser than 250 (two hundred fifty) million manat (50 000 AZN) the purchaser will use any procurement methods.

The Law provided the key definitions and determined the functions of the corresponding executive authority, coming into effect of the procurement contract and the procedures as regards the public distribution of the related information.

At the same time this Law regulates the matters, inter alia, the determination of compliance of the contractors' qualification, the participation of the contractors in the public procurement, the informing forms concerning the procurement procedures, the failure of the tender and refusal of its extension, the conflict of interest in the public procurement, the conditions of application of the procurement methods, organization of procurement, forming of the procurement, establishing of the tender commission, the main collection of conditions of the tender, involving of the tender proposals, the content of the invitation for the tender, the tender procedures, the submission of the tender proposals, the term of validity, changing and withdrawal of the tender proposals, starting to the tender procedures, reviewing, estimation and comparison of tender proposals, the aspect of the tender proposals and coming into force of the procurement agreements, procurement of services, estimation of the service proposals and the other procurement methods.

This Law determines the rules, specifically rules of appeal, appeal in an administrative manner, suspension of the procurement procedures and appeal in the judicial manner.

The State Agency of Azerbaijan Republic on the Procurement controls over the fulfilment of the Law "on the public Procurement". The State Agency on Procurement is entrusted with creating and improvement of the base for the normative-legal acts regulating the public procurement in the Republic of Azerbaijan, providing of the control on the legacy of procurement of goods (works and services) at the expense of the state owned funds based on the competition and fulfilment of the contracts, carrying out of arrangements aiming at improvement of the qualification level of the specialists employed by the purchaser-organizations in the filed of public procurement in the manner determined by the law, establishing of the data base related to the public procurement and the matters concerning accomplishment of other duties prescribed by the effective legislation of Azerbaijan Republic.

In general, the Law "on the public Procurement" was drawn up and executed incorporating the majority articles of the United Nations model law "on the procurement of goods and services" and taking into account the provisions contained in the effective documents of some countries of the European Community related to the public procurement, the recommendations of the World Bank and the treaties of the World Trade Organization on the public procurement. It conforms to the requirements of this article of the Convention.

The Agency has drawn up the methodological instruction with respect to the organization and fulfilment of the "quotation inquiry procedure", reviewing of the tender proposals on the public procurement of the goods and works, their appraisal and contracting, procurement of the installation systems of computer for the tender participants in the public procurement process, organization and conducting through the proposals inquiries method of the procurement of goods (works and services), organization and conducting of the goods public procurement via the open tender method, organization and fulfilment of the public procurement of services (consultancy services) for the tender participants in procurement of the civil construction works, the determination of the contractors qualification compliance, the procurement of goods, works and services via the two-phases tender procedure for the tender participants and preventing of the cases of corruption and fraud in the procurement of goods, works and services with the purpose of conducting of the public procurement transparently based on the competition and publicity, using the state owned funds effectively and providing the equal competitive environment for all contractors. Information concerning all public procurement is published in the central state newspapers, as well as placed in the web-page of the Agency. The project of amendments to the Law "on the public procurement" was drawn up and submitted to the Apparatus of the President in order to provide the transition of procurement into the electron procurement aiming at improvement of the transparency while the public procurement.

Conclusion

The domestic legislation conforms to the requirements prescribed by these norms of the Convention.

Article 9

Public procurement and management of public finances

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

- (a) Procedures for the adoption of the national budget;
 - (b) Timely reporting on revenue and expenditure;
 - (c) A system of accounting and auditing standards and related oversight;
 - (d) Effective and efficient systems of risk management and internal control;
- and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

ACTIVITY ON THE COMPLIANCE OF THE DOMESTIC LEGISLATION TO THE REQUIREMENTS OF THIS ARTICLE

The Law “on the budget system” adopted on July 02, 2002 determines the fundamental organizational, legal and economic principles of organization of the budget system, drawing up of the budgets, confirmation, execution and the control over their accomplishment in Azerbaijan Republic, as well as the mutual relations by and between the state budget and the out of budget public funds and the local budgets.

According to the Law, the process of the budgeting is started within 11 months before the next budget year and encompasses the period up to the day of submission of the budget project to the Milli Majlis of Azerbaijan Republic. The process of budgeting project is started by the decision of the corresponding executive power authority published within the third ten days of January. According to this decision, the country’s medium term economic and social development program is specified compiled by the corresponding executive authority. As per the verified medium term economic and social development program, the initial medium term budget forecasting (profits, expenses, losses and financing) and the investment program in March of the current year for the next year.

The primary draft of the state budget and the investment program prepared before the 15th of April of the current year is submitted to the Council of Ministers by the corresponding executive authority together with the main directions of the budget and tax policy, the threshold level of the profits and expenses in the level of the budget classification sections, the state debts, the summary budget forecasting for the next year and the next three years.

The draft law on the state budget on the next fiscal year accompanied with the attached documents is submitted for the discussion to the Milli Majlis of Azerbaijan Republic as per the point 2 of the article 109 of the Constitution of Azerbaijan Republic no later than the 15th of October of the current year.

The draft law on the state budget for the next year is published in the newspapers within 10 days from the date of entrance to the Milli Majlis of Azerbaijan Republic.

Discussion and adoption of the budget project for the next fiscal year is implemented according to the internal regulations of the Milli Majlis of Azerbaijan Republic. The budget project on the next year is adopted by the Milli Majlis of Azerbaijan Republic no later than the 20th of December of the current year. The monthly report on the implementation of the state budget is drawn up before the 25th of the next month followed by the month under review and is submitted to the corresponding executive authority. The report reflects the implementation of the state budget with the increasing sum from the beginning of the year based on the functional and the economic classification. The quarterly report on the accomplishment of the state budget is submitted to the Milli Majlis and the corresponding executive authorities before the end of the first month of the next quarter. The report is published in the newspapers. The quarterly report, besides the other indices provides the comparative analysis of the profits and losses. In the case of any difference arisen among the figures confirmed by the factual indices in the financing of the expenses, the report will provide explanations related to this difference and information concerning the projects of the state importance.

The annual report on accomplishment of the state budget and the related draft law is submitted to the Milli Majlis of Azerbaijan Republic by the corresponding executive authority for adoption no later than the 15th of May of the next year. The report will encompass, besides the other information, the data related to all state debts, debts borrowed within a year and the state warranties, the issued state loans and the use the reserve funds within a year.

The Accounting Chamber of Azerbaijan Republic issues corresponding opinions as regards the reports on execution of the state budget and the related draft law according to its Charter.

The Milli Majlis of Azerbaijan Republic discusses the submitted documents and adopts the law on the execution of the state budget on the corresponding report year.

The quarterly and annual reports on the execution of the summary budget (budget profits, expenses, the amount of the state debt, credits and other information) are published in the mass media means.

The audit of the profits and expenses of the state budget and the summary budget, as well as the out of budget state funds is conducted by the Accounting Chamber of Azerbaijan Republic according to the effective legislation.

The Law "on the business accounting" adopted on June 29, 2004 regulated the rules of the organization and conducting of the business accounting, drawing up and submission of the financial reports by the business accounting subjects carrying out their activity in the territory of Azerbaijan Republic, regardless their property and the organizational-legal form. The main purpose of the state regulation in the field of the business accounting in the Republic of Azerbaijan is to develop the domestic business accounting on the basis of the international standards and to provide the financial transparency in the financial reports upon drawing up of the international standards of the financial reports for the commercial institutions and the standards of the domestic business accounting based on them, the Standards of the Domestic Business Accounting for the non-commercial organizations based on the business accounting international standards for the social sector.

According to the requirements of the Law, the Domestic Business Accounting Standards for the commercial organizations are drawn up in strict compliance to the International Standards of the financial reports and embrace all matters regulated by the Financial reports' international standards. In the case of necessity not to include any international standards of the financial reports to the domestic business accounting standards for the commercial organizations wholly or partially or to amend to it before the inclusion, the reason of non application of the initial form of the financial reports' international standards and any other difference by and between the domestic business accounting standards for the commercial organizations and the financial reports' international standards should be explained and interpreted in the appendix to the Domestic Business Accounting Standards.

According to the Law, the Domestic Business Accounting Standards for the budget organizations are drawn up based on the Business accounting international standards for the public sector and embrace all matters regulated by the Business Accounting International Standards for the public sector. In the case of necessity not to include either of the international standards of the business accounting for the public sector to the domestic business accounting standards for the budget organizations wholly or partially or to amend to it before the inclusion, the reason of non application of the initial form of the business accounting international standards by the corresponding executive authority and any other difference by and between the domestic business accounting standards for the budget organizations and the business accounting international standards for the public sector should be explained and interpreted in the appendix to the Domestic Business Accounting Standards.

All institutions of the social importance (credit organizations, insurance companies, investment funds, non-governmental (private) public funds, the legal entities being in the turnover in the stock market of securities and the commercial organizations possessing indices exceeding two of criterion (annual profit, average staff number within the report year and the balance total amount) determined by the corresponding executive body as of the date of drawing up of the financial reports) will draw up the financial reports required as per the Law "on the business accounting" in strict compliance to the Financial Reports' International Standards.

The business accounting is compulsory for all business accounting subjects.

The content of the initial accounting documents, the business accounting registers and the other accounting documents is commercial secret. The state authorities have the right to be acquainted with all documents used in the business accounting in the cases and manner determined by the Law. The auditor involved to the audit examination by the business accounting subject will be entitled to be acquainted with all business accounting documents.

The decree signed by the President of Azerbaijan Republic in connection with the coming into force of the Law "on the business accounting" stipulated for determination of the list of

institutions of the public importance, which have to conduct the business accounting and to submit the financial report according to the financial reports' international standards before January 01, 2008 entrusted with the Council of Ministers. This list was adopted in 2005 by the Council of Ministers. 20 institutions included to this list from January 01, 2008 are keeping the business accounting according to the Financial Reports' International Standards.

The municipalities, the budget organizations and the out of budget state funds draw up the required financial reports in compliance with the Domestic Business Accounting Standards.

The state regulation in the field of the business accounting is carried out by the Ministry of Finance.

The Law "on the auditor services" adopted on September 16, 1994 determines the organization of the auditor services, the legal principles of its conducting, the functions, rights and obligations of the auditors and prescribes the establishment of the independent financial supervision system defending the property rights of the entrepreneur.

The Chamber of Auditors of Azerbaijan Republic was established in order to organize the state regulation of the auditor services; to compile the drafts of the normative acts and the system of measures existing in this field and directed towards improvement and development of the auditor services in Azerbaijan Republic; to defend the interests of the state, economic subjects and the auditors (audit organizations); and to control on observance the requirements proceeding from this Law, the effective legislation and the normative-legal acts. The functions and obligations of the Chamber of Auditors include the audit planning, the conditions of audit (letter-obligation), selection of the auditor, the rule of functioning of the auditor in the case of revealing of discrepancy in the business accountings, involvement of the other auditors to the audit examination, the participation of the auditors in the examinations on the special matters, the information submitted to the auditor by the guidance of the economic subject, the audit opinions, the use of the expert activity, risk appraisal and the internal supervision system, the audit under conditions of the computer information systems, the annual audit examination, the initial balances, the analytic procedures, the business unity, the next events, fraud and errors standards and the Code of the auditors professional ethics and the instructions on taking into account of the legal acts while the audit of the business (financial) accounting of the economic subjects.

As to the Law "on the internal audit" adopted on May 22, 2007, it determines the legal principles of organization and execution of the internal audit services aiming at improvement of the efficiency and transparency of management of the economic subjects in Azerbaijan Republic and the rights and obligations of the internal auditors. This Law is applied to all economic subjects of the compulsory audit, carrying out their activity in the territory of Azerbaijan Republic, regardless their property and the organizational-legal form. The economic subjects are free to select the auditor. The auditors are prohibited to conduct audit in the enterprise in the case if they have personal property interests, the direct relationship with the head or any employee of this enterprise, worked previously as the founder, proprietor and the shareholder of the enterprise or rendered services in this enterprise previously.

Conclusion

The Domestic Legislation conforms to the requirements prescribed by these norms.

Article 9

Public procurement and management of public finances

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

ACTIVITY ON THE COMPLIANCE OF THE DOMESTIC LEGISLATION TO THE REQUIREMENTS OF THIS ARTICLE

The actions indicated in this norm of the Convention are subject of the administrative liability according to the article 204-1 of the Code of Administrative Infractions of Azerbaijan Republic (infraction of the financial rules in the financial-economic activity of the enterprises and organizations financed from the state budget), 247-1 (violation of the legislation on the business accounting, the rules of submission of reports and information), 249 violation of rules of writing off of taxes and compulsory payments from the account).

For these actions there were prescribed the criminal liability according to the article 204 of the Criminal code of Azerbaijan Republic (preparation, obtaining and selling of false moneys or securities), 205 (producing, obtaining or selling of the false credit or account cards or other payment documents), 213 (deviation from the tax payment), 313 (official forgery), 320 (falsification of official documents, state decorations, seals, stamps and letterheads, illegal producing, selling or use the false documents).

Conclusion

The Domestic Legislation conforms to the requirements prescribed by these norms.

Article 12

Private sector

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance

with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

ACTIVITY ON THE COMPLIANCE OF THE DOMESTIC LEGISLATION TO THE REQUIREMENTS OF THIS ARTCILE

The actions contained in this norm of the Convention were prohibited according to the corresponding norms of the Administrative Infractions, Taxes and the Criminal Codes:

The Chapter V of the Code of Taxes of Azerbaijan Republic considers the above mentioned actions as the tax infractions and determined financial sanctions for these actions.

The actions envisaged by the articles 200 (false entrepreneurship), 201 (false bankruptcy), 202 (deliberately bankruptcy), 203 (illegal actions while the bankruptcy), 204 (illegal receipt of credit or using the credit not on its own assignment), 215 (violation of rules of preserving of documents to be kept as per the legislation on the securities), 223 (illegal obtaining or disclosure of information being commercial or the bank secrets), 247 (violation of the legislation on the business accounting, rules of submission of reports and information), 249 (violation of rules of removal of taxes or compulsory payments from accounts) of the Code of Administrative Infractions of Azerbaijan Republic are subject of the administrative liability.

The actions stipulated by the articles 192 (illegal entrepreneurship), 193-1 (legalization of moneys and other valuables obtained by the criminal actions), 195 (illegal receipt of credit or using the credit not on its own assignment), 202 (illegal obtaining or disclosure of information being commercial or the bank secrets), 204 (producing, obtaining or selling of false money, credit or other payment or account cards), 210 (illegal actions while bankruptcy), 211 (deliberately bankruptcy), 212 (false bankruptcy), 213 (deviation from tax payment), 313 (official forgery), 320 (falsification of official documents, state decorations, seals, stamps and letterheads, illegal producing, selling or use the false documents), 326 (theft or liquidation of official documents, stamps, seals) are subject of the administrative liability.

Article 12

Private sector

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

ACTIVITY ON THE COMPLIANCE OF THE DOMESTIC LEGISLATION TO THE REQUIREMENTS OF THIS ARTCILE

The Domestic Legislation conforms to the requirements prescribed by these norms.