

AZERBAIJAN

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NATIONAL POLICY

The Republic of Azerbaijan is one of the states which has suffered heavily from terrorism. Since the early years after the restoration of its independence, the Republic of Azerbaijan has suffered 373 terrorist attacks, which have resulted in 1568 dead, 1808 wounded and considerable material and spiritual damage to the state and its people.

Immediately after the terrorist attacks of 11 September 2001, the Republic of Azerbaijan, without hesitation, joined the international fight against terrorism and has since contributed to combating international terrorism through the implementation of a national programme of legislative, organisational and practical actions. On 12 September 2001, the President signed a Declaration announcing Azerbaijan's joining the global anti-terrorist coalition, after which the country offered its full assistance to the antiterrorist operations carried out by the coalition forces in Afghanistan by sending a military peacekeeping contingent and declaring its airspace and airports open for that purpose, and by arresting dozens of terrorists in the country and extraditing them to the relevant states.

On 11 May 2002, the President signed Decree No. 920 approving the "Plan of action for the implementation of UN Security Council resolutions 1368 of 12 September 2001, 1373 of 28 September 2001, and 1377 of 12 November 2001". The Decree contains instructions to the relevant bodies of the executive power to take action for the suppression of terrorism and the financing of terrorism, as well as for the freezing of assets and other financial activities or economic resources of legal and physical entities which have perpetrated or are planning to perpetrate acts of terrorism. The plan of action envisages steps for preventing all individuals and organisations from directly or indirectly financing criminals, or from providing them with financial or other services. The document also includes articles on the provision of comprehensive assistance to members of the international antiterrorist coalition in the investigation of criminal cases concerning terrorism.

The Decree was followed by the adoption of Law No. 712-IIQ "On National Security" of 29 June 2004, which establishes the legal basis for the national

security strategy and policy with a view to the development of the Republic of Azerbaijan as an independent, sovereign, democratic state. It includes conceptual articles concerning terrorist threats and the carrying out of effective antiterrorist activities. This law regards international terrorism as a major threat to the national security of the Republic of Azerbaijan;¹ multilateral co-operation in combating international terrorism and transnational organised crime is regarded as one of the main methods for ensuring national security.²

The Republic of Azerbaijan's location in a crucial and sensitive geostrategic region, its current political-military situation, as well as the realisation of large-scale transnational projects for the provision of transport and energy security to the European region, require complex security measures.

In order to determine the objectives, principles and policy approaches, aimed at protection of the independence of the Republic of Azerbaijan, its territorial integrity, constitutional order, national interests of the people and the country against internal and external threats – an Order of the President of the Republic of Azerbaijan was adopted "On approval of the National Security Concept of the Republic of Azerbaijan" of May 23, 2007 No. 2198. The present Concept providing for national security risks, implementation of appropriate measures to prevent and eliminate these risks also lays the basis for the national security policies of the Republic of Azerbaijan, sets the tasks for the governmental structures and requires their coherent efforts for the protection of national interests.

The purpose of the "Maritime security strategy of the Republic of Azerbaijan" adopted by the Order of the President of the Republic of Azerbaijan of September 11, 2013, No. 3130 consists of joining all efforts for prevention of threats against national security and national interests of the Republic of Azerbaijan, existing in the sea and foreseen in the future. Maritime security strategy identifies the duties and responsibilities of relevant authorities in order to conduct the necessary and effective measures against the maritime threats. The strategy of joining

¹ Law No. 712-IIQ of the Republic of Azerbaijan "On National Security" of 29 June 2004: Articles 6.2.6, 7.5.8, 7.5.12.

² Law No. 712-IIQ of the Republic of Azerbaijan "On National Security" of 29 June 2004: Articles 16.2.13, 16.2.16.

all efforts, in order effectively combat the threats existing in the sea and foreseen in the future and to be completely aware of the situation in the sea, is reflected in this document. The Maritime security strategy includes the matters of the aspects of national security the country in the sea, protection of territorial integrity, sovereignty and national interests of the Republic of Azerbaijan against any threats.

The physical and operative protection of Azerbaijan's borders, control over passport and registration regimes and verification procedures at border check-points have been strengthened. At the same time, the necessary steps are being taken to prevent the illegal influx of aliens into Azerbaijan and for the repatriation of illegally settled persons to their native countries. A complex series of preventive and operative actions are carried out to strengthen the security of important buildings, transit oil and gas pipelines, energy infrastructure, terminals, air and sea ports, warehouses, embassies, international organisations and representations, foreign companies and religious institutions. Additional action is being taken to identify and expose members of international terrorist organisations, groups engaged in transnational and trans-regional organised crime, their close contacts and persons inclined to religious extremism. In accordance with the law, Azerbaijan's law-enforcement agencies take operative search actions for the identification, disclosure and arrest of terrorist groups and individual terrorists, as well as to prevent any activities related to terrorism.

LEGAL FRAMEWORK

Law No. 687-IQ "On the Fight against Terrorism" of 18 June 1999 is the main domestic legal document for combating terrorism. This law determines the legal and organisational guidelines for combating terrorism in the Republic of Azerbaijan, the mechanism for inter-agency co-operation between the state bodies in charge of anti-terrorism operations, as well as the rights and duties of those bodies and individual citizens. It has 5 sections and 22 articles.

The law contains and interprets definitions of "terrorism", "terrorist", "terrorist group", "terrorist organisation", "terrorist activity", "international terrorist activity", "financing of terrorism", "fight against terrorism", "operations against terrorism" etc. This law defines "terrorism" as the "*perpetration of explosions or fires or commission of other acts which threaten to endanger the lives of people, injure their health, cause substantial damage to property or give rise to other socially dangerous consequences with the aim of disturbing public order, sowing panic among the population or influencing the adoption of decisions by the organs*

of State power or international organisations, and also the threat of committing such acts with the same aim".³

According to the law, the fight against terrorism in the Republic of Azerbaijan is carried out for the following purposes:

- 1) to ensure human rights and liberties, the security of society and the state;
- 2) to discover and prevent terrorism and minimize possible harmful consequences of terrorism;
- 3) to disclose and eliminate the reasons and conditions for the emergence and existence of terrorism, as well as the financing and provision of other support to terrorism.⁴

The law sets out the following principles of the fight against terrorism: rule of law; inevitability of punishment; coordination of overt and covert methods; complex use of legal, political, socio-economic and organisational preventive action; priority of protecting the rights of people subjected to the terrorist threat; independence of command over the forces involved in anti-terrorist operations; and minimum disclosure of the staff, technical equipment and tactics used in anti-terrorist operations.⁵

An interagency working group has been established to monitor anti-terrorist legislation, improve the efficiency of the fight against such crimes and determine punishment for such acts.

A package of legal acts adopted in the Republic of Azerbaijan to prevent the entry and transit of terrorists and the use of national territory for the preparation of criminal acts against other states includes the following documents: the laws "On State Border of the Republic of Azerbaijan" of 9 December 1991, "On Exit from the Country, Entry to the Country and Passports" of 14 June 1994, "On Place of Residence and Location" of 4 April 1996, "On Citizenship of the Republic of Azerbaijan" of 30 September 1998, "The Migration Code of the Republic of Azerbaijan" approved by the Law of the Republic of Azerbaijan of July 2, 2013 No.713-IVQ, "Rules of Perusal of Applications for Immigration to the Republic of Azerbaijan" (approved by a Presidential Decree of 24 August 2002).

Penal law

The appropriate amendments to the law "On Fight Against Terrorism" and the Criminal Code, introduced in accordance with Law No. 332-IIQD "On Amendment of Some Legislative Acts of the

³ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 1.

⁴ Ibid., Article 3.

⁵ Ibid., Article 4.

Republic of Azerbaijan following the enforcement of law of the Republic of Azerbaijan "On Accession of the Republic of Azerbaijan to the International Convention for the Suppression of the Financing of Terrorism" of 17 May 2002, made the punishment for terrorist activity and for deliberate disinformation about terrorism more severe and prescribed the inclusion of a new article introducing criminal liability for the financing of terrorism.

Due to their character and the level of danger to society they represent, the above-mentioned crimes have been classified, in accordance with the definitions set forth in Article 15 of the Criminal Code, as serious and particularly serious crimes. Article 20 of the Criminal Code determining the age limits for criminal liability establishes that any mentally sound person at least 14 years old can be liable for a terrorist crime, and must reach the age of 16 before the date of the commission of the offence to be liable for the crimes of financing terrorism and deliberate disinformation about terrorism.

Terrorism, as defined by Articles 1 and 214.1, is punished by eight to twelve years' imprisonment with confiscation of property. The punishment can be increased to life imprisonment where aggravating circumstances are involved,⁶ namely if terrorism is committed: by an organised group or criminal organisation; repeatedly; with use of firearms or items used as weapon; and/or results in the accidental death of humans or other serious consequences.

The financing of terrorism is defined in Article 215 as the "*Deliberate transfer of money or any other property, completely or partially, directly or indirectly to perpetration of terrorism, as well as deliberate rising of money or any other property for the same purpose*" and it is punished by eight to twelve years' imprisonment with confiscation of property.

The Law also makes *deliberate disinformation about terrorism* an offence, which is punished by five to eight years' imprisonment.⁷

The Law provides for the possibility of dropping charges against any person who has participated in the preparation of an act of terrorism who assists in the prevention of such crime through giving a timely warning to the authorities or in any other way and there is no other *corpus delicti* in his/her actions.

The Council of Europe Convention on the Prevention of Terrorism, signed in Warsaw on 16 May 2005, was approved by the Law of the Republic of Azerbaijan of February 3, 2014 No.891-IVQ. For implementation of the Warsaw Convention to the

Criminal (domestic) Legislation by the Law of the Republic of Azerbaijan of March 4, 2014 No.919-IVQD, the new articles which provide criminal liabilities such as "Public appeals to terrorism" and "Conducting exercises with a terrorism purpose" were included into the Criminal Code of the Republic of Azerbaijan.

According to the article 214-2 of the Criminal Code of the Republic of Azerbaijan "Public appeals to terrorism", Public appeals to commit offenses stipulated for - attack on persons or establishments, which use international protection, terrorism, conducting exercises with a terrorism purpose, capture of the hostage, stealing of airship, ship or railway train, sea robbery, illegal handling with radioactive materials, plunder or extortion of radioactive materials, attempt on life of the state or public authority (act of terrorism), creation of a armed formations or groups, which are not provided by the legislation, diversion as well as the distribution of materials with similar content are punishable as a crime by imprisonment for a period of up to five years.

Act on conducting exercises with a terrorism purpose defined by the article 214-3 of the Criminal Code of the Republic of Azerbaijan provides criminal liability of the men, who are getting training on methods of committing offenses and the men, who are taking part organisation or conducting exercises stipulated for these above-stated acts the use of firearms, explosives or devices, toxic substances, other common unsafe practices or technical means to commit.

At the part Note of this Article a person who commits an act stipulated for by conducting exercises with a terrorism purpose shall be exempt from criminal liability if he contributed to the prevention of criminal acts being a purpose of such exercises, identifying those involved in such exercises, organised such trainings, persons financed such trainings by timely notification of the authorities or by another method, and his act was free of components of crime.

In accordance with the classification in the article 15 of the Criminal Code of the Republic of Azerbaijan the acts which describing in article 214-2 and article 214-3 on nature and degree of action defined as serious crimes and especially serious crimes.

To carry out the obligations deriving from the international antiterrorist conventions and protocols it has signed and to bring its domestic criminal legislation into conformity with those documents, the Republic of Azerbaijan has introduced criminal prosecution for other acts of a terrorist nature.

⁶ Article 214.2.

⁷ Article 216.

Such crimes include:

- attacks on persons and organisations enjoying international protection (serious crime);⁸
- deliberate homicide, under aggravating circumstances, as well as related to terrorism (particularly serious crime);⁹
- violations of the customs borders of the Republic of Azerbaijan for illicit trafficking in radioactive substances, explosive substances and devices, military weapons and machines, nuclear, chemical, biological and other weapons of mass destruction, as well as materials and equipment for the manufacture of weapons of mass destruction (less serious or serious crimes);¹⁰
- hostage taking (serious or particularly serious crime);¹¹
- creation of a criminal community (organisation) (serious or particularly serious crime);¹²
- hijacking of an aircraft, maritime vessel or railroad train (serious or particularly serious crime);¹³
- sea piracy (serious or particularly serious crime);¹⁴
- illegal handling of radioactive materials, theft of radioactive materials or obtaining them through intimidation (serious or particularly serious crimes);¹⁵
- illegal manufacture, possession, transfer, sale, storage, transportation of firearms, ammunition, explosive substances and devices or obtaining them through intimidation (less serious or serious crimes);¹⁶
- attempts on the lives of state officials or public actors (terrorist attack) (particularly serious crime);¹⁷
- creation of armed units or groups unforeseen by legislation (serious or particularly serious crime);¹⁸
- sabotage (particularly serious crime);¹⁹

The criminal legislation of the Republic of Azerbaijan determines that any crime perpetrated by a previously arranged group of people, organised gang or criminal community (organisation), using firearms, explosive devices or other generally dangerous means and technical devices, as an act aggravating criminal liability.²⁰ At the same time, Articles 75.5

⁸ Article 102.

⁹ Article 120.2.

¹⁰ Article 206.2-206.4.

¹¹ Article 215.

¹² Article 218.

¹³ Article 219.

¹⁴ Article 219-1.

¹⁵ Articles 226-227.

¹⁶ Articles 228-229 and 232.

¹⁷ Article 277.

¹⁸ Article 279.

¹⁹ Article 282.

²⁰ Criminal Code of the Republic of Azerbaijan: Articles 61.1.3, 61.1.10.

and 80.4 of the Criminal Code forbid the application of the statute of limitations, the dismissal of criminal charges and the implementation of legally-empowered court sentences against persons who perpetrate attacks on persons and organisations enjoying international protection, acts of terrorism or financing of terrorism.²¹

The introduction of criminal liability for not reporting information about a crime or for beforehand non-promised concealment of the crime²² also plays an important role in combating terrorism. The scope of that article includes terrorism, financing of terrorism, Public appeals to terrorism and conducting exercises with a terrorism purpose and other terrorism-related crimes, because the criminal legislation of the Republic of Azerbaijan attributes these offences to the above-mentioned category of crimes.

Although criminal legislation provides for responsibility for terrorism, there is no independent *corpus delicti* for incitement to terrorism. Article 32.4 of the Criminal Code gives the following definition of incitement: an activity carried out by gaining control or agreement of or by intimidating other persons with the aim of creating in the latter the determination to commit a crime. Article 33.3 of the Criminal Code sets out rules for establishing the responsibility of the instigator along with other participants in the crime. Once the responsibility of the person who acted as the instigator of an investigated terrorist crime is established in accordance with Article 32 of the Criminal Code, he/she is subject to the sanctions of the appropriate articles contained in the Special Part of the Criminal Code.²³

The act of setting up a criminal unit with the purpose of perpetrating serious or particularly serious crimes is determined in Article 218.1 of the Criminal Code as an offence which has an independent *corpus delicti* element. From an objective point of view, the setting up of a criminal organisation implies searching for accomplices, their recruitment and training, the selection of criminal targets, and in some cases holding an oath-swearing ceremony to secure entry into the community. Depending on the

²¹ In accordance with Article 75 of the Criminal Code (release from criminal responsibility under the statute of limitations) a person cannot be held responsible for a crime which does not represent a great threat to the public after 2 years from the date of incident; for less grave crimes – after 7 years; for grave crimes – after 12 years; for particularly grave crimes – after 15 years.

In accordance with Article 80 of the Criminal Code (release from serving a penalty under the statute of limitations for execution of sentence) a person is released from serving his/her penalty if the sentence of the court prosecuting a crime which does not represent a great threat to the public is not executed after 2 years from the date of legally coming into force; for less grave crimes – after 7 years; for grave crimes – after 12 years; for particularly grave crimes – after 15 years.

²² Article 307 of the Criminal Code - less serious crime.

²³ For example, Article 214.

existence of other characteristic circumstances, the terrorist crime is classified as either a serious or a particularly serious crime; the offences of recruitment of terrorists, training of terrorists with the aim of perpetrating a terrorist act and preparation for terrorism are prosecuted in accordance with Article 218.1. If the group is in possession of arms, the same actions can be classified under the clauses of Article 279.1 (creation of armed units or groups unforeseen by legislation) of the Criminal Code.

Jurisdiction

Article 12 of the Criminal Code includes some internationally acknowledged clauses and provides for the jurisdiction of criminal law over crimes committed beyond the territory of the Republic of Azerbaijan.

Article 12.1 of the Criminal Code establishes that, on the basis of this Code, citizens of the Republic of Azerbaijan and persons without citizenship permanently living in Azerbaijan can be held responsible for crimes (action or inaction) committed beyond the borders of the Republic of Azerbaijan, if such actions are described as crimes in the legislation of the Republic of Azerbaijan and the foreign country where it took place, unless those persons have already been prosecuted for this crime in the foreign country (*non bis in idem*).

Article 12.2 of the Criminal Code establishes that, on the basis of this Code, foreign nationals and persons without citizenship can be held responsible for crimes committed beyond the borders of the Republic of Azerbaijan against citizens or interests of the Republic of Azerbaijan, and in the cases described in the international treaties to which the Republic of Azerbaijan is a signatory, unless those persons have already been prosecuted for this crime in a foreign country.

Article 12.3 of the Criminal Code clearly states that criminal liability for international crimes, including terrorism, does not depend on the place where the crime is committed: "Citizens of the Republic of Azerbaijan, foreign nationals and persons without citizenship on the basis of this Code, regardless of the place where the incident took place, can be held responsible for the commission of crimes against peace and humanity, war crimes, trafficking in human beings, terrorism, financing of terrorism, hijacking of aircraft, hostage taking, torture, sea piracy, illegal circulation of narcotic drugs and psychotropic substances, forgery and sale of money and securities, attacks on persons or organisations enjoying international protection, radioactive materials-related crimes, as well as the other crimes to be punished in accordance with the international

treaties to which the Republic of Azerbaijan is a signatory".

According to the Law "On Status of Refugees and Forced Re-settlers (Internally Displaced Persons)" of 21 May 1999, refugee status cannot be granted to a person who is proved to be guilty of crimes against peace, war crimes, crimes against mankind or humanity; serious or particularly serious crimes of a non-political character; or actions contrary to the goals and principles of the United Nations, committed before his/her arrival in the Republic of Azerbaijan.²⁴

Criminal Procedure Legislation

According to Article 209 of the Criminal Procedure Code of the Republic of Azerbaijan, the preliminary investigator, investigator or prosecutor in charge of supervising the preliminary investigation must immediately start a criminal case on the basis of the facts of the terrorist crime. A person who has committed a terrorism-related crime can be arrested or restrained by other means.²⁵

Court decisions to extend the period of detention or on waiver thereof can be appealed against by filing a complaint or protest to the court of appeal. The decision of the court of appeal on this issue has the ultimate power.

Detention

If the court decides to take a person charged with a terrorism-related crime into custody as the means of constraint during the investigation of the case and before it brought to trial, it determines the maximum term of detention as 3 months for such persons.²⁶

Depending on the complexity of the case, the court can prolong the period of detention for another term not exceeding 3 months the first time, and 3 months for the second time in cases related to crimes of financing of terrorism and deliberate disinformation about terrorism; and not exceeding 4 months for the first time, and 5 months for the second time in cases related to crimes of terrorism, and attempts on the lives of state officials or public actors (terrorist acts).²⁷

²⁴ Law of the Republic of Azerbaijan "On Status of Refugees and Forced Re-settlers (Internally Displaced Persons)" of 21 May 1999: Article 2.

²⁵ Criminal Procedure Code of the Republic of Azerbaijan: Article 155.

²⁶ *Ibid.*, Article 158.

²⁷ Criminal Procedure Code of the Republic of Azerbaijan: Article 159. The general rule is that the final limit of detention for the period of investigation up until the trial may not exceed 9 months in cases of financing of terrorism and deliberate disinformation about terrorism, and 12 months in cases related to crimes of terrorism, and attempts on the life of state officials or public actors (terrorist act).

In extraordinary cases where the investigation is delayed or encounters other difficulties, such as the emergence of a large volume of investigation materials or a great number of accused persons, the court may decide to prolong the final limit of detention by up to a maximum of 3 months in cases of financing of terrorism and deliberate disinformation about terrorism, and 6 months in cases related to crimes of terrorism, and attempts on the lives of state officials or public actors (terrorist acts).

If the time limit for the period of detention (9 and 12 months),²⁸ of an accused person caught outside the territory of the Republic of Azerbaijan expires before his/her transfer to the authority of the agency in charge of the criminal process in the Republic of Azerbaijan and there is a need to continue the preliminary investigation, the court may decide to prolong the period of detention by up to 6 months.

Investigation

The preliminary investigation of a criminal case must be completed within a maximum term of 3 months after the start in cases of financing of terrorism and deliberate disinformation about terrorism, and 4 months in cases related to crimes of terrorism, and attempts on the lives of state officials or public actors (terrorist acts).

The preliminary investigation starts on the date the criminal case is opened and ends on the date of its submission to court or the decision on its cancellation. Any period of suspension of the preliminary investigation of the criminal case does not count towards its total duration.

On a well-grounded request from the investigation officer or the prosecutor in charge of supervising the preliminary investigation on the complex nature of the criminal case, authorised prosecutors (senior officials) may decide to prolong the period of preliminary investigation for another term not exceeding 3 months for the first time, 3 months for the second time, and 3 months for the third time in cases of financing of terrorism and deliberate disinformation about terrorism, and not exceeding 4 months for the first time, 4 months for the second time, and 6 months for the third time in cases related to crimes of terrorism, and attempts on the lives of state officials or public actors (terrorist acts).²⁹

²⁸ Article 159.7 of the Criminal Procedure Code.

²⁹ The general rule is that the final limit for the period of preliminary investigation in cases brought under the clauses of the Criminal Procedure Code must be completed within 12 months in cases of financing of terrorism and deliberate disinformation about terrorism, and 18 months in cases related to crimes of terrorism,

The Prosecutor General may prolong the term of the preliminary investigation in cases of unresolved crimes several times until they are resolved. Once a crime has been disclosed, the Prosecutor General may prolong the term of the preliminary investigation of that case only once. The Prosecutor General may also prolong the term of the preliminary investigation in relation to an indictment when an established participant in the crime has not been charged, where this is for objective reasons and until he/she is found guilty.

Persons having committed crimes of terrorism and financing of terrorism cannot be exempted from criminal liability under the statute of limitations or from serving the penalty determined by the court sentence where this has not been executed in due time.

Hand Over of Persons who have Committed Crimes (extradition)

Legal Framework

The extradition of persons living or present in the territory of the Republic of Azerbaijan (non-citizens of the Republic of Azerbaijan) to foreign countries for trial for crimes committed beyond the borders of the Republic of Azerbaijan or for the execution of a punishment delivered by a court is governed by the Constitution of the Republic of Azerbaijan, Law No. 132-IIQ "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001, the Decree of the President on approval of the above-mentioned Law No. 499 of 11 June 2001, the Criminal Procedure Code (Articles 493-504), and other legislative instruments and international treaties in this sphere concluded by the Republic of Azerbaijan with foreign countries.

In the absence of an extradition treaty between the Republic of Azerbaijan and the requesting country, extradition can be guided by the principle of mutual legal assistance and based on the clauses of the Law "On Hand Over (extradition) of Persons who have Committed a Crime".³⁰ If international treaties to which the Republic of Azerbaijan is a signatory contain different clauses concerning the extradition of criminals, then they shall prevail.³¹

Simultaneously with the adoption of the above-mentioned law, the Parliament of Azerbaijan ratified

and attempts on the lives of state officials or public actors (terrorist act).

³⁰ Law No. 132-IIQ of the Republic of Azerbaijan "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001: Article 1.2.

³¹ Criminal Code of the Republic of Azerbaijan: Article 13.4.

the European Convention on Extradition signed in Paris on 13 December 1957, its Additional Protocol of 15 October 1975 and its Second Additional Protocol of 17 March 1978. The Republic of Azerbaijan is also a party to two regional documents – the European Convention on Mutual Assistance in Criminal Matters (20.04.1959) and its Additional Protocol (1978), and the Chisinau Convention "On Legal Assistance and Legal Affairs in Civil, Family and Criminal Matters" (07.10.2002) – and to a number of bilateral treaties (Bulgaria, Georgia, Uzbekistan, Iran etc.). Countries which have no agreement with Azerbaijan may request legal assistance in accordance with the Law "On Legal Assistance in Criminal Matters" of 29 June 2001.

Foreign nationals or persons without citizenship present in the Republic of Azerbaijan who commit any of the crimes listed in Article 13.2 of the Criminal Code outside the territory of the Republic of Azerbaijan may be extradited to foreign countries for trial or execution of a sentence in accordance with the Law "On Hand Over (extradition) of Persons who have Committed a Crime", other legislative acts, and international agreements to which the Republic of Azerbaijan is a signatory.

Basic Principles

The Law "On Hand Over (extradition) of Persons who have Committed a Crime" forbids the classification of terrorist activities as political crimes, thus ensuring their extradition.³² Furthermore, national legislation provides for the possibility of bringing terrorists to trial in accordance with the Criminal Code in cases where the request for their extradition is denied.³³ The legislation of Azerbaijan in relation to terrorism and other international crimes is based on the principle of *aut dedere aut judicare*.

Citizens of the Republic of Azerbaijan who commit any of the crimes listed in Article 13.1 of the Criminal Code in other countries cannot be extradited to those countries. The matter of charging such persons is resolved in accordance with the clause of criminal legislation providing for responsibility for crimes committed outside the territory of the Republic of Azerbaijan.³⁴ That clause is based upon the 53rd Article of the Constitution of the Republic of Azerbaijan stating that citizens of the Republic of

Azerbaijan cannot be exiled or extradited to a foreign country under any circumstances.³⁵

Procedures

The extradition of a person who has committed a crime is carried out on the basis of a written request submitted by the relevant authority of the requesting country to the Ministry of Justice of the Republic of Azerbaijan. The conditions and bases for the denial of a request for the extradition of a person who has committed a crime are listed in Article 3 of the Law "On Hand Over (extradition) of Persons who have Committed a Crime". Articles 5.1 and 5.2 of the same law include requirements to be met during the preparation of the extradition request. If the extradition request meets all the requirements of the Law, then the Ministry of the Interior of the Republic of Azerbaijan, in accordance with the criminal procedure legislation, takes appropriate actions to find and arrest the person concerned. Once that person has been arrested, the Ministry of Justice submits all the documents concerning his/her extradition to the Court for Serious Crimes for consideration. The Ministry of Justice immediately informs the requesting country about his/her arrest.³⁶ The Court for Serious Crimes studies the extradition of the person on the basis of the request from the foreign country and issues a well-grounded decision.

The criminal procedure legislation of the Republic of Azerbaijan establishes the procedure for bringing complaints or appeals against decisions of the Court for Serious Crimes on the extradition of individuals. Where an extradition request is refused, the Ministry of Justice informs the relevant authority of the requesting country. Where the request is granted, it informs the relevant authority of the requesting country about the time and place for the handing over of the person. Should the requesting country fail to receive the extradited person at the appointed date, he/she must then be released within the following 15 days.³⁷ On the basis of the location of the requesting party, the Ministry of Justice may prolong the term for handing over the person, but this may not exceed 30 days. The relevant authority of the requesting country must inform the Ministry of Justice about the results of the criminal prosecution against the extradited person.

The requesting party shall bear all the costs for the extradition and transit travel of the extradited

³² Law No. 132-IIQ of the Republic of Azerbaijan "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001: Article 3, Note: paragraph 1, clauses «s» and «ç».

³³ Law No. 132-IIQ of the Republic of Azerbaijan "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001: Article 3, Note: paragraph 3; Criminal Code of the Republic of Azerbaijan: Article 13.3.

³⁴ Criminal Code of the Republic of Azerbaijan: Article 12.

³⁵ Constitution of the Republic of Azerbaijan: Article 53 (II).

³⁶ Law No. 132-IIQ of the Republic of Azerbaijan "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001: Article 6.

³⁷ *Ibid.*, Article 13.1.

person.³⁸ All contacts concerning the extradition of the person are to be established with the Ministry of Justice of the Republic of Azerbaijan. All the documents submitted for the extradition of the person must be translated into Azeri or one of the official languages of the UN, subject to the consent of the Ministry of Justice of the Republic of Azerbaijan.

Operative-Search Activity

Legal grounds and purposes of the operative search activity

The operative search activity is conducted by the authorised agencies listed in the criminal procedure legislation of the Republic of Azerbaijan in order to protect the lives, health, rights and liberties of people, legal interests of legal entities, state and military secrets, as well as national security against criminal attacks. Law No. 728-IQ "On Operative Search Activity" of 28 October 1999 establishes the legal framework for the operative search activity and a system of legal guarantees applicable during the operative search actions.

The purposes of the operative search activity are the following:³⁹

- detection of prepared and executed crimes;
- establishment and disclosure of perpetrated crimes;
- identification of persons who are preparing, planning to commit or have committed crimes;
- search for persons hiding from court, investigation or preliminary investigation agencies, escaping from serving penalties or reported missing;
- identification of unknown bodies.

The operative search activity is based on the principles of legality, humanism, respect for human rights and liberties, confidentiality and the coordination of overt and covert methods.

Reasons and grounds for realisation of operative search actions

The following reasons and grounds must be available for operative search actions to be carried out:⁴⁰

Reasons:

- statements of individuals;
- statements of authorised officials of companies, agencies or organisations;
- information published in the press;

³⁸ Law No. 132-IIQ of the Republic of Azerbaijan "On Hand Over (extradition) of Persons who have Committed a Crime" of 15 May 2001: Article 17.

³⁹ Law No. 728-IQ of the Republic of Azerbaijan "On Operative Search Activity" of 28 October 1999: Article 1 (III).

⁴⁰ Ibid., Article 11.

- information directly collected by entities in charge of the operative search activity;
- written requests of other entities related to the operative search activity;
- written requests of agencies protecting bodies of supreme state power and special premises of the Republic of Azerbaijan;
- written instructions from officials conducting preliminary investigations or investigations of criminal cases;
- official inquiries from foreign law-enforcement agencies and relevant international organisations;
- written requests from entities in charge of intelligence and counter-intelligence activity.

Grounds for operative search actions:

- decisions of the court (judge);
- decisions of investigation bodies;
- decisions of authorised entities of the operative search activity.

Court supervision of the operative search activity is carried out in conformity with the criminal procedure legislation of the Republic of Azerbaijan.⁴¹

The Prosecutor General and the prosecutors appointed by him/her supervise the implementation of the law by the entities in charge of the operative search activity.⁴²

Competences of entities in charge of the operative search activity

Decree No. 507 of the President of the Republic of Azerbaijan of 19 June 2001, on the distribution of competences for the implementation of operative search actions between relevant entities clearly establishes the framework of authorities.

Entities in charge of the operative search activity can take the following operative search actions:⁴³

- 1) interrogation of citizens;
- 2) investigations;
- 3) telephone interception (applied by the Ministries of National Security and of the Interior of the Republic of Azerbaijan);
- 4) control of mail, telegraphs and other correspondence (applied by the Ministry of National Security; in the case of international parcels jointly with the State Customs Committee);
- 5) collection of information from communication channels and other technical devices (applied by the Ministry of National Security);
- 6) control of mail of convicts (applied by the Ministry of Justice; in Nakhichevan by the

⁴¹ Ibid., Article 19-1.

⁴² Ibid., Article 20.

⁴³ Ibid., Article 10.

Ministry of Justice of the Nakhichevan Autonomous Republic);

- 7) inspection of transport facilities;
- 8) entry and inspection of buildings, including residences, other buildings, premises and areas of restricted access;
- 9) surveillance over buildings, including residences, other buildings, premises and areas of restricted access, transport facilities and other objects (applied by the Ministry of National Security or the State Border Service where border protection is concerned);
- 10) surveillance over individuals (applied by the Ministry of National Security, or the State Border Service where border protection is concerned);
- 11) identification of identity;
- 12) controlled purchase;
- 13) study of items and documents;
- 14) collection of specimens for comparative study;
- 15) controlled delivery;
- 16) infiltration of criminal groups and criminal targets;
- 17) foundation of legal entities (the right to the foundation of the legal entity during the operative search activity is attributed to the Ministry of National Security);
- 18) operative experiment, i.e. reproduction of model of criminal's behaviour.

INSTITUTIONAL FRAMEWORK

The President of the Republic of Azerbaijan leads the fight against terrorism, and provides manpower and logistical support for that activity.⁴⁴

In accordance with Presidential Decree No. 185 "On Implementation of the law of the Republic of Azerbaijan "On Fight Against Terrorism"" of 30 August 1999, the Ministries of National Security, the Interior, Defence, State Border Service and Special State Protection Service participate in the fight against terrorism within framework of their authority.

To provide a direct and strict chain of command in antiterrorist operations, the President, by a Decree, created an operative staff to command antiterrorist operations and appointed a chief of staff.

The activity of the operative staff is guided by the "Regulation on control of action of Anti-terrorist Operations Centre" approved by the Decree of the President of the Republic of Azerbaijan of September 17, 2007 No.626. From the beginning of the antiterrorist operation, all personnel, military personnel, employees and experts involved in the operation must answer to the Chief of staff.

⁴⁴ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 5.

The Chief of the operative staff determines the territorial limits of the operation, the particularities of the operation, and takes decisions on the deployment of the necessary forces and facilities. The Chief of the operative staff may also take other decisions, including decisions partially or temporarily restricting the rights of citizens and officials present within zone of the antiterrorist operation for the sake of their protection.

"The Model Instruction on functional tasks of the task forces created for ensuring activity of Operational Staff on management of anti-terrorist operations" was approved by the Resolution of the Cabinet of the Ministers of the Republic of Azerbaijan of May 15, 2009 No.78

The orders of the Chief of Operative staff are mandatory for all officials and citizens within the zone of the antiterrorist operation. Only the President of the Republic of Azerbaijan, who created the Operative staff to command the antiterrorist operation, can interfere in the activity of the Chief of staff during the antiterrorist operation or cancel his/her orders.⁴⁵

In accordance with the law, all state and local self-government bodies, organisations and public associations (regardless of the type of property), officials and citizens are obliged to assist state agencies in fighting terrorism. Everybody must help law enforcement agencies to disclose and prevent terrorism, for example by providing information about incidents and reports that might help to minimize any damage that that activity might cause.⁴⁶

Investigative Jurisdiction

Presidential Decree No.387 25 August 2000 abolished the previous alternative investigative jurisdiction over criminal cases concerning terrorism,⁴⁷ financing of terrorism,⁴⁸ and deliberately giving false information about terrorism,⁴⁹ Public appeals to terrorism⁵⁰, conducting exercises with a terrorism purpose⁵¹ and dissemination of information on measures taken against legalisation (laundering) of money or other property acquired in a criminal way or terrorism financing⁵² and established the Ministry of National Security as the single body of the central executive power in charge of such cases.

⁴⁵ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 7.

⁴⁶ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 6.

⁴⁷ Article 214 of the Criminal Code.

⁴⁸ Article 214-1 of the Criminal Code.

⁴⁹ Article 216 of the Criminal Code.

⁵⁰ Article 214-2 of the Criminal Code.

⁵¹ Article 214-3 of the Criminal Code.

⁵² Article 316-2 of the Criminal Code.

The prosecutors' offices and the courts supervise adherence to the law in this sphere, within the framework of their authority.

According to national legislation, the fight against terrorism and other forms of transnational organised crime is one of the main responsibilities of the Ministry of National Security.⁵³

Protection of witnesses, victims and persons assisting law-enforcement agencies

Legal grounds

The legal and social protection of witnesses, victims and persons assisting law-enforcement agencies in the Republic of Azerbaijan are set out in Law No. 585-IQ "On State Protection of Persons Participating in the Criminal Process" of 11 December 1998; Law No. 687-IQ "On Fight Against Terrorism" of 18 June 1999; Law No. 728-IQ "On Operative Search Activity" of 28 October 1999; Law No. 711-IIQ "On Intelligence and Counter-intelligence Activity" of 29 June 2004; the Criminal Procedure Code and other legal acts of the Republic of Azerbaijan.

Categories of protected persons

According to the Law "On State Protection of Persons Participating in the Criminal Process" a protected person is an individual who is the subject of a decision taken by the authorised state body on the implementation of protective measures.

The law establishes the following categories of protected persons:⁵⁴

- 1) individuals reporting to law-enforcement bodies about a crime or participating in the revealing, detection or disclosure of a crime;
- 2) victims of the crime, their legal or ordinary representatives, accusers and their representatives;
- 3) suspected or accused persons, their defence and legal representatives;
- 4) civil plaintiffs, civil defendants, their legal and ordinary representatives;
- 5) witnesses;
- 6) experts, specialists, interpreters and situation witnesses.

Protective measures can be applied to close relatives of protected persons if they have been threatened in order to influence the protected persons.

Security Actions

The following types of security actions can be applied to protected persons:⁵⁵

- 1) guarding the protected person, his/her flat and property;
- 2) providing the protected person with special devices for his/her personal defence and information about imminent threats;
- 3) temporary relocation of the protected person to a secure place;
- 4) protecting the confidentiality of information about the protected person;
- 5) changing the protected persons' working position, employment, school, or place of residence;
- 6) changing the identity documents or appearance of the protected person;
- 7) in cases established by law, holding of court hearings behind closed doors when the protected person is participating in the trial.

The clauses of the same Law are applied where necessary to safeguard protected persons placed in custody or convicts in correctional facilities during the investigation of a criminal case or during court hearings. The following additional security measures can be taken to protect such persons:

- 1) transfer from one correctional facility to another;
- 2) transfer to an isolated or single cell;
- 3) change of action of process restrictions in a way established by the criminal procedure legislation of the Republic of Azerbaijan.

The above-mentioned measures are taken only when the safety of the protected person cannot be guaranteed by other methods.

Procedures

Reliable information received by the agencies providing security about threats to kill, harm or destroy the property of protected persons because of their assistance in a criminal investigation or court hearing is a sufficient ground for the application of protective measures.

Appeals and requests from persons participating in a criminal trial for the implementation of protective measures must be examined by the bodies conducting the trial immediately, and not more than 72 hours after receipt of the application. The body conducting the criminal trial immediately informs the applicant about the decision concerning his/her appeal or request and sends him/her a copy of the relevant document.

⁵³ "Charter of the Ministry of National Security of the Republic of Azerbaijan" approved by a decree of the President of the Republic of Azerbaijan No. 43 of 27 March 2004: Article 8.5.

⁵⁴ Law No. 585-IQ of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process" No. 585-IQ of 11 December 1998: Article 3.

⁵⁵ Law No. 585-IQ of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process" of 11 December 1998: Article 7.

The applicant is entitled to appeal to the court for the implementation of protective measures within five days of his/her receipt of a copy of the decision denying his/her appeal or request for individual protection, or if he/she has not received a copy of the decision from the body conducting the investigation within seven days after filing an appeal or request.

The agency providing the security measures informs the body conducting the criminal trial about the implementation of protective measures, their results, and files inquiries about the removal of the protective measures when the situation threatening the security of the protected person is over.⁵⁶

The decision on the implementation of protective measures to safeguard protected persons is taken by the body conducting the investigation in accordance with the criminal procedure legislation. The implementation of protective measures for the protection of persons determined by that decision is entrusted to the Ministries of the Interior and of National Security of the Republic of Azerbaijan.⁵⁷

Compensation

According to the Law "On State Protection of Persons Participating in the Criminal Process" in the event of the death of a protected person assisting in a criminal investigation or court hearing, the state agency, which took the decision on the implementation of protective measures, decides on a lump sum payment from the state budget to every family member or any person formerly under the guardianship of the deceased equal to one hundred times the minimum salary.

In the event of serious bodily injury to or incapacitation of a protected person assisting in a criminal investigation or court hearing, the state agency, which took the decision on the implementation of protective measures, decides on a lump sum payment from the state budget equal to fifty times the minimum salary. Compensation for damage to the property of a protected person is paid in accordance with the procedures established by the legislation of the Republic of Azerbaijan.⁵⁸

The financial and logistical maintenance of the protective measures is covered from the state

budget or paid by the protected person him/herself, subject to his/her written consent.⁵⁹

By Law No. 836-IQ of 17 March 2000, the Republic of Azerbaijan acceded to the European Convention on the Compensation of Victims of Violent Crimes.

Legislative action for combating the financing of terrorism and money laundering

The Republic of Azerbaijan takes purposive actions against the financing of terrorism and the legalisation of the proceeds from crime.

The "Guidelines on actions to be taken by professional competitors on the securities market in order to prevent money laundering and financing of terrorism through the securities market" of 9 March 2004, are based upon the principles of the International Convention for the Suppression of the Financing of Terrorism, acceded to by Azerbaijan on 11 October 2001, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, acceded to on 4 July 2003, and prepared in accordance with the Charter of the "State Commission on Securities under the President of the Republic of Azerbaijan" approved by Presidential Decree No. 161 of 26 July 1999. They set out the plan of action to be carried out by professional competitors, such as brokers and dealers on the bonds market, to prevent money laundering and maintain transparency.

The Group of Experts against Money Laundering and Financing of Terrorism, established under the Cabinet of Ministers in 2004, in accordance with Article 4.33 of the "State Programme on Fight Against Corruption (2004-2006)" approved by Presidential Decree No. 377 of 3 September 2004, has prepared, coordinated and submitted to the President a Plan of Action against money laundering and the financing of terrorism. The Plan of Action determines the timeframe for the activity against money laundering and thus establishes the functions of the relevant state bodies.

Article 4.34 of the "State Programme on Fight Against Corruption" envisages the drafting of a law "On prevention of legalisation of proceeds from crime", the development of proposals for further improvement of national legislation in line with the relevant conventions of the UN and Council of Europe and the recommendations of the FATF. The Law of the Republic of Azerbaijan "On the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism"

⁵⁶ Law No. 585-IQ of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process" of 11 December 1998: Article 17.

⁵⁷ Decree of the President of the Republic of Azerbaijan No. 86 of 1 February 1999, implementing the Law of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process".

⁵⁸ Law No. 585-IQ of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process" of 11 December 1998: Article 22.

⁵⁹ Law No. 585-IQ of the Republic of Azerbaijan "On State Protection of Persons Participating in the Criminal Process" of 11 December 1998: Article 23.

prepared by the Group of Experts was adopted on February 10, 2009 No.767-IIIQ.

At present, the fight against the legalisation of illegally gained money and other property and the financing of terrorism is based on several legislative acts.

Article 19 (Liability of organisations for terrorist activity) of the Law "On Fight Against Terrorism" of 18 June 1999 establishes that an organisation (its branch or representation) functioning in the Republic of Azerbaijan can be closed by a court decision and in accordance with the legislation of Azerbaijan, for affiliation with a terrorist activity. Any property belonging to an organisation whose affiliation with a terrorist activity has been established under the legislation of the Republic of Azerbaijan, is to be confiscated and transferred to the state budget. The Prosecutor General and subordinated prosecutors can appeal to the court requesting to charge the organisation for its terrorist activity.⁶⁰

The article 99-5 of the Criminal Code of the Republic of Azerbaijan intends the imposition of a fine, special confiscation, deprivation of the right of a legal entity to be engaged in certain activity, liquidation of a legal entity like a criminal law measure applicable to legal entities.

In accordance with the Article 99-4.6 of the Criminal Code of the Republic of Azerbaijan Criminal law measures are applied to legal entities for commission of acts defined as terrorism, financing of terrorism, public appeals to terrorism, conducting exercises with a terrorism purpose, capture of the hostage, obviously untrue report on terrorism, gang, organisation of criminal community (criminal organisation), stealing of airship, ship or railway train, dissemination of information on measures taken against legalisation (laundering) of money or other property acquired in a criminal way or terrorism financing and other crime acts.

Under the provisions of Article 42 (prevention of money laundering) of Law No. 590-IIQ "On Banks" of 16 January 2004, banks must establish the identity of every client. During money transactions, banks have a duty to demand that the client identify the beneficiary. The opening of anonymous accounts, including savings accounts, is forbidden; moreover the legislation of the Republic of Azerbaijan allows banks to implement other requirements to stop money laundering through banks.

Many normative documents of the Central Bank of Azerbaijan refer to the problem of money laundering

⁶⁰ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 20.

and the financing of terrorism.⁶¹ These documents include requirements for a more strict verification of clients' identity.

Referring to the decision of the 18th plenary session of the Council of Europe's Committee MONEYVAL, the Cabinet of Ministers' Group of Experts against money laundering and the financing of terrorism, under the leadership of the National Bank, prepared an "Interim Report" which it has submitted to the secretariat of the MONEYVAL.

For the purposes of detecting and preventing the acts aimed at the legalisation of criminally obtained funds or other property and the financing of terrorism, the Law of the Republic of Azerbaijan "On the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism" of February 10, 2009 No.767-IIIQ regulates the relations of the citizens of the Republic of Azerbaijan, foreigners, stateless persons, legal persons carrying out transactions with the funds and other property, as well as the activity of supervision authorities empowered to supervise execution of transactions with funds or other property on the territory of the Republic of Azerbaijan.

In accordance with the aforementioned Law criminally obtained funds or other property are funds of every kind, property, whether movable or immovable, corporeal or incorporeal, tangible or intangible, legal documents evidencing the title to such property, obtained directly or indirectly through the commission of an offence provided by the Criminal Code of the Republic of Azerbaijan. Financing of terrorism — wilful provision or collection funds or other property by any means, in full or in part, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to finance the preparation, organisation or carrying out by a person or by a group (organisation, community) of persons of an act which constitutes a crime within the scope and as defined in the articles 102, 214, 215, 219, 219-1, 277, 278, 279, 280, 282 of the Criminal Code of the Republic of Azerbaijan, or by an individual terrorist or by a terrorist organisation⁶².

⁶¹ "Regulations on regime of foreign currency transactions of residents and non-residents in the Republic of Azerbaijan" No. 12 issued by the Central Bank of Azerbaijan on 27 May 2002: Article 7.4 – Functions of currency control agent of the entrusted banks; "Procedure regulations for revisions in banks" No. 19 of 3 November 2004: Article 4.4 – Preparation for revision; "Regulations for opening, administration and termination of banking accounts" No. 19 of 3 November 2004: Article 1.1 – General articles.

⁶² The Law of the Republic of Azerbaijan "On the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism" of February 10, 2009 No767-IIIQ: Article 1.0.2, 1.0.4

In accordance with the Law measures of control carried out by the financial monitoring organ, which completed monitoring mechanism, based on the information on transactions with the funds or other property received from the monitoring entities, lawyers, notaries, other persons providing legal or audit services, other persons involved in monitoring, the supervision authorities, or other known sources.

The Financial Monitoring Service under the Central Bank is the state authority, which implements competences in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism in the Republic of Azerbaijan – created by the Decree of the President of the Republic of Azerbaijan of February 23, 2009 No. 66.

In "The Statute of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan" approved by the Decree of the President of the Republic of Azerbaijan of July 16, 2009 No. 122 the scope of activity of the Financial Monitoring Service are implements state policy and ensures supervision in the relevant sphere, coordinates the activity in the relevant sphere of monitoring entities, other persons involved in monitoring, supervision authorities and other state authorities, collects and analyses the information received from them, provides application of unified information system in the relevant sphere⁶³.

In accordance with this Law "Dissemination of information on measures taken against legalisation (laundering) of money or other property acquired in a criminal way or terrorism financing" was included as an Article 316-2 into the Criminal Code of the Republic of Azerbaijan and investigation of this crime carried out by the Ministry Of National Security of the Republic of Azerbaijan⁶⁴.

Also, "Violation of legislation on fight against laundering of money or other assets obtained by criminal means and funding of terrorism" as an Article 348-3 was included into the Code of the Republic of Azerbaijan On administrative violations⁶⁵.

The crimes of "terrorism"⁶⁶ and "financing of terrorism"⁶⁷ are classified as particularly serious and serious crimes respectively. Article 28.2 of the Criminal Code determines that the act of preparing the perpetration of a serious or particularly serious crime is subject to criminal prosecution. To this end, the property and other assets used for the

preparation of an act of terrorism or collected for the perpetration of a terrorist crime shall be seized in accordance with Article 51 (confiscation of property) of the Criminal Code and paragraph XXXII (seizure of the property) of the Criminal Procedure Code of the Republic of Azerbaijan.

Following the adoption of the new Law No. 92-IIIQD "On Amendment of Some Legislative Acts of the Republic of Azerbaijan with a view to the Fight Against Corruption" of 7 April 2006, new articles have been introduced into the Criminal Code:

- "51.3. Illegally gained property belonging to a convict or his/her money or other property equal to the value of the proceeds from the crime, where this has been spent, alienated or for other reasons cannot be exacted to the state treasury, shall be confiscated";
- Article 193-1 establishes criminal liability for "Legalisation of illegally gained money, assets or other property".⁶⁸

"The list of countries (territories) that are suspected in either legalisation of criminally obtained funds or other property, financing of terrorism, support of the dangerous trends of transnational organised crime, armed separatism, extremism and mercenary, participation in illegal drug dealership and other psychotropic substances production or circulation thereof, or the countries (territories) that do not require disclosing identification information when conducting financial transactions" approved by the Order of the director of Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan of February 14, 2014 No.F-006.

"Regulation on determination of the list of countries (territories) that are suspected in either legalisation of criminally obtained funds or other property, financing of terrorism, support of the dangerous trends of transnational organised crime, armed separatism, extremism and mercenary, participation in illegal drug dealership and other psychotropic substances production or circulation thereof, or the countries (territories) that do not require disclosing identification information when conducting financial transactions" approved of the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan of June 25, 2010 No123.

Court jurisdiction

Legal Grounds

The legislation of the Republic of Azerbaijan concerning courts and judges comprises the Constitution of the Republic of Azerbaijan, the Law "On Courts and Judges", other legislative acts and

⁶³ www.fiu.az

⁶⁴ The Decree of the President of the Republic of Azerbaijan of July 20, 2009 No.128

⁶⁵ The Law of the Republic of Azerbaijan of June 30, 2009 No. 856-IIIQD.

⁶⁶ Article 214 of the Criminal Code.

⁶⁷ Article 214-1 of the Criminal Code.

⁶⁸ Criminal Code of the Republic of Azerbaijan: Article 193-1.

international agreements concluded by the Republic of Azerbaijan.⁶⁹

According to the Constitution, the courts are the only bodies with judicial power,⁷⁰ and President is the guarantor of the independence of the judiciary.

Cases are heard in courts of first instance, appeal and cassation. In accordance with and in the order provided by the legislation of the Republic of Azerbaijan, cases are heard either in collegial manner or by one judge. In courts of first instance cases are heard by one or three judges, or with the presence of a jury; in the courts of appeal and cassation justice is administered by three or more judges.

Under the provisions of Article 69.1 of the Criminal Procedure Code, the Court for Serious Crimes examines cases and materials on serious and particularly serious crimes, including terrorism. As part of the judicial system of the Republic of Azerbaijan, the Court for Serious Crimes has the same status as a court of first instance.

Under Article 25 of the Constitution, justice is administered in conformity with the principle of equality of every person before the law and court, regardless of his/her race, nationality, religion, language, gender, origin, proprietorship status, service position, convictions, membership in political parties, trade unions or other public associations. The principle of the presumption of innocence, reflected in Article 63 of the Constitution, is ensured by the court of justice.

Court Procedures

The courts pronounce sentences, verdicts, resolutions and decisions on behalf of the Republic of Azerbaijan. Court resolutions coming into force in accordance with the legislation of the Republic of Azerbaijan are mandatory for all physical and legal entities in the Republic of Azerbaijan and must be executed fully and in a timely manner. Failure to execute legally enforced court decisions is subject to the liability envisaged by the legislation of the Republic of Azerbaijan.

Paragraph V of Article 127 of the Constitution of the Republic of Azerbaijan establishes that hearings at all courts must be open to the public, except for the cases allowed by legislation to be heard in closed sessions. Except for the cases listed in the legislation, no hearing can be held in the absence of

the accused person. In all cases, court decisions must be pronounced in open sessions.

In accordance with the Law "On Fight Against Terrorism", the court (judge) can decide to hold hearings of cases concerning terrorist crimes and compensation of damage caused by terrorist attacks in closed sessions.⁷¹

Paragraph VII of Article 127 of the Constitution establishes that court proceedings must be based upon principle of contest providing legal equality of parties.

Court proceedings are held in the state language of the Republic of Azerbaijan or in the language of the majority of the population in its district. The rights of persons participating in court, but not speaking the language of the trial, to study case materials in full, to use an interpreter or to speak their native language are ensured.⁷²

The court jurisdiction established by the legislation of the Republic of Azerbaijan over criminal cases cannot be changed and the unjustified withdrawal of a case from execution by the legally authorised judge is forbidden.

Article 65 of the Constitution provides for the rights of every person convicted by the court to submit appeals to the court of higher instance for the revision of the pronounced sentence, as well as to appeal for a pardon or mitigation of the punishment.

These rights are set out in Article 35 of the Criminal Procedure Code:

"35.1. In the cases and order established by this Code the participant of the criminal process enjoys the right to bring complaint to the court of higher instance concerning decisions and actions taken by the lower court in process of criminal case and study of other materials relevant to criminal prosecution.

35.2. The convicted person bringing complaint to the court of higher instance enjoys the following rights:

35.2.1. to request revision of the court sentence convicting him as it was illegal or groundless;

35.2.2. to request relief of heavy penalty determined by the announced sentence.

35.3. The rights of convicted person established by the Articles 35.1 and 35.2 of this Code cannot be restricted".

INTERNATIONAL CO-OPERATION

In accordance with the international agreements it has signed, the Republic of Azerbaijan co-operates in combating terrorism with foreign countries, their

⁶⁹ Law No. 310-IQ of the Republic of Azerbaijan "On Courts and Judges" of 10 June 1997: Article 2.

⁷⁰ The Constitution of the Republic of Azerbaijan: Articles 7(III), 8 (IV).

⁷¹ Law No. 687-IQ of the Republic of Azerbaijan "On Fight Against Terrorism" of 18 June 1999: Article 18.

⁷² The Constitution of the Republic of Azerbaijan: Article 127 (X).

law-enforcement agencies and relevant international organisations. To strengthen co-operation against terrorism in the framework of both regional and universal organisations, Azerbaijan has acceded to international and regional antiterrorist conventions.

The Constitution of the Republic of Azerbaijan has determined international agreements concluded by the Republic of Azerbaijan as an integral part of its national legal system. In the case of contradictions between domestic legislative documents and international agreements to which the Republic of Azerbaijan is a signatory, the latter shall prevail.⁷³ Thus the concluded international agreements become an integral part of the legal system of Azerbaijan and are enforced across the territory of the country.

United Nations

To implement UN Security Council Resolutions 1368 of 12 September 2001, and 1373 of 28 September 2001, the Republic of Azerbaijan acceded to all of the UN conventions and protocols on the fight against terrorism between 1999 and 2003.

The Republic of Azerbaijan plays an active role in the consultations on the drafting of the "Comprehensive Convention against Terrorism" in the framework of the Sixth Committee of the UN GA. Azerbaijan will study the issue of accession to that Convention as soon as the final text has been adopted.

Organization for Security and Cooperation in Europe

As a member of the Organization for Security and Cooperation in Europe, the Republic of Azerbaijan has acceded to instruments containing the fundamental principles of that organisation, including the Final Act of Helsinki, the Paris Charter for New Europe, the OSCE Charter for the European Security and other important documents reflecting the principles of the fight against terrorism.

European Union

To intensify the relations of the Republic of Azerbaijan with the European Union and to ensure effective and coordinated work for the development of the Plan of Action for Azerbaijan in line with the EU's policy of New Neighbourhood, the President issued a Decree of 1 June 2005 on the establishment of a State Commission for integration with Europe. The above-mentioned Plan of Action is expected to contribute significantly to co-operation in combating terrorism and transnational organised crime.

Council of Europe

Since its admission to the Council of Europe (25.01.2001), the Republic of Azerbaijan has accomplished its obligations undertaken before the Council of Europe, in accordance with PACE Resolution 222 (2000). The Republic of Azerbaijan has acceded to the majority of the European conventions and protocols on fight against terrorism and organised crime (see the table of ratified instruments below).

The Republic of Azerbaijan took part in the activities of the Council of Europe Multidisciplinary Group on International Action against Terrorism (GMT),⁷⁴ and now participates in the work of the Council of Europe's Committee of Experts on Terrorism.

NATO

Endorsement of the Framework Document of the NATO Partnership for Peace Programme on 4 May 1994, was the start of the important process for the Republic of Azerbaijan's integration into the Euro-Atlantic space. On 14 November 1997, the President signed Decree No. 692 "On Actions for Further Enforcement of Co-operation between the Republic of Azerbaijan and NATO" providing for the establishment of a special Commission, which has been enlarged in recent years.

In May 2004, the Republic of Azerbaijan submitted the Presentation Document of the Individual Partnership Action Plan to the NATO Euro-Atlantic Partnership Council. On 27 May 2005, the NATO EAPC approved the Individual Partnership Action Plan (IPAP), including concrete actions for the achievement of the goals set out in the Presentation Document. On 3 August 2005, the President signed Decree No. 937 giving necessary instructions to the relevant state bodies for the execution of the Republic of Azerbaijan's obligations under the IPAP.

As a country taking an active part in the international efforts to combat terrorism, Azerbaijan attaches special importance to the NATO Partnership Action Plan against Terrorism (PAP-T). Significant actions in the sphere of combating terrorism have been carried out by Azerbaijan since the adoption of the PAP-T. Delegations from more than 30 countries participated in the EAPC Workshop "Operationalization of PAP-T: Partners' Contribution to and Participation in NATO Operations to Combat Terrorism" held in the city of Baku, from 6 to 7 July 2006.

⁷³ The Constitution of the Republic of Azerbaijan: Articles 148(II), 151.

⁷⁴ Developments at National Level – Azerbaijan, GMT (2002) Inf 27. Strasbourg, 25 September 2002.

Commonwealth of Independent States

The Republic of Azerbaijan is a signatory to the following CIS documents on co-operation in the fight against terrorism and organised crime:

- Agreement of the Commonwealth of Independent States member states on co-operation in the fight against crime (25.11.1998);
- Agreement of the Commonwealth of Independent States member states on co-operation in the fight against terrorism (04.06.1999);
- Agreement of the Commonwealth of Independent States member states on co-operation in the fight against crimes related to computer information (01.06.2001);
- The Protocol approving the Charter of Guidelines for organisation and execution of joint antiterrorist actions on territories of the CIS member states (07.10.2002).
- Agreement on Protection of Crime Judgement Participants (28.11.2006).
- Agreement on Exchange of information in the sphere on struggle on criminality (22.05.2009).

The Republic of Azerbaijan has also taken an active part in the drafting of and has signed the following documents on fighting terrorism of the Council of leaders of security bodies and special services of the CIS member states:

- Agreement on co-operation in the fight against organised crime;
- Agreement on co-operation to ensure protection of the civil aviation from acts of illegal interference;
- Protocol on co-operation in the fight against terrorism;
- Protocol on actions for the protection of critical industrial, transport and communication infrastructure and prevention of possible acts of nuclear, chemical and bacteriological terrorism;
- Protocol on co-operation and interaction between security bodies and special services of the CIS member states in the fight against terrorism, separatism and other extremist activity carried out under the cover of religious, ethnic and political action.

The Republic of Azerbaijan co-operates with the CIS Antiterrorist Centre in the information analysis and consultation spheres. Azerbaijan contributed to the development of the CIS Antiterrorist Centre's "Unique list of possible terrorist and extremist organisations, whose activity in the territories of the CIS member states must be banned" and added many organisations to that list.

GUAM Organization for Democracy and Economic Development

On 23 May 2006, in Kiev (Ukraine), the heads of state of Azerbaijan, Georgia, Moldova and Ukraine signed the Charter of the GUAM Organization, thus establishing its legal and organisational principles, which completed its transformation from a regional consultative conference of multilateral diplomacy into a regional intergovernmental organisation. In its present form, the GUAM fully meets the requirements concerning regional organisations set forth in the Section VIII of the UN Charter.

Co-operation in the fight against international terrorism, extremism, separatism, various forms of transnational organised crime and other serious crimes is one of the top purposes of the GUAM Organization for Democracy and Economic Development.

The Republic of Azerbaijan is party to the following GUAM documents on the fight against terrorism:

- Agreement "Between Governments of the GUAM member states on co-operation in the fight against terrorism, organised crime and other dangerous crimes" signed at the GUAM Summit in Yalta, 20 July 2002;
- Agreement "On establishment of the GUAM Virtual Centre and the GUAM Intergovernmental Information-Analysis System for combating terrorism, organised crime, proliferation of drugs and other dangerous crimes" signed in Yalta, Ukraine, on 4 July 2003.

Organization of the Black Sea Economic Cooperation

The Republic of Azerbaijan adopted Law No. 296-IIQ "On accession to the "Agreement between the Governments of the Organization of the Black Sea Economic Co-operation member states on co-operation in the fight against crime and especially its organised forms" done in the city of Kerkira, Greece, on 2 October 1998" of 9 April 2002, and Law No. 523-IIQ of 5 December 2003, on accession to the Additional Protocol done in Kiev, on 15 March 2002.

| Relevant Council of Europe conventions – Azerbaijan | Signed | Ratified |
|--|---------------|-------------------------|
| Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [CETS No. 198] | | |
| Council of Europe Convention on the Prevention of Terrorism [CETS No. 196] | 16.05.2005 | 04.04.2014 |
| Convention on Cybercrime [ETS No. 185] | 30.06.2008 | 15.03.2010 |
| Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems [ETS No. 189] | | |
| Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141] | 07.11.2001 | 04.07.2003 |
| European Convention on the Compensation of Victims of Violent Crimes [ETS No. 116] | | 28.03.2000 accession |
| European Convention on the Suppression of Terrorism [ETS No. 90] | 07.11.2001 | 11.02.2004 |
| Protocol amending the European Convention on the Suppression of Terrorism [ETS No. 190] | 12.05.2004 | 02.12.2008 |
| European Convention on the Transfer of Proceedings in Criminal Matters [ETS No. 73] | 07.11.2001 | |
| European Convention on Mutual Assistance in Criminal Matters [ETS No. 30] | 07.11.2001 | 04.07.2003 |
| Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 99] | 07.11.2001 | 04.07.2003 |
| Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 182] | | |
| European Convention on Extradition [ETS No. 24] | 07.11.2001 | 28.06.2002 |
| Additional Protocol to the European Convention on Extradition [ETS No. 86] | 07.11.2001 | 28.06.2002 |
| Second Additional Protocol to the European Convention on Extradition [ETS No. 98] | 07.11.2001 | 28.06.2002 |
| Third Additional Protocol to the European Convention on Extradition [CETS No. 209] | 14.05.2012 | 08.01.2014 |
| Fourth Additional Protocol to the European Convention on Extradition [CETS No. 212] | | |

| Relevant United Nations conventions – Azerbaijan | Signed | Ratified |
|--|---------------|-----------------|
| Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963) | | 09.12.2003 |
| Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970) | | 09.11.1999 |
| Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971) | | 09.11.1999 |
| Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1988) | | 09.11.1999 |
| Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973) | | 02.02.2001 |
| International Convention against the Taking of Hostages (New York, 1979) | | 09.11.1999 |
| Convention on the Physical Protection of Nuclear Material (Vienna, 1979) | | 09.12.2003 |
| Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005) | | |
| Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988) | | 09.12.2003 |
| 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005) | | |
| Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988) | | 09.12.2003 |
| 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005) | | |
| Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991) | | 09.11.1999 |
| International Convention for the Suppression of Terrorist Bombings (New York, 1997) | | 02.02.2001 |
| International Convention for the Suppression of the Financing of Terrorism (New York, 1999) | | 01.10.2001 |
| International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005) | | 02.12.2008 |