



Transparency  
Azerbaijan



# EUROPEAN NEIGHBOURHOOD POLICY

MONITORING AZERBAIJAN'S  
ANTI-CORRUPTION COMMITMENTS 2010

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## **Acknowledgements**

Transparency Azerbaijan wishes to gratefully acknowledge the valuable input of all those individuals, including representatives from governmental and non-governmental institutions, who contributed to the development of this report. The project team at TI Secretariat in Berlin and Transparency International Liaison Office to the EU in Brussels are also grateful to TI staff members in Yerevan, Baku and Tbilisi for their continuing efforts. Finally we wish to extend our appreciation to the Norwegian Ministry of Foreign Affairs who provided the financial support for this project.

## Executive Summary

This report is part of an ongoing process of monitoring the degree to which the Government of Azerbaijan has complied with its 2006 European Neighbourhood Policy (ENP) commitments.<sup>1</sup> It focuses on progress made during 2010 in addressing judicial reform, civil service reform and the fight against corruption, as defined by compliance with the Council of Europe Group of States against Corruption (GRECO) recommendations.<sup>2</sup> These three elements constitute the first priority area of the EU/Azerbaijan Action Plan.

	2009 Compliance Score	2010 Compliance Score
Strengthening the Judiciary	33/52 (63%)	39/58 (67%)
Civil Service Reform	22/50 (44%)	28/50 (56%)
Implementation of GRECO	23/36 (64%)	24/36 (67%)

### Judicial reform

There are two programmes to support judicial reform; the first is the government supported State Program on the Development of the Justice Sector,<sup>3</sup> which has been running since 2009 and due to complete in 2013. The second is a World Bank Modernization of Justice Project running between 2006 and 2011.<sup>4</sup> Both programmes aim to modernise the judiciary and enhance the administration of justice, but despite these programmes, there was no significant progress in 2010.

As a result, the judiciary remains largely under the control of the executive branch and the laws regulating it are not supported by effective implementation or enforcement mechanisms. In addition, there are no impartial systems in place to evaluate judges' performance, leading to lack of discipline for poor performance, and enabling arbitrary decisions on promotions. The low salaries of administrative staff also contribute to weak governance and low trust in the justice system, which has been recognised by representatives of the justice system.<sup>5</sup> The execution of court decisions remain a serious challenge, including the implementation of the rulings of the European Court of Human Rights.

### Public sector reform – civil service administration

There has been considerable progress in recruitment practices and professional training, and training in ethics and integrity has improved and even gained momentum in 2010. There remain considerable shortcomings in managerial skills, however, and there is a lack of mechanisms to protect civil servants from the biased decisions of their superiors. Levels of remuneration for civil servants also remain low, providing incentives for poorly paid officials to take advantage of opportunities, such as corruption, to increase their incomes.

There is a need for further reform of the civil service to ensure high levels of accountability. The rules of procurement – a prime opportunity for public sector corruption – have been strengthened, but the process remains rather obscure. This means that government officials are reported to continue the

<sup>1</sup> EU Azerbaijan Action Plan; available at: [http://ec.europa.eu/world/enp/pdf/action\\_plans/azerbaijan\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf).

<sup>2</sup> Joint First and Second Round Evaluation Compliance Report on Azerbaijan, dated 10 October 2008; and Addendum to the Compliance Report on Azerbaijan Joint First and Second Evaluation Round, dated 1 October 2010; available at: [www.coe.int](http://www.coe.int).

<sup>3</sup> Interview with Minister of Justice Mr. Fikrat Mammadov, dated 16 February 2010; available at:

[http://www.judicialcouncil.gov.az/e\\_view\\_index.php?id=23](http://www.judicialcouncil.gov.az/e_view_index.php?id=23).

<sup>4</sup> Judicial Modernization Project implemented by World Bank in the Republic of Azerbaijan; available at: <http://siteresources.worldbank.org/AZERBAIJANEXTN/Resources/301913-1287044230041/Judicial.pdf>.

<sup>5</sup> Interview of chairman of the Supreme Court Ramiz Rizayev, dated 11 November 2010; available at: [www.news.day.az](http://www.news.day.az).

practice of favouring 'well-connected' companies and individuals when awarding contracts, rather than following transparent and equitable procurement guidelines.<sup>6</sup>

## **GRECO implementation**

An analysis of the implementation of the GRECO recommendations reveals substantial progress in the fight against corruption. A National Data Base of Corruption Related Offences<sup>7</sup> has been created with analytical reports being made public through the media. The government has also made efforts to tackle money laundering, which have been commended and received international appreciation. The MONEYVAL Committee of the Council of Europe on AML/CFT has recommended the country's development as a model for the legislative system,<sup>8</sup> and has assigned Azerbaijan to evaluate systems in Moldova.<sup>9</sup> A key GRECO recommendation aimed to introduce new provisions for the confiscation of the proceeds of corruption, including assets held by third parties is present on paper, but there is little evidence of its effective implementation.

## **Recommendations**

In order to deliver on its ENP commitments, and improve governance, Transparency International encourages the government of Azerbaijan to carry out the following recommendations:

### ***Judicial reform***

#### *Independence and accountability:*

- Ensure that there is complete separation of powers between the judiciary and the executive, including financial independence.
- Increase the salaries of judicial clerks.

#### *Administration with transparency and equity:*

- Apply a system that ensures cases are distributed evenly between judges and that this system is managed without undue influence from outside powers.
- Enhance transparency at all stages of litigation by publishing the verdicts of the lower instance courts and using modern technology to record court hearings.
- Establish a robust system of free public defence by strengthening the role of the Azerbaijan Bar Association and providing it with greater resources.
- Ensure tighter control over the implementation of court decisions through an increased emphasis on monitoring by the Ministry of Justice.

#### *Training and standards:*

- Ensure that provisions allowing the bypassing of exams are stopped and all employees are fully trained and able to carry out their responsibilities.
- Create clear and transparent systems to conduct performance assessments and where standards are lacking provide follow up procedures for training and further assessment.

### ***Public sector reform***

#### *Administration with transparency and equity:*

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<sup>6</sup> 2010 Annual Report of State Procurement Agency of the Republic of Azerbaijan; available at: <http://tender.gov.az/new/?inc=report&rep=2010>.

<sup>7</sup> OECD Monitoring Report; available at: <http://www.oecd.org/dataoecd/8/11/44996103.pdf>.

<sup>8</sup> 33<sup>rd</sup> Plenary Session of MONEYVAL Secretariat, September 2010. MONEYVAL is a Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism.

<sup>9</sup> 22<sup>nd</sup> Plenary Session of the Financial Action Task Force, October 2010; available at [www.fatf-gafi.org](http://www.fatf-gafi.org).

- Amend the framework for civil service promotions and rotations, to ensure that the system is based on performance and ensure transparency in order to better protect civil servants from discretionary decisions by their supervisors.
- Create a system to regulate and make necessary amendments to the legislation to make public the financial declarations of civil servants.
- Introduce internal control systems to ensure the protection of whistleblowers when they report illegal practices.
- Ensure better transparency in the system of public procurement.

*Training and capacity building:*

- Increase the capacity of the civil service by conducting regular training on managerial skills and competencies.

**GRECO recommendations**

*Legislation and institution building:*

- Introduce laws and supporting regulations to address: the criminal accountability of legal persons; the submission of financial declarations by public officials; and conflicts of interest, including withholding the right for civil servants to hold certain positions in legal entities outside the public service.
- Introduce an obligation on public servants to report suspicions of corruption, provide procedures through which they can do so, and ensure protection for whistleblowers.
- Establish an agency on Information Matters or an Information Ombudsman, with appropriate capacity and independence to inform the public of government activities.
- Apply new legislation on the confiscation of the proceeds of corruption and ensure that the implementation of such legislation is reported in the media.

*Training and capacity building:*

- Increase capacity building programmes for judges, judicial clerks, court executors and law enforcement officers.
- Provide support for civil society to independently monitor the implementation of newly adopted regulations.

## Introduction

The European Neighbourhood Policy (ENP) is a framework for bilateral agreements between the European Union (EU) and its neighbours to the south and east. Its aim is to avoid 'the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned'. Within this framework, Action Plans are designed to outline the specific commitments of states in the context of their relationships with the EU. There are many policy areas covered by the Action Plans, but commitments to anti-corruption and good governance feature prominently.

Azerbaijan adopted its Action Plan in 2006, as a continuation of the earlier signed EU-Azerbaijan Partnership and Cooperation Agreement. It laid out a series of targeted reforms to be achieved by 2011 in order to guide Azerbaijan towards a more democratic and lawful society, with legal and economic systems pegged to European and international standards. The Action Plan sets out 10 policy areas for reform,<sup>10</sup> and a series of benchmarks against which progress can be judged. As such, a continuous assessment of Azerbaijan's implementation of the Action Plan is an essential component of the reform agenda and the ENP process. Civil society organisations (CSOs) have been at the centre of this process and in 2008 and 2009 the European Commission also published its own assessments.

This report considers the three main elements of Azerbaijan's reform agenda: judicial reform, civil service reform and the implementation of international anti-corruption conventions. It constitutes civil society independent monitoring of the process and provides recommendations for government improvements.

The first two areas are considered to be a particular source of concern in Azerbaijan. A well-functioning judiciary is vital for the promotion of democracy, human rights and economic growth. The civil service is similarly important, as it is at the core of the government's ability to deliver on its responsibilities, including social services and the protection of rights.

Finally, as corruption is a poison to any reform process, and is corrosive to efficiency and equality in public and private life, an anti-corruption strategy is central to the Action Plan. While many aspects of the government's anti-corruption strategy have been successful, it is clear that continued vigilance is essential. Therefore, the Action Plan's requirement to implement the recommendations of the Council of Europe Group of States against Corruption (GRECO) remains highly relevant.

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<sup>10</sup> (1) Contribution to a peaceful solution of the Nagorno-Karabakh conflict; (2) Strengthening democracy in the country, including through a fair and transparent electoral process; (3) Strengthening the protection of human rights and of fundamental freedoms and the rule of law; (4) Improving the business and investment climate, particularly by strengthening the fight against corruption; (5) Improving the functioning of the customs' service; (6) Support balanced and sustained economic development, including protection of the environment; (7) Further convergence of economic legislation and administrative practices; (8) Strengthening EU-Azerbaijan energy bilateral cooperation, and energy and transport regional cooperation; (9) Enhancement of cooperation in the field of justice, freedom and security, including in the field of border management; (10) Strengthening regional cooperation.

## Methodology

The European Commission (EC) carries out periodic reviews of ENP implementation. However, many civil society organisations, including Transparency International's national chapters, also independently monitor government compliance. The impact of this work has been limited in the past, due to lack of an analytical monitoring framework, clear benchmarks and timelines. This report seeks to address these shortcomings by using an indicator-based framework to assess governance and anti-corruption activities. It is the second progress report to monitor ongoing developments and updates the first report published in May 2010.<sup>11</sup>

The indicators used in this analysis were developed by Transparency International Secretariat, in consultation with national chapters in Armenia, Azerbaijan and Georgia. This involved analysing the wording of each of the objectives of the Action Plan and identifying the elements relating to governance and anti-corruption activities. The three emerging core areas – judicial reform, public sector reform and anti-corruption activities related to the GRECO obligations – were divided into sub-categories in line with the principles of independence, transparency, accountability and integrity. Based on international standards and best practice, scoring systems were devised for each indicator, allowing for aggregation across the indicators to obtain a score for each core area, to be complemented by qualitative analysis.

The data on which the assessments were made are based on desk reviews of legislation and relevant policy documents, as well as interviews with key stakeholders conducted between February and March 2011. The report covers progress made during the calendar year 2010; thus legislation adopted in 2010, but entering into force in 2011 are not reviewed, and consequently no data was collected on its enforcement.

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<sup>11</sup> The report is available at: [www.transparency.az](http://www.transparency.az).

## Research findings

Throughout 2010 anti-corruption activities in Azerbaijan gained momentum. An extended meeting of the State Anti-Corruption Commission, convened on 27 January 2011, discussed the progress and the new government targets that had been established at the President's speech at the 14 January 2011 Cabinet of Ministers meeting. The President called for an elimination of monopolies and the creation of an environment for free competition in the market. He also supported taking measures against artificial price rises, stopping unnecessary audits and inspections of private entities by public agencies, preventing tax evasion and called for respective bodies to systematically combat corruption. Finally he instructed the government to work towards building public trust.<sup>12</sup>

### Objective one: Strengthening the Judiciary

	2009 Compliance Score	2010 Compliance Score
<b>Overall Score</b>	33/52 (63%)	39/58 (67%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
<i>Independence of Judiciary</i>	14/24 (58%)	14/24 (58%)
<i>Judicial Human Resources</i>	4/4 (100%)	4/4 (100%)
<i>Access to Justice</i>	2/4 (50%)	3/4 (75%)
<i>Judicial Resources</i>	6/8 (75%)	6/8 (75%)
<i>Transparency</i>	7/12 (58%)	7/12 (58%)
<i>Enforcement</i>		
<i>Judicial Integrity</i>		

#### Sub-Objective One: Independence of the Judiciary

**Indicators:** To what extent are there legal provisions in place requiring that the selection and promotion of judges be based on merit?

**Compliance Score: 1**

#### 2010 Updates

According to a statement by the Ministry of Justice, the protocols for regulating the selection of judges have received a high assessment from Council of Europe experts.<sup>13</sup> Despite this, there have been no legislative developments in this area since 2009 and there are no impartial systems in place to conduct performance evaluations, creating opportunities for arbitrary decisions.

#### 2009 Notes

The selection process for position of judges as envisaged in the Law on Courts and Judges is based on written and verbal exams, organised by the Judges Election Committee under the Judicial Legal

<sup>12</sup> See: <http://www.525.az/view.php?lang=az&menu=17&id=25911>.

<sup>13</sup> See Letter from Ministry of Justice, dated 28 April 2010; Rules of Selection of Non-judicial Candidates to Vacant Positions of Judges, dated 11 March 2005; and the Judges Selection Charter, dated 11 March 2005.

Council, the governing body for the judicial system.<sup>14</sup> Upon completion of long-term training by successful candidates, this Committee reviews the accomplishments of the trainees, interviews them and recommends the list for appointment by the executive branch.

The Law on Courts and Judges also provides for the special order of selection to the position of judges, allowing avoidance of procedures envisaged in Article 93-3 of the current law.<sup>15</sup> Provided that candidates are eligible under general requirements and if they additionally enjoy authority in the sphere of jurisprudence, and have 20 years' experience in the profession and high moral standards, they can be appointed by executive authorities for the position of senior judges upon the recommendation of the Judges Selection Commission.<sup>16</sup> The latter provisions seem to be rather broad and may allow for arbitrary decisions.

Promotion is based on attestation and there are no clear systems in place to conduct and execute impartial performance assessments, which allows space for arbitrary decisions.

### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, to what extent is the selection and promotion of judges based on merit?

**Compliance Score: 1**

### **2010 Updates**

In 2010 the judicial corps were reinforced with new recruits; the President appointed 78 new judges, in addition to the 157 appointed through the competitive 'test system'.<sup>17</sup>

In September, in response to criticism from CSOs, the Legal Judicial Council invited observers to view the final stage of the judicial selection process. Roughly 50 observers from civil society organisations – including Transparency Azerbaijan – attended.<sup>18</sup> There were no violations observed during this particular session. Despite this apparent willingness to involve civil society, however, there remain grave concerns regarding the process and there is little real evidence to suggest that selection and promotion of judges is based on merit.

### **2009 Notes**

Transparency Azerbaijan is often invited to be part of the group of independent observers for the first two selection stages for judges (contrary to the law described above, both stages are conducted in written form – a test and an essay), but never to the final, decisive, face-to-face interview. Final selection is based on rather broadly defined criteria, and according to competition participants (both successful and unsuccessful), selection is not based on merit.<sup>19</sup> Therefore, one may draw a conclusion that there is no adherence to Article 93-3 of the Law on Courts and Judges. What is more, the law does not say anything about the duration of training courses for successful semi-finalists, after which a candidate is invited to an interview. In real life, the courses take up six months of study at the Academy of Justice and a further three months of practice in the courts.<sup>20</sup> Furthermore, even with selected candidates, the law does not clarify the processes of appointment of judges. This uncertainty may result in a situation in which selected candidates for the post of judge have to wait for their appointment for

<sup>14</sup> Article 93-3 of the Law on Courts and Judges, dated 10 June 1997; The Judges Election Committee was established by the Legal Judicial Council as envisaged by Article 14 of the Law on the Legal Judicial Council, dated 28 December 2004; and Judicial Legal Council was established under the Presidential decree 30, dated 1 December 1998 and functions in accordance with the Law on the Legal Judicial Council, dated 28 December 2004.

<sup>15</sup> Article 93-4 of the Law on Courts and Judges, dated 10 June 1997.

<sup>16</sup> Article 126 of the Constitution of Azerbaijan Republic.

<sup>17</sup> Official Bulletin of the Ministry of Justice, 'Judicial Reform Successfully Continues', 26 January 2011; see [http://www.justice.gov.az/view\\_full.php?id=247](http://www.justice.gov.az/view_full.php?id=247).

<sup>18</sup> See: [www.day.az](http://www.day.az), 16 September 2010.

<sup>19</sup> Source: Interview with judges and semi-finalists, dated 19 March 2010.

<sup>20</sup> Source: Interview with Aliovsat Aliiev, chairman of Information and Society Public Union, dated 18 March 2010.

years.<sup>21</sup> Given the evidence presented here on the selection of judges, it is unlikely that promotions are entirely based on merit.<sup>22</sup>

#### **Sub-Objective One: Independence of Judiciary**

**Indicators:** To what extent are there legal provisions which provide for security of tenure (to prevent judges from being threatened with arbitrary termination of their contract)?

**Compliance Score: 2**

#### **2010 Updates**

There were no new developments in this area.

#### **2009 Notes**

According to the Constitution, judges are independent, accountable only to the Constitution and laws of the Azerbaijan Republic, and are irremovable during their term of office.<sup>23</sup> Chairpersons and deputy chairpersons of courts, as well as chairpersons of court boards, are selected from among judges for a period of five years and cannot hold these positions in respective courts for more than two terms.<sup>24</sup> Other judges are appointed for the period of five years, and if no professional deficiencies are found when evaluating their activities (i.e. if a judge fully fulfils his/her obligations as set forth by Articles 99 and 99-1 of the Law on Courts and Judges), with the suggestion of Judicial Legal Council their mandate can be prolonged until the end of their electoral qualification – 65 years. In special cases this term, again at the suggestion of Judicial Legal Council, could be prolonged until the judge reaches the age of 70 years.<sup>25</sup>

Irrevocability and inviolability during the term of office of judges are also covered by other statutory acts.<sup>26</sup> In addition, the Constitution provides that powers of judges can be terminated only according to the rules provided by law.<sup>27</sup> A judge's power can be suspended or terminated by the decision of Legal Judicial Council if it receives information on acts of a criminal character or other violations.<sup>28</sup> The bases for the termination of powers of judges are covered in Law on Courts and Judges.<sup>29</sup> Legally, judges are well protected from arbitrary termination of their contract.

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, is it the case that judges are not removed from office for anything other than misconduct or incapacity to carry out judicial functions?

**Compliance Score: 1**

#### **2010 Updates**

The last year saw more judges penalised, reduced in rank or removed from office than in previous years. A total of 21 judges received disciplinary penalties, three were removed from office, three were reduced in rank, and others received written reprimands.<sup>30</sup> The reasons for these penalties have not

<sup>21</sup> Source: Progress Assessment on the Action Plan which Azerbaijan signed with the European Union, by Azerbaijan National Committee for European Integration (ANCEI), available at:

[http://aamik.az/ts\\_general/download/Brief\\_ANCEI\\_report\\_on\\_AP\\_Azerbaijan-2007\\_eng.pdf](http://aamik.az/ts_general/download/Brief_ANCEI_report_on_AP_Azerbaijan-2007_eng.pdf).

<sup>22</sup> Source: Interview with Intigam Aliiev, President, Legal Education Society, dated 1 March 2010.

<sup>23</sup> Part I of Article 127 of the Constitution of Azerbaijan Republic.

<sup>24</sup> Article 94 of the Law on Courts and Judges, dated 10 June 1997.

<sup>25</sup> Article 96 of the Law on Courts and Judges, dated 10 June 1997.

<sup>26</sup> Article 97, Article 100 and Article 101 of the Law on Courts and Judges, dated 10 June 1997.

<sup>27</sup> Part III of Article 128 of the Constitution of Azerbaijan Republic.

<sup>28</sup> Part IV and V of Article 128 of the Constitution of the Azerbaijan Republic.

<sup>29</sup> Article 113 of the Law on Courts and Judges, dated 10 June 1997.

<sup>30</sup> Official Bulletin of the Ministry of Justice, 'Judicial Reform Successfully Continues', 26 January 2011; available at: [http://www.justice.gov.az/view\\_full.php?id=247](http://www.justice.gov.az/view_full.php?id=247).

been disclosed, but it is considered likely that decisions to remove judges may be politicised at the executive level.<sup>31</sup>

Although there is a lack of disclosure through official channels, prevalent reasons for discipline in the past include failure to complete litigation in a timely manner, failure to ensure participation of all parties in the litigation process, and/or restricted rights of appeal for the litigation participants.

## 2009 Notes

In practice, the fact that final appointment is made upon recommendation from the Judicial Legal Council by the President for lower rank judges *without* approval from the Parliament, and for the most senior rank judges *with* approval from the Parliament, does not make the judiciary very independent from the impact of the executive branch.<sup>32</sup> Judges are not free from political interference and obviously fear removal for political reasons.<sup>33</sup>

This is indirectly testified to by the fact that the courts are flooded with complaints from civil society organisations about refusals to register cases by the Ministry of Justice, which at best are rejected and at worst completely ignored by the courts, evidently not willing to go against the Ministry. Civil society founders have appealed to the Supreme Court, the Ministry of Justice, the Court and Law Council and other authorised entities to take disciplinary action against senior judges, but to no avail.<sup>34</sup>

Judges are removed from their positions for inefficiencies at work and misconduct. According to an interview with the Minister of Justice, in the year 2009 the Judicial Legal Council initiated disciplinary cases against 22 judges, two of whom were fired for serious violations of the law.<sup>35</sup> Also, the powers of three judges were recently terminated and several judges received reprimands and have been downgraded for being too stern on the accused. Ramiz Rzayev, Head of the Supreme Court, in his recent press conference, indicated that judges gave too much preference to pre-trial custody rather than milder measures available.<sup>36</sup>

### Sub-Objective One: Independence of the Judiciary

**Indicators:** To what extent are there legal regulations in place to ensure that judicial salaries are comparable to those of other high-level government employees?

**Compliance Score: 2**

## 2010 Updates

Amendments were passed in 2010 to improve the financial status of judges, allow judges to be reimbursed for expenses related to their office duties such as travel and communication costs and to claim per diems.<sup>37</sup> The salary changes constituted a 25% increase for the Supreme Court, 20% for the Court of Appeal and 15% for lower court judges. In addition, all newly appointed judges will receive a bonus equivalent to two months' salary. This amendment makes judges one of the most highly paid public officials in Azerbaijan.

<sup>31</sup> Azerbaijan Progress Report on Implementation of the European Neighbourhood Policy in 2010, Azerbaijan National Committee for European Integration; available at: [www.aamik.az](http://www.aamik.az).

<sup>32</sup> Article 109.9 Azerbaijan Republic Constitution; Article 94, Law on Courts and Judges; and Articles 109.9 and 95.10 of the Azerbaijan Republic Constitution.

<sup>33</sup> Global Integrity Report 2009 available at: <http://report.globalintegrity.org/Azerbaijan/2009/scorecard/91/80b>; and Interview with an anonymous judge, dated 18 January 2010.

<sup>34</sup> Progress Assessment on the Action Plan signed between Azerbaijan and European Union (2009), Report on ENP AP of the Azerbaijan National Committee for European Integration, available at <http://aamik.az/en/reports.html>.

<sup>35</sup> Source: Interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at: <http://www.525.az/view.php?lang=az&menu=2&id=10373>.

<sup>36</sup> Press Conference by Ramiz Rzayev, Chairman of Supreme Court, available at: <http://www.525.az/view.php?lang=az&menu=17&id=11612>.

<sup>37</sup> Law on Making Amendments and Changes to the Law on Courts and Judges, dated 8 October 2010.

## 2009 Notes

The Law on Courts and Judges and Law on Constitutional Court and other statutory acts regulate official salaries of judges.<sup>38</sup> The salaries of high-level government employees are regulated by special ranking tables,<sup>39</sup> but there are no laws that correlate judicial salaries to the salaries of other government employees.

### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, are judicial salaries comparable to the salaries of other high-level government employees?

**Compliance Score: 2**

## 2010 Updates

Judges remain one of the most highly paid cohorts of public employees.

## 2009 Notes

In practice, judicial salaries and the salaries of high-level employees of both legislative and executive authorities are comparable. For example, salaries of the heads of the Supreme Court and Constitutional Court constitute 1,785 Manats (US \$2,213) per month, while the head of the Presidential Office is paid 1,900 Manats (US \$2,356), and the heads of the Parliament Office and Office of Chamber of Accounts receive 1,550 Manats (US \$1,922).<sup>40</sup> At the same time, the heads of Supreme and Constitutional Courts Offices, as well as of the offices of Judicial Legal Council and Ombudsman are entitled to a salary of 1,525 Manats (US \$1,891).<sup>41</sup> According to the Minister of Justice, salaries of judges have increased 25-fold as compared to the year 2000, which is evidence of real progress in terms of bringing salaries of judges in line with best international practices.<sup>42</sup>

### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** Is the judiciary legally entitled to propose, allocate and manage its own budget?

**Compliance Score: 1**

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

Rules for the financing of courts are envisioned in the Law on Courts and Judges, Law on Constitutional Court and other statutory acts.<sup>43</sup> According to the Law on Courts and Judges, the allocation of the judicial budget is provided under a separate article of the state budget. The respective presidential decree sets the Cabinet of Ministers and Ministry of Justice to manage funding of the courts, while the Ministry of Justice and high instance courts are entitled to send proposals with regard to the next year's budgetary allocations to respective executive authorities, set as the Cabinet of Ministers under another

<sup>38</sup> Article 106 of the Law on Courts and Judges, dated 10 June 1997; and Article 71 of the Law on Constitutional Court dated 23 December 2003.

<sup>39</sup> Public Servant's Budget Memo under State Budget for 2009.

<sup>40</sup> The national currency in Azerbaijan is the Manat or AZN; the exchange rate to USD is 1.24 as of 1 March 2010 from Bloomberg, available at Coin Mill.Com: The Currency Converter [http://coinmill.com/AZN\\_USD.html#AZN=1](http://coinmill.com/AZN_USD.html#AZN=1).

<sup>41</sup> Public Servant's Budget Memo under State Budget for 2009.

<sup>42</sup> Interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at:

<http://www.525.az/view.php?lang=az&menu=2&id=10373>.

<sup>43</sup> Article 90 of the Law on Courts and Judges, dated 10 June 1997; and Article 70 of the Law on Constitutional Court, dated 23 December 2003.

Presidential decree.<sup>44</sup> The above-mentioned shows that the judiciary is not entitled to allocate and manage its budget.

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, does the judiciary propose, allocate and manage its own budget?

**Compliance Score: 0**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

In practice the judiciary is not allowed to allocate and manage its budget, but high instance courts (not low instance courts) have the right to propose their budgets.<sup>45</sup> This is another example of the judicial system being dependent on the executive branch. More information on the issue is not available.

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** To what extent are there regulations regarding the assignment of cases to judges by an objective method administered by the judiciary?

**Compliance Score: 2**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

According to the rules of assignment, cases should be assigned on the basis of coding procedures.<sup>46</sup> Names of judges are encoded numerically starting with the number 1. The coding process should be conducted by random numbers selected at the general meeting of the judges, and cases are assigned in strict sequence of cases received by the court with regards to the coded number of the judges, with the exception of judges who are out of office or overloaded with cases already assigned. In order to ensure equal assignment among judges, the clerical service of the court draws a supervision list of assignment of cases. A responsible clerk should fill in and sign a list of cases received in sequence each day. One copy of the supervision list should be introduced to the chairman of the respective court, with another copy kept in a separate folder. At the end of each quarter the clerical service should analyse the assignment of cases with subsequent discussion at the meeting organised by the chairman of the court.

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, are judges assigned to cases by an objective method, in a process administered by the judiciary?

**Compliance Score: 1**

#### **2010 Updates**

The Ministry of Justice claims to perform random monitoring of case load distribution.<sup>47</sup> Case load distribution is also included in judicial training. While the system is applied in practice, the court chair has instruments to distribute cases at his/her discretion.

#### **2009 Notes**

<sup>44</sup> Decree 30 by the President of Azerbaijan Republic, dated 1 December 1998; and Decree 29 by the President of Azerbaijan Republic, dated 12 February 2004.

<sup>45</sup> Interview with judges, dated 17 March 2010.

<sup>46</sup> Chapter XI of the Instructions on Carrying out of Clerical Work in Courts of Azerbaijan Republic.

<sup>47</sup> Letter from the Ministry of Justice, dated 28 April 2010.

In practice the distribution of cases in courts is not always conducted in full compliance with the above rules. The instances, in which cases are forwarded to the chairman of the court without being encoded first, and later allocated by his/her arbitrary decision to other judges, are quite frequent.<sup>48</sup> So far no automated innovative technologies are used in courts. It has been indicated that 'there are some discussions on moving to a blind assignment system', however.<sup>49</sup>

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** To what extent is there a specific legal framework or constitutional provision to protect judges from external interference or improper influence by public officials or private interests?

**Compliance Score: 2**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

The Constitution of the Azerbaijan Republic and Law on Courts and Judges envisage the independence of judges, and prohibit direct or indirect restriction of legal proceedings for any reason, illegal influence, pressing, threat and intervention, and disrespect towards the court.<sup>50</sup>

#### **Sub-Objective One: Independence of the Judiciary**

**Indicators:** In practice, to what extent are judicial proceedings and decisions free of bias or improper influence by public officials or private interests?

**Compliance Score: 0**

#### **2010 Updates**

The Azerbaijan authorities continue to refuse the European Court of Human Rights (ECHR) April 2010 decision on the jailed journalist, Eynulla Fatullayev. His imprisonment was largely believed to be politically-motivated and although the authorities tried to appeal the ECHR decision in June 2010, the verdict was upheld by the court in October. Subsequently, the Supreme Court in Baku lifted some of the several charges against him in November, including defamation and terrorism. Despite this he remained imprisoned on dubious drug-possession charges. His continued detention has caused international outcry by dozens of human rights organisations.<sup>51</sup>

In January 2010, the Institute of Peace and Democracy put together and distributed a list of judges who are found to be in violation of norms of the European Convention on Human Rights.<sup>52</sup> This and observations of many other representatives of the civil society indicate that judicial decisions are not free of bias.<sup>53</sup>

#### **2009 Notes**

As indicated above, the legislation regulating selection and promotion of judges has loopholes that allow space for the undue influence of the executive branch. This is indirectly testified to by the fact that some politically coloured cases have not been accepted by courts for review. For example in 2009 all complaints to law enforcement agencies and courts (including the complaint filed by the editor-in-chief of the *Talishi-Sado* newspaper, Novruzali Mammadov, who died in prison) about mistreatment filed by

<sup>48</sup> Interview with judges, dated 4 February 2009.

<sup>49</sup> Global Integrity Report 2009 available at: <http://report.globalintegrity.org/Azerbaijan/2009/scorecard/91/80b>.

<sup>50</sup> Article 127-3 of the Constitution of Azerbaijan Republic; and Article 9 of the Law on Courts and Judges.

<sup>51</sup> ANCEI Progress Report for 2010, available at: [www.aamik.az](http://www.aamik.az).

<sup>52</sup> Letter from the Institute of Peace and Democracy, dated 29 January 2010.

<sup>53</sup> ANCEI Progress Report for 2010, available at: [www.aamik.az](http://www.aamik.az).

journalists, political party members, civil society representatives, students and others were rejected.<sup>54</sup> In general the judicial system is strongly influenced by the executive power.<sup>55</sup>

#### **Sub-Objective Two: Judicial Human Resources**

**Indicators:** To what extent are there legal provisions to ensure that judges, prosecutors and officials are regularly trained in new judicial practices and procedures and new and/or changing laws?

**Compliance Score: 2**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

According to the legislation, the Judicial Legal Council is responsible for upgrading the professional qualifications of judges, with the exception of the Supreme Court and Court of Appeal, and ensures the provision of courts with necessary legal materials.<sup>56</sup> At the beginning of the year the Judicial Legal Council sends a questionnaire to identify training needs of judges. Based on the results, the Council creates a schedule of training programmes throughout the year. Under the law, participation of judges in training programme is voluntary.<sup>57</sup> Judicial clerks and other administrative staff are not included in this training programme.

#### **Sub-Objective Two: Judicial Human Resources**

**Indicators:** In practice, is it the case that judges, prosecutors and officials are regularly trained and given access to new judicial practices and procedures and new and/or changing laws?

**Compliance Score: 2**

#### **2010 Updates**

To improve judicial professionalism about 20 training programmes have been arranged by the Academy of Justice and international legal organisations. The training sessions were attended by roughly 200 judges.<sup>58</sup> According to the chairman of the Supreme Court, in addition to annual training courses, the Supreme Court holds seminars relating to the analysis of recurrent judicial themes. In 2010, for the first time, newly-selected judges were sent to Germany and Turkey for training.<sup>59</sup>

#### **2009 Notes**

Training is conducted in the new Academy of Justice, recently created on the basis of the former Legal Training Center within the Ministry of Justice (not fully operational yet). According to an interview with the Minister of Justice, taking into account the significance of training for judges in order to eliminate deficiencies and qualifying activities, the Judicial Legal Council learnt from international experience and designed a new curriculum based on recommendations of the European Judges Advisory Council and findings of surveys conducted among judges.<sup>60</sup> In 2009 the Judicial Legal Council designed 17 training courses on various topical issues, and all first instance court judges were involved in these programmes with the participation of experienced foreign specialists. The practice of joint training for judges and law

<sup>54</sup> ANCEI Progress Report for 2009, available at: [aamik.az](http://aamik.az).

<sup>55</sup> Global Integrity Report 2009 available at: <http://report.globalintegrity.org/Azerbaijan/2009/scorecard/91/80b>.

<sup>56</sup> Article 86 of the Law on Courts and Judges, dated 10 June 1997.

<sup>57</sup> Presentation by Javid Huseynov, head of office of Judicial Legal Council at advocacy round table on Improvement of Transparency of the Judicial System organized by TI Azerbaijan on 31 March 2011.

<sup>58</sup> Official Bulletin of the Ministry of Justice, 'Judicial Reform Successfully Continues', 26 January 2011, available at : [http://www.justice.gov.az/view\\_full.php?id=247](http://www.justice.gov.az/view_full.php?id=247).

<sup>59</sup> Interview of Ramiz Rzayev, chairman of the Supreme Court, 31 January 2011; available at: [www.trend.az](http://www.trend.az).

<sup>60</sup> Interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at: <http://www.525.az/view.php?lang=az&menu=2&id=10373>.

enforcement officers is in place (for more please see Objective 3). The Justice Academy will also train other legal professionals, including defence lawyers, which is also a positive development.

### **Sub-Objective Three: Access to Justice**

**Indicators:** To what extent are there legal provisions which provide for free public defence for persons without means to cover procedural costs?

**Compliance Score: 2**

#### **2010 Updates**

There were no new legislative initiatives in 2010. In practice persons without means (mostly refugees and internally displaced persons) receive free public defence from the state. Civil society, with financial assistance from the Organisation for Security and Cooperation in Europe (OSCE), USAID and other donors, also contributes to such efforts.<sup>61</sup> Additionally, the chairman of the Supreme Court proposed the establishment of a special agency, run jointly with the Social Protection Fund, to provide free legal defence to poor families. Preparatory activities are underway.<sup>62</sup>

#### **2009 Notes**

According to the Constitution, in cases provided by the law, legal aid is provided free of charge at the expense of the state.<sup>63</sup> Following the Law on Courts and Judges, the right for judicial protection of the rights and freedoms of citizens, foreigners living in its territory and persons without citizenship, as well as legitimate interests of legal bodies, from all encroachments and infringements of laws is provided at any stage of legal proceedings.<sup>64</sup> This issue is also covered by other statutory acts.<sup>65</sup>

Ramiz Rzayev, chairman of the Supreme Court, in his recent press conference spoke of plans to establish an agency to provide barristers for poor families.<sup>66</sup> If people with low income levels cannot afford a lawyer, costs will be paid by this agency based on a contract between a lawyer and the recipient of assistance. In practice, the professional level of state lawyers is low. This is explained by the fact that lawyers with higher qualifications do not wish to participate in processes that are financed by the state Treasury. Although the price of rendering legal aid at the expense of the state was raised from 0.99 Manats (US \$1.22) an hour to 2 Manats (US \$2.48),<sup>67</sup> the cost of such services in the private sphere is estimated to be much higher and is quoted at a minimum of 200 Manats (US \$248) and a maximum of 5,000 Manats (US \$6,200) per case.<sup>68</sup>

### **Sub-Objective Three: Access to Justice**

**Indicators:** To what extent are there adequate interpretation services (e.g. for non-native language or deaf court users) in place in the court system?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

<sup>61</sup> Since 2009 OSCE funds five Legal Resource Centres in the cities of Ganja, Lenkoran and Sheki operated by Transparency Azerbaijan and one centre in the city of Sumgait operated by Democracy and Human Rights. Meanwhile, USAID has supported Transparency Azerbaijan with three Advocacy and Legal Advice centre since March 2005.

<sup>62</sup> Interview of Ramiz Rzayev, chairman of the Supreme Court, 31 January 2011; available at: [www.trend.az](http://www.trend.az).

<sup>63</sup> Part II of Article 61 of the Constitution of the Azerbaijan Republic.

<sup>64</sup> Article 10 of the Law on Courts and Judges, dated 10 June 1997.

<sup>65</sup> Article 92.9.24, Article 90.7.9 and Article 91.5.5 of the Criminal Procedural Code; and Article 19 and 20 of the Law on Attorneys and Legal Defence Practices, dated 28 December 1999.

<sup>66</sup> Press Conference by Ramiz Rzayev, Chairman of Supreme Court, available at: <http://www.525.az/view.php?lang=az&menu=17&id=11612>.

<sup>67</sup> See: <http://www.baki-xeber.com/new/2010/02/01/get=39778>.

<sup>68</sup> There is no practice for lawyers in Azerbaijan to bill per hour, except for a few big legal firms. Interview with Intigam Aliev, president, Legal Education Society, dated 1 March 2010.

## 2009 Notes

According to the Constitution, legal proceedings are carried out in the state language of the Azerbaijan Republic or in the language of the majority of the local population of an administrative unit.<sup>69</sup> Participants of a proceeding not knowing the language of legal proceedings are guaranteed the right of full acquaintance with the materials of the case, participation in court by means of a translator and verbal pleading in court in the native language. This is also covered by several other laws.<sup>70</sup> In practice, there are very few translators with knowledge of a foreign or local language and an understanding of the legal system, and the quality of translations leaves much to be desired.<sup>71</sup>

### Sub-Objective Four: Judicial Resources

**Indicators:** Financial resources: To what extent are changes in the overall judicial budget commensurate with the growth of the national budget and also reflect changes in demands for judicial services?

**Compliance Score: 2**

## 2010 Updates

On 18 June 2010, the Parliament passed a bill to increase the 2010 budget through oil revenue and tax collection.<sup>72</sup> The corresponding increase in the budget for the judiciary was 3% above 2009.

## 2009 Notes

According to the Statement of the Chamber of Accounts on the Draft Law of the Azerbaijan Republic on the State Budget for the year 2010, allocations to the judiciary increased threefold during last five years, and the judiciary was allowed to expand the number of courts and judges, as well as to upgrade the material and technical base of the judiciary.<sup>73</sup> Allocations to the judicial budget for 2009 as compared to 2008 increased in absolute terms, but decreased as a proportion to the overall budget. As for the 2010 budget forecast the picture is slightly different: the overall decrease of the state budget, due to a decline in oil prices, resulted in a decrease of the judicial budget, but a growth of the judiciary's share of public funds. This signifies that the government provides proper funding to the judicial system, even at the expense of other sectors of the public economy.

### Sub-Objective Four: Judicial Resources

**Indicators:** Human resources/capacity: Are there procedural rules in place to discourage excessive adjournments; ensure judges have adequate time to hear cases and prepare judgments; and ensure that appeals are heard without undue delay?

**Compliance Score: 2**

## 2010 Updates

Amendments to the Administrative Procedure Code created new Courts for Grave Offences (the number expanded from two to five) and new administrative/economic courts. The new courts became operational as of 1 January 2011.<sup>74</sup> They are intended to contribute to the general work and to

<sup>69</sup> Part X of Article 127 of the Constitution of Azerbaijan Republic.

<sup>70</sup> Article 14 of the Law on Courts and Judges, dated 10 June 1997; Article 26 and Article 99 of the Criminal Procedural Code; and Article 11 and Article 65 of the Civil Procedural Code.

<sup>71</sup> Interview with a judge, dated 18 January 2010.

<sup>72</sup> 'Azerbaijan increases 2010 budget', 18 June 2010; available at: [www.news.az](http://www.news.az).

<sup>73</sup> See: <http://www.ach.gov.az/index.php?az/content/319>. The draft law has been signed into law as of the date of this report.

<sup>74</sup> The Law on Making Amendments and Changes to the Law on Courts and Judges, dated 22 June 2010; approved by Presidential Decree, dated 15 July 2010.

decrease the caseload of lower courts. Also, a decision was made by the government to increase the total number of judicial corps from 480 in August 2010 to 600 judges.<sup>75</sup>

## 2009 Notes

Procedural operations are defined in the Civil Procedural Code, Criminal Procedural Code and Law on Administrative Execution, Administrative Procedures Code and other statutory acts.<sup>76</sup> In cases not covered by the legislation, procedures shall be defined by court. For example, preparatory sessions for criminal cases in low instance courts and those reviewed by the Court of Appeal should be heard within 15 days after the entry of the case, and this term can be prolonged up to 30 days depending on the volume of a case, while the court hearing should be conducted a maximum of 15 days after a preparatory session is over. Appeals to Supreme Court should be heard within 30 days after finalisation of the initial review. Sanctions are established and executed for excessive adjournments by decisions of the Legal Judicial Council.

### Sub-Objective Four: Judicial Resources

**Indicators:** Human resources/capacity: In practice, are cases heard and judgments handed down without lengthy delays and excessive adjournments?

**Compliance Score: 1**

## 2010 Updates

The Judicial Legal Council continues to impose disciplinary penalties for infringement of protocol by judges. However, many judges, particularly from the regional courts complain of the excessive workload which causes such violations. These courts would like to see litigation procedures simplified and an increase in the number of the judges and judicial clerks.<sup>77</sup>

## 2009 Notes

As opposed to the situation a couple of years ago, most cases are heard in due time.<sup>78</sup> This is especially true with criminal cases, while some delays may occasionally occur with civil suits.<sup>79</sup> Overall, in practice, judges adhere to the terms of hearing cases and mostly examine them without delay, as the Judicial Legal Council imposes disciplinary penalties for infringement of the given terms.<sup>80</sup>

### Sub-Objective Four: Judicial Resources

**Indicators:** Human resources/capacity: To what extent does each judge have the basic tools necessary to do his or her job, e.g., sufficient office space, adequate support staff, word processing equipment, a law library (whether physical or online), etc?

**Compliance Score: 1**

## 2010 Updates

<sup>75</sup> Presidential Decree on some changes in the composition of the judicial corps, on number of judges and jurisdiction of territorial courts, dated 9 August 2010.

<sup>76</sup> Chapter X of the Civil Procedural Code; Article 48.2.3, Article 202 and Article 203 of the Criminal Procedural Code; Article 48 of the Law on Administrative Execution; and Chapter V of the Administrative Procedures Code.

<sup>77</sup> 'Corruption related offences in the judicial system have been discussed', 7 February 2011; available at: [www.trend.az](http://www.trend.az); and survey among judges in Lenkoran by Transparency Azerbaijan in July-December 2010.

<sup>78</sup> Rena Safaraliev, 'Azerbaijan's Yawning Gap between Reforms on Paper and in Practice' in Transparency International, *Global Corruption Report 2007: Corruption in the Judiciary*, (Cambridge: Cambridge University Press, 2007); available at [http://www.transparency.org/publications/gcr/gcr\\_2007#book](http://www.transparency.org/publications/gcr/gcr_2007#book).

<sup>79</sup> Interview with a judge, dated 1 February 2010.

<sup>80</sup> Experience of Transparency Azerbaijan's Advocacy and Legal Advice Centre clients; and interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at: <http://www.525.az/view.php?lang=az&menu=2&id=10373>.

Problems of human resources/capacity and lack of legal materials continue to plague judges, particularly those working in the regional courts.<sup>81</sup> Another problem is access to the internet and poor computer literacy amongst provincial and older judges.<sup>82</sup> Judges also complain that the residential facilities, promised to them by law are not available;<sup>83</sup> under the law housing shall be offered to judges in need within six months of taking the bench.<sup>84</sup> Transparency Azerbaijan monitored the recruitment of judicial clerks and observed low levels of professional skills.<sup>85</sup>

## 2009 Notes

According to the legislation in order to create the necessary conditions for the exercise of justice by courts in line with requirements of the procedural legislation, each court is provided with specially equipped premises, judicial authority signs (national banner, state emblem and official emblem of justice) and judges' gowns, letterhead, stamps, cards for judges identifying their status, and all necessary logistical means.<sup>86</sup>

Activities and technical/organisational support of judges is provided in a separate article of the state budget. According to first-hand information, premises allocated for newly set up courts are spacious and well-equipped.<sup>87</sup> A source reveals that there remain difficulties in logistical support due to insufficient financial and material support for courtrooms.<sup>88</sup> Another problem is the low professional level of the junior staff: paralegals and judicial clerks are neglected by training programmes that focus primarily on judges. This is especially true of provincial courts in comparison to the courts in the capital city of Baku, which are much better equipped and staffed.<sup>89</sup>

### Sub-Objective Five: Transparency

**Indicators:** To what extent are courtroom proceedings required by law to be open to the public and the media?

**Compliance Score: 2**

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

According to the Constitution and other laws,<sup>90</sup> legal proceedings in all courts should be held publicly.<sup>91</sup> Hearing cases in closed sessions is allowed only if the court considers that an open session could disclose a state, professional or trade secret, or if there is a need to keep personal or family issues confidential.

### Sub-Objective Five: Transparency

**Indicators:** In practice, are courtroom proceedings generally open to, and able to accommodate, the public and the media?

**Compliance Score: 1**

<sup>81</sup> Survey among judges in Lenkoran by Transparency Azerbaijan July-December 2010.

<sup>82</sup> Transparency Azerbaijan's first hand experience through its regional centres.

<sup>83</sup> Interview with an anonymous source, dated 4 March 2010.

<sup>84</sup> Law on Courts and Judges, dated 10 June 1997.

<sup>85</sup> The recruitment of judicial clerks is performed by the State Commission on Civil Service and took place from November 2010 to January 2011.

<sup>86</sup> Article 90 of the Law on Courts and Judges, dated 10 June 1997.

<sup>87</sup> Interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at:

<http://www.525.az/view.php?lang=az&menu=2&id=10373>.

<sup>88</sup> Interview with regional judges, dated 14 March 2010.

<sup>89</sup> Survey among judges in Ganja, by TI Azerbaijan, Ganja Legal Resource Centre, December 2009.

<sup>90</sup> Article 12 - Publicity of Legal Proceedings – of the Law on Courts and Judges; Article 10 – Publicity of Court Review – of the Civil Procedural Code; and Article 27 - Publicity of Crime Judgement Execution – of the Criminal Procedural Code.

<sup>91</sup> Part V of Article 127 of the Constitution of the Republic of Azerbaijan.

## 2010 Updates

In 2010 there were fewer cases reported in which participants complained about access to courtrooms.<sup>92</sup>

## 2009 Notes

In practice, courtroom proceedings are open, but there are cases where hearings are conducted in closed sessions for political reasons. For example, journalists were not allowed to enter the courtroom in the case of Intigam Ismayilov, who was believed to have been dismissed from work due to his pro-oppositional political convictions, and journalists also stayed out of the courtroom in the appeal process of former Minister of Economic Development Farhad Aliyev.<sup>93</sup>

In another case, journalists were not given access to the courtroom in the trial of young bloggers Adnan Hajizade and Emin Milli.<sup>94</sup> Another example involves representatives of international organisations, embassies and civil society willing to observe the Supreme Court process of termination of registration of the Election Monitoring Center, who were not allowed into the court building by police officers.<sup>95</sup> Observers were told that there were instructions not to let people in. There are courtrooms with cameras installed for court records, but no cameras outside courtrooms for people to observe processes online.

### Sub-Objective Five: Transparency

**Indicators:** To what extent does the law require that judicial decisions be published and be open to public scrutiny?

**Compliance Score: 1**

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

There is no regulation in statutory acts obliging courts to publish all court rulings, with the exception of a few instances. Decisions of plenary sessions of the Constitutional Court should be published in the official state newspapers.<sup>96</sup> The Civil Procedures Code envisages that all court rulings by which new statutory acts are adopted or rule that old acts have lost their legitimacy should be published by the media.<sup>97</sup> According to Fikrat Mammadov, Ministry of Justice, in order to ensure transparency of court activities, discussions are underway to publish all court rulings of higher instance courts, including annulled and changed decisions of lower instance courts.<sup>98</sup>

### Sub-Objective Five: Transparency

**Indicators:** Are judicial decisions published?

**Compliance Score: 1**

## 2010 Updates

<sup>92</sup> Transparency Azerbaijan's own experience, through five clinics, which provide free legal assistance to citizens, including representation in courts in civil cases.

<sup>93</sup> See: <http://www.nakhchivan.org.az/content/view/736/28/lang.az/>; and <http://www.irfs.az/content/view/938/28/lang.az/>.

<sup>94</sup> See: <http://ol-az.blogspot.com/2009/09/bir-mhkm-iclas-da-arxada-qald.html>.

<sup>95</sup> See: <http://azadliq.az/?p=9810>.

<sup>96</sup> Article 69 of the Law on Constitutional Court, dated 23 December 2003.

<sup>97</sup> Article 221.3 and Article 304.3 of the Civil Procedural Code.

<sup>98</sup> Interview of Fikrat Mammadov, Minister of Justice, dated 2 February 2011; available at: <http://www.525.az/view.php?lang=az&menu=2&id=10373>.

The Judicial Legal Council is implementing a project to increase court transparency via the internet. Currently, 16 upper courts have functioning websites. The proposed project plans to cover all courts and create a single network by the end of 2011.<sup>99</sup> Despite lack of improvement in the quantity/quality of publications in 2010 some ground work has been made for the implementation of e-records.

## 2009 Notes

As indicated above, decisions of plenary sessions of the Constitutional Court are indeed published in official state newspapers such as *Azerbaijan, Respublika* and smaller periodicals.<sup>100</sup> In some cases, decisions of the Supreme Court and the Court of Appeal are published on their websites. Supreme Court Plenary decisions are compiled and published in a special journal (brochure) on a regular basis. However, no examples of decisions of courts of first instance being published are available.<sup>101</sup>

### Sub-Objective Five: Transparency

**Indicators:** To what extent does the law require that a transcript of courtroom proceedings be maintained and made available to the public?

**Compliance Score:** 1

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

There are legal obligations in the Civil Procedures Code, Criminal Procedures Code and other legal texts regulating the rights of participants of court hearings to get acquainted with the transcripts, but there are no legal provisions to make transcripts available to the public.<sup>102</sup> Maintenance of transcripts is regulated by the Instructions on Carrying out of Clerical Work in Courts, which also provides for the list of those who can get acquainted with materials with permission from either the chairman of the court or a judge, upon production of documents revealing identity of the requestor (passport, military ticket, etc.).<sup>103</sup>

### Sub-Objective Five: Transparency

**Indicators:** Is a transcript or some other reliable record of courtroom proceedings maintained and available to the public?

**Compliance Score:** 1

## 2010 Updates

Although transcripts are maintained they are not easily accessible by the public. Without a copy of transcripts from previous cases, it is difficult for defence lawyers to prepare effective defences for their clients.<sup>104</sup>

## 2009 Notes

Transcripts are maintained and participants of a lawsuit, as stated above, can get acquainted with materials in courtrooms. In cases where participants of the process disagree with the transcripts, where

<sup>99</sup> Presentation by Javid Huseynov, head of office of Judicial Legal Council at advocacy round table on Improvement of Transparency of the Judicial System, organised by Transparency Azerbaijan on 31 March 2011.

<sup>100</sup> Article 69 of the Law on Constitutional Court, dated 23 December 2003.

<sup>101</sup> Interview with anonymous lawyer, dated 19 January 2010.

<sup>102</sup> Article 47.2 of the Civil Procedural Code; and Article 22 of the Criminal Procedural Code.

<sup>103</sup> Chapter XXII and Chapter XXIII of the Instructions on Carrying out of Clerical Work in Courts of Azerbaijan Republic, with amendments dated 6 November 2009; available at: [www.e-ganun.az](http://www.e-ganun.az).

<sup>104</sup> Remark by Fuad Agayev, practicing lawyer at the advocacy round table on Improvement of the Transparency of the Judicial System, organised by Transparency Azerbaijan on 31 March 2011.

there are allegations of misinterpretation or an important issue is missing, they can take a copy of the transcript and submit a protest to the judge. In general, both individuals and legal persons have the right to use documents of the State Archive Fund.<sup>105</sup> Depending on terms of keeping documents in the Fund, rules of using documents of the State Archive Fund are specified by the respective executive authority. Court archives are sent to the National Archive in rare cases and mostly are stored in the court itself, which does not make the Archive very useful.<sup>106</sup> In summary, reliable records of courtroom proceedings are kept but they are not available to the general public. As described above, there are no rules obliging courts to give out court materials at a simple request and no provisions prohibiting this. Court authorities use this loophole in the legislation and thus complicate access to court materials to the public and media.<sup>107</sup>

#### **Sub-Objective Six: Enforcement**

**Indicators:** To what extent are there provisions in place which describe the role, organisation, status and training of enforcement agents, i.e. those responsible for carrying out the enforcement process (e.g. enforcement and other judicial officers)?

**Compliance Score: 2**

#### **2010 Updates**

The role, organisation, status and training of enforcement agents are regulated by the Law on Court Supervisors and Court Executors,<sup>108</sup> and the Law on the Execution of Court Decisions.<sup>109</sup> In June 2010, amendments were made to the laws, but changes are of a purely technical nature.<sup>110</sup> From now on the Service of Court Supervisors and Court Executors shall be called the Service of Court Executing Officials. Also, similar technical changes to reflect a name change have been made to the Law on Execution of Court Decisions.<sup>111</sup>

Note: This question was not included in the 2009 review.

#### **Sub-Objective Six: Judicial Enforcement**

**Indicators:** In practice, to what extent are enforcement agents well trained in enforcement practices and procedures?

**Compliance Score: 1**

#### **2010 Updates**

Judicial executors receive training in enforcement practices and procedures, along with other judicial officers. Despite this, failure to execute court decisions is common, as recognised by the authorities and analysts. According to a high ranking official, of the 45 decisions by the European Court on Human Rights against the government of Azerbaijan, 19 are related to failure to implement court decisions.<sup>112</sup>

According to the chief of the Head Department of Court Executors of the Ministry of Justice, X. Zeynalov, 77% of all court decisions (50,000 cases) have been enforced, but the reasons for failing to enforce the remaining 23% were not disclosed. Analysis of the recent publication of the 2010 statistics sheds some light on why: authorities make efforts to execute only those court decisions that serve state

<sup>105</sup> Article 16 of the Law on National Archive Fund, dated 22 June 1999.

<sup>106</sup> Interview with a practicing lawyer, dated 9 February 2010.

<sup>107</sup> Interview with Intigam Aliev, president, Legal Education Society, dated 1 March 2010.

<sup>108</sup> Law on Court Supervisors and Court Executors, dated 28 December 1999; available at: [www.e-qanun.az](http://www.e-qanun.az).

<sup>109</sup> Law on the Execution of Court Decisions, dated 27 November 2010; available at: [www.e-qanun.az](http://www.e-qanun.az).

<sup>110</sup> Law on Court Supervisors and Court Executors, dated 28 December 1999 with changes and amendments it was turned into the Law on Execution Officials, dated 1 November 2010; and Law on Execution of Court Decisions, dated 27 December 2001 with changes and amendments was turned into the Law on Execution, dated 1 November 2010; available at: [www.e-qanun.az](http://www.e-qanun.az).

<sup>111</sup> Law on the Execution of Court Decisions, with changes and amendments available at: [www.e-qanun.az](http://www.e-qanun.az).

<sup>112</sup> Latif Huseynov, head of the department of State Building and Legislation of the Parliament Office, 'There are problems with execution of court decisions in Azerbaijan', 9 February 2011; available at: [www.trend.az](http://www.trend.az).

interests, and only a small proportion of non-executed court decisions resulted in legal prosecutions for the defaulters.

Note: This question was not included in the 2009 review.

**Sub-Objective Seven: Code of Ethics**

**Indicators:** To what extent are enforcement agents bound by ethical and professional standards as outlined in a written code of ethics?

**Compliance Score: 2**

**2010 Updates**

This area is regulated by Code of Ethics for Employers of the Justice System and specifically by Article 6.1.2, which refers directly to court executors.<sup>113</sup> The regulation was created with considerable assistance from the international community, but its implementation has been slow and leaves much to be desired.

Note: This question was not included in the 2009 review.

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<sup>113</sup> Code of Ethics for Employers of the Justice System, dated 29 November 2007.

## Objective two: Public Sector Reform

	2009 Compliance Score	2010 Compliance Score
<b>Overall Score</b>	<b>22/50 (44%)</b>	<b>28/50 (56%)</b>

Sub-Objective	2009 Compliance Score	2010 Compliance Score
Independence, Accountability and Transparency of Civil Service	8/16 (50%)	9/16 (56%)
Human Resources	5/10 (50%)	8/10 (80%)
Public Sector Integrity	2/8 (25%)	3/8 (38%)
Subtotal Civil Service	15/34 (44%)	20/34(58%)
Public Procurement <sup>114</sup>	7/16 (44%)	8/16 (50%)

### Sub-Objective One: Independence, Accountability and Transparency of Civil Service

**Indicators:** To what extent are there regulations which prevent undue political interference in the appointment and promotion of civil servants?

**Compliance Score: 1**

#### 2010 Updates

The Civil Service Commission amended its internal legislation to invite civil society organisations to take part in the work of its Appeal Commission and invited TI Azerbaijan to participate. The Appeals Commission reviews complaints from applicants for positions within the civil service.<sup>115</sup> A penalty in the form of a fine between 300 and 700 AZN (approximately US\$375 and US\$875) is introduced upon respective officials for provision of false or incomplete information on public servants (both new recruits or veteran employees) for the Civil Service State Registry. Despite this reform there were no legislative efforts to support better transparency in the appointment or promotion of medium and high ranking civil service officials.

#### 2009 Notes

The Azerbaijani legal framework has a series of normative legal acts regulating the civil service, the most important being a special Law on Civil Service. Article 27.1 of this law sets the right to be recruited for the civil service to all citizens aged 16 and over, having professional skills in accordance with

<sup>114</sup> On December 22, 2010, NA passed the new Law on Procurement, which entered into effect from January 1, 2011. During 2010 no amendments or changes have been introduced in the old Law on Procurement. At the same time, Armenian Government adopted three decrees, through which it introduced changes and amendments into its June 5, 2008, Decree N853-N, which is the major sub-legislative act regulating the implementation of the old Law on Procurement. Those are Decree N564-N (adopted on April 15 and entered into effect on May 27), Decree N1701-N (adopted on December 9 and entered into effect on December 28), and Decree N1724-N (adopted on December 16 and entered into effect on January 11, 2011). It should also be mentioned that the new Law on Procurement provides that all legal acts adopted for the implementation of the old Law shall remain in effect, unless they contradict to the provisions of the new Law (see Article 55 of the new Law). Hence, all mentioned Decrees remain in effect.

<sup>115</sup> Presentation by Vugar Askerov, legal sector head, the State Civil Service Commission under the President of the Republic of Azerbaijan at the advocacy round table on Improvement of Good Governance Principles in Civil Service, organised by Transparency Azerbaijan in February 2011.

requirements of the relevant position and regardless of their race, nationality, language, sex, social origin, property status, place of residence, religion, beliefs, membership in social and other organisations.<sup>116</sup> Article 4.1.9 of the law also sets equal rights for all citizens to be employed and promoted in the public sector, except for prohibitions for the entry set in Article 27.2. In accordance with Article 28 of the law, entry into the civil service is conducted on a competitive basis. While medium and senior grades should only undergo an interview, according to Article 29.2, recruitment for the lowest grades of 6 to 9 of the public service table should be performed under competition *and/or* an interview. In the case of competition, persons successfully passing exams are allowed to the next stage – an interview. According to Article 29.7 of the law, the interview is conducted by a panel of at least three people, including the person concerned, i.e. a representative of the employing public institution. In fact, this may lead to a pre-judged decisions and political interference in the appointment process. As for promotion, the regulations are vague and allow more space for arbitrary decisions.<sup>117</sup>

#### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent are recruitment and promotion regulations effective in preventing political interference (e.g. are selection committees able to work without political interference)?

**Compliance Score: 2**

#### **2010 Updates**

Despite internal regulations that envision the participation of civil society in the recruitment process, neither the Civil Service Commission nor civil society took a proactive stance until mid-2010 to monitor the recruitment process.<sup>118</sup> The Commission is responsible for all civil service recruitment except at the Prosecutors' Office; the Ministries of Justice, Internal Affairs, Tax, Foreign Affairs; the Customs' Committee; positions of judges; and the State Migration Committee, which conduct recruitment in a more complicated three stage process. Civil society has a limited role in observing these processes.

#### **2009 Notes**

In practice, civil society is invited to observe the recruitment processes, including paper/computer-based tests and a written essay in several key public agencies. All participating civil society organisations, including TI Azerbaijan, which monitor the first two stages finds them fair and transparent.<sup>119</sup> The final stage which includes an interview, is conducted behind closed doors, however, with the final selection criteria not clearly defined in the legislation. The right of civil society to monitor the recruitment process is not set forth in the legislation and can be revoked easily. However, with the consent of the applicant, an interview can be video recorded and made available to independent observers at their request. Moreover, the Civil Service Commission had established an appeal commission responsible for the review of appeals from unsatisfied applicants.<sup>120</sup>

Some ministries hire new people as individual consultants (under a service agreement). In fact, these are not considered fully-fledged civil servants and are not entitled to a benefit package, though they execute the same duties and receive the same salaries. When the 'vacant positions' are announced, consultants go through the standard procedure (competition and/or interview), but they are, in fact, in a more advantageous position as they are already known to a member of the recruitment commission (one of a total of three), representing the relevant public agency.

<sup>116</sup> Law on Civil Service, dated 21 July 2000; Law on Mandatory insurance of civil servants, dated 30 April, 2002; Presidential Decree on Adoption of regulations on entering the civil service through the competition, dated 24 June 2009; Presidential Decree on the Establishment of Commission on Civil Service, dated 19 January 2005; Presidential Decree on Approval of Regulations of the Civil Service Commission, dated 3 June 2005; Ethics Code of Civil Servants, dated 31 May 2007.

<sup>117</sup> Article 32 of the Law on Civil Service, dated 21 July 2000.

<sup>118</sup> Presentations at the advocacy round table of Transparency Azerbaijan and Civil Service Commission, dated 2 February 2011.

<sup>119</sup> Ministry of Justice, Prosecutors' Office, Judiciary, Ministries of Foreign and Internal Affairs; and Transparency Azerbaijan's first-hand experience of monitoring the recruitment process.

<sup>120</sup> Letter from B.Xalilov, chairman, Civil Service Commission under the President of Azerbaijan Republic, dated 23 April 2010.

A similar scheme is often applied with promotion. Civil servants can be promoted as acting department heads. As a result, people perform functions for years, but are not fully protected by the law and thus are vulnerable and easily manipulated. There are numerous cases in which newly appointed heads of public agencies make use of the provisions of Article 29.2 to downgrade civil servants in order to appoint new, loyal people transferred from previous jobs to key positions.<sup>121</sup> This occurs despite Article 21.4 of the Law on Civil Service, which clearly prohibits the excuse of changes in the structure or management of public agencies as grounds for termination from the civil service.

The evidence suggests that civil servants are not protected from political interference in Azerbaijan, and this view is shared by many other observers.<sup>122</sup>

#### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent are there comprehensive regulations regarding political activities of existing civil servants (e.g. political party membership, expression of political views)?

**Compliance Score: 2**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

Article 20.1.6 of the Law on Civil Service forbids joining activities of any political party during the term of civil service. Article 4.2 of the Law on Civil Service also forbids the establishment of branches of political parties in the civil service.<sup>123</sup> Article 4.3 says that while performing duties civil servants should be guided by the Constitution, laws and other legislative acts and not be affected by the decisions of political parties and social organisations. Under Article 10.4 of the law, the legal status of persons holding political positions should be determined by other legislative acts, unless otherwise specified in this law. Article 31.5 of the law prohibits attestation of civil servants on the basis of their political views or beliefs. These legal provisions seem to be clear and sufficient to make the public service free from political views.

#### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent are these regulations enforced?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

In reality, civil servants are encouraged to join events conducted by the ruling party of Yeni Azerbaijan, and there are even cases in which the chairs of branches (regional offices) of the ruling and supporting political parties have been civil servants. Joining in the activities or membership of opposition parties is considered to be a serious disadvantage and will sooner or later result in dismissal from the office under an unrelated pretext.<sup>124</sup>

#### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent are there legal requirements for the disclosure/declaration of personal assets, income, financial interests for public sector employees?

**Compliance Score: 1**

<sup>121</sup> Interview with an anonymous informant, dated 23 January 2010.

<sup>122</sup> Indicator 45, Global Integrity Report 2008, available at: <http://report.globalintegrity.org/Azerbaijan/2008/scorecard/54>.

<sup>123</sup> Law on Civil Service, dated 21 July, 2000.

<sup>124</sup> Interview with an anonymous informant, dated 23 January 2010.

## 2010 Updates

There are no new developments in this area, despite efforts of civil society and the media to raise this issue at every opportunity, such as at meetings and conferences with participation of public officials.<sup>125</sup>

## 2009 Notes

Under Article 5 of the Law on Combating Corruption,<sup>126</sup> public officials should file regular asset disclosure forms illustrating sources, types and amount of income, stock holdings, taxable properties and other assets. Article 3.1 of the Law on Approval of Rules for Submission of Financial Information by Officials,<sup>127</sup> stipulates that among others, the senior echelon of public officials, including the President, should submit their declarations to the Anti-corruption Commission, and lower ranks to the respective financial/accounting departments. Under the named law, civil servants should submit a declaration within 30 days of taking up their responsibilities.<sup>128</sup> The Cabinet of Ministers was instructed to draw up such forms and rules, which has not been carried out so far.<sup>129</sup>

The mechanism for verification of financial declarations has not yet been set up, however. Thus, the legislation does not define an independent auditing of the executive branch asset disclosure forms. Under Article 8 of the latter law, the Commission itself controls the accuracy of the information submitted.<sup>130</sup>

Article 6.5 of the Law on Approval of Rules for Submission of Financial Information by Officials envisions administrative responsibility for delay, while criminal responsibility for the willful falsification and concealment of information is also set forth in the Criminal Code.<sup>131</sup> The Law on Combating Corruption also refers to disciplinary procedures.<sup>132</sup> However, it is not clear from the language of the law what disciplinary procedures or punishment would be applied, and it is unknown if any have been applied. Still, both elected and appointed officials can be held criminally responsible for the falsification of documents.<sup>133</sup>

### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent does disclosure of personal assets, income, financial interests of public sector employees occur in practice?

**Compliance Score: 0**

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

So far, public officials have not submitted any financial declarations because as indicated above, no forms for such a disclosure have been prepared and approved by the authorised agency, i.e. Cabinet of Ministers.

<sup>125</sup> Presentation of Rena Safaraliev, executive director, Transparency Azerbaijan; and Radio Free Europe/ Radio Liberty Azerbaijan desk, 'Why public officials do not submit tax returns?', 30 July 2010; available at: <http://www.azadliq.org/content/article/2114304.html>.

<sup>126</sup> Law on Combating Corruption, dated 13 January 2004.

<sup>127</sup> Law on Approval of Rules for Submission of Financial Information by Officials, dated 7 April 2006.

<sup>128</sup> Ibid.

<sup>129</sup> Presidential Decree on Amendments and Changes to the Civil Code, dated 9 August 2005.

<sup>130</sup> Global Integrity Report 2009; available at: <http://report.globalintegrity.org/reportPDFS/2009/Azerbaijan.pdf>.

<sup>131</sup> Law on Approval of Rules for Submission of Financial Information by Officials, dated 7 April 2006; and Article 313 of the Criminal Code of Azerbaijan Republic, dated 30 December 1999.

<sup>132</sup> Article 6 of the Law on Combating Corruption, effective from 1 January 2005.

<sup>133</sup> Article 313 of the Criminal Code of Azerbaijan Republic, dated 30 December 1999.

### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** To what extent are there legal regulations protecting civil servants against arbitrary dismissals or political interference?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

Article 10 of the Law on Rules of Ethical Behaviour for Civil Servants,<sup>134</sup> provides that civil servants should follow only legal orders within their authority that are given/issued by higher officials. The above-mentioned article partially provides for the protection of civil servants from the execution of illegal orders and assignments. However, Article 33 of the Law on Civil Service,<sup>135</sup> provides for more reasons of termination of civil service employees, including omission of duties. The grounds for dismissal from the civil service are violations of Article 18 (which lists the duties and obligations of civil servants) and Article 20 (setting prohibitions for civil servants). These two articles could be broadly interpreted and thus provide little legal protection. Article 20.1.6 forbids participation in the activities of political parties; however as described above, this is quite common in respect of the ruling party.

### **Sub-Objective One: Independence, Accountability and Transparency of Civil Service**

**Indicators:** In practice, are the regulations protecting civil servants from arbitrary dismissal effective?

**Compliance Score: 1**

#### **2010 Updates**

Information on dismissal and prosecution of public officials is available through the media. In 2010, five staff members of the prosecutors' system have been dismissed from their positions for serious offences.<sup>136</sup> Twenty-four municipal employees were held accountable in 2010 over suspicions of committing crimes.<sup>137</sup> However, it is difficult to judge if officials have committed offences or were punished for political reasons. Therefore, Transparency Azerbaijan recommended the creation of a public database on legal cases.<sup>138</sup> According to other sources, government investigations of civil servants other than petty officials are often politically driven.<sup>139</sup>

#### **2009 Notes**

The existing Law on Civil Service<sup>140</sup> specifically provides that new appointments to senior positions or restructuring of public agencies should not serve as a basis for civil service termination.<sup>141</sup> However, this norm is not supported by implementing regulations. Neither the authorised public agency, the Commission on Civil Service, nor civil society are allowed to conduct monitoring and compile statistics of dismissals as a result of changes in key positions at public institutions. The information on administrative reviews of cases from civil servants is not available.

<sup>134</sup> Law on Rules of Ethical Behaviour for Civil Servants, dated 31 May 2007.

<sup>135</sup> Law on Civil Service, dated 21 July 2000.

<sup>136</sup> 'Five staff members of the prosecutors' system have been dismissed from their positions', 5 February 2011; available at: <http://www.milli.az/news/society/35736.html>, 7 August 2010.

<sup>137</sup> '24 municipal employees were held accountable to the bodies of Azerbaijani prosecution since the start of 2010 over suspicions of committing crimes', 24 November 2010; available at: [www.day.az](http://www.day.az).

<sup>138</sup> Recommendations for Improvement of the Civil Service from Advocacy round table, dated 2 February 2011; available at: [www.transparency.az](http://www.transparency.az).

<sup>139</sup> Azerbaijan Country Profile; available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/azerbaijan/initiatives/public-anti-corruption-initiatives/>.

<sup>140</sup> Law on Civil Service, dated 21 July 2000.

<sup>141</sup> Article 21 of the Law on Civil Service, dated 21 July, 2000.

According to several sources and Transparency Azerbaijan's Advocacy and Legal Advice Centre cases, these regulations in practice are more often ineffective, despite the fact that the Law on Civil Service provides civil servants with the right to protect his/her legal rights and interests in authorised agencies and court.<sup>142</sup> Transparency Azerbaijan's Advocacy and Legal Advice Centre has received first-hand information on cases of restoring a job after wrongful dismissal at the Ministry of Communication and Information Technologies with the help of a civil society organisation, and at the Copyright Agency under a court decision.<sup>143</sup> Thus, this indicator is scored at 1, as regulations are neither utterly ineffective nor effective, and rather depend on an individual case and the persistence of the dismissed to defend their rights. Procedures on judicial protection of rights are set forth in the Civil Code.

### **Sub-Objective Two: Human Resources**

**Indicators:** To what extent are wages in the public sector competitive enough to sustain an appropriate standard of living for public sector employees, in accordance with the country's economic situation?

**Compliance Score: 1**

### **2010 Updates**

On 15 April 2010, the government announced (in response to an International Monetary Fund warning of a possible recession in Azerbaijan) an unspecified increase in public sector wages.<sup>144</sup> In September/October 2010, President Aliyev signed a number of orders increasing the salaries of employees of budgetary institutions, the basic pension, and all social benefits.<sup>145</sup> Despite these increases the average salary of public sector workers remains low as compared to the private sector and living standards,<sup>146</sup> but as of the date of this report information on average salaries in the public sector for 2010 is not available.<sup>147</sup>

Those working in the public sector include civil servants and employees of budget funded organisations, such as teachers and doctors. Under current legislation some public agencies have the right to establish non-budgetary (so called internal development) funds for employees, for example, the Ministries of Tax and Internal Affairs and the Customs' Committee. These funds are not transparent at all, creating the potential for corruption.<sup>148</sup>

While public sector wages increased in 2010, so too did the overall standard of living. Azerbaijan ranks 67<sup>th</sup> among 169 countries in the UN Human Development Index 2010,<sup>149</sup> taking it out of the group of 'countries with the average level of human development' into the group of 'countries with a high level of human development'. In 2010, the populations' deposits in banks increased by 23% and the growth rate of private assets exceeded 8%.<sup>150</sup>

### **2009 Notes**

In general, the current level of wages in the public sector is not sufficient to sustain an appropriate standard of living for public sector employees, which provokes a general tendency for low- and

<sup>142</sup> Article 19.0.9 of the Law on Civil Service, dated 21 July, 2000.

<sup>143</sup> Transparency Azerbaijan's first-hand experience with the lawyers and clients in both cases.

<sup>144</sup> 'Economic crisis could trigger recession in Azerbaijan', 26 May 2010; available at: <http://www.muxbir.com/2010/05/economic-crisis-could-trigger-recession-in-azerbaijan>.

<sup>145</sup> 'Social sector in Azerbaijan (for 2010)', 9 February 2011; available at: [www.trend.az](http://www.trend.az).

<sup>146</sup> Interviews with about 12 public officials after 29 November 2010, 2 February 2010 and 30 March 2010 advocacy round tables organised by Transparency Azerbaijan.

<sup>147</sup> Official data of the State Statistics Committee, see: <http://www.azstat.org/>; and Social sector in Azerbaijan (for 2010), 9 February 2011; available at: [www.trend.az](http://www.trend.az).

<sup>148</sup> The report on the assessment of 2010 microeconomic policy of Azerbaijan, by National Budget Group, released on 15 March 2011; available at: [www.nbg.az](http://www.nbg.az).

<sup>149</sup> UN Human Development Index, 2010; available at: [www.un-az.org](http://www.un-az.org).

<sup>150</sup> The Country's Socio-Economic Development in 2010; available at: [http://president.az/attachments/figures\\_en.pdf](http://president.az/attachments/figures_en.pdf).

medium-level civil servants to move to the private sector.<sup>151</sup> Azerbaijan's GDP is based on purchasing-power-parity (PPP) per capita at US\$9,352, according to 2009 International Monetary Fund data,<sup>152</sup> which ranks the economy 81 out of 181 surveyed worldwide. Still, the minimum wage for public sector employees is determined as follows: 175 Manats (US \$217) per month for administrative staff and 120 Manats (US \$149) for assisting staff.<sup>153</sup> These salaries for newcomers are basic and are increased depending on work experience and grades. By comparison, the minimum wage is set at 75 Manats (US \$93), while the minimum living standard calculated by the government is 77 Manats (US \$95), which is 30% below a realistic consumer basket as assessed by independent experts.<sup>154</sup>

It should be noted that the wage profile in the public sector is very uneven. Some agencies pay wages competitive with the private sector rate, mostly in law enforcement and the petroleum production and refining sector. For example, the salary of the chairman of the Supreme Court is set by law at 1,785 Manats (US \$2,222),<sup>155</sup> but some sectors (e.g. social services) pay extremely low wages. Therefore, according to the report of the State Statistics Committee, the average salary in the civil service is US \$429 (as of 10 June 2009).<sup>156</sup>

### **Sub-Objective Two: Human Resources**

**Indicators:** To what extent are there legal provisions to ensure that civil servants are regularly trained to improve their technical and managerial competencies?

**Compliance Score: 2**

#### **2010 Updates**

Regulations requiring professional training were adopted in 2009, but entered into force as of 1 January 2010.<sup>157</sup>

#### **2009 Notes**

According to Article 19.0.13 of the Law on Civil Service,<sup>158</sup> civil servants have a broadly defined right to be educated at the state's expense and receive relevant training, as well as to take leave for educational purposes. More details are specified in the Resolution of the Cabinet of Ministers, which sets out the types and terms of professional training for civil servants; as well as financing procedures for additional training.<sup>159</sup> The Civil Service Commission, under the President, is responsible for coordination of the training activities in public institutions.<sup>160</sup>

More concrete obligations of the state bodies to educate employees are foreseen in some sector regulations. For example, Article 2.9 of the Law on Rules of Ethical Behaviour for Civil Servants,<sup>161</sup> provides for rights and obligations with regard to the conduct of training programmes for members of the judicial services. However, the regulations do not specify the content of the training programmes or the consequences for dereliction of duties by officials responsible for the organisation of such

<sup>151</sup> Interview with an anonymous informant, dated 25 January 2010.

<sup>152</sup> See: [www.imf.org](http://www.imf.org).

<sup>153</sup> Memory booklet, publication of Azerbaijan Ministry of Finance, 2009, Expert Publishing House.

<sup>154</sup> Presidential Decree 2577, dated 26 December 2007; Law on Living Standard Minimum for 2010, dated 26 November 2009; and 'Azerbaijan's minimum wage well below cost of living', interview with economist Ogtay Ahverdiyev, 19 January 2010; available at <http://www.news.az/articles/6965>.

<sup>155</sup> Law dated 8 May 2007 on amendment to the Article 106 of the Law on Courts and Judges, dated 10 June 1997.

<sup>156</sup> See: APA newspaper <http://az.apa.az/news.php?id=156681>.

<sup>157</sup> Cabinet of Ministers Decree No 44, Rules on Financial Support and Types, Forms, Terms of Additional Professional Training for Public Servants, dated 19 March 2009.

<sup>158</sup> Law on Civil Service, dated 21 July 2000.

<sup>159</sup> Cabinet of Ministers Decree No 44, Rules on Financial Support and Types, Forms, Terms of Additional Professional Training for Public Servants, dated 19 March 2009.

<sup>160</sup> Presidential Decree on the Approval of Charter of The State Civil Service Commission under the President of the Republic of Azerbaijan, dated 3 June 2005.

<sup>161</sup> Law on Rules of Ethical Behaviour for Civil Servants, dated 31 May 2007.

programmes. Moreover, there are no monitoring and evaluation mechanisms for the trainers and trainees.

#### **Sub-Objective Two: Human Resources**

**Indicators:** In practice, is it the case that civil servants are regularly trained to improve their technical and managerial competencies?

**Compliance Score: 1**

#### **2010 Updates**

The State Commission on Civil Service conducts regular surveys to determine the professional development needs of civil servants. In response, a summarised request for training was sent to the Cabinet of Ministers in 2010. This programme plans short term on-site training abroad and invites foreign experts to administer training domestically. For example, 36 officials from the executive branch attended the Lithuanian Governance Institute, and nine others attended training at the Dutch Public Administration Institute. The Civil Service Commission arranged training on Human Resources Management on 15 February 2010 with a Lithuanian expert as a guest speaker for about 150 civil servants. Altogether, the Commission extended training opportunities to 750 public servants.<sup>162</sup> Despite these gains, management training, such as time management and innovative management skills are not provided.

#### **2009 Notes**

In practice, the availability and quality of professional training programmes varies dramatically from one public agency to another. Most national public agencies have their own training centres and conduct structured induction trainings for newcomers (Customs Committee, Ministry of Taxes, Prosecutors, Ministry of Justice, Ministry of Internal Affairs, etc.) and mid-career professionals. In addition, some civil servants receive mid-career training in Azerbaijan and abroad under the technical assistance projects to these public agencies, implemented with the support of USAID, the EU, the Council of Europe and the German agency GTZ, as well as other international organisations.<sup>163</sup> Some public institutions have demonstrated success in this area, for example the establishment of the World Customs Organisation regional training centre in Baku.

The information that the public agencies are conducting training aimed to improve their managerial skills and competences is available for certain public institutions. The state body responsible for conducting training for civil servants is the Academy of Public Administration under the President, which has a low capacity to conduct training on the improvement of technical and managerial competences.<sup>164</sup>

Information providing the justification of promotion in the civil service under the professional upgrade is not available.

#### **Sub-Objective Two: Human Resources**

**Indicators:** To what extent are there provisions to ensure that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?

**Compliance Score: 2**

#### **2010 Updates**

The 2010/2011 Action Plan of the Commission on Civil Service envisions quarterly training on ethics and integrity for the national and local offices of the executive branch. The Commission requires by-annual reports on conducted activities.

<sup>162</sup> Interview with a representative of the Civil Service Commission, dated 18 March 2011.

<sup>163</sup> List of seminars and trainings conducted at Customs Committee; available at: <http://www.az-customs.net/az/arxnews/>.

<sup>164</sup> List of events conducted at the Academy of Public Administration; available at: [http://www.dia.edu.az/xeber\\_en.php](http://www.dia.edu.az/xeber_en.php).

## 2009 Notes

Training on ethics is broadly envisioned in Article 19.0.1 of the Law on Rules of Ethical Behaviour for Civil Servants and sector codes of conduct – e.g., for judges, Prosecutors' Office employees, police officers, tax and customs officials, and internal regulations at some public agencies. The organisation of quarterly training programmes on issues of ethics and integrity is envisioned in the Action Plan of the Civil Service Commission.<sup>165</sup> However, existing regulations do not specify the content of training or repercussions for non-compliance.

### **Sub-Objective Two: Human Resources**

**Indicators:** In practice, is it the case that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?

**Compliance Score: 2**

## 2010 Updates

Training activities related to ethics have gained momentum in the public sector by some government agencies, especially by the Commission on Civil Service. For the first time, in 2010, the Commission published its ethical education activities.<sup>166</sup> Training topics included rules of ethical behaviour, conscientiousness, cultural behaviour, respect for human rights, inadmissibility of corruption, conflicts of interest, organisation of supervision of ethical behaviour and liability for violations of ethical rules. Training has been arranged for representatives of national and local executive agencies. In early 2011 the Commission published its first report summarising training on ethical issues and the implementation of provisions of codes of behaviour.<sup>167</sup>

## 2009 Notes

The Code of Ethical Behaviour – with sections on corruption, gifts and conflicts of interest – is included in the training curriculum of all central and executive bodies, judges and prosecutors. In general, training programmes at law enforcement agencies, as well as the Ministry of Taxes and Customs Committee, are much better organised and coordinated compared to other public agencies.<sup>168</sup> A series of training courses have previously been organised by the Civil Service Commission on its own and in cooperation with international organisations, such as Council of Europe and the UN Development Program.<sup>169</sup> Available reports of public agencies do not specify information on the duration, topics or the ranks of the recipients of training.

### **Sub-Objective Three: Public Sector Integrity**

**Indicators:** To what extent are there legal provisions in place to protect whistleblowers in the public sector?

**Compliance Score: 0**

## 2010 Updates

There are no new developments in this area.

## 2009 Notes

<sup>165</sup> Action Plan for 2009-2010 of the Civil Service Commission, which is part of the implementation of the National Strategy for Increasing Transparency and Combating Corruption.

<sup>166</sup> Information on 2010 Activities of the Civil Service Commission on Issues of Ethical Behaviour; available at: [www.dgmk.az](http://www.dgmk.az).

<sup>167</sup> Ibid.

<sup>168</sup> See: [www.taxes.gov.az](http://www.taxes.gov.az) and [www.customs.gov.az](http://www.customs.gov.az).

<sup>169</sup> Letter from B.Xalilov, chairman, Public Service Commission under the President of Azerbaijan Republic, dated 23 April 2010.

The protection of whistleblowers is envisioned in the draft law on Conflicts of Interest, the adoption of which has been delayed, while existing legislation is rather inconsistent on the issue. Although a public official should be subject to criminal liability for failure to report serious or especially grave crimes, and few corruption related offences fall under this category, there is no legal protection for those who do.<sup>170</sup> In other words, if officials do not report grave incidents they may be punished, and in case of lighter offences they will not receive any penalty, except for police officers who are required to report all kinds of law violations.<sup>171</sup> However, when officials report violations, the law will not protect them unless a criminal case is opened and the Law on State Protection of Participants of the Criminal Process steps in.<sup>172</sup> Hence, there is little incentive for officials to act as whistleblowers when violations are identified. Ordinary citizens do not have any reporting obligations and receive some protection under the Criminal Code – i.e. they are freed from criminal responsibility for paying a bribe if they report it before the information becomes known to law enforcement bodies, or if they have been threatened by an official.<sup>173</sup>

### **Sub-Objective Three: Public Sector Integrity**

**Indicators:** To what extent are whistleblowers in the public sector protected in practice?

**Compliance Score: 0**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

Protection of whistleblowers in practice is nonexistent, as supported by other external evaluations.<sup>174</sup> Statistics are not available on the reporting of corruption-related offences. There are no specific systems to receive reports of suspicions of corruption in most public agencies, the exceptions being the Ministries of Tax and Education.

However, many government bodies have online facilities and hotlines through which people, including officials, can make reports, including on suspicions of corruption. The efficiency of these tools is minimal, as the law prohibits reviewing anonymous reports and few people, least of all civil servants, would dare to reveal their identity when making reports. The gap in the official whistleblower mechanisms has partly been filled by civil society organisations such as Transparency Azerbaijan's Corruption Hotline. However, it should be noted that even civil society does not receive many reports other than complaints from victims of corruption themselves, as the reporting of somebody else's misdoings is contrary to the national culture.

### **Sub-Objective Three: Public Sector Integrity**

**Indicators:** To what extent are comprehensive codes of conduct regarding conflicts of interest, rules on gifts and hospitality, post-employment restrictions, etc. for public sector employees in place?

**Compliance Score: 2**

#### **2010 Updates**

More agencies adopted, or made public, their respective codes of ethics in 2010. The most significant development was the ethics portal [www.etika.az](http://www.etika.az) released by the Azerbaijan Lawyers Confederation, with the support of the Commission on Combating Corruption. The website contains a collection of relevant legislation, an online test and information for state civil servants and citizens.

<sup>170</sup> Article 182 of the Criminal Code of Azerbaijan Republic, dated 30 December 1999.

<sup>171</sup> Articles 13 and 15 of the Law on Police, dated 28 October 1999.

<sup>172</sup> Law on State Protection of Participants of the Criminal Process.

<sup>173</sup> Note to Article 312 of the Criminal Code of Azerbaijan Republic, dated 30 December 1999.

<sup>174</sup> Public Anti-corruption Initiatives; available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/azerbaijan/initiatives/public-anti-corruption-initiatives/>.

## 2009 Notes

The comprehensive Law on Rules of Ethical Behaviour for Civil Servants and the Law on Combating Corruption were developed with substantial input from civil society and are generally viewed by external experts as comprehensive and substantive laws. There are also specific Codes of Ethics for Customs, Tax, the Ministry of Internal Affairs and the Ministry of Justice employees. Generally, the legislation is rather well developed and will be further elaborated in the Law on the Prevention of Conflicts of Interest, which is currently in the draft stage. However, these laws are not free of deficiencies in the area of hospitality. Namely, Article 8 of the Law on Combating Corruption allows 'ordinary hospitality', but it does not set a limit in monetary expression. As for the prevention of conflicts of interest, this area is not well covered due to delays with the adoption of respective legislation.

Some restrictions for post-employment are set out for law enforcement officers. The law sets out a prohibition for civil servants to move to entities supervised when in public service within a period of time.<sup>175</sup> However, this time period and other measures remain unspecified and should be set forth by the Law on the Prevention of Conflict of Interest, which was passed in the Parliament in the first reading in mid-2006 but has stalled since.

### **Sub-Objective Three: Public Sector Integrity**

**Indicators:** To what extent are these codes of conduct followed in practice?

**Compliance Score: 1**

## 2010 Updates

The Commission on Civil Service instructed all public agencies to report on training and complaints with regards to unethical behaviour.<sup>176</sup> The Commission published its first aggregate report in 2010.<sup>177</sup> According to the report, within the first six months approximately 250 officials were penalised, of which about 30 have been dismissed. In view of the complaints received by Transparency Azerbaijan (a total of 27,593 initial calls/contacts for 2010), these numbers do not seem to represent the actual situation.

Some public agencies instituted dedicated hotlines for reporting abuses. Agencies and ministries that operate such phone and internet services include: the Ministry of Tax, Ministry of Education, Ministry of Culture and Tourism, Ministry of Environment and Natural Resources, and the Saatli regional executive.<sup>178</sup> Unfortunately, only the Ministry of Education discloses information regarding the follow-up of these complaints.

## 2009 Notes

There are no implementing regulations allowing the authorised public agency, the Commission on Civil Service and/or civil society to monitor and report on the status of the implementation of codes of conduct at public institutions. Neither is there any information on the level of implementation of codes in the available reports by public institutions. This indicator is not scored, as no sufficient information on the issue is available.

### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent do public procurement regulations exist requiring open competitive bidding as a general rule with exceptions regulated in the law kept to a minimum?

**Compliance Score: 2**

<sup>175</sup> Article 15.3 of the Law on Rules of Ethical Behaviour for Civil servants, dated 31 May 2007.

<sup>176</sup> Two letters from the Civil Service Commission to national and local executive authorities, dated 27 January 2010.

<sup>177</sup> Information on 2010 Activities of the Civil Service Commission on Issues of Ethical Behaviour; available at: [www.dgmk/az](http://www.dgmk/az).

<sup>178</sup> Information on 2010 Activities of the Civil Service Commission on Issues of Ethical Behaviour; available at: [www.dgmk/az](http://www.dgmk/az).

## 2010 Updates

The rules on public procurement are being strengthened with new initiatives. The Agency for Public Procurement introduced tools, through its website, to encourage Azerbaijani businesses to participate in procurement processes abroad.<sup>179</sup> Also, standard tender documents and guidelines for procurement by public agencies have been prepared with the help of USAID experts.<sup>180</sup>

## 2009 Notes

The Law on Public Procurement sets out several procurement methods based on the supposed value of the contract.<sup>181</sup> If the supposed value is more than 50,000 Manats (US \$62,000), it should follow the open tender procedures; if the supposed amount is between 2,000 Manats (US \$2,489) and 50,000 Manats (US \$62,000), the method of request for quotations may be followed. The law specifies the criteria and methodology for the use of a two-stage tender process, limited participation and procurement from the one-source method.<sup>182</sup> Information on bids is available at [www.tender.gov.az](http://www.tender.gov.az), as well as through major newspapers. Article 19 of the law determines special cases where limited and closed tenders should be conducted and these cases seem reasonable. However, the method of procurement from one source is not supported by detailed implementing regulations, thus creating opportunities to avoid transparency of public procurement.<sup>183</sup>

### Sub-Objective Four: Public procurement

**Indicators:** In practice, to what extent is open bidding the general rule for public contracts, with exceptions regulated in the law and kept to a minimum?

**Compliance Score: 1**

## 2010 Updates

Procurement remains an area of serious concern. Companies surveyed in the World Economic Forum Global Competitiveness Report 2010-2011 report that Azerbaijan government officials often favour 'well-connected' companies and individuals when awarding contracts.<sup>184</sup> In response, the State Procurement Agency began publishing a list of contracts awarded, including information about successful bidders and contract prices on its website.<sup>185</sup>

## 2009 Notes

In practice, the bidding process for public contracts is open and information about them is available. According to the State Procurement Agency, the major part of procurement is conducted under the open tender method (approximately 94%).<sup>186</sup> State Procurement Agency statistics for 2008 show the total number of bids was 8,839, for a total amount of 2.5 billion Manats (US \$3.1 billion).<sup>187</sup> However, information on tenders with participation of domestic subcontractors and amounts of less than 10 million Manats can remain unpublished under the existing legal framework, which is another grey area of concern.<sup>188</sup> As a result, information on most tender winners, as well as the total number of projects is

<sup>179</sup> 'Azerbaijan began to stimulate participation of Azerbaijan business in tenders abroad', 3 August 2010; available at: <http://banki.az/showekonews.php?id=3303&lang=ru>.

<sup>180</sup> Annual 2010 Report of the State Agency for Public Procurement; available at: [www.tender.gov.az](http://www.tender.gov.az).

<sup>181</sup> Law on Public Procurement, dated 27 December 2001.

<sup>182</sup> This is where only one supplier is available.

<sup>183</sup> Article 21 of the Law on Public Procurement, dated 27 December 2001.

<sup>184</sup> This report is available at: [www.weforum.org](http://www.weforum.org).

<sup>185</sup> Correspondence with the State Procurement Agency, dated 31 March 2011.

<sup>186</sup> Report on state procurement by state agencies and enterprises of the Azerbaijan Republic for 2008, State Procurement Agency; available at: <http://tender.gov.az/hesabatlar/Hesabat2008.html>.

<sup>187</sup> Ibid.

<sup>188</sup> Order 124 of the Ministry of Finances, dated 22 July 2002.

not available. Some sources even claim that tenders for most of the contracts have not been held, and that 'contractors are defined on the basis of mysterious decisions'.<sup>189</sup>

#### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent are there detailed formal rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees, etc.) to ensure objectivity in the contractor selection process?

**Compliance Score: 1**

#### **2010 Updates**

The State Procurement Agency applied a new registration system based on recommendations provided by the Center for Economic and Social Reforms. The new system allows companies to register on the State Procurement Agency website and apply for tenders online. The new system will also allow registered companies to monitor results.<sup>190</sup>

#### **2009 Notes**

Article 36 of the Law on Public Procurement determines the general rules for the review, assessment and comparison of tender proposals.<sup>191</sup> With regard to implementation of this article, the State Procurement Agency had adopted the general Methodological Instructions for the review, assessment and comparison of tender proposals. However, the detailed formal rules to ensure objectivity in the contractor selection process have not been adopted yet. The current Azerbaijan system of quality assessment is under development (EU Twinning, GTZ, etc., technical assistance projects, providing assistance for the development of national legislation and institutional framework in the field of technical regulation, certification).

#### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent are these rules followed in practice?

**Compliance Score: 1**

#### **2010 Updates**

There is no direct evidence that the award of contracts is biased. However, circumstantial evidence indicates significant problems. In the spring of 2010 many regions in Azerbaijan suffered severe flooding, affecting 111,000 hectares and 30,000 rural homes. Civil society organisations initiated a group to monitor the consequences of the flood. The report, published on 23 July 2010, stated that 'the flood occurred as a result of poor management rather than natural cataclysm. For the past 5 years the national budget allocated 1 billion Manats (US \$1.25 billion) including a foreign loan but the delta of the river of Kura was not cleaned properly, though most of the money was "spent"'.<sup>192</sup>

#### **2009 Notes**

It is difficult to judge to what extent these rules are followed in practice, but a picture can be drawn based on the surveys among companies, tender participants and independent journalist investigations. 'There are cases when information about the winner of tender is not disclosed. At the same time, there are indirect obstacles which hinder suppliers to bid. In particular, there are cases, where bidders' participation fees are not refunded to suppliers, resulting in limited number of bidders.'<sup>193</sup>

<sup>189</sup> Global Integrity Report 2009; available at: <http://report.globalintegrity.org/Azerbaijan/2009/scorecard/62/51j>.

<sup>190</sup> Press release from CESD, dated 27 August 2010; available at: <http://www.cesd.az/index1.htm>.

<sup>191</sup> Law on Public Procurement, dated 27 December 2001.

<sup>192</sup> Radio Free Europe/Liberty, Azerbaijan desk, 'Flood as a result of poor management', 27 August 2010; available at: <http://www.radiozadlyg.org/content/article/2179812.html>.

<sup>193</sup> Journalist investigation by F. Suleymanoglu; 'Azadliq' newspaper, dated 28 January 2010; available at: <http://sei.az/news-656.html>.

The following challenges exist in the procurement sector:

- Business leaders rate the diversion of public funds to companies, individuals, or groups due to corruption with a score of 3.8 on a 7-point scale (1 being 'very common' and 7 'never occurs').
- Business leaders rate the favouritism of government officials towards well-connected companies and individuals when deciding upon policies and contracts with a score of 3.6 on a 7-point scale (1 being 'always show favouritism' and 7 'never show favouritism').<sup>194</sup>

Also, 37.6% of the companies surveyed expect to give gifts to secure a government contract, with the value of a gift expected to secure a government contract being 1.1% of the contract value.<sup>195</sup>

Existing legislation provides for the establishment of tender committees comprised of authorised representatives of the public agencies involved. Thus, decision-makers are usually selected from the same restricted number of people. There is nothing to stop the recurrent committee members from developing 'favourites'. Independent, medium-sized local businesses do not even try to participate in the tender process unless they have established informal contacts in advance.<sup>196</sup> In addition, there is need for developing and promoting monitoring procedures.

#### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent does the law provide for a procedure to request a review of and appeal against a procurement decision?

**Compliance Score: 1**

#### **2010 Updates**

The State Procurement Agency prepared a draft of the Law on Public Procurements that contains a new mechanism for appeals. According to the draft law, procurement entities will have to follow the decisions made by the State Procurement Agency regarding appeal.

#### **2009 Notes**

Article 24 of the Law on Public Procurement provides contractors with the right to appeal the decision of the tender commission.<sup>197</sup> However, third parties are not entitled to request a review or complain about decisions. The independence of the reviewing body is questionable, as it is set by the State Procurement Agency. This creates conditions for conflicts of interest. In addition, review procedures and existing penal mechanisms as set forth in Chapter VIII of the above law are considered liberal both for the bidder and the supplier.

#### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent are these review mechanisms effective in practice?

**Compliance Score: 1**

#### **2010 Updates**

Detailed statistics on procurement complaints from 2010 are not available from official sources. The State Procurement Agency states that 28 complaints were submitted by the bidders regarding the organisation and conduct of tender processes for public procurement. The complaints were reviewed in compliance with the requirements of Chapter VIII of the Law on Public Procurement; relevant

<sup>194</sup> World Economic Forum, The Global Competitiveness Report 2009-2010; available at: <http://www.weforum.org/en/>.

<sup>195</sup> The World Bank & International Financial Corporation: Enterprise Surveys 2009; available at: <http://www.enterprisesurveys.org/>.

<sup>196</sup> Interview with an anonymous source, dated 16 February 2010.

<sup>197</sup> Law on Public Procurement, dated 27 December 2001.

recommendations were given and necessary methodical assistance was provided.<sup>198</sup> However, this does not allow one to conclude that there is an effective monitoring system in place.

## 2009 Notes

Statistics on the review of complaints have not yet been disclosed by the State Procurement Agency for the year 2009. The only available report is for the year 2008, which does not provide ample information about the content of complaints; complaints received mainly concerned the organisation of tender procedures and the holding of tenders. As a result of the review, the reviewing body gave relevant recommendations and claimed that it had rendered methodical help to ensure impartiality and remove shortcomings.<sup>199</sup> According to a State Procurement Agency's official, '...there are three stages of review of appeal. At first stage, appeal is reviewed by the tender; the State Procurement Agency intervenes at the second stage of review; if the complainant is not satisfied with the decision made, he/she may complain further to the court. Mainly these complaints are solved at the first stage'.<sup>200</sup> According to data available to Transparency Azerbaijan, the State Procurement Agency received 16 complaints within the first half of 2009.<sup>201</sup> The Agency annulled more than 30 bidding procedures, as a result of considering complaints and monitoring.

### Sub-Objective Four: Public procurement

**Indicators:** To what extent is there a system in place to monitor public procurement, as well as to detect misconduct and apply sanctions accordingly?

**Compliance Score: 1**

## 2010 Updates

A change made to the Law on Public Procurement requires the publication of all tender announcements on the official website of the State Procurement Agency.<sup>202</sup> The number of tenders announced by the State Procurement Agency has substantially increased and the system is becoming more transparent, however, there is still substantial room for corruption.<sup>203</sup>

## 2009 Notes

The law foresees monitoring of public procurement by the State Procurement Agency; however, there are problems with enforcement of the requirements. Part of the problem lies in the absence of comprehensive regulations on monitoring, so the system exists only partially. According to an official of the State Procurement Agency, '...the Agency had developed and submitted to the Ministry of Justice the Regulations (instructions) for conducting monitoring over the implementation of procurement contracts. This control is foreseen by the Law on Public Procurement and Bylaws of the Agency. The enforcement of control would be much more effective upon adoption of the named regulations'.<sup>204</sup>

In addition, the law does not provide for civil society monitoring of public procurement. According to independent lawyer Mr. Alasgar Mammadli, 'the Law on Public Procurement foresees the principle of effectiveness and evidence of use of public money. The effectiveness could be achieved by

<sup>198</sup> Correspondence with the State Procurement Agency, dated 31 March 2011.

<sup>199</sup> Report for year 2008, official website of the State Procurement Agency; available at: <http://tender.gov.az/hesabatlar/Hesabat2008.html>.

<sup>200</sup> Interview of Zahid Valiyev, the Head of Trainings and Foreign Relations Sector at the State Procurement Agency to ANS Press, dated 11 January 2010; available at: <http://anspress.com/index.php?a=2&lng=az&nid=21741>.

<sup>201</sup> Materials made available to Transparency Azerbaijan in connection with the meeting of Azerbaijan NGOs with the team of the OECD Anti-Corruption Network for Eastern Europe and Central Asia preparing the second round of anti-corruption monitoring of Azerbaijan, dated 10 December 2009.

<sup>202</sup> The Law on Public Procurement, with amendments dated 27 December 2001, Article 4.1.7.

<sup>203</sup> Interview by Sabit Bagirov to Regnum News Agency, dated 5 April 2011; available at: [www.regnum.ru](http://www.regnum.ru).

<sup>204</sup> Interview with Zahid Valiyev, Head of Trainings and Foreign Relations Sector at the State Procurement Agency to ANS Press; available at: <http://anspress.com/index.php?a=2&lng=az&nid=21741>.

transparency. There is lack of awareness of general public on these processes. This is not required by the law and therefore represents a serious problem'.<sup>205</sup>

On the other side, the Procurement Agency is in the process of setting up a blacklist of companies violating tender provisions, in accordance with the provisions of the 2007-2011 National Strategy on Increasing Transparency and Combating Corruption.<sup>206</sup>

#### **Sub-Objective Four: Public procurement**

**Indicators:** To what extent does this monitoring system function effectively in practice?

**Compliance Score: 0**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

Article 4.1.2 of the Law on Public Procurement provides the State Procurement Agency with the right to control the implementation of procurement contracts.<sup>207</sup> However, detailed implementing regulations have not been adopted. Therefore, the effectiveness and legal framework for the monitoring system could not be appraised.

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<sup>205</sup> 'Journalist investigation of tenders in education sector', by A. Farhadova, Express newspaper; available at: <http://sei.az/news-656.html>.

<sup>206</sup> Information by the State Anti-corruption Commission on implementation in 2008 of the 2007-2011 National Strategy for Increasing Transparency and Combating Corruption Report; available at: <http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>. The strategy is available at: [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az).

<sup>207</sup> Law on Public Procurement, dated 27 December 2001.

## Objective three: Implementation of GRECO Recommendations

	2009 Compliance Score	2010 Compliance Score
<b>Overall Score</b>	23/36 (64%)	24/36 (67%)

Sub-Objective	2009 Compliance Score	2010 Compliance Score
Corruption Research	2/2 (100%)	2/2(100%)
Public Sector Human Resources Management	8/8 (100%)	8/8(100%)
Seizure of Assets	2/6 (33%)	2/6 (33%)
Anti-Money Laundering System	2/2(100%)	2/2 (100%)
Access to Information	0/2 (0%)	1/2 (50%)
Public Sector	8/14 (57%)	8/14 (57%)
Anti-bribery legislation Conflict of Interest	1/2 (50%)	1/2 (50%)

### Sub-objective One: Corruption research

**Indicators:** Has the GRECO recommendation to carry out a comprehensive study, in order to gain a clearer insight into the extent of corruption in Azerbaijan, its causes, its features and the sectors most affected by it, been implemented?

**Compliance Score: 2**

### 2010 Updates

At the end of 2009, the Information and Cooperation Network of the Anti-Corruption NGOs, published a survey in cooperation with the State Commission on Combating Corruption.<sup>208</sup> Follow up actions resulting from these surveys are unknown.

The Twinning Project on the Support to the Department on Combating Corruption, under the Prosecutors' Office, envisions the development of a survey to assess public trust. The survey has so far not been conducted. The Department has also created a National Data Base of Corruption Related Offences and shares its aggregate analytical reports with the public through the media.<sup>209</sup>

### 2009 Notes

The Information and Cooperation Network of the Anticorruption NGOs carried out a survey at the end of 2007 following the order of the Commission on Combating Corruption. The results were scrutinised at the sessions of the Commission,<sup>210</sup> but not made available to public, except for a brief presentation of major findings. The second survey conducted at the end of 2009 is being finalised as of date of this report.<sup>211</sup> In addition, the Commission on Combating Corruption is conducting an ongoing survey

<sup>208</sup> See: [www.anticorner.net](http://www.anticorner.net).

<sup>209</sup> Interview with an anonymous source at the Prosecutors' Office, dated 4 February 2011.

<sup>210</sup> Interview with Alimamed Nuriyev, Information and Cooperation Network of the Anticorruption NGOs coordinator, dated 8 February 2010.

<sup>211</sup> Ibid.

assessing the key anti-corruption measures through its website.<sup>212</sup> It is unknown if any actions and measures have been made and/or planned by the Commission pursuant to the survey's findings.

#### **Sub-Objective Two: Public Sector Human Resources Management (Detection and prosecution of corruption)**

**Indicators:** Has the GRECO recommendation to take the necessary measures to improve communication, feedback and cooperation in practice of all agencies involved in the detection, investigation and prosecution of corruption (i.e. police, prosecution and tax authorities) been implemented?

**Compliance Score: 2**

#### **2010 Updates**

The Prosecutors' Office arranged a seminar to improve the capacity of internal security and investigation departments of law enforcement agencies. Other participating agencies included the Ministries of Education, Health, Labour and Social Protection of Population, and the Social Protection Fund, State Commission for Civil Service, State Patent Office, Metrology Institute and Standardisation Committee. The seminars aimed to establish corruption detection units. The Anti-Corruption Department also assisted the above agencies with internal regulations.<sup>213</sup>

#### **2009 Notes**

This recommendation has been implemented. Pursuant to the recent Presidential Decree that sets coordination and cooperation in combating corruption-related violations in the field of management of state and municipal property, an amendment was introduced to the internal regulation instructing prosecutors to forward court decisions to the relevant investigation departments of other public agencies in order to improve communication and feedback between respective agencies.<sup>214</sup> Enhancement of cooperation was achieved through another innovation: an investigator should participate in the criminal case circumstances discussion with a public prosecutor appearing in the court on behalf of the state.<sup>215</sup> The practice of establishing joint investigation teams is also extensive. As a rule, all investigation teams are led by prosecutors/investigators of the Prosecutors' Office.<sup>216</sup>

#### **Sub-Objective Two: Public Sector Human Resources Management (Police, Prosecution, Tax authorities)**

**Indicators:** Has the GRECO recommendation to set up a working group of representatives from the various training centres to share best practices and to design a plan for joint training of police, prosecution and tax authorities on investigations into complicated economic crimes, including corruption been implemented?

**Compliance Score: 2**

#### **2010 Updates**

The training programme continues using previously established training modules. However, there is little utility in continuing the training if corruption related crimes will be delegated exclusively to a specialised department at the Prosecutors' Office.

#### **2009 Notes**

<sup>212</sup> See: <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=0>.

<sup>213</sup> Interview with an anonymous source at the Prosecutors' Office, dated 4 February 2011.

<sup>214</sup> Internal order of the Prosecutor General; and Presidential Decree on strengthening of combating corruption-related violations in the field of management of state and municipal property and means, dated 22 June 2009.

<sup>215</sup> Also supported by internal order of the Prosecutor General.

<sup>216</sup> Interview with an anonymous source, dated 18 February 2010.

The chief of the Analytical Information Division of the Anti-corruption Department under the Prosecutors' Office chairs a newly formed ad hoc working group composed of representatives of the training centres of various public agencies, including the Prosecutors' Office, Ministry of Internal Affairs and Ministry of Taxes, as well as the Ministry of National Security.<sup>217</sup> This ad hoc group has developed a special curriculum for anti-corruption training modules that were incorporated into the training programmes of the agencies referred to above. Some of the training topics may recur for new groups of beneficiaries or at the upgraded level.

#### **Sub-Objective Two: Public Sector Human Resources Management (financial crimes)**

**Indicators:** Has the GRECO recommendation to establish a comprehensive specialised training programme for the agencies concerned to increase their expertise on how to carry out financial investigations (both of financial crimes and of the possible proceeds of crime), in particular as regards corruption, been implemented?

**Compliance Score: 2**

#### **2010 Updates**

By the end of 2010, 15 training seminars were arranged under the Twinning Project and the Department on Combating Corruption at the Prosecutors' Office.

#### **2009 Notes**

The newly formed ad hoc working group (mentioned above) has included topics on how to carry out financial investigations (both of financial crimes and of the possible proceeds of crime) in their training curriculum.<sup>218</sup>

#### **Sub-Objective Two: Public Sector Human Resources Management (Judiciary and Public Sector)**

**Indicators:** Has the GRECO recommendation to give a core number of prosecutors from the Department for the Defence of the State Indictment and a core number of judges systematic and particular training in dealing with corruption cases – building on existing training opportunities – and to provide that, wherever possible, corruption prosecutions should be conducted in court by prosecutors with that systematic training, before judges with such training, been implemented?

**Compliance Score: 2**

#### **2010 Updates**

Training programmes continue and the five existing courts for Grave Offences have specialised prosecutors, but lower-courts can not afford to have specialised prosecutors in this area. In addition, Parliament revoked the right of military garrisons to institute criminal cases and conduct initial investigations; power will be delegated to the specialised prosecutors.<sup>219</sup>

On 11 March 2010, by Presidential Decree,<sup>220</sup> the number of staff of the Anti-corruption Department under the Prosecutors' Office increased from 40 to 100 prosecutors. The Cabinet of Ministers was also assigned to increase substantially the salaries of the officers of the Department and take necessary measures to improve its material maintenance. Legislative amendments have also been made to empower the Anti-corruption Department to carry out special investigation means (SIMs) in respect of the corruption offences in addition to their investigative powers.<sup>221</sup> The amendments go beyond this to exclude all other law enforcement agencies from carrying out policing measures in respect of the corruption offences, with the exception of legitimate extraordinary circumstances. On 3 March 2011

<sup>217</sup> Internal order of the Prosecutor General.

<sup>218</sup> Interview with an anonymous informant, dated 22 February 2010.

<sup>219</sup> See: [www.day.az](http://www.day.az), 22 October 2010.

<sup>220</sup> Presidential decree on some measures for the improvement of the activities of the Anti -Corruption Department under the General Prosecutor of the Republic of Azerbaijan, dated 11 March 2011.

<sup>221</sup> Amendments to the Law on Prosecutors' Office and the Law on Detective Search Activities, dated 18 March 2011.

Prosecutors' Office launched special hot-line with the number 161. This is an easy-to-access, free-toll hotline aimed at receiving complaints related to corruption.

## 2009 Notes

The internal regulation of the Prosecutors' Office<sup>222</sup> draws a circle of public prosecutors authorised to deal with corruption-related cases, while the judicial system does not have a list of designated judges.<sup>223</sup> Various training courses for judges and prosecutors were conducted at the Prosecutors' Training Centre at least once every three months with the participation of the OSCE, the Council of Europe (within the framework of the Azerbaijan Project on Anti-Corruption), Germany's Technical Cooperation Organization (GTZ), the US Department of Justice, and the EU Twinning Project with the Prosecutors' Office and other international organisations. These courses also examined precedents set by the European Court of Human Rights.<sup>224</sup> So, in practice, the core prosecutors are most often in receipt of such training programmes while there seems to be no systematic approach for judges. Though all judges are participating in regular training conducted by the Judiciary Council, as well as under various technical assistance projects being implemented, there are no special courts or specialised judges responsible for reviewing corruption trials.

### Sub-Objective Three: Seizure of Assets – Practice

**Indicators:** Has the GRECO recommendation to make full use in practice of the new provisions allowing for the confiscation of assets of an equivalent value to the proceeds of corruption and to introduce provisions allowing for the confiscation of assets held by third parties been implemented?

**Compliance Score: 1**

## 2010 Updates

As in 2009, no data on cases relating to property confiscation are available, despite the Presidential Decree.<sup>225</sup> Other sources believe that amendments should be introduced both to the existing legislation and the Criminal Code to make applications of confiscation in all corruption and corruption related crimes mandatory.<sup>226</sup> Even in cases covered by the media, there is no indication that interim measures, such as freezing assets before a trial, have been applied.

In the case of an investigator in the Goychay regional Prosecutors' Office, who abused official power and was released from his position, prosecution is under way in line with the Article 313 of the Criminal Code.<sup>227</sup> The Prosecutors' Office also arrested the head of the Gobustan department of State Social Protection Fund and an Assistant Rector at the Cooperation University for corruption related offences. No information on the application for temporary measures, such as freezing of assets, is available for either of the cases above.<sup>228</sup>

## 2009 Notes

Article 51 of the Criminal Code envisions mandatory confiscation, upon conviction, of the assets obtained as a result of corruption or the equivalent value of the proceeds of corruption in cases where it is not possible to confiscate the actual assets. It is difficult to assert whether full use has been made of the practice of confiscation, in the view of meagre value of the assets confiscated: value of property that was subject to the intermediary measures, such as freezing, arresting, etc. was 105,302 Manats

<sup>222</sup> Internal order of the Prosecutor General.

<sup>223</sup> Interview with an anonymous informant, dated 22 February 2010.

<sup>224</sup> Azerbaijan newspapers for 2009 and Transparency Azerbaijan first-hand experience.

<sup>225</sup> Presidential Decree No 469 on rules for the confiscation of property, dated 16 October 2006 .

<sup>226</sup> Second Round of Monitoring, Azerbaijan: Monitoring Report, OECD Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, 31 March 2010; available at: [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).

<sup>227</sup> 'Investigator has been fired from his position', Radio Liberty, 11 August 2010; available at:

<http://www.azadliq.org/content/article/2125220.html>.

<sup>228</sup> See: [www.mediaforum.az](http://www.mediaforum.az), 24 September 2010.

(US\$131,465) in 2006 and 180,180 Manats (US\$224,945) in 2007. Neither 2008 nor 2009 data, nor data for the value of property confiscated as a result of court decisions, is available to Transparency Azerbaijan.<sup>229</sup> The new provisions allowing for confiscation of assets held by third parties have been introduced. However, under the Civil Code the confiscation of property from a third person should be based on a civil suit (within a criminal case), abolishing the transaction with property.

#### **Sub-Objective Three: Seizure of Assets Human Resources**

**Indicators:** Has the GRECO recommendation to establish guidelines and thorough training for those officials (i.e. investigators, prosecutors and judges) who are required to apply the legal provisions on confiscation and interim measures been implemented?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

Training on legal provisions on confiscation and interim measures has been implemented. Interim measures are applied by prosecutors based on the court sanction, while confiscation is performed by court executors (bailiffs) pursuant to the court verdict. There are no special guidelines on how to freeze/arrest and confiscate; or at least, information is not available. The confiscation and interim measures are common for all crimes, including corruption, and are regulated by legislation in force.

#### **Sub-Objective Three: Seizure of Assets – Legislation**

**Indicators:** Has the GRECO recommendation on assessing the effectiveness of the amended Penal Code and on verifying, in particular, that the measures introduced are appropriate for the seizure and deprivation of the proceeds of corruption offences, by collecting detailed information on the use, and failure to use, confiscation and interim measures been implemented?

**Compliance Score: 0**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

There is no available information.

#### **Sub-Objective Four: Anti-Money Laundering System**

**Indicators:** Has the GRECO recommendation to ensure that the anti-money laundering system becomes operational as soon as possible, to rapidly provide the FIU with appropriate staff, resources and access to relevant information sources (databases), to provide training to the FIU's staff as well as to investigators, prosecutors and judges on the new provisions, and to educate reporting entities regarding their reporting duties under the new legislation been implemented?

**Compliance Score: 2**

#### **2010 Updates**

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<sup>229</sup> Materials made available to Transparency Azerbaijan in connection with the meeting of Azerbaijan NGOs with the team of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, preparing the second round of anti-corruption monitoring of Azerbaijan dated 10 December 2009.

Legislative activity in this area continued as one more law and two presidential decrees were adopted.<sup>230</sup> Additionally, numerous lesser legal acts were approved.<sup>231</sup> Since 2009, Azerbaijan has also adopted numerous legislative initiatives on anti-money laundering.<sup>232</sup>

Special money laundering provisions require the ability to closely monitor and collate Cash Transactions Reports and Electronic Funds Transfer Reports. Special software (AzAML and GoAML) was acquired and installed to receive, process and analyse data securely. Altogether four training programmes on AML/CFT have been designed and 54 training events were organised with support from international organisations such as USAID, OSCE, the IMF, the World Bank and the UN Office on Drugs and Crime. In October 2010, the USAID Baku Office awarded the FMS team with a Certificate of Accomplishment in recognition of efficient training programmes on AML/CFT and achievements in introducing international standards in this field.<sup>233</sup>

Thanks to the expedient and systematic measures taken in the development of the AML/CFT system Azerbaijan was assigned to evaluate Moldova.<sup>234</sup> The MONEYVAL Committee of the Council of Europe on AML/CFT has recommended the country's development as a model in the legislative system and to be treated as an example by other states.<sup>235</sup>

## 2009 Notes

Azerbaijan has created a legislative basis to combat money laundering and the financing of terrorism. Pursuant to joining the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime in March 2003, Azerbaijan adopted a respective law to honour its obligations.<sup>236</sup> Subsequently, the Ministry of Finance dissolved its previous financial structure, and as of April 2009 Azerbaijan established and put into operation a new intelligence unit entitled the Public Financial Control Service or Financial Intelligence Unit under the National Bank.<sup>237</sup> The Unit is responsible for controlling the use of budgetary funds according to their destination, and it receives and processes reports from reporting agencies. The Ministry of Finance and the General Prosecutors' Office have signed a memorandum of understanding on establishing an effective channel of communication, and from April through to December 2009 the Unit performed six complex financial examinations pursuant to the request of law enforcement agencies.<sup>238</sup> The Unit has received a good external evaluation of its work.<sup>239</sup> It is equipped with appropriate staff and resources: its staff is made up of 124 persons and it had a budget of 601,600 Manats (US \$751,072) for the year 2009, but there are

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<sup>230</sup> Presidential Decrees on making changes and additions to some legislative acts of the Republic of Azerbaijan, related to criminally obtained funds and other property, as well as on strengthening the fight against the financing of terrorism, dated 13 August and 241, dated 17 March 2010.

<sup>231</sup> Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism, dated 10 February 2009. The Law on Changes and Amendments to some legislative acts of the Republic of Azerbaijan in connection with implementation of the Law of the Republic of Azerbaijan on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism, dated 24 July 2009. The Law of the Republic of Azerbaijan on amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism, dated 5 March 2010.

<sup>232</sup> 'OSCE Trains Azerbaijani Financial Institutions in Combating Money Laundering', Press Release, dated 22 November 2010; available at: [www.osce.org/baku/74182](http://www.osce.org/baku/74182).

<sup>233</sup> Annual report for the Financial Intelligence Unit for 2010; available at: [www.fiu.az](http://www.fiu.az).

<sup>234</sup> 22 Plenary Session of Financial Action Task Force, October 2010; available at: [www.fatf-gafi.org](http://www.fatf-gafi.org).

<sup>235</sup> 33rd Plenary Session of MONEYVAL Secretariat, September 2010.

<sup>236</sup> The process of joining the new 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism is under way. Law on Combating Legalization of Proceeds from Crime and Financing of Terrorism, dated 10 February 2009.

<sup>237</sup> According to the Presidential Decree on measures for improving the activity of the Ministry of Finances of the Republic of Azerbaijan, dated 9 February 2009.

<sup>238</sup> Materials made available to Transparency Azerbaijan in connection with the meeting of Azerbaijan NGOs with the team of the OECD Anti-Corruption Network for Eastern Europe and Central Asia preparing for the second round of anti-corruption monitoring of Azerbaijan, dated 10 December 2009.

<sup>239</sup> Compliance Enhancing Procedures in respect of Azerbaijan, dated 11 December 2009; available at: [http://www.coe.int/t/dghl/monitoring/moneyval/About/AZE\\_StatDec09\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/About/AZE_StatDec09_en.pdf).

deficiencies regarding access to databases.<sup>240</sup> Training was not yet provided to the Unit staff, or to prosecutors, judges and reporting agencies, but it is planned for the year 2010.<sup>241</sup>

#### **Sub-Objective Five: Access to Information**

**Indicators:** Has the GRECO recommendation on (i) setting up the 'Authorized Agency on Information Matters' as provided for in the law 'On the Right to Obtain Information' as soon as possible and to providing it with adequate resources to carry out its functions, (ii) providing training to those civil servants required to respond to requests for information under the new law, (iii) holding civil servants' accountable for failure to comply with the requirements of the aforementioned law, and (iv) raising the awareness among the general public about their right to access information been implemented?

**Compliance Score: 1**

#### **2010 Updates**

There were no serious efforts to improve access to information other than the further establishment of hotlines for reporting crimes. New hotlines have been introduced by the Department on Combating Corruption under the Prosecutors' Office, Azerigas Joint Stock Company, the Ministry of Labour and Social Protection, the Ministry of Health, and the Customs' Committee. Transparency Azerbaijan recommended the State Council on Civil Service to take up the task of regulating the operation and accountability of such hotlines.<sup>242</sup>

As the country continues to slide on its downward trajectory in international freedom indexes, Facebook, YouTube and Twitter are emerging as an alternative source of information, which are widely used by the younger generation.<sup>243</sup>

#### **2009 Notes**

There are serious gaps between the law on freedom of information and its implementation in practice.<sup>244</sup> The Authorized Agency on Information Matters or Information Ombudsman envisioned by the law has not been set up, although discussions in Parliament are under way. Neither has the single electronic registry of documents available on the internet been created. There are no dedicated public information offices in ministries, and although press agencies have been informally instructed to attend to information requests, they have neither official competence nor knowledge on how to do so. The public cannot get access to information on government departments or to the designated officials to whom to send requests.<sup>245</sup> No systematic and comprehensive training for those civil servants required to respond to requests for information has been provided; neither are public civil servants being held accountable for failure to comply with the requirements of the aforementioned law. There have been no overt efforts by the authorities to raise public awareness on the right to access to information.<sup>246</sup>

It should be acknowledged that national authorities have improved their performance in replying to queries compared to previous years. As a result, the rate of responses to information queries is in the range of 25-30% for ordinary citizens and 70-75% for civil society organisations such as Transparency Azerbaijan.<sup>247</sup> A number of government agencies have also enhanced their websites and set up

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<sup>240</sup> Materials made available to Transparency Azerbaijan in connection with the meeting of Azerbaijan NGOs with the team of the OECD Anti-Corruption Network for Eastern Europe and Central Asia preparing the second round of anti-corruption monitoring of Azerbaijan, dated 10 December 2009; and interview with an anonymous informant, dated 22 February 2010.

<sup>241</sup> Interview with an anonymous informant, dated 24 February 2010.

<sup>242</sup> Recommendations on Improving Civil Service from the advocacy round table, dated 2 February 2011, submitted by Transparency Azerbaijan to the State Council on Civil Service; available at: [www.transparency.az](http://www.transparency.az).

<sup>243</sup> 'Vugar Gojayev reports on Azerbaijan's diminishing media landscape', dated 15 March 2010; available at: [www.indexoncensorship.org](http://www.indexoncensorship.org).

<sup>244</sup> The Law on the Right to Obtain Information, dated September 2005.

<sup>245</sup> Interview with Rahid Hajili, director, Media Rights Institute, dated 24 February 2009.

<sup>246</sup> Interview with Arif Aliev, chairperson of Yeni Nesil Union of Azerbaijan Journalists, dated 23 February 2010 and Transparency Azerbaijan first-hand experience.

<sup>247</sup> Transparency Azerbaijan, first-hand experience through the Advocacy and Legal Advice Centres.

information hotlines, speeding up the process of obtaining information; the best sample being the Ministry of Tax. However, the absence of a unique methodology for the establishment and operation of hotlines, as well as legal provisions for accountability, diminishes their efficiency.<sup>248</sup>

#### **Sub-Objective Six: Public Sector – Conflicts of Interest**

**Indicators:** Has the GRECO recommendation to enact and implement standards on conflicts of interest for all civil servants and officials – including standards with regard to situations where officials move to the private sector – and to provide for an appropriate mechanism to enforce these standards been implemented?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.<sup>249</sup>

#### **2009 Notes**

There are several provisions covering conflicts of interest in Azerbaijan legislation. Civil servants are obliged to avoid and report potential conflicts of interest.<sup>250</sup> In addition to specialised legislation covering law enforcement officers, the above law sets out post-employment restrictions, namely prohibiting civil servants from moving to entities in the private sector supervised when in public service within period of time again as set out by the legislation. However, the full details shall be set out by the Conflict of Interest Law, which was passed by the Parliament in the first reading in mid-2006 but has been delayed ever since, drawing much criticism from civil society. Accordingly, no sanctions for violation of this provision are foreseen in the Administrative or Criminal Code, or in the Code of Administrative Violations. Thus, no implementing mechanisms exist to prevent conflicts of interest, including in post-employment. Even if there were, most senior officials own companies obtained before or during office. Some of them are even in monopoly positions and keep their businesses after being in the government.<sup>251</sup> This recommendation has been partially implemented.

#### **Sub-Objective Six: Public Sector – Disclosure of Assets**

**Indicators:** Has the GRECO recommendation to (i) ensure that financial declarations can be verified in an effective manner, (ii) provide for an appropriate means of enforcing the provisions regarding financial declarations with regard to all officials concerned, and (iii) consider disclosing the financial declarations of elected and appointed officials to the public, as a preventive measure, with a view to increasing transparency in the public sector been implemented?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

All asset declarations are considered commercial or bank secrets and should be disclosed only in the event of a corruption or criminal investigation pursuant to court decisions. Use of the financial information for anything other than the actions specified above constitutes a criminal offence. This provision nullifies the whole of idea of this as a tool for improved accountability of the public servants.

<sup>248</sup> Report Regarding Monitoring of the Activity of Hotline telephone Services of the State Bodies, publication by NGO Coalition, ed. by S.Mammadov, Baku, 2009; available at: [http://www.clrpl.az/upload/file/Qaynar\\_xett\\_Hesabat\\_az.pdf](http://www.clrpl.az/upload/file/Qaynar_xett_Hesabat_az.pdf); and Making Government Anti-corruption Hotlines Effective, a study of Azerbaijan, Czech Republic, Kenya and Moldova, Working Paper by Transparency International, No 7, 2009.

<sup>249</sup> Recommendations on Improving Civil Service from the advocacy round table, dated 2 February 2011, submitted by Transparency Azerbaijan to the State Council on Civil Service; available at: [www.transparency.az](http://www.transparency.az).

<sup>250</sup> Article 151 and 15.2 of the Law on Rules of Ethical Behaviour for Public Servants.

<sup>251</sup> Global Integrity Report, Azerbaijan, 2008; available at: <http://report.globalintegrity.org/Azerbaijan/2008/scorecard/34>.

## 2009 Notes

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types and amount of income, stock holdings, taxable properties and other assets. Furthermore, the Law on Approval of Rules for Submission of Financial Information by Officials<sup>252</sup> covers appointed as well as elected officials, and requires submission of declarations within 30 days of taking up their responsibilities. Later the Cabinet of Ministers was instructed to draw up such forms and rules for both types of official, which so far has not been carried out.

As to the agency that is the recipient of such declarations, according to the Law on the Rules, the senior echelon of public officials including the President should submit declarations to the Anti-corruption Commission, and lower ranks to the respective financial/accounting departments. Members of the national Parliament and the Nakhichevan Autonomous Republic Parliament, report to an entity selected by the respective parliaments, which is yet to be set up, and local elected governments should submit declarations to the body 'specified by the law', which later was set as the Ministry of Justice.

All authorities receiving asset declarations are required to review the statements for accuracy and completeness of information, and compare the current statement with the financial information submitted previously. Additional information may be requested from filers for the sake of clarification. However, the cause or procedure for this action is not clear from the language of the legislation. The mechanism for verification of financial declarations has not yet been set up. Thus, the legislation does not define an independent auditing of the executive branch's asset disclosure forms. Under Article 8 of the Law on Approval of Rules for Submission of Financial Information by Officials, the Commission itself controls the accuracy of the information submitted.

### **Sub-Objective Six: Public Sector - Integrity**

**Indicators:** Has the GRECO recommendation on establishing rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants, including such issues as reporting corruption, gifts and conflicts of interest been implemented?

**Compliance Score: 2**

## 2010 Updates

In general, training in anti-corruption and ethics for public officials gained momentum in 2010. Training programmes were delivered by the Anti-Corruption Commission, the State Commission on Civil Service, various international organisations, civil society organisations, the Public Administration Academy, the Justice Academy and the Ministry of Education. Still there is no legal framework regulating such programmes.

## 2009 Notes

Training on anti-corruption, ethics and integrity is broadly envisioned in Article 19.0.1 of the Law on Rules of Ethical Behaviour for Civil Servants and sector codes of conduct, e.g., for judges, Prosecutors' Office employees, police officers, tax and customs officials, etc., and internal regulations at some public agencies. However, existing regulations do not specify the frequency and content of training, or the responsibility for non-compliance.<sup>253</sup> Also the organisation of quarterly training programmes on issues of ethics and integrity is envisioned in the Action Plan of the Civil Service Commission. A series of training courses was organised by the Commission on its own and in cooperation with international organisations, such as Council of Europe and UN Development Program, covering all of the country.<sup>254</sup>

<sup>252</sup> Law on Approval of Rules for Submission of Financial Information by Officials, dated 24 June 2005.

<sup>253</sup> Action Plan for 2009-2010 of the Civil Service Commission, which is part of the implementation of the National Strategy for Increasing Transparency and Combating Corruption.

<sup>254</sup> Letter from B.Xalilov, chairman, Civil Service Commission, dated 23 April 2010.

### **Sub-Objective Six: Public Sector Whistleblowing**

**Indicators:** Has the GRECO recommendation on introducing clear rules/guidelines requiring civil servants to report suspicions of corruption and to ensure that civil servants who report suspicions of corruption in public administration in good faith are adequately protected from retaliation been implemented?

**Compliance Score: 0**

#### **2010 Updates**

These are envisioned in the draft Conflict of Interest Law. This law has yet to be adopted, despite the efforts of civil society.<sup>255</sup>

#### **2009 Notes**

This recommendation has not been implemented: there are no clear rules/guidelines requiring civil servants to report suspicions of corruption, nor are civil servants who report suspicions of corruption in public administration in good faith adequately protected from retaliation.

### **Sub-Objective Six: Public/Private Sector Integrity**

**Indicators:** Has the GRECO recommendation on ensuring that a sanction disqualifying a person from engaging in certain specific professions and activities is effective in practice, in respect of persons acting in a leading position in a legal person been implemented?

**Compliance Score: 1**

#### **2010 Updates**

There are no new developments in this area.

#### **2009 Notes**

The punishment of depriving civil servants the right to hold certain positions or to be engaged in certain types of activity for a certain period of time following official abuse, including corruption-related offences is envisioned in Chapter 33 of the Criminal Code. Also, Article 27 of the Law on Public Service specifically prohibits people who have been subject to the punishments mentioned above from being recruited to the public service. Specific legislation also has similar provisions, e.g. for temporary debarment from participating in public procurement contracting.<sup>256</sup> However, all these provisions cover civil servants and are not applicable to persons in leading positions in other entities such as in the private sector. There is evidence of some implementation of this sanction albeit infrequently, with only four cases of respective court decisions in 2009.<sup>257</sup> Notwithstanding this, the records show a very small number of persons convicted for bribery:<sup>258</sup> 62, 52 and 68 persons in the years of 2006, 2007 and 2008, respectively.<sup>259</sup>

### **Sub-Objective Six: Public Sector - Codes of Conduct**

**Indicators:** Has the recommendation that tax authorities pay particular attention to the problem of corruption in the exercise of their fiscal duties, and to this end develop guidelines and specific training modules concerning the detection of corruption offences and the enforcement of the relevant legislation been implemented?

**Compliance Score: 1**

<sup>255</sup> Recommendations on Improving Civil Service from advocacy round table, dated 2 February 2011, submitted by Transparency Azerbaijan to the State Council on Civil Service; available at: [www.transparency.az](http://www.transparency.az).

<sup>256</sup> Article 13 of the Law on Public Procurement.

<sup>257</sup> Letter from Inam Karimov, Secretary, State Anti-corruption Commission, dated 26 April 2010.

<sup>258</sup> Official court verdict statistics has a line for 'bribery' rather than 'corruption'.

<sup>259</sup> See: <http://www.azstat.org/statinfo/crimes/az/008.shtml>.

## 2010 Updates

Training continued by the Ministry of Tax and the Training Centre of the Department of Combating Corruption under the Prosecutors' Office. Despite these improvements, arbitrary taxation creates opportunities for graft.<sup>260</sup> In the first half of 2010, the Ministry of Tax filed 94 prosecution cases for tax violations, finalised the initial prosecution in 39 cases and sent another 22 cases to court. The numbers seem to be rather small in light of mass tax evasion, as demonstrated by businesses in many opinion surveys.<sup>261</sup>

A memorandum of understanding has been signed between the Ministry of Tax and the Prosecutors' Office to design specific training modules concerning the detection of corruption offences with regard to tax evasion.<sup>262</sup> However, the evidence suggests that the relevant legislation has not been implemented efficiently: only one person in 2007 and 12 people in 2008 have been prosecuted and convicted for false accounting.<sup>263</sup> No other more precise data is available.

## 2009 Notes

To improve detection of corruption in the exercise of their fiscal duties, the Ministry has developed special Corruption Detection Guidelines that are thoroughly assessed by peers.<sup>264</sup> Information on corruption and other offences by tax inspectors and/or in application of tax legislation by reporting entities can be given to the Ministry online.<sup>265</sup> While existence of this tool is commendable, no follow-up on the reports received is publicly available.

### **Sub-Objective Six: Public Sector - Accountability**

**Indicators:** Has the recommendation to review the provisions on account offences, and to establish appropriate sanctions fully in line with Articles 14 and 19 of the Criminal Law Convention on Corruption been implemented?

**Compliance Score: 2**

## 2010 Updates

This recommendation has been implemented and no new developments took place.

## 2009 Note

In line with Article 14 (Account offences) and Article 19 (Sanctions and Measures) of the Council of Europe Criminal Law Convention against Corruption, amendments were made to the Criminal Code: Articles 313 (forgery by an official), 320 (forgery, illegal preparation and sale of official documents, state awards, stamps and forms or use of false documents) and 179 (embezzlement, misappropriation or other misuse of entrusted property) envisage criminal accountability. The Code of Administrative Violations sets out administrative penalties for possible accompanying violations: Articles 204-1 (violation of financial rules in financial-economic activities at state budget-financed enterprises and organisations), 247-1 (violation of the legislation covering accounting procedures) and 249 (violation of the rules of writing off taxes and compulsory fees). A loophole exists concerning legal persons who

<sup>260</sup> 2011 Index of Economic Freedom by the Heritage Foundation and Wall Street Journal; available at: <http://www.heritage.org/Index/>.

<sup>261</sup> See: [www.day.az](http://www.day.az), 13 July 2010.

<sup>262</sup> Letter from Inam Karimov, Secretary, State Anti-corruption Commission, dated 26 April 2010.

<sup>263</sup> Materials made available to Transparency Azerbaijan in connection with the meeting of Azerbaijan NGOs with the team of the OECD Anti-Corruption Network for Eastern Europe and Central Asia, preparing the second round of anti-corruption monitoring of Azerbaijan, dated 10 December 2009.

<sup>264</sup> Interview with anonymous informant, dated 18 February 2010.

<sup>265</sup> Through the Ministry of Tax website; available at: <http://www.taxes.gov.az/?name=daudit&lang=eng>.

cannot be held liable under current criminal law, although draft legislation is underway. Still, administrative and civil legislation applies to legal persons for corruption and similar offences.<sup>266</sup>

#### **Sub-Objective Seven: Anti-bribery legislation (Individual liability)**

**Indicators:** Has the GRECO recommendation on adopting the necessary legislation to provide for liability of legal persons for the offences of bribery, trading in influence and money laundering with sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS 173), and to provide training to investigative and judicial authorities on these issues been implemented?

**Compliance Score: 1**

#### **2010 Updates**

The draft law on Criminal Accountability of Legal Persons (the draft was prepared by the Working Group on Improvement of Legislation under the State Anti-Corruption Commission) has not been adopted. However, a national working group was established to propose amendments to the Criminal Code to bring it in line with international obligations.<sup>267</sup> Preparatory activities are under way.

A draft law on the amendments to the Criminal Code was submitted to the Parliament in February 2011.<sup>268</sup> Under the new law the subjects of corruption crimes will include all categories of civil servants listed in the Civil Service Act, employees of institutions who, although do not occupy administrative and managerial posts, are still materially in charge of affairs, employees of the municipalities, officials of foreign states, 'other employees' of international organisations, members of the international parliamentary assemblies, officials and judges of the international court, arbiters of international arbitrary tribunals, foreign and local jurors. In terms of the active and passive bribery, the legislator is to introduce the acceptance of the offer or promise to do so, as well as the offer and promise of a bribe. Likewise the trade in influence is to be extended to cover similar elements both in active and passive forms. The draft Law also envisions mandatory anti-corruption screening of all normative and legal documents and their drafts.

#### **2009 Note**

To honour its respective international obligations,<sup>269</sup> the country has made some preliminary steps in this direction. A draft law on the Criminal Accountability of Legal Persons was drawn up and submitted for review and comments to the working group set up jointly with the Council of Europe. It is planned to include the criminal accountability of legal persons in the new version of the Criminal Code.<sup>270</sup> However, no training for judges or investigators has been conducted in this respect. Azerbaijan legislation envisions the head of any legal entity or any other authorised official thereof should bear liability for illegal actions of any of its staff on duty.<sup>271</sup>

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<sup>266</sup> Article 7.2 of the Code of Administrative Violations covers corruption-related offences; petty embezzlement is covered by Article 69 and other violations related to securities and economic activity are covered in Chapter 18.

<sup>267</sup> Interview with Alimamed Nuriyev, Information and Cooperation Network of the Anticorruption NGOs coordinator, dated 15 March 2011.

<sup>268</sup> Draft Law on Normative Legal Acts.

<sup>269</sup> Obligations assumed under the Council of Europe Criminal Law Convention on Corruption ratified on 30 December 2003, and the UN Convention Against Corruption ratified on 30 September 2005.

<sup>270</sup> Interview with Alimamed Nuriyev, Information and Cooperation Network of the Anticorruption NGOs coordinator, dated 8 February 2010.

<sup>271</sup> Article 1099 of the Civil Code.

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