

Strasbourg, 23 June 2006

**Greco Eval I-II Rep (2005) 5E**

## **Joint First and Second Evaluation Rounds**

### **Evaluation Report on Azerbaijan**

Adopted by GRECO  
at its 29<sup>th</sup> Plenary Meeting  
(Strasbourg, 19-23 June 2006)

## INTRODUCTION

1. Azerbaijan joined GRECO on 1 June 2004, i.e. after the close of the First Evaluation Round. Consequently, Azerbaijan was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds (cf. paragraph 3 below). The GRECO evaluation team (hereafter referred to as the "GET") was composed of Dr Alastair BROWN, Advocate Depute, Crown Office (United Kingdom), Mr Levan KHETSURIANI, Chief Advisor, Anti-Corruption Policy Coordinating Department, National Security Council (Georgia), Mr Jorn GRAVESEN, Detective Chief Superintendent, The Public Prosecutor for Serious Economic Crime (Denmark), and Ms Eline WEEDA, Senior Policy Maker, Investigation Policy Department, Ministry of Justice (Netherlands). This GET, accompanied by two members of the Council of Europe Secretariat, visited Azerbaijan from 12 to 16 December 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (documents Greco Eval I-II (2005) 1E – Part 1 and Greco Eval I-II (2005) 1E – Part 2), copies of relevant legislation, and other documentation.
2. The GET met with officials from the following governmental organisations: the Commission for Combating Corruption under the State Council for Management of Civil Service, the Ministry of Justice (various departments, including the Centre for Work with Local Administration and the Registry of Legal Persons), the Prosecutor General's Office (various departments, including the department on Combating Corruption), the Judicial Legal Council, the Ministry of Internal Affairs / Police (various departments, including the Police Academy), the Ministry of Taxes, Ministry of Finance, the Chamber of Accounts, the Executive Office of the Parliament, the National Bank, the Ombudsman / Human Rights Commissioner, the State Customs Agency, the State Agency for the Administration of State Property, the State Agency on Public Procurements, the State Academy of Public Administration and the Nasimi District Municipality, the Sabail District Badamdar Municipality and the Sumqayit City Municipality. Moreover, the GET met with representatives of the following non-governmental institutions: the Chamber of Commerce, the Investment and Export Promotion Fund, the Auditor's Chamber, the Media-Broadcasting Council, various trade unions, the Young Lawyers Association and Transparency International. The GET also met with representatives of two business companies (Neftqazmash and Impeksar) and with independent auditors.
3. It is recalled that GRECO, in accordance with Article 10.3 of its Statute, agreed that:
  - the First Evaluation Round would deal with the following themes:
    - ❖ **Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption**<sup>1</sup>: Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
    - ❖ **Extent and scope of immunities**<sup>2</sup>: Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption), and
  - the Second Evaluation Round would deal with the following themes:
    - ❖ **Proceeds of corruption**<sup>3</sup>: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money

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<sup>1</sup> Themes I and II of the First Evaluation Round.

<sup>2</sup> Theme III of the First Evaluation Round

laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;

- ❖ **Public administration and corruption**<sup>4</sup>: Guiding Principles 9 (public administration) and 10 (public officials);
- ❖ **Legal persons and corruption**<sup>5</sup>: Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

Azerbaijan ratified the Council of Europe's Criminal and Civil Law Conventions on Corruption (ETS 173 and 174) on 11 February 2004 and became a member of GRECO upon their entry into force on 1 June 2004 (see paragraph 12 below).

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of Azerbaijan in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report presents – for each theme - a description of the situation, followed by a critical analysis. The core of the text describes the situation as it was in Azerbaijan at the time of the visit. Changes made to legislation after the visit, such as amendments to the Penal Code, are usually reflected in the footnotes to the text. The conclusions include a list of recommendations adopted by GRECO and addressed to Azerbaijan in order to improve its level of compliance with the provisions under consideration.

## **I. OVERVIEW OF ANTI-CORRUPTION POLICY IN AZERBAIJAN**

### **a. Description of the situation**

#### Perception of corruption

5. The authorities of Azerbaijan consider corruption “a serious problem, which could jeopardise the vast economic growth the country has experienced in recent years and be a threat to the social and political development of Azerbaijan”. In their comments, the authorities have indicated that it cannot be excluded that there is a link between corruption and organised crime in Azerbaijan: in the past there have been a number of convictions for corruption committed in an organised manner. In Transparency International's corruption perceptions index 2005, Azerbaijan ranked 137 (out of 159 countries) with a score of 2.2 out of 10 (compared to 1.9 out of 10 in the 2004 index). A Chapter of Transparency International (TI) was opened in Azerbaijan in October 2000.

#### Major initiatives

6. On 13 January 2004 the law 'On combating corruption' was adopted. The law *inter alia* establishes corruption-related offences with regard to public officials and stipulates that these offences will give rise to disciplinary, civil, administrative or criminal liability as provided for in (other) legislation. The law 'On combating corruption' furthermore allows for confiscation of the proceeds of corruption and establishes obligations for officials to declare their assets and income (see also 'Theme V' below). The law was complemented by a Presidential Decree of 3 March

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<sup>3</sup> Theme I of the Second Evaluation Round

<sup>4</sup> Theme II of the Second Evaluation Round

<sup>5</sup> Theme III of the Second Evaluation Round

2004 'On the implementation of the law on combating corruption', which established a new prosecutorial department for the fight against corruption, and prepared for the adoption of the statute of the Commission on Combating Corruption and for amendments to legislation to bring certain laws into conformity with the law 'On combating corruption'.

7. By Presidential Decree of 3 September 2004 the State Programme on Combating Corruption was adopted. The main objective of the Programme is to "provide a national integrity system for the effective implementation of the fight against corruption". To this end the Programme envisages the implementation of a comprehensive set of anti-corruption measures, including legislative changes (amendments to Penal Code, a law on liability of legal persons etc.), institutional reforms (the establishment of a Commission on Combating Corruption and new internal inspection bodies etc.), measures with regard to law enforcement and the court system (selection of judges, immunity of judges, increase in salaries of law enforcement personnel etc.), economic reforms, and awareness raising, education and co-operation with NGOs.
8. As mentioned above, one of the measures covered by the State Programme is the establishment of a specialised entity for the prevention of corruption, the Commission on Combating Corruption under the State Council on Management for the Civil Service. The Commission, which was established by the above-mentioned law 'On combating corruption', consists of 15 members, representing the executive, legislative and judicial branches. The statute of the Commission was approved by law on 3 May 2005 and provides that the Commission monitors the implementation of the State Programme. The Commission has set-up working groups to *inter alia* review draft versions of legislation. Representatives of civil society, the media and international experts take part in the working groups.
9. The State Programme covers a period of three years (2004-2006). The various state bodies addressed in the programme have to report bi-annually on the implementation of measures to both the Cabinet of Ministers and the Commission. The Commission meets regularly to assess the implementation of the Programme and publishes an account of its meetings on its website. The Commission and the Cabinet of Ministers are required to report independently to the President and to publish the progress of the implementation of the State Programme on the website of the Commission and in the media. The Cabinet of Ministers is to include information on anti-corruption measures in its annual report to the Parliament.
10. On 28 October 2004 the Statute of the Department on Combating Corruption in the Office of the Prosecutor General was adopted. This Department is a specialised entity in detection, investigation and prosecution of corruption offences (see below, under 'public prosecution').
11. On 3 June 2005 the Statute of the Commission on Civil Service Issues under the President was approved. The Commission on Civil Service Issues is a central executive entity responsible for the implementation of state policy on issues related to civil service. Its tasks include the central organisation of recruitment to all state bodies, preparation of the regulations and conditions for competitive examinations, publication of vacant posts in state bodies and the development of a centralised information centre for the management of recruitment to the civil service (see 'Theme V' under 'recruitment').
12. The implementation of the State Programme will result in a number of new laws and amendments to existing legislation. In addition to the aforementioned law 'On combating corruption', a number of other laws (and amendments to existing laws) relevant to the prevention of and fight against corruption entered into force in 2005: the law on 'Submission of financial information by public officials', the law 'On the right to obtain information', the 'Judicial legal council act', the law 'On

administrative proceedings' and amendments to the 'Courts and judges act 1997'. The latter introduced new procedures for the recruitment of judges<sup>6</sup> and the lifting of immunities. After the visit of the GET, amendments to the Penal Code were adopted, involving the criminalisation of trading in influence, the inclusion of specific provisions on active and passive bribery of foreign public officials, and the redefinition of the provisions on abuse of power, active and passive bribery, exceeding official powers and money laundering as well as changes to the provisions on confiscation. According to the authorities, further legislative reforms will include a new law on a Code of Ethics for Civil Servants, a law on corporate criminal liability, an anti-monopoly law and a law on investments.

## Criminal Law

13. Azerbaijan ratified the Council of Europe's Criminal<sup>7</sup> and Civil Law Conventions on Corruption (ETS 173 and 174) on 11 February 2004; they entered into force on 1 June 2004. Azerbaijan is also party to the Convention on Laundering, Search, Seizure of the Proceeds from Crime (ETS 141) and the European Convention on Mutual Legal Assistance in Criminal Matters<sup>8</sup> (ETS 30). Azerbaijan has ratified both the UN Convention against Transnational Organized Crime and the UN Convention against Corruption. There are also bilateral agreements between Azerbaijan and other states. In the absence of a treaty, legal assistance may be carried out on the basis of reciprocity. Azerbaijan does not extradite its own nationals (Article 13, paragraph 1 PC). Pursuant to Article 13 (paragraph 3) PC, citizens of Azerbaijan, as well as residents of Azerbaijan without Azeri citizenship, who commit a criminal act outside the territory of Azerbaijan are subject to criminal liability provided that the offence committed is recognised as a crime in both Azerbaijan and the state where the offence was committed (double criminality).
14. The corruption offences established in the Penal Code (hereinafter PC) are active and passive bribery of officials<sup>9</sup>, which are regulated by Articles 311 and 312 of the PC. Article 311 (paragraph 1) PC criminalises passive bribery and provided, at the time of the visit<sup>10</sup>: "Acceptance by an

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<sup>6</sup> Recruitment exams under the new procedure were held for the first time in September 2005.

<sup>7</sup> Upon depositing its instrument of ratification Azerbaijan made the following reservations: it reserved the right not to establish as a criminal offence the conduct referred to in Articles 6 (bribery of members of foreign public assemblies), 10 (bribery of members of international parliamentary assemblies), 12 (trading in influence) and the passive bribery offences under Article 5 (bribery of foreign public officials) of the Convention and it may refuse mutual legal assistance under Article 26, paragraph 1, of the Convention if the request concerns an offence which the Republic of Azerbaijan considers as a political offence. It furthermore declared that "it would not be able to guarantee compliance with the provisions of the Convention in its territories occupied by the Republic of Armenia until these territories are liberated from that occupation".

<sup>8</sup> Upon depositing its instrument of ratification, Azerbaijan made the reservation that in addition to grounds provided for in Article 2 of this Convention assistance may also be refused in the following cases:

- if the request for assistance concerns acts which are not qualified as an offence under the legislation of the Republic of Azerbaijan;
- if there is an enforceable judgment of the court of the Republic of Azerbaijan or of a third State in respect of the person for committing the same offence of which he is suspected or accused in the requested State;
- if the request for assistance concerns an offence that is under investigation or judicial consideration in the Republic of Azerbaijan and if the postponement of execution of this request is impossible.

<sup>9</sup> Officials are considered to be persons, who "permanently or temporarily or by special authority, carry out the functions of representatives of state authorities, carrying out organizational-managerial or administrative functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organisations, and also in commercial and non-commercial institutions." (Footnote to Chapter 33 of the PC, Article 308 and further). After the visit of the GET, in April 2006, "representatives of international organisations and 'public officials' as defined by the law On Combating Corruption" were added to the definition of official in the Penal Code.

<sup>10</sup> With the entry into force of the amendments to the Penal Code in May 2006, Article 311, paragraph 1, now provides: "Receipt of a bribe – i.e. requesting or receiving by an official, directly or indirectly, personally or through an intermediary, of any material or other value, privilege or advantage, for him/herself or a third person, for any act (inaction), as well as 'general patronage or indifference', in the exercise of his/her duties – is punished with 4 to 8 years' imprisonment with deprivation of the right to hold a certain post or engage in certain activities for a period of up to 3 years and confiscation of property".

official, personally or through an intermediary, of a bribe in the form of money, securities, other property or benefits of a property nature for (in)actions carried out for the benefit of the bribe giver or a person represented by him, provided that the carrying out or facilitating of such (in)actions falls within the power of the official concerned or if by virtue of his/her official position s/he can promote such (in)actions, 'as well as for the general protection or indifference on service'<sup>11</sup>, is punished with 2 to 7 years imprisonment with the possibility to deprive the official of the right to hold a certain post or to engage in certain activities for a period up to 3 years". If the bribe is received by the official for illegal (in) actions the punishment can be increased up to 5 to 10 years' imprisonment in addition to deprivation of the right to hold a certain post or engage in certain activities for a period of up to 3 years<sup>12</sup>. If the bribe is received under aggravated circumstances, namely "on preliminary arrangement by a group of persons or organised group, repeatedly, involving a large amount<sup>13</sup>, or "with the application of threats" the punishment can be further increased up to 7 to 12 years' imprisonment<sup>14</sup> with (mandatory) confiscation of property.

15. Active bribery of an official is covered by Article 312 of the PC, which at the time of the visit provided<sup>15</sup>: "The presentation of a bribe to an official, personally or through an intermediary, is punished with a penalty of 1000 to 2000 nominal financial units<sup>16</sup> or up to 5 years' imprisonment and a penalty of 500 to 1000 nominal financial units<sup>17</sup>". If the bribe is presented in order to have the official engage in an obviously illegal act (or inaction) or in case of repeated presentation of a bribe, the sanction can be increased to 2000 to 4000 nominal financial units (approximately €2000 to €4000) or 3 to 8 years' imprisonment<sup>18</sup> with the possibility of confiscation of property.<sup>19</sup>
16. The GET was informed that amendments to the Penal Code would be adopted in 2006 and was told - after the visit - that these amendments entered into force in May 2006. The amendments enlarge the scope of the bribery offences with regard to an official, by including the request for a bribe in the definition of passive bribery and extending the meaning of a bribe to include an immaterial advantage. Furthermore, criminal liability under these articles is extended to cases where the benefit, advantage or concession is accepted by or offered to a third party acting on behalf of the official. The sanction for passive bribery is increased to 4 to 8 years' imprisonment with the possibility of deprivation of certain rights and confiscation of property.
17. Other offences that are criminalised, which may relate to corruption offences are: abuse of official powers (Article 308 PC), exceeding official powers (Article 309 PC), forgery by an official of official documents (Article 313 PC), illegal participation in entrepreneurial activities (Article 190

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<sup>11</sup> According to the authorities, this is to be understood as wilfully turning a blind eye to irregularities taking place.

<sup>12</sup> With the entry into force of the amendments to the Penal Code in May 2006, "with confiscation of property" has been added to the sanction under article 311, paragraph 2.

<sup>13</sup> A large amount is understood to be a sum of money, value of securities, property or benefits of a property nature, exceeding 5000 nominal financial units, which is approximately €5000. (One nominal financial unit equals 5500 Azeri Manats, which is approximately €1).

<sup>14</sup> With the entry into force of the amendments to the Penal Code in May 2006, this has become 8 to 12 years' imprisonment.

<sup>15</sup> With the entry into force of the amendments to the Penal Code in May 2006, Article 312, paragraph 1, now provides: "Giving of a bribe –i.e. the giving of any material or other value, privilege or advantage, directly or indirectly, personally or through an intermediary, to an official for him/herself or a third person to act or refrain from acting in the exercise of his/her duties - is punished with a penalty of 1000 to 2000 nominal financial units or 2 to 5 years' imprisonment with confiscation of property".

<sup>16</sup> Approximately €1000 to €2000.

<sup>17</sup> Approximately €500 to €1000.

<sup>18</sup> With the entry into force of the amendments to the Penal Code in May 2006, this has become 4 to 8 years' imprisonment with confiscation of property.

<sup>19</sup> "The person giving a bribe shall not be held criminally liable if the presentation of the bribe took place as a result of threats by the official concerned or if the person has voluntarily informed the appropriate state body about a presentation of a bribe."

PC), restriction of competition (Article 199 PC), as well as embezzlement by an official (Article 179 paragraph 2 PC).

18. Trading in influence was not criminalised in the PC at the time of the visit, but the authorities have reported that the aforementioned amendments to the PC also provide for the criminalisation of trading in influence.<sup>20</sup>
19. Criminalisation of money laundering was limited, at the time of the visit, to laundering the proceeds of drug trafficking (pursuant to Article 241 of the PC) and was also partly covered by the offence of 'receiving', i.e. purchasing or selling of illegally obtained property in Article 194 of the PC. However, the GET was informed that the aforementioned amendments to the Penal Code also criminalise the laundering of proceeds of all crimes, including corruption.<sup>21</sup>
20. Participation in organised crime is both an aggravating circumstance - that allows for an increase in the sanction imposed upon the offender (as indicated above in respect of passive and active bribery with regard to an official) - and a separate criminal offence. Article 218 of the PC provides that "the establishment of a criminal organisation for committing "very serious or serious crimes"<sup>22</sup>, managing a (subgroup of a) criminal organisation or establishing an association of representatives of criminal organisations with a view to committing "serious or very serious crimes" is punished with 8 to 15 years' imprisonment." Participation in a criminal organisation (as defined in Article 34 of the PC) can be punished with 6 to 12 years' imprisonment and (mandatory) confiscation of property. If committed by an official it can be punished with 10 to 15 years' imprisonment and the possibility of confiscation of property

## **b. Analysis**

21. The GET found that Azerbaijan was making substantial efforts to address the problem of corruption, but nevertheless still appeared to be extensively affected by corruption, at all levels of society.<sup>23</sup> However, during the visit, when the GET asked about the level and perception of corruption in Azerbaijan, it was repeatedly told that "corruption is a problem in the world and Azerbaijan is part of the world". A number of officials met by the GET nevertheless acknowledged that corruption in Azerbaijan was "widespread", but failed to indicate which sectors were most

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<sup>20</sup> The authorities have reported that these amendments were adopted in April 2006, entered into force in May 2006 and provide that "the request or receipt by any person of any material or other value, privilege or advantage, for him/herself or a third person for exerting improper influence over the decision-making of an official using his/her real or assumed means of influence is punished by a fine in the amount of 3000 to 5000 nominal financial units or 3 to 7 years imprisonment and confiscation of property." (Article 312-1). The new provision on active trading in influence provides that "giving to any persons of any material or other value, privilege or advantage, for exerting improper influence over decision-making of an official using his/her real or assumed means of influence is punished by a fine in the amount of 1000 to 2000 nominal financial units or 2 to 5 years imprisonment and confiscation of property".

<sup>21</sup> The authorities of Azerbaijan have reported that these amendments were adopted in April 2006 and entered into force in May 2006. A new Article 193-1 has been added to the Penal Code, providing: "legalisation of money or other property obtained through a criminal act – that is by giving a legal status to money and other property knowing that this money or property has been obtained through a criminal act, to conceal the real source of their obtainment, to carry out financial operations or other acts using such money and other property - is punished by a fine of 2000 to 5000 nominal financial units<sup>21</sup> or 2 to 5 years imprisonment with confiscation of property and the possibility of deprivation of the right to hold a certain post or to engage in certain activities for a term up to 3 years". Certain aggravated circumstances allow for an increase in the sanction. (See also 'Theme IV' of this report)

<sup>22</sup> The Penal Code (Article 15) classifies crimes in four categories depending on the nature and severity of the offence:

1. crimes which do not represent a big public danger (maximum sentence is 2 years' imprisonment);
2. 'less serious' crimes (sentence of 2 to 7 years' imprisonment);
3. serious crimes (sentence of 7 to 12 years' imprisonment), and;
4. very serious crimes (sentence of more than 12 years' imprisonment).

<sup>23</sup> The authorities of Azerbaijan indicated that they did not concur with this assessment.

affected by corruption, and could neither identify the forms corruption takes in Azerbaijan, nor its causes. The GET notes that some international organisations and companies as well as non-governmental organisations have conducted research and studies into the phenomenon and perception of corruption in Azerbaijan. Yet, the picture of corruption in Azerbaijan presented by these studies is not complete. The GET therefore considers that a comprehensive study carried out on the basis of information and data collected by those domestic organisations directly involved in the prevention of and fight against corruption would be useful. Such a study could contribute to a more effective anti-corruption policy, as it would identify areas that are perhaps not covered by the State Programme, that possibly require further measures to be taken and in general would create a better understanding by all those concerned of the level, causes and forms of corruption in Azerbaijan and the measures required to fight and prevent it. Consequently, **the GET recommends 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.**

22. The government has recognised the urgent need to take measures to address corruption in Azerbaijan and has adopted a comprehensive State Programme on Combating Corruption 2004-2006, which intends to address the causes of corruption as well as the means for dealing with it. Although the measures contained in the State Programme are sometimes phrased in rather general terms and the precise authority responsible for implementation is not always clearly indicated, the GET commends the authorities of Azerbaijan for the comprehensiveness of this Programme. The GET shares the authorities' view that it is not possible to counter corruption by repressive measures alone and welcomes the inclusion in the State Programme of a wide array of preventive measures. The GET recognises that measures in the State Programme which seek to educate employees in the public service and, by raising the pay of employees to a decent level, to thus reduce incentives for public sector employees to solicit and accept bribes, are likely in the long term to be the key measures in the transformation of the situation. Evidence for the success of these measures can be found in the apparently significant decrease in bribes solicited by traffic policemen after they were given a substantial pay-rise. The GET would however like to stress the need to implement measures such as these evenly across the whole range of public officials. Such measures are not within the scope of this evaluation, but the GET's recommendations on matters which *are* within its scope should be seen against the background of the explicit recognition that Azerbaijan has embarked on a process of fundamental change. The institutional and legislative basis for a potentially effective fight against corruption appears to be in place and Azerbaijan is now moving to the difficult matters of raising public awareness (including of the business community), educating the public and employees in the public sector and, more importantly, effectively implementing the State Programme and relevant legislation. This matter of implementation will prove critical to the success of the efforts to reduce corruption in Azerbaijan. **The GET recommends to develop a mechanism to assess whether the measures included in the State Programme on Combating Corruption are being implemented in practice within the given deadlines, and assess their impact on the various sectors concerned.**

## **II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION AND FIGHT AGAINST CORRUPTION**

### **a. Description of the situation**

23. In addition to the Commission on Combating Corruption, which is described in greater detail in the section on major initiatives above, and the obligation imposed on all state bodies – pursuant to article 4 of the law 'on combating corruption' - to combat corruption within their powers, a

number of other state bodies are responsible for counteracting corruption within their respective fields of competence.

### Public prosecution

24. The main functions of the public prosecution service are defined in Article 136 of the Constitution, which provides that the prosecution service “exercises control over the accurate and uniform execution and application of laws, initiates prosecution and carries out investigations in cases envisaged by legislation, defends the interests of the state in a court of law, brings a case for the prosecution in a court of law, and appeals to decisions of the courts”. The functions of the prosecution service are further described in Article 4 of the law ‘On the prosecution office’, which *inter alia* provides that the prosecution service institutes criminal proceedings and carries out investigations, exercises procedural control of preliminary investigations and exercises supervision over the implementation and application of laws by the investigative bodies in the course of their investigations.
25. The prosecution service encompasses the Office of the Prosecutor General, the Military Prosecution Office, the Prosecution Office of the Nakhchivan Autonomous Republic, district/city prosecution offices, military prosecution offices and support offices (press office, educational-scientific institution etc.).The Office of the Prosecutor General consists of 13 departments. The total number of prosecutors in Azerbaijan is 1060.
26. The criminal system is a mixed system of mandatory and discretionary prosecution. Article 37 of the Code of Criminal Procedure makes a distinction between so-called private prosecution, semi-public prosecution and public prosecution. Private prosecution only takes place on complaint of a victim concerning the offences of defamation, insult, violation of intellectual property rights. Semi-public prosecution takes places for certain specified crimes on the basis of a complaint by a victim or without such a complaint if they affect the interests of the state or society, are committed against a so-called defenceless person or in other circumstances specified in Article 37<sup>24</sup>. Public prosecution refers to mandatory prosecution, which is to be instituted in all other cases, including corruption offences (i.e. active and passive bribery of an official).
27. Articles 214 and 215 of the Code of Criminal Procedure specify for which offences the preliminary and/or subsequent criminal investigation are to be carried out by the police (or the Ministry of National Security, the Ministry of Taxes or the State Customs Agency) and for which offences

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<sup>24</sup> Article 37 (paragraph 3) of the Code of Criminal Procedure provides that “A semi-public prosecution shall take place on the complaint of a victim or, in the circumstances provided for in 37.5 of this Code, on the initiative of the prosecutor for offences under Articles 127, 128, 129.2, 130 (paragraph 2), 131 (paragraph 1), 132-134, 142 (paragraph 1), 149 (paragraph 1), 150 (paragraph 1), 151, 156-158, 163, 175, 176, 177 (paragraph 1), 178 (paragraph 1), 179 (paragraph 1), 184 (paragraph 1), 186 (paragraph 1), 187 (paragraph 1), 190 (paragraph 1), 197 and 201 (paragraph 1) of the Penal Code of the Republic of Azerbaijan”. The offences referred to include such offences as causing serious bodily harm, assault and battery, torture, rape, theft, fraud, and illegal use of trade marks.

Article 37.5 provides that “Where no complaint is made by the victim, a semi-public criminal prosecution may be begun by the prosecutor only in the following cases:

- if the offence committed affects the interest of the state or society;
- if the offence was committed by or against a representative of the government or other officials of state institutions;
- if the offence was committed against a pregnant woman or an elderly or helpless person;
- if the offence was committed with application of threats and by force or against a person dependent on the person who committed it;
- if the offence was committed by or against a person without legal capacity or a person below the age of criminal responsibility.

they are to be carried out by the prosecution service.<sup>25</sup> Criminal investigations regarding passive and active bribery of an official (Articles 311 and 312 of the Penal Code) fall within the remit of the prosecution service. The prosecution service is also responsible for investigating charges against persons enjoying immunities (in this case the investigation is in the hands of the Office of the Prosecutor General) and charges concerning crimes committed by abuse of authority by the President, Members of Parliament, the Prime Minister, judges, diplomats of Azerbaijan in foreign countries, foreign diplomats in Azerbaijan and employees of the prosecution service, judiciary, police, security, tax and customs authorities.

28. In March 2004 a specialised entity was established for the investigation and prosecution of corruption and other corruption-related offences (abuse of power, fraud etc.) within the Office of the Prosecutor General: The Department on Combating Corruption. It is planned that the Department is staffed with 40 prosecutors, but at the time of the visit of the GET only half that number had been recruited. Prosecutors working for the Department are entitled to receive all information related to corruption cases from all law enforcement agencies and are also empowered to carry out investigations in these cases. In addition to investigating and prosecuting corruption and corruption-related offences, the statute establishing the Department also provides that the Department is to be involved with raising public awareness of corruption and with organising education and taking preventive measures in the field of the fight against corruption. The Security Division within the Department on Combating Corruption also carries out inspections of the activities of officials employed by the prosecution service and liaises with the Organizational-Analytical Department, which has primary responsibility for investigating possible internal corruption cases within the prosecution system. The Department on Combating Corruption reports annually on its activities to the President of the Republic and the Commission on Combating Corruption.
29. Recruitment to the prosecution service takes place on the basis of an open competition, consisting of exams and interviews. The Prosecutor General is appointed to and dismissed from his/her post by the President with the consent of the parliament (Article 136 of the Constitution). Deputies of the Prosecutor-General, prosecutors in charge of specialised prosecution offices and the prosecutor of the Nakhchivan Autonomous Republic are appointed to their post by the President on recommendation of the Prosecutor General; territorial (district/city) prosecutors and specialised prosecutors by the Prosecutor General with the consent of the President.
30. On the basis of Article 84 (4) of the Code of Criminal Procedure the prosecutor in charge of the procedural aspects of the investigation is under the obligation to execute legitimate instructions of a superior prosecutor, which means that any decision by the prosecutor in charge of the case to discontinue the proceedings can be reversed by a more senior prosecutor<sup>26</sup>. However if the prosecutor in charge of the procedural aspects of the investigation does not agree with these instructions (including instructions on the termination of a case) s/he has the right to object in writing to the senior prosecutor. If the senior prosecutor disagrees with the arguments provided by the subordinate prosecutor he can transfer the responsibility for the investigation and prosecution to another prosecutor. If a senior prosecutor decides to transfer the responsibility for

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<sup>25</sup> When the investigation is to be carried out by the Prosecution Office, it would usually be the responsibility of the "Department of control over the investigation in the prosecution office", which is part of the Prosecutor General's Office. If the investigation is to be carried out by another investigative authority (police, Ministry of Taxes etc.) control may be exercised over the investigation by two other departments of the Prosecutor General's Office. If the offence falls within the remit of several investigative authorities a joint investigation team may be set up by a decision of the Prosecutor General. In exceptional cases, as defined by Article 215 (paragraph 7) of the Code of Criminal Procedure, the Prosecutor General may also transfer the investigation from one investigative authority to another.

<sup>26</sup> If a prosecutor decides to discontinue criminal proceedings, the victim of the offence can appeal this decision to a more senior prosecutor or to the court.

an investigation and/or prosecution to another prosecutor this decision can be appealed by the subordinate prosecutor to the Prosecutor General. The GET was furthermore informed that no external authority could interfere with prosecutorial decisions.

31. Disciplinary measures can be imposed on prosecutors on the basis of the laws “On service in bodies of the prosecution office” and “On the prosecution office”. These measures include reprimands, demotion, discharge from a position and dismissal from the prosecution service. Disciplinary measures against a prosecutor can be taken by the Prosecutor General.<sup>27</sup> Senior prosecutors may apply to the Prosecutor General for disciplinary measures to be taken against subordinate prosecutors. A decision on disciplinary measures can be reviewed by a court.
32. Training on corruption-related matters is an integral part of the training prosecutors receive in the first 3 months of their career. More generally, the State Programme on Combating Corruption envisages the organisation of training and seminars for officials involved with the fight against corruption, including public prosecutors, but no such training had yet been carried out at the time of the visit of the GET.<sup>28</sup>
33. A Code of Conduct for prosecutors was drafted in 2005, but had not yet been adopted at the time of the visit.

#### The police

34. The police (also called internal affairs bodies) is responsible for maintaining public order and security and has both preventive and investigative responsibilities. The police is part of the Ministry of Internal Affairs – headed by the Minister of Internal Affairs, who is appointed by the President. There are approximately 28 policemen for every 10,000 inhabitants (in total around 23,000 police officers). The police are organised countrywide over 84 regions, including the capital Baku. The police has the competence to carry out a number of investigative processes (including those relating to interviewing persons, conducting enquiries, making observations, identifying persons) in the preliminary stage of an investigation (and for some crimes also the subsequent criminal investigation); however, the police is required to inform the prosecution service without delay about investigative steps taken.
35. Although criminal investigations into corruption fall within the remit of the prosecution service, the police is able to carry out the preliminary investigation in (some of) these cases. The main police department involved with investigating corruption cases is the Department on Combating Organised Crime, which is divided into 7 units staffed with a total number of 75 police officers. Within this department the ‘Unit for special investigation measures in corruption crimes’, established in May 2005 and staffed with 10 police officers, has the responsibility of carrying out special investigative measures in investigations into corruption offences. This unit can be called upon to support any region in the country with an investigation into corruption; it can take part in a special ad hoc co-operation team and can even take over and conduct the entire investigation in close cooperation with the Department on Combating Corruption (of the Office of the Prosecutor General). However, at the time of the visit, this unit had only dealt with a few relatively minor cases. Other police departments which can at times be involved with (preliminary) investigations into corruption are the Department on Investigation and Preliminary Investigation,

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<sup>27</sup> This power to take disciplinary measures can –within certain limits – be delegated to the military public prosecutor, the public prosecutor of the Nakhchivan Autonomous Republic, and the public prosecutor of Baku city.

<sup>28</sup> The authorities of Azerbaijan reported after the visit of the GET, that in the first semester of 2006 3 courses on corruption-related matters had been organised at the training centre.

the Department on Crime-Search/ the 7<sup>th</sup> Department, the Department on Drug Enforcement, the Internal Security Department, and the National Bureau of Interpol.

36. Police officers within the unit set up for preliminary investigations into corruption have received some training on investigations into corruption. Further training in the field of corruption is scheduled to be provided by the Training Centre of the Ministry of the Interior in 2006.
37. With regard to possible internal corruption, Article 62 of the Disciplinary Statute of the Ministry of Internal Affairs provides that police officials have to report to their direct superiors (or if need be to higher superiors) circumstances they have come across which point to illegal acts within the police, abuse which they face during their service, or if they discover anomalies which could negatively influence actions of the Ministry of Internal Affairs, including corrupt acts they are aware of. The superior to whom these reports are made is obliged to have an inquiry conducted and the Internal Inquiry (Investigation) Department will, if deemed necessary, take measures in conformity with the Disciplinary Statute, and present material of a criminal character to the appropriate authorities. On the basis of Article 33 of the 'Police Act' disciplinary measures, such as a reprimand, demotion, and dismissal from the police, can be taken if a policeman has carried out any illegal acts in the course of his/her service, if s/he has breached "service and executive discipline" or if s/he has undertaken any other acts discrediting the name of the police. The Internal Security Department of the Ministry of Internal Affairs carries out internal (general) inspections and monitors the integrity situation within the ministry. If the Internal Security Department detects a possible corruption offence, it refers the case to the Internal Inquiry (Investigation) Department, which can take disciplinary measures against officials who are involved in corruption or corruption-related offences and will present its findings to the appropriate investigative authority for starting criminal proceedings, namely either the Department on Combating Organised Crime of the police and/or the Department on Combating Corruption within the Office of the Prosecutor General.

#### Ministry of Taxes

38. Corruption offences may also be investigated by the Investigations Department of the Ministry of Taxes, if in the course of their investigation into tax evasion (and a limited number of other crimes) they come across information on a corruption offence (cf. 'Theme VI' for further explanation). In investigating these crimes the Ministry of Taxes may also make use of certain special investigative techniques. The Investigations Department has a staff of 120 and has the mandate to investigate cases (within their investigative remit) in the entire country. The Department refers cases directly to the prosecution service (and not the police), but has set up joint investigation teams with the police on a number of occasions in the past. Training is provided to the staff within the Department of the Ministry of Taxes at their own training centre or at the Training Centre of the Prosecutor General's Office.

#### The Judiciary

39. The Courts which exercise jurisdiction in criminal matters in Azerbaijan are the following:
  - Courts of first instance  
Articles 67 to 70 of the Code of Criminal Procedure provide that district/city courts, the military courts, the Assize Court and Military Assize Court are to function as courts of first instance.
  - Courts of Appeal

The Courts of Appeal are to hear appeals to decisions of the courts of first instance, excluding appeals to judgments of the district/city courts of the Nakhchivan Autonomous Republic (Article 71-72 Code of Criminal Procedure).

- Supreme Court of the Nakhchivan Autonomous Republic

The Supreme Court of the Nakhchivan Autonomous Republic is to hear appeals against decisions of the district/city courts of the Nakhchivan Autonomous Republic

- Supreme Court

The Supreme Court has jurisdiction by way of judicial review of all the decisions of all subordinated courts, including decisions of the Supreme Court of the Nakhchivan Autonomous Republic.

40. In Azerbaijan there are 105 courts and 329 judges in total. The authorities of Azerbaijan have reported that the number of judges will be substantially increased in the near future.
41. Article 127 of the Constitution provides that “judges are independent, they are subordinated only to the Constitution and laws of the Republic of Azerbaijan, they cannot be replaced during the term of their office”. Judges are appointed for the period up to their retirement at the age of 65 and can only be removed from office by a decision of the Parliament taken with a simple majority (63 votes) or with a majority of 83 votes in case of judges of the Constitutional, Supreme and Appeal Courts). The President can initiate proceedings before Parliament regarding the removal from office of a judge, after a decision to this effect by the Judicial Legal Council taken on the basis of an application of the President of the Supreme Court or the Ministry of Justice, if one of the conditions of Article 113 of the ‘Court and judges act 1997’ applies.<sup>29</sup> During their term in office, judges are, pursuant to Article 126 (2) of the Constitution, prohibited from occupying any other posts and are not allowed to be involved in any type of business, commercial or other paid activity, with the exception of scientific, pedagogical and creative activities. They are furthermore prohibited from engaging in political activities and from joining a political party; they are not allowed to receive any remuneration other than their salary as a judge and money they may get for scientific, pedagogical and creative activities.
42. Recruitment of judges, as regulated by the ‘Court and judges act 1997’ (as amended in 2005), takes place on the basis of a written and oral examination, evaluation by a Judge Selection Committee (an 11-member committee of judges and legal experts established by the Judicial-Legal Council) after a long-term training period and consideration of the evaluation by the Judicial-Legal Council, which will propose candidates to the President. The judges of courts of first instance are appointed by Presidential Decree, the judges of the Supreme Court and Courts of Appeal are appointed by Parliament upon a proposal by the President.
43. The Judicial-Legal Council is a self-governing public entity composed of 15 members<sup>30</sup>. It is to ensure the organisation and operation of the court system, to arrange for the selection of candidates to judicial posts, the transfer of judges to other posts and promotion of judges and the evaluation of the work of judges, as well as other issues relating to courts and judges. The

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<sup>29</sup> For instance a gross violation of legislation in the course of consideration of a case by a judge, if disciplinary measures have been taken against the judge twice in one year or if s/he is engaged in activities not compatible with his/her position

<sup>30</sup> The Minister of Justice, President of the Supreme Court, a person appointed by the President, a person appointed by the Parliament, a person appointed by the Minister of Justice, a lawyer appointed by the Board of the Bar Association, a person appointed by the Prosecutor General’s office, 8 judges of a number of different courts appointed by – depending on the court - the Ministry of Justice, the Supreme Court, the Constitutional Court and the Supreme Court of the Nakhchivan Autonomous Republic (NAR), on the basis of proposals of the association of judges.

Judicial-Legal Council also has the authority to institute disciplinary procedures against a judge, on application by the President of the Supreme Court, the President of the Court of Appeal or the President of the Supreme Court of the Nakhchivan Autonomous Republic, or by the Minister of Justice.<sup>31</sup> On the basis of Article 112 of the 'Court and judges act 1997' (as amended in 2005) the Judicial-Legal Council can reprimand a judge or propose to the relevant executive body (i.e. the President of the Republic) that the judge be transferred to a different post, demoted or dismissed from his/her post. Appeals can be made against disciplinary measures taken to the Board of the Supreme Court.

44. Judges have their own code of ethics. A new code of ethics for judges was under preparation at the time of the visit of the GET.

#### Investigation of corruption: special investigative techniques, banking secrecy and witness protection

45. When carrying out an investigation into possible crimes, including corruption, the police has recourse to the use of special investigative techniques (hereafter SITs). The Ministry of National Security, the Ministry of Taxes and the State Customs Agency may also use certain SITs. The prosecution service cannot directly make use of SITs itself, but in its investigations it can instruct the police (or another investigative body) to use such techniques. The law on 'Detective search activity' of 1998 specifies 18 SITs, such as phone tapping, interceptions of postal, telegraphic and other mail communications, observations, under-cover operations, controlled deliveries, searches, pseudo-purchases, infiltration of a criminal group and incorporation of a legal person<sup>32</sup>. Certain SITs<sup>33</sup> may only be used on the basis of a decision of a judge; others can be used on the basis of a decision of an investigative authority or a decision of so-called authorised agents for the use of SITs. Supervision over compliance with the conditions set out in the law on 'Detective search activity' for the use of SITs is carried out by prosecutors of the Prosecutor General's Office. The Presidential Decree 'On the designation of powers to the agents of the detective-search activity related to the implementation of the detective-search measures' specifies which agencies can use which SITs, for example interception of postal, telegraphic and other communications can only be carried out by the Ministry of National Security, tapping of phones is available only to the police and the Ministry of National Security.
46. As far as legal obstacles to criminal investigations of corruption offences in the form of bank secrecy are concerned, the law 'On banks' prohibits the disclosure of banking information in general, with the exception of the disclosure to tax authorities. However, information about financial transactions, bank accounts and tax payments may be obtained by the prosecution service when conducting a criminal investigation (but not in a preliminary investigation) on the basis of a court order, pursuant to Article 177 of the Code of Criminal Procedure.
47. Protection of witnesses is based on the law 'On state protection of persons participating in criminal proceedings'. This law also applies to the protection of witnesses in corruption cases. Persons protected under this law (so-called 'protected persons') are those who have informed

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<sup>31</sup> However, on the basis of Article 112 of the law 'On Courts and Judges' natural and legal persons can apply directly to the Judicial-Legal Council for initiating disciplinary proceedings if they have information of the involvement of a judge in the commission of a corruption act, as defined by Article 9 of the law 'On Combating Corruption'. If a judge is found to be involved with the commission of corrupt acts, the Judicial-Legal Council can reprimand him/her or propose to have him/her transferred or demoted.

<sup>32</sup> The latter two SITs (infiltration of a criminal group and incorporation of a legal person) can only be used for the purpose of prevention and disclosure of serious crimes – those crimes which carry a maximum sentence of up to 12 years' imprisonment - organised or committed by organised criminal groups and especially dangerous crimes against the State.

<sup>33</sup> Such as phone tapping, inception of postal, telegraphic and other correspondence, retrieving information from computers etc.

law enforcement authorities of a crime (or have in another way contributed to the prevention or detection of a crime), victims of crimes, witnesses as well as their legal representatives, prosecutors, suspected and accused persons, parties in a civil claim, experts and translators. On the basis of this law, information relating to death threats or violent acts towards 'protected persons' or their property provide the basis for taking protective measures, including temporary placement in a safe location or permanent relocation. Protective measures are to be implemented by the Ministry of Internal Affairs (police) or the Ministry of National Security. There is no special agency responsible for the protection of witnesses

## **b. Analysis**

### Bodies in charge of corruption

48. The information gathered by the GET during the visit, did not suggest that those in charge of the prevention, investigation, prosecution and adjudication of corruption suffered from undue political and other interference in dealing with corruption. More pressing problems perceived by the GET were the fragmented and very complicated system of preliminary and criminal investigations and prosecution of corruption offences. In this connection, the GET had particular concerns about the extent of compartmentalisation and isolation of agencies responsible for investigating and prosecuting corruption offences. Again and again, the GET found that the investigative and prosecutorial authorities interviewed were able to report the referral of cases to other agencies for investigation or prosecution but had little idea, or even apparent interest, in what had happened to those cases afterwards. Jurisdictional boundaries appeared to be very rigid - to the extent that the prosecution service and the police did not have access to the same information and data bases - and this situation has induced a somewhat rigid mindset. When asked about this perception, several of the persons the GET met agreed that this was an accurate assessment. It seems to the GET that such compartmentalisation and isolation represent a lost opportunity. Better communication and feedback between those involved at different stages of the investigation and prosecution processes would almost certainly result in a more effective handling of individual cases, the learning of valuable lessons for future cases and more job satisfaction. There appears to be no structural impediment to such communication and feedback. **The GET recommends to take the necessary measures to improve communication, feedback and co-operation in practice of all agencies involved in the detection, investigation and prosecution of corruption (i.e. police, prosecution and tax authorities).**
49. The GET recalls the need to provide those in charge of fighting corruption with appropriate means to perform their tasks. The legislative and institutional basis for fighting corruption in Azerbaijan appears to be largely in place but it is of critical importance that the anti-corruption measures foreseen are implemented effectively and within reasonable time. In this connection, the GET was concerned to learn that, at the time of its visit, the Department on Combating Corruption within the Prosecutor General's Office – although it was established more than a year before the visit - was not yet fully staffed and did not yet have a permanent office, although it was apparently planned to remedy this situation. The GET recognises that the establishment of any new organisation takes time but if these matters have not been attended to by the time of GRECO's examination of this report, the GET would regard this state of affairs as a serious shortcoming. **The GET recommends to fully staff the Department for Combating Corruption within the Prosecutor General's Office as a matter of urgency and to immediately provide the Department with permanent and suitable premises.**
50. More generally, some of the investigative and prosecutorial authorities the GET met, who had made study visits to other countries, expressed a wish to be in a position to use confiscated

property (or assets of equivalent value) with a view to providing additional resources for the agencies in charge of fighting corruption. The GET is aware that similar arrangements exist in a number of other countries. In the opinion of the GET, such arrangements can, in principle, be an aspect of the provision of appropriate means for those who fight corruption. Therefore, **the GET recommends to explore possibilities, consistent with national law and public funding rules, for allocating an appropriate proportion of the assets confiscated in corruption cases to bodies specialised in fighting corruption.**

#### Investigation of corruption offences and training

51. In relation to the gathering of evidence regarding corruption and corruption-related offences, the GET found that there is a very heavy reliance on the provision of voluntary information by a party to a corrupt transaction. Although this reactive approach does produce some tangible results (for example, the police run a successful telephone hotline for the reporting of the solicitation of bribes by their officers), the GET finds that reliance on such sources limits both the offences which are detected and the effectiveness of gathering of evidence. Moreover, the GET was told that it is the experience of the Prosecutor General's Office that many such reports provided by citizens concern bribes paid long before the report is made, so that the offence is stale by the time it is reported. Further, such reports often appear to be motivated by a desire to use prosecution in furtherance of a private dispute. The establishment of statistical records on corruption-related offences, contemplated by Measure 3.4 of the State Programme, seems to have been subject to delay and such information as the GET was able to obtain about the scale of corruption, numbers of investigations and numbers of prosecutions was patchy. The GET wishes to stress, once again, that the evidence gathered during the visit, clearly indicates that corruption, in the sense of bribery, is widespread and significantly affects everyday life in Azerbaijan. Yet, however one interprets the various figures quoted by the GET's interlocutors, the number of investigations and prosecutions appear extremely low. The *highest* figure for the number of corruption prosecutions in any one year quoted to the GET was around 20.<sup>34</sup> In the view of the GET, this very low number of prosecutions must be attributable, in a large part, to the heavy reliance on the reactive approach to detection and investigation. **The GET recommends (i) to adopt a more proactive approach with regard to the investigation of corruption, by - *inter alia* - making greater use of special investigative techniques and (ii) to provide training on the use of special investigative techniques to all those involved in the detection and investigation of corruption.**
52. Thorough financial investigation is of key importance in the detection of corruption offences and also in the context of tracing of illegal and criminal assets that can be subject to confiscation. Important elements of successful financial investigations are both systematic and professional cooperation between the police, the prosecution service and the tax authorities and the availability of specialised expertise on how to conduct financial investigations, in a pro-active way, and to make use of special investigative techniques and all information available. As already noted, the practical co-operation between police, the prosecution service and the Ministry of Taxes is quite limited. The police authorities met by the GET, but also the prosecution service, expressed an interest in increasing this co-operation, and told the GET that joint training on

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<sup>34</sup> The authorities of Azerbaijan reported after the visit of the GET that from 1 May 2005 to 1 May 2006 the Department on Combating Corruption dealt with 45 *investigations* into corruption and corruption-related offences. Of these 45 investigations, 23 cases have been prosecuted (7 bribery cases and 16 so-called 'service crimes' and embezzlement offences), 3 investigations have been combined with other investigations, 2 investigations have been dismissed, 3 investigations were transferred to other agencies and 14 cases are still under investigation. In addition the authorities of Azerbaijan pointed out that – as the Department on Combating Corruption is not the only agency involved in the investigation of corruption offences – the number of prosecutions will be higher than the 23 prosecutions reported here.

financial investigations would also be useful in this respect. The GET noted that there are a number of training centres within Azerbaijan for investigative and prosecutorial authorities. However, there does not appear to be any overall coordination or direct co-operation between the different training centres. Therefore, **the GET recommends (i) 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, and (ii) 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.**

53. It became clear to the GET from the answers given by several interlocutors that the Department on Combating Corruption of the Prosecutor General's Office occupies a pivotal position in the fight against corruption. Its creation clearly represents specialisation of a sort which is contemplated by Guiding Principle 7 and is, on that ground, to be welcomed. The specialisation of the Department on Combating Corruption may however be slightly less focussed than its title suggests, as the GET noticed the concept of 'corruption' is understood by the prosecutorial and investigative authorities to include all forms of abuse of official power<sup>35</sup>. The GET also learned that the Department has a function which is limited to investigation and that, when a case is presented in court, it is handled by a separate Department (the prosecutorial Department for the Defence of the State Indictment) the staff of which are specialised in the handling of cases in court but not specifically in corruption cases, even defined in the wide sense. It was, however, explained to the GET that some of those prosecutors have benefited from training, study visits and attendance at relevant conferences and that the selection of court prosecutors for particular cases takes account of that. The GET also noted that the judges before whom corruption cases are prosecuted are not specialists in corruption cases. The GET understands and accepts that the prosecution of criminal cases in court is a specialisation in its own right and that in a relatively small jurisdiction such as Azerbaijan it is unlikely to be practicable for judges to specialise exclusively in corruption matters. Nevertheless, it appears to the GET that, at one critical point - the point at which the decision is taken about whether the criminal charge has been proven - the specialisation contemplated by Guiding Principle 7 is absent. The GET was informed that the absence of specialised judges has been a problem in money laundering cases and that reinforces the GET's concern about a similar absence in relation to corruption. **The GET recommends 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.**

### **III. EXTENT AND SCOPE OF IMMUNITIES**

#### **a. Description of the situation**

54. In order for criminal proceedings to be instituted against the President of the Republic, s/he has to be removed from office. An impeachment procedure may be initiated against the President for serious crimes<sup>36</sup>, which include certain cases of (aggravated) bribery<sup>37</sup>. To this end the Constitutional Court can - on the basis of a decision by the Supreme Court - request dismissal of the President to the Parliament, which has to take a decision with a majority of 95 votes (out of a total of 125 votes) within two months after the request was submitted by the Constitutional Court

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<sup>35</sup> Examples of corruption cases cited to the GET often turned out to be cases of misappropriation of state property.

(Constitution, Article 107). If Parliament fails to reach a decision within two months the President will not be removed from office.

55. The Prime-Minister enjoys immunity during his term in office and may not be arrested (except for cases where he has been caught *in flagrante delicto*), held criminally liable, searched or be subject to administrative sanctions imposed by a court (Constitution, Article 123). The immunity of the Prime-Minister may be lifted by the President on application of the Prosecutor General. If the Prime-Minister is arrested after having been caught *in flagrante delicto*, the Prosecutor General is to be immediately notified.
56. Members of Parliament enjoy immunity during their term in office. MPs cannot be held liable for their actions, voting and statements made in parliament. Except for cases in which a member of the parliament is caught *in flagrante delicto*, MPs may also not be prosecuted, arrested, searched nor may any administrative sanctions be imposed upon them by a court (Article 90 of the Constitution). The immunity of an MP may be lifted by a decision of the Parliament by simple majority on application of the Prosecutor General. If an MP is arrested after having been caught in the act of a crime, the Prosecutor General is to be immediately notified.
57. On the basis of the Election Code, from the day of registration until the day of official announcement of results of elections, registered election candidates (at both the local and national level) can not be indicted for a crime, detained nor be subject to administrative sanctions imposed by a court, without the permission of the relevant prosecutor (the Prosecutor General for candidates for election to the Parliament, the district prosecutor for candidates in local elections). The registered candidate can be arrested only if s/he is caught in the act of crime.
58. Judges enjoy immunity by virtue of Article 128 of the Constitution. On the basis of the 'Courts and judges act 1997' (as amended in 2005), judges cannot be arrested or detained (except when caught in the act of a crime) nor can they be subjected to searches. They can only be prosecuted with permission of the Judicial-Legal Council, on application of the Prosecutor General.<sup>38</sup>
59. The Human Rights Commissioner (Ombudsman) enjoys immunity for his/her term in office and cannot be subjected to criminal or administrative proceedings, searches, examinations, nor arrested or detained, unless caught in the act of a crime (Article 6 of the law 'On the commissioner on human rights'). The inviolability of the Ombudsman extends to his/her place of residence, office, means of transport and communication, correspondence, private property and documents. When the Ombudsman is arrested after having been caught in the act of a crime, the Prosecutor General and the Parliament are to be informed within 24 hours. The Ombudsman's immunity may be lifted by a decision of the Parliament taken with a majority of 83 votes, on application of the Prosecutor General.

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<sup>36</sup> On the basis of Article 15 of the Penal Code serious crimes are those crimes which carry a sentence of 7 to 12 years imprisonment.

<sup>37</sup> With the entry into force of the amendments to the Penal Code in May 2006, all bribery offences are considered to be serious crimes.

<sup>38</sup> The procedure for prosecuting a judge is as follows, on the basis of Article 101 of the law "On Courts and Judges". The Prosecutor General shall be immediately informed when a judge has been caught in the act of a crime. If the Prosecutor General finds that there are sufficient grounds to institute a criminal prosecution, s/he will apply to the Judicial-Legal Council for permission to do so. The Judicial-Legal Council will decide within 24 hours on the application of the Prosecutor General. In all other cases, the application of the Prosecutor General on prosecuting a judge will be considered within 10 days. If the Judicial-Legal Council gives permission for commencing the prosecution, a judge will be prohibited from exercising his/her powers as of the moment of the start of the criminal proceedings.

60. Criminal proceedings against prosecutors and certain police officers are subject to special procedures. Criminal proceedings against prosecutors may only be instituted by the Prosecutor-General, with the consent of the Chairperson of the Supreme Court. The investigation into crimes committed by prosecutors falls within the exclusive competence of the Prosecutor-General's Office. Criminal proceedings against high-ranking police officers may be instituted only with the consent of the Prosecutor-General's Office and notification of the Minister of Internal Affairs (except for cases where a police officer has been caught in the act of a crime).
61. By virtue of the law 'On diplomatic service' an Azeri diplomat will be called back if there are strong assumptions that s/he has committed acts which are considered to be crimes under the legislation of Azerbaijan or the country in which s/he benefits from diplomatic immunity. A diplomat can be prosecuted in Azerbaijan for crimes committed abroad on the basis of Article 12 of the Penal Code which provides that citizens of the Republic of Azerbaijan and stateless persons, permanently residing in Azerbaijan, who commit a crime outside the territory of Azerbaijan, are criminally liable provided that the act has been recognised as a crime in the Republic of Azerbaijan and in the foreign jurisdiction where the crime was committed (double criminality) and provided that these persons have not already been convicted for this crime in another country.

**b. Analysis**

62. The GET is aware that the scope of immunities and the categories of persons enjoying them are contentious issues in young democracies. It is a fundamental principle of democratic governance that no one should be allowed to stand above the law and, in this regard, it is obvious that immunities can easily be abused by the persons enjoying them. However, immunities can also provide persons with the necessary independence and the possibility to carry out their work without fear of politically motivated prosecutions. As such, it is very much tied in with the first theme of this evaluation and Guiding Principle 3 (namely to ensure that those in charge of investigation, prosecution and adjudication of corruption offences are free from improper influence). Azerbaijan is still in search of the right balance on this topic, as are apparently international experts advising Azerbaijan. The GET was informed that in recent years experts from various organisations and countries had supplied Azerbaijan with different – at times contradictory – opinions on this topic. The GET was also told that the authorities of Azerbaijan had recently made several changes to the list of categories of persons enjoying immunities (the prime-minister enjoys immunity but not other members of the government), the duration of their immunities (for Members of Parliament this has recently been limited to their term in office) and the procedures for lifting them (the Judicial Legal Council now has been given a decisive role in decisions to lift the immunity of a judge). The GET welcomes the changes that have been made, but still has some concerns about the remaining list of categories of persons who enjoy inviolability in Azerbaijan. Therefore, **the GET recommends to consider reducing the categories of persons enjoying immunity from prosecution, including the immunity provided for election candidates.**
63. The GET learned that since 1995, there have been only 3 requests to lift the immunity of a Member of Parliament; in each of these cases immunity was lifted. The GET was however not made aware of the existence of any objective criteria, rules or guidelines applicable to a decision to lift the immunity of a Member of Parliament and the considerations to lift immunities would therefore appear to be political. In light of this, **the GET recommends to draw up guidelines containing criteria to be applied when deciding on requests for lifting of immunities, ensuring that decisions are based on the merits of the request submitted by the Prosecutor General.**

## IV. PROCEEDS OF CORRUPTION

### a. Description of the situation

#### Confiscation and other deprivation of instrumentalities and proceeds of crime

64. The Penal Code (hereinafter PC) provides for confiscation of property, which includes both instrumentalities and proceeds of crimes<sup>39</sup>. Confiscation is a sanction and has a supplementary character (i.e. it can only be imposed together with another sanction). A court only has recourse to confiscation if the article in the PC defining the offence specifically mentions the possibility of confiscating the property of the offender as a sanction and was, at the time of the visit, with regard to corruption limited to bribery under certain aggravated circumstances. Article 311, paragraph 3, of the PC provides for mandatory confiscation of property (together with a prison sentence) for passive bribery committed by an official, if the offence has been committed on preliminary arrangement of a group of persons, repeatedly, by the application of threats or if it concerns a large amount.<sup>40</sup> Article 312, paragraph 2, of the PC provided, at the time of the visit, for discretionary confiscation of property (together with a prison sentence or a fine) for active bribery of an official, if the bribe was given in order to have the official engage in an obviously illegal act or if it was a 'repeat offence'. The GET was informed that amendments to the Penal Code would provide for a confiscation sanction for all bribery offences. It was subsequently reported that these amendments entered into force in May 2006.
65. At the time of the visit, value confiscation was not possible. The GET was however informed that the aforementioned amendments to the Penal Code provide for the possibility of confiscating value equivalent to the property to be confiscated.<sup>41</sup>
66. The PC does not differentiate between primary and secondary proceeds. A confiscation sanction applies to any proceeds of crime regardless of whether they are of a primary or secondary nature.
67. Confiscation requires a prior criminal conviction. The burden of proof always lies with the prosecutor and cannot be reversed. The criminal origin of the property to be confiscated has to be proved beyond reasonable doubt.
68. In general it is not possible to confiscate property (proceeds and instrumentalities of crime) of third parties, who have acquired this property in good faith. If the property was of significant value<sup>42</sup> and acquired in the knowledge that it represented the proceeds or instrumentalities of crime the third party can be prosecuted on the basis of Article 194 PC for the offence of 'receiving' (defined as the acquisition of property of significant value that was obviously extracted in a criminal way). However, even when the third party is convicted for the offence of 'receiving',

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<sup>39</sup> Pursuant to Article 51, paragraph 1, of the PC property is to include "instruments and means, used by the offender for the commission of a crime, and property extracted in a criminal way". This paragraph was amended after the visit, in April 2006, and now provides that "objects of crime" are also included in this definition.

<sup>40</sup> A large amount is understood to be the sum of money, value of securities, property or the benefits of the property, exceeding five thousand nominal financial units. A nominal financial unit is 5,500 Azeri Manats, which equals €1. A large amount can therefore be understood to mean €5,000 or more (Footnote to Article 311 PC).

<sup>41</sup> These amendments were adopted in April 2006 and entered into force in May 2006. These amendments have introduced a new paragraph to Article 51 of the Penal Code, which provides: "If property obtained by a criminal act or an object of a crime cannot be confiscated, because of its use, transfer to another person or for other reasons, money or property equal in value to the property of the offender is to be confiscated".

<sup>42</sup> Significant value is understood to be the equivalent of 1,000 to 7,000 nominal financial units, approximately €1,000 to €7,000 (Footnote to Chapter 24 of the PC, Article 190 and further).

the property cannot be confiscated from the third party unless the 'receiving' offence was committed under aggravated circumstances (for example if the offence concerns property is of a large value<sup>43</sup>)

69. Under Article 51 of the PC confiscated property becomes the property of the state and can as such not be used for the compensation of damages. Nevertheless, pursuant to Article 132 (subparagraph 4) of the Code of Criminal Procedure, before deciding that the property is to be confiscated, the court may order that seized property is to be used to compensate for the damage caused by the offence. Compensation can furthermore also be obtained by filing a civil claim in criminal proceedings.
70. The Civil Code allows in Article 339 for the removal of the advantage obtained through active corruption offences, by providing that agreements reached by abuse of power or fraud, which is understood to include corrupt acts, are invalid and all gains obtained in course of this invalid agreement have to be returned to the victim. Furthermore, Article 12 of the law 'On combating corruption' provides that an official has to compensate the state for the advantage gained in relation to a corruption offence as defined by the same act.

#### Interim measures

71. Articles 248-254 of the CCP regulate the seizure of property (instrumentalities and proceeds of crime) to ensure the enforceability of a confiscation sanction or satisfaction of a civil claim. Decisions on seizure of property are taken by the court - on the basis of a "substantiated request by the investigator and appropriate submissions by the prosecutor" – if it is satisfied that the evidence collected in the criminal case *prima facie* provides sufficient grounds for seizing the property. In cases which permit no delay - where there are sufficient grounds to believe that the accused may destroy, damage, spoil, conceal or sell the property - the investigating authorities may seize the property without a court decision (on the basis of Article 249, paragraph 5 of the CCP with reference to Article 177, paragraph 4, sub 3 of the CCP). Investigating authorities may furthermore seize objects and documents they come across during a search, if these can be of significance as evidence in criminal proceedings on the basis of 242, paragraph 3, of the CCP and, on the basis of a decision of the Court, seize bank, financial or commercial records (Article 259, paragraph 3 of the CCP).
72. The interim measures set out in the CCP can be applied to all crimes covered by the PC. The authorities of Azerbaijan reported that property will usually be seized as a precautionary measure in (the preliminary stages of) an investigation into passive and active bribery, as the confiscation of property is a sanction envisaged for passive bribery committed by an official under aggravated circumstances (mandatory confiscation) and for active bribery of an official (discretionary confiscation).<sup>44</sup>
73. As far as the management of seized property is concerned, precious metals, stones, money and securities will be handed over to the State Bank for safekeeping and other property will – with the exception of large objects and immovable property – be kept on the premises of the investigating authority or court or handed over for safekeeping to a representative of the relevant state authority on the basis of Article 251 CCP. Property that is not removed is to be sealed and given to its owner or holder, or family members, in exchange for a commitment not to embezzle,

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<sup>43</sup> Large value is different from the aforementioned significant value as it is understood to be the equivalent of more than seven thousand nominal financial units, approximately €7,000 and more. (Footnote to Chapter 24 of the PC, Article 190 and further).

<sup>44</sup> With the amendments to the PC confiscation is now envisaged as a sanction in all bribery cases.

damage or destroy it, and the person concerned must be warned of his/her statutory liability for embezzlement of or damage to the property. Regardless by whom or where the property is held the prosecuting authorities are required to draw up a record of the seized property.

### Statistics

74. No general statistics were available, neither on the number of corruption cases in which interim measures were taken nor on the number of cases in which confiscation was adjudicated.

### Mutual legal assistance

75. When Azerbaijan is the requested state legal assistance is - in absence of a treaty – based on the law “On legal assistance in criminal matters”, which provides that in Article 2.3 that interim measures, such as the seizure of property and the identification of property obtained through a criminal act and instrumentalities of crime, including (but not specifically) in cases of corruption, can be taken in response to a mutual legal assistance request in conformity with the laws of the Republic of Azerbaijan. In general the requested assistance may be performed if in a similar domestic case this would also be possible. A request for assistance may be refused if for example carrying out the request would conflict with the legislation of Azerbaijan or if the request relates to an offence which is not criminalised in Azerbaijan.<sup>45</sup>
76. With respect to the enforcement of foreign confiscation orders, Article 64, paragraph 3, of the CCP provides that the obligation to execute decisions of foreign courts and investigating authorities is to be determined on the basis of international agreements to which Azerbaijan is a party. Article 520 of the CCP furthermore provides that the courts of Azerbaijan are required to examine the enforcement of judgments or other final decisions given by the courts of foreign states in accordance with the provisions of the CCP and other legislation and international agreements to which Azerbaijan is a party.
77. When Azerbaijan is the requesting state, mutual legal assistance requests are to be made in accordance with the bilateral and multilateral agreements, international conventions to which Azerbaijan is party, as well as in accordance with the legislation of the requested country. A request for assistance can be issued by the Ministry of Justice or the Prosecutor General's Office.

### Money laundering

78. Criminalisation of money laundering was at the time of the visit limited to laundering money or other property derived from drug trafficking, pursuant to Article 241 of the PC<sup>46</sup>, and was - according to the authorities - also (partly) covered by the offence of ‘receiving’ of Article 194 of the PC.<sup>47</sup> It was reported that the aforementioned amendments to the Penal Code would also

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<sup>45</sup> Other grounds for refusal are: carrying out the request may be detrimental to the sovereignty and security and other essential interests of Azerbaijan; the request relates to an offence of a political character, an offence related to military service or to an offence which is under investigation or being prosecuted in Azerbaijan; there are strong presumptions the request is made for the prosecution of a person based on his/her race, nationality, language religion, citizenship, political convictions or sex; or the form of the request does not respond to the requirements of the legislation.

<sup>46</sup> This article has been deleted with the entry into force of the amendments to the Penal Code in May 2006.

<sup>47</sup> Article 194 of the PC: “The beforehand not promised purchase and selling of a property of significant value obviously obtained in a criminal way is subject to penalty in the amount of thousand or three thousand nominal financial unit or, otherwise, restriction of freedom for the period up to three years or three years imprisonment with a penalty in the amount of thousand nominal financial units.”

criminalise the laundering of money or other property derived from criminal offences other than just drug trafficking, such as corruption.<sup>48</sup>

79. The draft law 'On the prevention of the legalisation of illegally obtained funds or other property and the financing of terrorism' foresees the establishment of a so-called "competent authority", which is designated as the national financial intelligence unit. It is foreseen that this competent authority will gather and analyse the information on 'suspicious operations' submitted by financial institutions, insurance companies/intermediaries, stock brokers, leasing companies, postal service, wire transfer operators, pawnshops, investment funds, notaries, (legal) persons trading in precious stones, metals and/or antique goods, non-governmental organisations and religious organisations who collect funds as a major part of their activities, lottery organisers and real estate agents. In the meantime only banks and stock brokers are required to detect and submit information on 'suspicious operations' to the National Bank and State Securities Agency. In 2005 (until the end of November), the banks have submitted 486 reports on 'suspicious operations' and the Customs Service has filed a further 31 reports on suspicious transactions with the National Bank. To investigate reports of 'suspicious operations' the National Bank established an Anti-Money Laundering Unit in August 2004. If the investigation of the reports and the information sources available to the National Bank further substantiate the 'suspicious operations' reports, the case will be handed over to the Prosecutor General's Office.
80. Since money laundering in relation to the predicate offence of corruption was not criminalised yet at the time of the visit, there was no data available on the number of money laundering investigations, prosecutions and convictions in relation to corruption.

**b. Analysis**

81. During the visit it became evident to the GET that the judicial authorities it interviewed, when asked about 'confiscation', tended to think and answer in terms of confiscating the instrumentalities of crime, although Article 51 of the PC clearly applies confiscation to 'property extracted in a criminal way'. By Article 51, paragraph 2, of the PC such confiscation can only take place where it is specifically provided for in the relevant offence-creating provision. As described above, at the time of the visit, confiscation was only possible with regard to bribery offences under certain aggravating circumstances, the legislation did not provide for value confiscation and it was not possible to confiscate property which has been placed in the hands of a third party. Whether because of these limitations or for other reasons, none of the persons interviewed by the GET was able to provide any clear information about, or examples of, confiscation of the proceeds of corruption offences. The GET welcomes the fact that the Government has recognised these deficiencies and has— after the visit of the GET - amended the PC, which now provides for value confiscation and the possibility to impose a confiscation sanction in all corruption cases.<sup>49</sup> The GET noticed, however, that even in the amendments to the PC, the

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<sup>48</sup> These amendments were adopted in April 2006. The new Article 193-1 provides: "legalisation of money or other property obtained through a criminal act – that is by giving a legal status to money and other property knowing that this money or property has been obtained through a criminal act, to conceal the real source of their obtainment, to carry out financial operations or other acts using such money and other property - is punished by a fine of 2000 to 5000 nominal financial units or 2 to 5 years imprisonment with confiscation of property and the possibility of deprivation of the right to hold a certain post or to engage in certain activities for a term up to 3 years". Moreover, aggravated circumstances such as when the offence was committed on preliminary arrangement of a group of persons or when the offence was committed by an official will allow for an increase in the sanction to 5 to 8 years' imprisonment (together with confiscation of property and deprivation of certain rights); in cases where a "very large amount" [more than 45,000 nominal financial units / €45,000] of money is laundered or in cases where a criminal organisation is involved with the laundering offence it can be further increased to 7 to 12 years' imprisonment (together with confiscation of property and deprivation of certain rights).

<sup>49</sup> These amendments were adopted in April 2006 and entered into force in May 2006.

confiscation of property in the hands of a third party is not addressed. In this connection, the GET notes that other countries have found it possible to provide for such confiscation in some circumstances (for example, where the third party has not given fair value for the property). It appears to the GET that the absence of any such provision in the law is likely to constitute a loophole for those who receive bribes or who benefit from action obtained by the payment of a bribe. Moreover, the GET was informed that it was not possible – at the time of the visit - to enforce confiscation orders against property already owned by the offender before the commission of the offence. The GET is of the view that the possibility of providing for the confiscation of property transferred and belonging to third parties should be reviewed, in particular in the light of international comparisons, and bearing in mind that the right to peaceful enjoyment of possessions guaranteed by Protocol 1, Article 1 of the European Convention on Human Rights, is qualified in ways which other States Party have regarded as permitting the confiscation of property in the hands of persons other than the principal offender. **The GET recommends 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.**

82. Even with the deficiencies in the legal provisions that existed at the time of the visit, the GET was of the view that these could not completely account for what seemed to be – in absence of any information to the contrary - sparse use made of the provisions on seizure and confiscation of the proceeds of corruption. The GET therefore concluded that the new legislation on confiscation has to be complemented by follow-up measures to promote its use in practice. The development of guidelines and training appear to be necessary for law-enforcement bodies and the prosecution in particular, but also with regard to the judiciary. These guidelines and training should not only focus on the legal provisions as such but should also deal with practicalities associated with the existing and new legal provisions (such as how to assess the equivalent value of property to be confiscated, when and how property is to be seized to ensure that it can be confiscated, and on conducting financial investigations with a view to tracking offenders' assets, as has also been indicated in 'Theme II' above). Consequently, **the GET recommends 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.**
83. The assessment by the GET of the current system concerning seizure and confiscation was hampered by the absence of information, both of a qualitative and quantitative nature, on the use of the provisions on seizure and confiscation in practice. Considering the expectation that the amendments to the Penal Code will bring significant improvements in the current practice on confiscation, the GET took the view that an assessment of how the new legislation works in practice would be useful, as this may help the authorities identify possible flaws in the judicial practice with regard to these new legal provisions. To prepare for this, it would be beneficial to systematically collect information, including statistics, on the use of confiscation (and interim measures) in corruption cases and on situations in which the provisions on confiscation (and interim measures) could not be used or did not have the desired result, and to analyse the effectiveness of the amended Penal Code in the near future. **The GET recommends to assess the effectiveness of the amended Penal Code and to verify, 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.**
84. Dealing with money laundering seems to be a relatively new area for Azerbaijan, as evidenced by the lacunae in the regulatory system at the time of the visit and the limited number of relevant prosecutions. GET welcomes that the authorities have recognised these lacunae and – after the

visit of the GET - have amended the Penal Code<sup>50</sup> which now provides for the criminalisation of the laundering of the proceeds of all offences (including corruption) and not just the laundering of the proceeds of drug trafficking offences as it was at the time of the visit. In addition, the proposed law 'On the prevention of legalisation of illegally obtained funds or other Property and the financing of terrorism' will – if adopted as foreseen - provide for a system of reporting and analysing suspicious transactions, broader than the current reporting system for banks and stock brokers, and will provide for the establishment of a 'competent authority' or Financial Intelligence Unit (FIU). The need to adopt and implement these provisions as soon as possible, to subsequently train staff at the (yet to be established) FIU - drawing on the notable expertise the National Bank has developed in this area - , to give the FIU access to all information sources relevant for its work and to educate reporting entities on their reporting requirements, will be obvious. Consequently, **the GET recommends 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 (data bases), 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.**

## V. PUBLIC ADMINISTRATION AND CORRUPTION

### a. Description of the situation

#### Definitions and legal framework

85. There is neither an explicit legal nor a constitutional definition of the concept of public administration. Various other terms are used to define the constituent parts of public administration. The law 'On civil service' defines a state body as "an organisation of civil servants, implementing the objectives and functions of the Republic of Azerbaijan within the limits determined by legislative acts of the Republic of Azerbaijan, established in accordance with the legislation and financed by the state budget". State bodies include ministries, local executive bodies, the Office of the President, Office of the Parliament and the Office of the Constitutional Court. The new law 'On administrative proceedings', which was adopted in October 2005, uses the term 'administrative bodies', which include central and local executive bodies, their regional and structural components, municipalities and their executive bodies, and all other natural and legal persons entitled to adopt administrative acts.
86. A variety of terms is used to identify different categories of persons employed in the public sector. Pursuant to Article 14, paragraph 1, of the law 'On civil service', *civil servants* are "citizens of the Republic of Azerbaijan who hold a civil service position, whose salary derives exclusively from the state budget" and are considered to be all those employed in governmental bodies. Although certain provisions of the law 'On civil service' do not apply to prosecutors, persons employed in judicial bodies, customs, national security, police, tax authority, foreign affairs, the National Bank or postal and telecommunication services, they are nevertheless considered to be civil servants (judges and military personnel excluded). Furthermore, a distinction is made between civil servants who have an administrative post and those who hold an auxiliary position. Article 14, paragraph 2, of the law 'On civil service' also provides that those civil servants holding "an administrative position and entitled to have authority" (meaning that certain decision-making authority has been delegated to them) are considered to be *state public officials*. Yet a different term is used by the law 'On combating corruption', namely *officials*, which includes the

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<sup>50</sup> As mentioned above, these amendments were adopted in April 2006 and entered into force in May 2006.



from entities<sup>51</sup> in possession of the information. Requests for information can be made orally or in writing. A response to a request for information has to be provided within 7 working days (or 5 working days if the information is not available or the request is incomplete or inaccurate), which may be extended by another 7 days if the provision of information requires additional work. Fees may be charged, providing that these do not exceed the expenses incurred by the organisation concerned. Information related to state secrets or professional (i.e. doctor, attorney, and notary), commercial, investigative and judicial secrecy and information relating to 'private life' is exempted from the main rule on freedom of information, pursuant to Article 34 (paragraph 4). In addition, Article 35 allows public authorities to further restrict the right to access certain documents for a certain period of time (a maximum of 5 years). This restriction relates *inter alia* to information on pending court cases and drafts of government decrees, which have not yet been submitted for approval. The law also foresees the establishment of a so-called 'Authorised Agency on Information Matters', which has been designated to act as an ombudsman in relation to issues of freedom of information, and monitor compliance with the requirements of the law and provide legal assistance to citizens concerning access to information. The law 'On the procedure for consideration of applications from citizens' of 10 June 1997 provides further guidance on applications for information and, *inter alia*, provides that the applicant does not have to justify the request for information. Refusal to issue information can be made subject to judicial review.

89. A special regime on access to information applies to the media. In the law 'On mass media' of 12 December 1999, it is established that the media has the right to obtain operational and reliable information on the economic, political, public and social situation in the society and the activities of public bodies, municipalities, institutions, enterprises and organisations, public associations, political parties and officials. The right cannot be restricted, except for cases specified by law.<sup>52</sup> Information may be requested either orally or in writing. If requested information is refused, the media has the right to lodge a complaint against the body which refused to provide the information. When requesting information the need to receive the information does not have to be justified.
90. On 2 May 2005 the Commission on Combating Corruption decided that all state bodies should have a website and that this website should contain comprehensive information on all activities of the state body concerned. The Commission also agreed that activities of the public relations services of the ministries should be further improved. The GET was informed that although decisions of the Commission would not be legally binding, state authorities were expected to implement them.
91. With regard to public consultation, the law 'On normative legal acts' of 26 November 1999 specifies that proposals submitted by, *inter alia*, academic organisations, the media and the population should be taken into consideration when drafting law. The authorities reported that draft laws in the field of preventing and combating corruption are placed on the official website of the Commission on Combating Corruption.

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<sup>51</sup> Article 9 of the law specifies that this applies to: "state authorities, municipalities, legal entities implementing public functions, as well as private legal entities and individuals engaged in activities relating to education, healthcare, cultural and social life based on legal acts or contracts, as well as legal entities with a dominant market position or natural monopoly with regard to information associated with the terms of offers and prices of goods and services and fully or partially state-owned or subsidiary non-commercial organisations, off-budget funds and trade associations in which the state is a member with regard to information associated with the use of the state budget".

<sup>52</sup> The authorities of Azerbaijan have indicated that special laws, such as the law 'On state secret' and on 'The right to obtain information' (i.e. the provisions regarding "information with limited access") contain special provisions restricting the right of the media to obtain information.

## Control of public administration

92. Decisions of state bodies may be appealed through either an administrative or judicial procedure. According to the law 'On complaining to court on decisions and actions violating rights and freedoms of citizens' of 11 June 1999, every person who believes their rights and freedoms have been violated by a decision or (in)action of a state body or local self-governing authority, enterprise, department, organisation, public union or official has the right to appeal to a superior body or directly to the court. The appeal to a superior body is, according to the law 'On the procedure for consideration of applications from citizens', to be reviewed within one month, or 15 days if no additional review or inspection is needed, unless shorter periods are provided for in legislation.<sup>53</sup>
93. Control of public administration is also exercised by the Human Rights Commissioner (Ombudsman), in conformity with the Constitutional Law 'On the commissioner on human rights' of 28 December 2001. The Ombudsman, who is elected by Parliament, can lodge investigations based on complaints by individuals (and legal persons) with regard to violations by governmental and municipal bodies and their officials, of human rights and freedoms - including red tape, loss or delayed delivery of documents in courts as well as delays in the execution of court judgments - enshrined by the Constitution, the laws and international treaties to which Azerbaijan is a Party. The Ombudsman may carry out investigations *ex officio* with the consent of the person whose rights have been violated in cases of special public importance or if persons are not capable of defending their rights themselves. Activities of the President, parliamentarians and judges fall outside the mandate of the Ombudsman.
94. While investigating a complaint, the Ombudsman is authorised *inter alia* to have free access to any state institution or organisation, to require and receive necessary information, documents and materials within 10 days from any governmental and municipal body or their officials. Based on the findings of the complaint under investigation, the Ombudsman may demand that the governmental or municipal body concerned remedy the situation, submit proposals to institute disciplinary proceedings against officials, file criminal charges, inform the media or, in cases of special public importance, apply to the President or address the matter in the parliament. If an investigation reveals that a law breaches the human rights and freedoms of a person, the Ombudsman can take the issue to the Constitutional Court on the basis of Article 13 (paragraph 2, sub 8) of the Constitutional Law 'On the commissioner on human rights' and Article 130 of the Constitution. The Ombudsman reports once a year to the President and Parliament on the situation of human rights in Azerbaijan. The report is made public. In 2004, the Ombudsman received 6300 appeals, more than half of which (53,7%) were refused as they fell outside the scope of the Ombudsman's authority. In 31,4% of the accepted cases the decision was in favour of the complainant. The Ombudsman has furthermore organised a number of round table discussions on corruption which is perceived as one of the main risks to the protection of human rights - and has co-operated in drafting the State Programme on Fighting Corruption.
95. Further financial control on public administration is carried out by the Chamber of Accounts and Ministry of Finance. The Chamber of Accounts supervises the approval and execution of the state budget, the inflow of funds generated by privatisation of state property and the use of state funds allocated to legal entities and municipalities. It reports quarterly to Parliament.

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<sup>53</sup> The authorities of Azerbaijan have reported, after the visit, that in May 2006 amendments to the law 'On the procedure for consideration of applications from citizens' entered into force. These amendments provide for a special procedure for complaints by citizens of alleged corrupt conduct by persons employed in the public service and *inter alia* stipulate that investigations into these complaints are to be conducted by the relevant internal inspection services within 20 days of receiving the complaint.

Furthermore, pursuant to Article 15 of the law 'On chamber of accounts', all legislative, executive and judicial bodies and all other legal persons and their officials are required to supply the Chamber of Accounts with information on their activities, if so requested by the Chamber. The Ministry of Finance is responsible for the administration of state finances and exercises financial control over enterprises and organisations funded by the state, carries out inspections and analyses the financial-economic activities of state administrations, enterprises and organisations. If the Chamber of Accounts or the Ministry of Finance come across possible instances of corruption in carrying out their control functions in respect of state finances, they are obliged to inform the prosecution service accordingly.

### Recruitment, career and preventive measures

96. Recruitment to the civil service is regulated by the law 'On civil service' of 21 July 2000. The law is applicable to civil servants. Although the Act also does not apply to employees of the prosecutor's office, judicial bodies, national security, border services, internal affairs (police), customs, tax, foreign affairs, postal and telecommunication services and the National Bank of Azerbaijan – which are regulated by special laws - the provisions of the law 'On civil service' on recruitment also apply to them (with the exception of judges who are not considered to be civil servants in the first place). According to Article 4 of the law 'On Civil Service', competitive recruitment is one of the central principles of the civil service. Article 8 provides that citizens are to be recruited to the civil service through competitive written examination or interview. Control over the selection process and competitions for vacant posts are carried out by each ministry or executive body individually, but by the end of 2006 this process will be centralised. To this end a new Commission on Civil Service Issues was set up in January 2005.
97. In 2001, a Presidential Decree on 'Rules on advance screening of possible eligibility of candidates to enter civil service' was approved, which includes provisions on screening of criminal records, disqualifications and other ineligibilities.<sup>54</sup> These rules apply to all civil servants.
98. Recruitment in justice, internal affairs (police), tax and customs bodies is regulated by separate laws.

### Training

99. In-service training is provided by the Public Administration Academy, which was established in 1999. Training on ethics is an integral part of the training programme of the Academy. Civil servants employed within the ministries of Justice and Taxes, the State Customs Agency, the Chamber of Accounts and the General Prosecutor's Office are obliged to undergo special training before taking up their duties, which include courses on fundamental principles and ethics of public service taking into consideration the specificities of the duties of these bodies. The Police Academy provides further training specifically for police officers on fundamental principles of civil service and rules on ethics; the Academy of the Ministry of National Security does the same for officers employed by this Ministry.

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<sup>54</sup> Pursuant to this decree, a person is to present his/her 'casier judiciaire' upon application. It will be checked whether there is a court decision or health certificate indicating the person's limited working ability or prohibiting a person from holding a certain position for a certain period of time, if a person is convicted of a crime or has been criminally prosecuted but not convicted because of lack of evidence and if there is a close relationship (spouse, sibling, child, parent) between the person to be recruited and a civil servant who is to be in a direct hierarchical relationship to him/her.

## Conflicts of interest

100. The law 'On civil service' provides a general framework to prevent conflicts of interest and incompatibilities between professional functions in the civil service. According to Article 20 of the law, civil servants *inter alia* do not have the right to:
- hold an additional paid post in a state body;
  - perform paid work without permission of the head of the state body, with the exception of scientific, pedagogical or creative work;
  - advocate/advise third persons on issues related to work of the state body.
101. Further incompatibilities are included in the law 'On combating corruption', which applies to all officials (civil servants with an administrative post and elected/appointed officials). Article 7 of the law provides that "next of kin of an official may not hold any post under the direct authority of the aforementioned official, except for elective offices and other cases provided by legislation." A draft law 'On the prevention of conflict of interest in the activity of public officials' is expected to be presented to Parliament in 2006.
102. Pursuant to Article 18, paragraph 0, sub 9, of the law 'On civil service', civil servants are required to submit to the head of the body s/he is recruited to, annual financial reports on personal income and estates, indicating sources, types and the amount of additional income. Failure to do so could lead to disciplinary measures, ranging from reprimand to dismissal from civil service, which are set out in Article 25 of the law 'On civil service'. Officials, as defined by the law 'On combating corruption' (see above) are obliged to declare their income, their property, their participation and shares in companies, funds and economic entities, their debts if they exceed five thousand nominal financial units and other obligations of a financial and property character if they exceed one thousand nominal financial units. The procedures for submitting financial information are prescribed by the law 'On approval of procedures for submission of financial information by public officials' (which entered into force on 24 June 2005); the law provides that *inter alia* the President, the chairman and the members of the Parliament, judges and prosecutors are to submit their financial declarations to the Commission on Combating Corruption. The violation of the financial declaration procedures may lead to disciplinary measures, which are laid down in a number of other laws<sup>55</sup>, or - in case other laws do not provide for disciplinary measures for a certain category of officials - to official publication of non-compliance by the Commission on Combating Corruption.
103. Apart from a general prohibition on the use of official information for the benefit of third parties after resignation or retirement (Article 20 of the law 'On civil service'), there are no specific restrictions imposed on civil servants taking up employment in the private sector.

## Rotation

104. Rotation is prescribed for certain public prosecutors by section 16 of the Prosecutor's Office Act of 1999 which specifies that territorial and specialised prosecutors, the Prosecutor-General, the Military Prosecutor and the Prosecutor of the Nakchivan Autonomous Republic can not be appointed for more than two terms of office (10 years in total). There are no specific legal provisions to provide periodic rotation of staff, but the authorities have reported that there exists a general policy of mobility and rotation within most state bodies (police, tax, national security justice etc.). The Commission on Combating Corruption recommended in its decision of 2 May

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<sup>55</sup> For example, Article 111-1 of the 'Courts and judges act 1997' (as amended in 2005) provides that failure to present financial declarations as required by the law 'On combating corruption' allow for disciplinary measures to be taken against the judge in question.

2005 all state bodies to apply the principle of rotation in the civil service in general, and in areas where civil servants are in direct contact with individuals in particular.

### Gifts

105. On the basis of Article 8 of the law 'On combating corruption' a gift received by an official in connection with performing his/her duties with a value of more than fifty nominal financial units (approximately €50)<sup>56</sup> will be considered as belonging to the state or municipal body for which the official is working. If a gift to an official of a high value is offered for his or her personal use, the official is allowed to keep the gift by paying the state or municipal body its equivalent value. Violation of this rule was reported to be subject to disciplinary measures, on the basis of various laws applying to the different categories of officials.

### Code of ethics

106. A Draft Code of Conduct for Civil Servants is under consideration of parliament. Rules on conflicts of interest, prevention of corruption and gifts are included in this draft. In addition, there exists a Code of Ethics for State Tax Employees, Code of Honour for Customs Employees and a Code of Ethical Behaviour for Police Officers. A Code of Conduct for Prosecutors is expected to be adopted in the near future. Violations of the provisions of the codes can lead to disciplinary measures, in so far as these violations also represent violations of provisions in other legislation, such as the law 'On civil service'.
107. Statistics on the number of breaches of ethical rules and disciplinary measures undertaken are collected by each state body individually.

### Reporting corruption

108. Current legislation does not contain any explicit provisions specifically applying to civil servants on the reporting of suspicions of misconduct or suspected corruption in public administration, with the exception of police officers who are required, on the basis of Article 62 of the Disciplinary Statute of the Ministry of Internal Affairs, to report to their direct superiors, or if need be to their higher superiors, violations of the law which they come across in exercising their duties and irregularities that could have a negative influence on the work of the police. Nevertheless, all citizens of Azerbaijan, and therefore also civil servants and officials, are under an obligation to report known, imminent or committed "serious or very serious crimes" – which after the adoption of the amendments to the Penal Code in May 2006 include all corruption offences - under Article 307 of the PC. Failure to do so can be punished with a monetary penalty of five hundred to one thousand nominal financial units, two years' imprisonment or two years of community service. No specific protection is afforded to civil servants and officials reporting instances of corruption within public administration, other than security measures that can be taken for the protection of persons participating in criminal proceedings (witness protection: see above, 'Theme II')

### Disciplinary proceedings

109. Each ministry has its own internal control body, which conducts investigations into alleged violations of legal requirements. These investigations may be based on information supplied by citizens. If a civil servant has been found in breach of his/her duties and/or legislation, the internal control body can propose to the head of the ministry to take disciplinary measures against the

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<sup>56</sup> The GET was informed that an average salary in the public sector ranged from €200 to €500

civil servant. Should disciplinary investigations into the conduct of a civil servant reveal that an offence has been committed, the state body that has instituted disciplinary proceedings must submit the evidence collected to the Prosecution service for further criminal investigation in conformity with the provisions of the CCP.

110. The law 'On civil service' provides for the following disciplinary measures: reprimands, reductions in salary from 5 to 30% for a period of one year, transfer to a position of the same grade but less well paid, demotion, downgrading, deprivation of a qualification rank and dismissal from civil service (Article 25). Civil servants can appeal a decision for disciplinary action to a higher civil service management body within seven days.

**b. Analysis**

111. The GET commends the authorities for their anti-corruption strategy, which has been in place since September 2004. This 'State Programme on Combating Corruption (2004-2006)' tasks state bodies (and also local authorities) to implement legislative and organisational measures. The political will to fight corruption has been expressed by the adoption of the state programme and tangible progress has been made in adopting legislation in key areas of importance for the prevention of and fight against corruption. However, the putting into practice of this legislation and keeping a tight rein on the timely implementation of the measures contained in the Programme, is a matter of perhaps even greater significance. In this respect the GET merely notes that the implementation of a number of measures in the State Programme has already been delayed.

112. The GET noted that in Azerbaijan a number of different terms are used to identify the various categories of persons employed in public service or otherwise elected or appointed to positions in the public sector. As noted in the descriptive part, various laws are applicable to '*civil servants*' (persons employed in the public sector), '*state public officials*' (civil servants employed in so-called administrative positions with certain delegated decision-making authority) or '*officials*' (civil servants employed in so-called administrative positions and persons elected or appointed to state bodies). It was not always clear to the GET which rights and obligations were applicable to the various categories of public sector employees. In this respect, the GET can only hope that the situation is clearer for the officials and civil servants to whom these laws apply than it was to the GET. The GET has some particular misgivings about the law 'On combating corruption' as it seems to rely on a number of other laws for its enforcement and for providing sanctions for violations of its provisions, but does not identify these other laws; each of these other laws addresses yet a different category of persons than the law 'On combating corruption' and some categories of officials do not appear to be covered by any other law at all. In the light of this highly complex situation, the GET is of the opinion that it should be made easier for officials to fully understand their rights and obligations under the different laws and to know exactly how the different acts defined in the law 'On combating corruption' will be penalised. It would in this regard be useful to clarify the relations between the law 'On combating corruption' and other laws. Consequently, **the GET recommends to clearly identify in legislation how violations of the law 'On combating corruption' are made subject to sanctions, in order to ensure that officials fully understand their rights and obligations under this law.**

113. Transparency of public administration is an important tool in preventing corruption and enhancing confidence in public administration in general. In this context, the GET welcomes the new law 'On the right to obtain information', which entered into force at the time of the visit of the GET, and which clarifies the procedures under which information may be sought. The GET was pleased to note that the law also provides for the setting up of an 'Agency on Information

Matters', which will have the authority to investigate issues related to access to information *ex officio*. The setting up of such an agency is all the more important considering the indications the GET received of a perceived reluctance on the part of civil service organisations to provide information and of misunderstanding among both civil servants and the general public about the actual scope of the right to information. In light of this, the GET is concerned that the provisions of the law which allow the (temporary) restriction of access to certain information may leave too much discretion to civil servants to refuse requests for information and may in practice create further misunderstandings. Consequently, **the GET recommends to (i) set up the 'Authorised Agency on Information Matters' as provided for in the law 'On the Right to Obtain Information' as soon as possible and to provide it with adequate resources to carry out its functions, (ii) provide training to those civil servants required to respond to requests for information under the new law, (iii) hold civil servants' accountable for failure to comply with the requirements of the aforementioned law, and (iv) raise the awareness among the general public about their right to access information.**

114. As noted in the descriptive part of the report, the law 'On combating corruption' provides that gifts received by an official (civil servants holding an administrative post and elected/appointed officials) with a value of more than fifty nominal financial units have to be handed over to the authority for which the official is working. The GET was told that the difference between a gift and a bribe was subject to intense debate in parliament, during the adoption process of the law. This information further substantiated concerns the GET had about this provision: it may be easily interpreted to mean that any gift below the amount of fifty nominal financial units is acceptable, regardless of how often an official receives such a gift, and may therefore *de facto* lead to a situation in which facilitation payments (in the form of gifts) of a substantial value are condoned, also considering that facilitation payments were said to be widespread in certain segments of the public sector in Azerbaijan. Moreover, fifty nominal financial units (approximately €50) represent a substantial amount in relation to the salary of certain categories of officials.<sup>57</sup> In this context, the GET also had some concerns that the government representatives it met did not seem to be aware of the risks involved with allowing officials to accept gifts in this amount. Violation of this rule was said to be subject to disciplinary measures as contained in other laws, but – as already indicated above – it was not clear if disciplinary measures could be taken against all officials covered by this rule. **The GET recommends to amend the provision on gifts, by lowering the value and frequency of any gifts that may be accepted by civil servants and other officials, so that they clearly do not raise concerns regarding bribes and other forms of undue advantage and to include appropriate sanctions for violations of the (amended) provision on gifts.**

115. Possible and actual conflicts of interests are primarily regulated by rules on incompatibilities in the law 'On civil service'. The GET was informed that a new law 'On the prevention of conflicts of interest of state employees and other officials' was expected to enter into force in the beginning of 2006.<sup>58</sup> This law, if adopted in the form seen by the GET, will provide for a more comprehensive regulation of conflicts of interest for officials (i.e. civil servants holding an administrative post and elected/appointed officials). The GET was however not made aware how this law was going to be enforced, nor which sanctions would be imposed for violations of the provisions in the law. It appeared to the GET, that if an elected/appointed official violates the requirements of the law, no measures - other than informing the state authority to which the official was elected or appointed - can be taken. In addition the GET noticed that the draft law does not contain any specific rules that can be applied to officials who move from the public to the private sector. It considers that there is a potential risk that a promise of future lucrative

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<sup>57</sup> The GET was told that an average salary in the public sector was in the range of €200 - €500.

<sup>58</sup> The authorities of Azerbaijan reported after the visit that this law was expected to enter into force by the end of 2006.

employment may be used to influence serving officials, and that former officials may abuse their contacts and inside knowledge of their former work areas, especially in cases where their new employment is closely related to their previous functions. **The GET recommends 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.**

116. Further on the issue of conflicts of interest, the GET commends the authorities for the introduction of a legal obligation for officials (civil servants holding an administrative post and elected/appointed officials) to submit financial declarations, under Article 5 of the law ‘On combating corruption’ and the law ‘On submission of financial information by public officials’, and for civil servants (both those holding an administrative post and others) under the law ‘On civil service’. The GET was informed that violations of these rules could result in “criminal, administrative and disciplinary actions stipulated under the legislation”. As the legislation on the basis of which such action could be taken was not identified for all categories of officials covered by these rules<sup>59</sup>, the GET had some doubts about the enforceability of these rules. Furthermore, the GET was concerned about control of the accuracy of the financial declarations. For example, it appeared that tax authorities would not have access to this data, nor did it seem that authorities to which the financial reports are submitted have access to tax information or other data by which the accuracy of a financial declaration could be checked. In the opinion of the GET, a system of financial declarations defeats its purpose, if the information contained in these financial declarations cannot be checked. Consequently, **the GET recommends (i) to ensure that financial declarations can be verified in an effective manner, (ii) to 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.**
117. As noted in the descriptive part of the report, current legislation does not contain any legal obligation on civil servants to report suspicions of misconduct or suspected corruption, unless it relates to information about known, imminent or committed “serious or very serious crimes” pursuant to Article 307 of the PC. The GET was informed that failure to report such crimes can be punished with a monetary sanction from five hundred up to one thousand nominal financial units, two years’ imprisonment or two years of community service. However, no information was available to determine whether failure to report corruption had ever led to charges against employees in the public sector. Furthermore, the GET had serious misgivings about the fact that there were no legal measures in place to ensure confidentiality and to protect employees in public service reporting corruption (so-called whistleblowers) from retaliation. **The GET recommends to introduce 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.**
118. The GET also took note of the draft ‘Code of ethics and conduct of civil servants’, which is a comprehensive document, addressing such issues as conflicts of interest, gifts and impartiality in decision-making. The GET was told that violations of this code, once adopted, would lead to

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<sup>59</sup> Civil servants can be held liable for failure to submit their financial reports pursuant to Article 18 (sub 9) of the law ‘On Civil Service’; judges can be held liable pursuant to Article 111-1 of the ‘Courts and judges act 1997’.

disciplinary measures in accordance with the provisions of the law 'On civil service'.<sup>60</sup> **The GET recommends to adopt a Code of Ethics for all civil servants, both at state and local level.**

119. On the issue of training, the GET met with representatives of the Public Administration Academy and the training centres of the Ministry of Justice, the Prosecutor General's Office and the Ministry of Taxes, and was presented with examples of training on corruption provided to employees. It was however not clear whether this training was provided regularly, nor whether it was mandatory for all civil servants. The GET takes the view that - especially in the light of the sheer volume of recent and forthcoming legislative changes- additional (mandatory) periodic training would be beneficial, in particular on the yet to be enacted law on conflicts of interest and the Code of Ethics, and such practical issues as how to act when confronted with situations where personal/financial interests or activities may give rise to conflict or partiality with regard to civil servants' duties and responsibilities. **The GET recommends to establish 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.**
120. As noted before, many new laws dealing with public administration have been adopted recently or are in the process of adoption. Practical experience with this legislation is understandably limited. It would be useful to gather and examine all complaints made about the functioning of public administration (for example complaints about unethical behaviour of civil servants). The outcome of this exercise would certainly be beneficial in identifying possible weaknesses in existing legislation or in the practical implementation of this legislation. Consequently, **the GET recommends to systematically gather and examine (at central level) information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement.**

## VI. LEGAL PERSONS AND CORRUPTION

### a. Description of the situation

#### General definition

121. Article 43 of the Civil Code provides for the following definition of a legal person: "A legal person is a body incorporated that has property and is liable for its obligations with that property and is entitled to acquire and exercise property and non-property rights, bear duties and be a plaintiff and or respondent in court." The definition includes commercial, non-commercial organisations and municipalities, but not state bodies.
122. Non-commercial legal persons can be categorised as civil unions, foundations, unions of legal persons, as well as other bodies provided by legislation. Non-commercial legal persons may engage in commercial activities only if these activities serve the aims for which they, according to their charter, were founded. In order to engage in commercial activities, non-commercial legal persons may establish commercial unions or may participate in such unions.

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<sup>60</sup> For example, a violation of a provision of the Code of Ethics would constitute a violation of the obligation to "observe the standards of service ethics" pursuant to Article 18, subparagraph 12, of the law 'On civil service', allowing for disciplinary measures to be taken against the civil servant in question.

123. Commercial legal persons may be established in the form of commercial partnerships or commercial companies. Article 43 of the Civil Code provides for the following types of commercial partnerships and commercial companies:

- General partnership

This type of partnership can be founded by two (natural or legal) persons, each of whom is a general partner. Each partner is liable for the partnership's obligations. The shares of the partnership are not freely transferable.

- Limited (*Commandit*) partnership

A limited partnership consists of a general partner and one or more limited partners. General partners are personally liable for the obligations of the partnership. Limited partners (*Commandit*) are liable only to the extent of their participation in the partnership and may not exercise any managerial functions.

- Limited liability company (LLC)

A LLC can be formed by one or several persons who must contribute to the founding capital of the company. There is no minimum requirement for the amount of founding capital. Liability for the obligations of the LLC is limited to a person's share in the capital of the company. Shares in the company are not freely transferable.

- Additional liability company (ALC)

An ALC is similar to an LLC, except participants in an ALC may assume liability for the company's obligations in specified amounts higher than their share in the capital of the company.

- Joint stock company (JSC)

A JSC can be founded by one or more (natural or legal) persons. The founding capital is divided into shares, owned by JSC's shareholders. Shareholders' liability is limited to the value of their respective shares. JSCs can be divided in open JSCs, characterised by an initial public offering of its shares and free transferability of and unrestricted trading in its shares, and closed JSCs, which do not have a public offering of shares and have restrictions on the transferability of their shares.

- Co-operative

A co-operative is an association of individuals created for the purpose of pursuing the economic interests of its members. Liability of members of co-operatives is limited to the extent of the unpaid portions of their respective contributions.

Of these commercial companies and commercial partnerships LLCs, JSCs and co-operatives are the most popular.

### Establishment

124. Requirements for establishing legal persons depend on the form of legal entity. The Civil Code sets the conditions for their establishment. The legislation does not contain any limitations with regard to the nationality or citizenship of a founder of a legal person. Legal persons may be founded by natural persons, including citizens of foreign countries, as well as by legal persons.

## Registration and transparency measures

125. A legal person comes into existence upon issuance of the registration certificate. From that moment the legal person may acquire rights and obligations. The registration of legal persons is performed by the State Registry of Legal Persons at the Ministry of Justice. In order to be registered, a legal person has to lodge an application with the Ministry of Justice, which has to be signed by the founder(s) and legal representatives and approved by a notary. Apart from the application form, the following documents must be submitted: the founding documents (charter / statute and if necessary, a foundation agreement) of the legal person, a receipt of the duty paid for state registration and a document verifying the legal address of the legal person.
126. The law 'On state registration and state registry of legal persons', as recently amended, provides that the maximum term for registration of commercial legal persons (and branches or subsidiaries of foreign commercial legal persons) is 5 days. If the Ministry of Justice does not reply to an application for registration within 5 days, the legal person is considered to be registered. In this case the Ministry has to provide the applicant with a registration certificate. The maximum term for registration of a non-commercial legal person is 40 days.
127. Information on the legal person - such as name, address, identification code, financial year, organisational and legal structure, names, nationality and residence of its founders (and, if the legal person is founded by another legal person, also the relevant information on the establishment of this legal person and information on its branches in Azerbaijan and abroad) - will be entered into the Registry. Additional information to be entered in the Registry varies with the type of company that is to be registered: for a limited partnership (*Commandit*) this will include information on the shares of each partner in the partnership; for an LLC or JSC it will be the amount of starting capital, for non-commercial legal persons it will be information on the nature of their activities.
128. The Registry is centralised and accessible to the public. On the basis of Article 14 of the law 'On state registration and state registry of legal persons' anyone may apply for information contained in the registry and request excerpts or copies. The registry of commercial legal persons is separate from the registry of non-commercial persons.
129. Pursuant to the 'Rules on the opening of bank accounts', issued by the National Bank on 18 March 2002, the number of bank accounts which can be opened by the management of a legal person is limited to one.

## Limitations on exercising functions in legal persons

130. Articles 42 and 46 of the Penal Code envisage as a sanction a prohibition to hold certain posts in state and local bodies and organisations or to engage in certain professions or other activities. If the sanction is prescribed as the sole sanction it can be imposed for a term of 1 to 5 years, in addition to another type of sanction it can be imposed for 1 to 3 years. If the possibility of this sanction is not foreseen in the relevant offence-creating provision in the Penal Code, the Court may nevertheless impose this as an additional sanction if it finds that, considering the nature of the crimes, the danger to the public and the personality of the offender, it would be impossible for the latter to occupy a particular post or be engaged in certain activities.

### Legislation on the liability of legal persons

131. Legal persons are subject to civil and administrative liability. Civil liability of legal persons is provided by Article 52 of the Civil Code: “The legal person shall be liable for its obligations with its property. Except cases provided for by this Code or the statute of the legal person, the founder(s) of the legal person shall not be liable for the obligations of the legal person and vice versa.” Legal persons are liable for damage resulting from illegal acts. Article 11, paragraph 2, of the law ‘On combating corruption’ provides that legal persons that have committed corruption offences as defined by the law ‘On combating corruption’ (which have a different scope than the corruption offences defined in the Penal Code) can be fined, as provided for by law, or liquidated. According to the authorities corruption offences under this law will entail civil liability.
132. Administrative liability is provided for by Article 17 of the Code of Administrative Violations: “Legal persons, including foreign legal persons, bear administrative responsibility for administrative violations under this Code as per generally accepted rules”. The GET was informed that the Code of Administrative Violations only deals with petty offences and that this Code therefore does not provide for administrative liability for corruption, money laundering and trading in influence unless, in the commission of these offences, administrative regulations are violated.
133. If a legal person is involved in a crime, only persons with a leading position in the legal person can be prosecuted for the offence. Prosecution of the persons with a leading position in the legal person does not hinder civil or administrative liability of the legal person for the same acts. The person or entity instituting civil or administrative proceedings may, if necessary, request and collect documents issued within the framework of the criminal proceedings against the natural person.

### Sanctions and other measures

134. The sanctions that can be imposed on a legal person by a civil court are liquidation (for corruption offences pursuant to Article 11 of the law ‘On combating corruption’; and if in the course of founding the legal person the law has been violated, if the legal person is operating without a licence, in case of bankruptcy or for repeated and serious violations of the law, pursuant to Article 59 of the Civil Code) and fines (for corruption offences pursuant to Article 11 of the law ‘On combating corruption’). As administrative liability of legal persons for corruption, money laundering or trading in influence offences does not exist (unless in the commission of these offences administrative regulations are violated), no administrative sanctions can be imposed on legal persons for these offences.
135. There is no data available on the application of sanctions against legal persons.

### Tax deductibility

136. The Tax Code provides an exhaustive list of the expenses and mandatory payments that are connected with obtaining income and that can therefore be deducted from income in order to calculate how much tax has to be paid. Claims for the deduction of expenses and mandatory payments have to be substantiated with relevant documentation (invoice or other accounting documents). Only expenses that are described in the Tax Code and are legally incurred may be taken into consideration. Consequently, facilitation payments are not tax deductible.

## Tax authorities

137. On the basis of the Decree on the implementation of the CCP the Ministry of Taxes is authorised to conduct investigations into such criminal offences as illegal entrepreneurship (Article 192 PC), false entrepreneurship (Article 193 PC) and tax evasion (Article 213 PC). The Decree on the implementation of the CCP provides that if in the investigation of these offences information on certain other crimes - including passive and active bribery with regard to an official (Articles 311 and 312 PC) but not money laundering or trading in influence<sup>61</sup> – is uncovered, the Ministry of Taxes is also authorised to continue the investigation into these crimes and can use the same investigative means as the police. To this end, an Investigations Department within the Ministry of Taxes was established on 28 August 2004.

## Accounting Rules

138. All legal persons registered in Azerbaijan are obliged to keep accounting records and books. In conformity with Article 127 of the Act on Approving, Entering into Force and Harmonization of Legislation with the Civil Code of 28 December 1999. These accounting records and books must be kept for a period of 10 years.

139. Both administrative and criminal liability are provided for negligent accounting. On the basis of Article 16 of the law 'On accounting' natural and legal persons responsible for violating legal provisions related to the preparation and submission of financial statements and the keeping of accounting records and books are under relevant legislation. Pursuant to Article 246 of the Code of Administrative Violations, violations of the rules on keeping accounting records can be fined with 10 to 30 nominal financial units (approximately €10 to €30) for natural persons or 35 to 40 nominal financial units (approximately €35 to €40) in the case of 'official persons'. Legal persons can however not be held liable for violations of this article. The fines are imposed by the Ministry of Taxes. Furthermore, the use of false or incomplete information in accounting records and the destruction or hiding of accounting records can also entail criminal liability under Article 320 PC (forging, selling or using counterfeit documents), Article 326 PC (stealing or destroying official documents) or if committed by an official, civil servant or employee of a local governmental body this may entail 'service fraud' (313 PC). If done for the purpose of tax evasion this may also entail violation of Article 213 PC (tax evasion). However, as criminal liability of legal persons does not exist, legal persons cannot be held liable for these offences.

## Role of auditors and other professionals

140. It is mandatory for all legal persons to have their accounts audited. On the basis of Article 13 of the law 'On auditor services' auditors are obliged to report to the management of a legal person observations made in the course of an audit, including observations on irregularities. Other than the obligation applying to all citizens of Azerbaijan to inform law enforcement authorities about "serious or very serious<sup>62</sup> crimes" (which since the entry into force of the amendments to the Penal Code in May 2006 includes all corruption offences) being prepared or having been committed (Article 307 PC), accountants, auditors and other advising professionals are not under any obligation to report suspicions of offences to law enforcement authorities.

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<sup>61</sup> The latter was criminalised after the visit of the GET in May 2006.

<sup>62</sup> The Penal Code (Article 15) classifies crimes in four categories, depending on the nature and degree of action: crimes which do not represent a big public danger (maximum sentence is 2 years' imprisonment), 'less serious' crimes (sentence of 2 to 7 years' imprisonment), serious crimes (sentence of 7 to 12 years' imprisonment), and, very serious crimes (sentence of more than 12 years' imprisonment).

141. Auditors have adopted their own Professional Code of Ethics (adopted by the Auditors Chamber Council in 2001), which *inter alia* provides that except in cases where the auditor is authorised to disclose information or there are circumstances obliging the auditor to disclose information that are explicitly prescribed by the Penal Code, the auditor must always adhere to rules of confidentiality and must also not disclose information to tax authorities, if the audit is conducted at the request of the legal person. According to the Professional Code of Ethics, the auditor has only to disclose information if s/he has correct, precise and irrefutable information about a serious crime being committed, such as treason, breach of the Constitutional order, espionage and other criminal offences as provided by the Penal Code.

**b. Analysis**

142. The GET noted that legal persons being used for the commission of crimes was not a well-recognised concept in Azerbaijan. Various authorities met by the GET spoke about prosecution of the physical perpetrator, but did not appear to be familiar with the concept of crimes being committed by legal persons and also did not seem aware of the role natural persons with a leading position within the legal person can play in this respect. The law provides for civil liability for damages – as a result of, for example, corruption – and administrative liability for various violations of administrative regulations, including some account offences but not for corruption, money laundering or trading in influence. The law ‘On combating corruption’, which was adopted on 13 January 2004, provides that legal persons who have committed corruption offences, as defined by this law, can be fined or liquidated. The GET was informed that this provision refers to civil liability of a legal person for corruption offences. The GET nevertheless had some doubts about the practical applicability of this provision, as the possibility to fine or liquidate a legal person appears to rely on the existence of an ‘injured’ party to take legal action against the legal person. It was furthermore unclear to the GET if it could be applied in situations where no tangible damage, as generally required under civil law, had occurred (for example, cases when a bribe has not yet changed hands and the required act has not been performed). The GET was told that no action against a legal person had ever been taken under this provision. The GET was however informed that a draft law on criminal liability of legal persons was being prepared and was soon to be presented to Parliament. Considering the unfamiliarity of the authorities met by the GET with the concept of crimes committed by legal persons, the GET is of the opinion that any new legislation on this matter needs to be followed up with appropriate training for police, prosecutors and judges, to effectively implement new provisions on liability of legal persons. Therefore, **the GET recommends to adopt 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.**

143. Until recently, registration of legal persons in Azerbaijan was a complex and lengthy process. However, recent amendments to the law ‘On state registration and state registry of legal persons’ and changes to the registration system have significantly improved the process and now over 95% of all legal persons are registered within 5 days. The GET was told that information on registration of legal persons is published in newspapers and on the website of the Ministry of Justice. Nevertheless, the role of the Registry in preventing the registration of legal persons being used for criminal activities appears to be rather limited. The Registry does not – upon registration or at any moment thereafter - check criminal records of the founders of a legal person or persons in a leading position within the legal person. If a civil court liquidates a company, the court is obliged to inform the Registry. However, the GET was told by the staff of the Registry that such information had never been provided.

144. As regards disqualification, Articles 42 and 46 of the Penal Code provide for the possibility to prohibit persons from holding certain posts or from engaging in certain professions and other activities. The authorities assured the GET that this sanction could also be applied to (managerial) positions within a legal person, including for corruption offences. Nevertheless, various persons interviewed by the GET, both from the Registry and from the private sector, seemed to be unaware that disqualification of persons in a leading position in a company was possible under Azeri law. The GET was told that this sanction had in fact never been imposed on persons in a managerial position in legal persons. The fact is that there is no mechanism in place to enforce a sanction of this kind, and - as already mentioned above - criminal records of the founders, representatives or persons who otherwise have a leading position in a legal person are not checked upon registration or at any moment thereafter.<sup>63</sup> Consequently, **the GET recommends to ensure 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.**
145. The GET was informed that after the amendments to the tax legislation in 2001, the so-called tax culture in Azerbaijan has improved and tax evasion has decreased. The GET was told that the tax authorities pay special attention to 'suspicious' expenses and have developed a methodology for investigating tax payments and the evasion of taxes. However, it appeared that in this methodology no special consideration was given to the detection of bribes. The Investigation Department of the Ministry of Taxes is authorised to investigate certain crimes, the most obvious of which is tax evasion, without the involvement of the police. The investigation of corruption does not fall within the immediate remit of the Department. Nevertheless, if the Department comes across a possible corruption offence in investigating aforementioned crimes it does not have to hand over the investigation to the police but is allowed to continue with its investigation into corruption. In 2005 it investigated 10 cases of possible corrupt conduct, 5 of which were subsequently prosecuted. The tax authorities told the GET that they considered corruption investigations particularly complex. The GET is of the opinion that the tax authorities could and should play an important role in the fight against corruption. Guidelines, such as those contained in the OECD Bribery Awareness Handbook for Tax Examiners, and further training would be useful in this respect. As the Investigation Department does have a mandate and the means to investigate those corruption offences they come across in their investigations into other crimes, the awareness of tax officials on how to detect corruption is of even greater significance than usual. Consequently, **the GET recommends 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.**
146. With regard to auditors, those met by the GET appeared to be very aware of their role in preventing and fighting corruption. The GET was informed that a department on combating corruption has been set up within the Auditors Chamber, that brochures and books outlining the procedures when an audit brings corruption to light have been issued, that a code of ethics has been adopted and that provisions have been made in the law 'On auditors' for dealing with internal corruption.

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<sup>63</sup> The GET was informed that criminal records of founders or persons who have a leading position in a legal person would nevertheless be checked when this person would apply for a license under- for example - the law 'On insurance activity', the law 'On banks' and the law 'On audits'. The GET however considered that there is a large number of activities for which a person does not need a license as required by these laws and consequently did not find this mechanism effective in practice.

147. Turning to accounting, the GET took note of the new law 'On accounting', which will be implemented in several stages, to be completed in 2009. The law specifies the standards for accounting; liabilities and sanctions for violations of these standards are regulated in other laws. Natural persons can be held criminally liable under the Penal Code for severe account offences, such as forging, selling or using counterfeit documents; they can also be held liable under the Code of Administrative Violations for other account offences, such as violations of accounting rules (Article 146). The sanctions that can be imposed under the Code of Administrative Violations are 30 nominal financial units (approximately €30) or if committed by an official 60 nominal financial units (approximately €60). The main misgivings the GET had about the provisions on account offences is related to the fact that the sanctions which can be imposed for such offences are extremely lenient. The maximum sanction for account offences that cannot be classified as forging, selling or using counterfeit official documents (Article 320 PC) or stealing or destroying official documents (Article 326) is 30 nominal financial units (approximately €30) under the Code of Administrative Violations. In the GET's view such sanctions are not dissuasive, and, in any case, neither proportionate nor effective with regard to account offences that have been committed intentionally, in order to commit, conceal or disguise the corruption offences as referred to in Article 14 of the Criminal Law Convention on Corruption. **The GET recommends 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.**

## **CONCLUSIONS**

148. In Azerbaijan corruption is a major problem, which according to the authorities of Azerbaijan could jeopardise the strong economic growth of the country and represent a threat to its social and political development. To address this problem the Government has introduced a State Programme on Combating Corruption (2004-2006), a comprehensive anti-corruption strategy which requires various authorities to implement legislative and organisational measures. In carrying out this programme commendable progress has been made in adopting new legislation and amending existing legislation. However, a more challenging task lies ahead for the authorities of Azerbaijan: the effective and timely implementation of the legislation and measures of the State Programme. This implementation will prove to be critical in the success of the efforts to reduce corruption in Azerbaijan.
149. In spite of the measures adopted under the State Programme, the system still suffers from several shortcomings. The limited co-operation and co-ordination by the various authorities responsible for detecting, investigating and prosecuting corruption offences and the lack of a proactive approach in investigating corruption offences are major obstacles to an effective fight against corruption; they appear to be the main reasons for the very low number of convictions for corruption. There is a need to provide for more training for all those concerned with the investigation, prosecution and adjudication of corruption offences, to ensure that the new anti-money laundering system becomes operational as soon as possible and to issue guidelines for those officials required to apply the provisions on confiscation and seizure. In the area of public administration it should be a matter of priority for the authorities to provide training and raise awareness with respect to access to information, to amend the current provisions on gifts, to adopt a code of ethics for all public sector employees, to address actual and potential conflicts of interests, to establish a formal duty for all such employees to report suspicions of corruption and afford adequate protection to so-called whistleblowers and to ensure that the information contained in financial declarations submitted by both civil servants and officials can be verified. Finally, as regards legal persons, the legal system in Azerbaijan does not provide for corporate liability. Consequently, there is a need to establish liability of legal persons for the offences of bribery, money laundering and trading in influence and to provide for sanctions that are effective,

proportionate and dissuasive, in accordance with the Council of Europe Criminal Law Convention on Corruption (ETS 173).

150. In view of the above, GRECO addresses the following recommendations to Azerbaijan:

- i. **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 (paragraph 21);**
- ii. **to develop a mechanism to assess whether the measures included in the State Programme on Combating Corruption are being implemented in practice within the given deadlines, and assess their impact on the various sectors concerned (paragraph 22);**
- iii. **to take the necessary measures to improve communication, feedback and co-operation in practice of all agencies involved in the detection, investigation and prosecution of corruption (i.e. police, prosecution and tax authorities) (paragraph 48);**
- iv. **to fully staff the Department for Combating Corruption within the Prosecutor General's Office as a matter of urgency and to immediately provide the Department with permanent and suitable premises (paragraph 49);**
- v. **to explore possibilities, consistent with national law and public funding rules, for allocating an appropriate proportion of the assets confiscated in corruption cases to bodies specialised in fighting corruption (paragraph 50);**
- vi. **(i) to adopt a more proactive approach with regard to the investigation of corruption, by - *inter alia* - making greater use of special investigative techniques and (ii) to provide training on the use of special investigative techniques to all those involved in the detection and investigation of corruption (paragraph 51);**
- vii. **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, and (ii) 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 (paragraph 52);**
- viii. **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 (paragraph 53);**
- ix. **to consider reducing the categories of persons enjoying immunity from prosecution, including the immunity provided for election candidates (paragraph 62);**

- x. to draw up guidelines containing criteria to be applied when deciding on requests for lifting of immunities, ensuring that decisions are based on the merits of the request submitted by the Prosecutor General (paragraph 63);
- xi. 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 (paragraph 81);
- xii. 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 (paragraph 82);
- xiii. to assess the effectiveness of the amended Penal Code and to verify, 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 (paragraph 83);
- xiv. 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 (data bases), 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 (paragraph 84);
- xv. to clearly identify in legislation how violations of the law 'On combating corruption' are made subject to sanctions, in order to ensure that officials fully understand their rights and obligations under this law (paragraph 112);
- xvi. to (i) set up the 'Authorised Agency on Information Matters' as provided for in the law 'On the Right to Obtain Information' as soon as possible and to provide it with adequate resources to carry out its functions, (ii) provide training to those civil servants required to respond to requests for information under the new law, (iii) hold civil servants' accountable for failure to comply with the requirements of the aforementioned law, and (iv) raise the awareness among the general public about their right to access information (paragraph 113);
- xvii. to amend the provision on gifts, by lowering the value and frequency of any gifts that may be accepted by civil servants and other officials, so that they clearly do not raise concerns regarding bribes and other forms of undue advantage and to include appropriate sanctions for violations of the (amended) provision on gifts (paragraph 114);
- xviii. 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 (paragraph 115);
- xix. to ensure that financial declarations can be verified in an effective manner, (ii) to 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 (paragraph 116);

- xx. to introduce 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 (paragraph 117);
  - xxi. to adopt a Code of Ethics for all civil servants, both at state and local level (paragraph 118);
  - xxii. to establish 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 (paragraph 119);
  - xxiii. to systematically gather and examine (at central level) information on complaints about breaches of ethical rules within the public administration as well as on the outcome of disciplinary proceedings in order to identify shortcomings in concrete areas of the public administration and, based on this evaluation, to take measures to make the necessary changes for improvement (paragraph 120);
  - xxiv. to adopt 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 (paragraph 142);
  - xxv. to ensure 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 (paragraph 144);
  - xxvi. 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 (paragraph 145);
  - xxvii. 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 (paragraph 147).
151. Finally, in conformity with Rule 30.2 of its Rules of Procedure, GRECO invites the authorities of Azerbaijan to present a report on the implementation of the above-mentioned recommendations by 31 December 2007.