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Corruption prevention in respect of members of
parliament, judges and prosecutors

EVALUATION REPORT

AZERBAIJAN

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EXECUTIVE SUMMARY

1. Over the last decade, the level of corruption perception in Azerbaijan has remained stably high, with insignificant fluctuations on Transparency International's Corruption Perception Index (CPI): 2.4 in 2006, 2.3 in 2009 and 2.7 in 2012. Corruption is often referred to as being a systemic problem that broadly affects society. Despite some serious efforts undertaken since 2011 to tackle low level public sector corruption, there is little evidence of it being pursued with determination among the political elite and the upper echelons of the public service.

2. Although the principles of independence and separation of powers are enshrined in the Constitution and key laws, the institutional set up grants particularly strong powers to the President and the executive, which exercise considerable influence on the legislature and the judiciary, including the Prosecutor's Office. This creates an environment lacking transparency and prone to political favouritism and corruption.

3. There are at least two aspects that are common to the three professional groups under review, i.e. members of parliament, judges and prosecutors. The first one is their allegiance to the executive. In respect of members of parliament this is due to the fact of their belonging to or supporting the party led by the President. A weak opposition is a characteristic of the political system and it can be argued that this – and the restrictions imposed on parliamentary debates of certain legislative proposals – significantly limits parliamentary oversight and the legislative process. In respect of judges and prosecutors this is due to their direct or indirect appointment by the President and the subservience of the Judicial Legal Council – the key judicial self-governing body – to the Ministry of Justice. Such a framework can create opportunities – real and perceived – for undue influence and political interference in the independent functioning of the legislature and the judiciary, erodes the checks and balances system and generates significant corruption risks. The second factor, which is common to all three groups, is the lack of controls on accessory activities and asset disclosure as well as on MPs' conflicts of interest. The law on asset disclosure adopted in 2005 is still not enforced. It provides for sealed, confidential asset declarations. Moreover, information on companies' organisational structures and ownership was withdrawn from the public domain in 2012. Building accountability of individual MPs, judges and prosecutors and their respective institutions appears to be problematic also in the context of restrictions on and self-censorship of the media.

4. To be credible and to reach top level elected or appointed officials, including specifically MPs, judges and prosecutors, the anti-corruption reforms need to be further deepened and institutionalised and also need to be and be seen to be enforced impartially. Other concerns specific to each of the three professional categories are also to be addressed. These include notably the development and enforcement of standards of conduct for parliamentarians, more consistent integration in the judges' and prosecutors' periodic evaluation of the integrity standards forming part of their respective codes of professional ethics. Last, but not least, the three groups are to benefit from guidance, confidential counselling and regular training and communication activities on the boosting of reputation, ethical behaviour and corruption prevention within their own ranks.

I. INTRODUCTION AND METHODOLOGY

5. Azerbaijan joined GRECO in 2004. Since its accession, Azerbaijan has been subject to evaluation in the framework of GRECO's Joint First and Second (in December 2005) and Third (in April 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

6. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

7. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

8. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the Members of Parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2014) 2E) by Azerbaijan, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Azerbaijan from 14 to 18 April 2014. The GET was composed of Mr Dražen JELENIĆ, Deputy State Attorney General, State Attorney's Office (Croatia), Ms Helena LIŠUCHOVÁ, Acting Head, International Cooperation Department, Ministry of Justice (Czech Republic), Mr Jim O'KEEFFE, Lawyer and former Member of Parliament and Minister of State, Old Chapel, Bandon (Ireland) and Mr Georgi RUPCHEV, State Expert, Directorate of International Cooperation and European Affairs, Ministry of Justice (Bulgaria). The GET was supported by Ms Liubov SAMOKHINA from GRECO's Secretariat.

9. The GET interviewed representatives of the National Assembly of Azerbaijan, including its Disciplinary Commission, several standing committees and the Office of Parliament, and representatives of political parties. The GET also met with members of the judiciary (including from district, appellate, Supreme and Constitutional courts, the Judicial Legal Council, the Academy of Justice and the two judges' associations) and the Prosecutor's Office (including from the Prosecutor General's Office, its Anti-Corruption and Organisational Analytical Departments, appellate and district prosecution offices). Furthermore, the GET interviewed representatives of the Commission on Combatting Corruption, the Ministry of Justice, the Office of Human Rights Commissioner, the Central Election Commission. Finally, the GET spoke with members of the Bar Association, representatives of the State Scientific Academy, Baku State University, Transparency International Azerbaijan, and the media.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Azerbaijan in order to prevent corruption in respect of Members of Parliament, Judges and Prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Azerbaijan, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Azerbaijan has no more than 18 months following the adoption of this report, to report back on the action taken in response.

II. CONTEXT

11. Over the last decade, the level of corruption perception in Azerbaijan has remained stably high, with insignificant fluctuations on Transparency International's Corruption Perception Index (CPI): 2.4 in 2006, 2.3 in 2009 and 2.7 in 2012.

12. Corruption in Azerbaijan is often referred to as being a systemic problem that broadly affects society.¹ Although the government consists of three branches of power, the institutional set up grants particularly strong powers to the President who since June 2012 enjoys lifetime immunity from criminal prosecution, and to the executive. Given the allegiance of the parliament and the judiciary to the ruling government², safeguards against graft and political favouritism remain insufficient. The political system is generally assessed as being paternalistic and patronage-based and the links between political and business interests appear to be significant. The GET was told that senior government officials and members of parliament and their families are known to run private businesses and, generally, to wield significant influence on the economy, having monopolised most of the countries' industries. They allegedly also tend to rely on informal *ad hoc* relations rather than institutionally-set rules.

13. The fight against corruption has been an officially proclaimed objective, nevertheless processes in this area have been ambivalent and the implementation of the official anti-corruption policy has been uneven. On the one hand, the legal framework is quite strong, underpinned by the 2004 Law on Combatting Corruption, the setting up in 2005 of the Commission on Combatting Corruption and the adoption of national strategies and action plans.³ In recent years, following the launch in January 2011 of an anti-corruption campaign, low level public sector corruption has arguably been tackled effectively within the traffic police, and via a network of Asan Service Centres set up in three major cities which offer one-window services for obtaining driving licenses, for example. Information provided to the GET on-site suggests that there has been relatively less harassment of business and extortion of minor bribes and somewhat friendlier policies towards civil society. Also, many more incidents of minor corruption have been reported by citizens to various bodies and, generally, the aforementioned improvements have been noticed and appreciated by the public.⁴

14. On the other hand, there is little evidence of corruption being pursued with determination among the political elite and the upper echelons of the public service. Although some high-ranking officials have been dismissed on account of bribery, very few have been prosecuted. Major enforcement failures are also apparent. The GET was informed by a number of interlocutors that the law on asset disclosure by public officials, the key element of the 2007-2011 Anti-Corruption Strategy and of the Law on Combatting Corruption, was adopted in 2005 but is still not implemented due to the claims that it would be meaningless without a large-scale property and capital amnesty. Furthermore, the envisaged confidential status of officials' asset declarations and the recent denial of public access to information on companies' registration, organisational structures, ownership and financial assets⁵ contradict the authorities' intentions to increase transparency. Last, but not least, the absence of an effective opposition to the ruling New Azerbaijan Party has limited the possibility of parliamentary oversight over

¹ See http://www.freedomhouse.org/sites/default/files/NIT13_Azerbaijan_2ndProof.pdf.

² See the PACE report on "The honouring of obligations and commitments by Azerbaijan", 20 December 2012 (<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19243&lang=en>).

³ The First National Strategy on Increasing Transparency and Combatting Corruption (2007-2011), the Second National Anti-Corruption Plan (2012-2015) and the National Plan to Promote Open Government.

⁴ See also <http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Azerbaijan.pdf>

⁵ Since June 2012, such information can be only obtained upon request by a court, a law enforcement agency or the Central Bank investigating suspected money-laundering or financing of terrorist groups. In addition, the petitioner corporate records will be provided only if the petitioner has the consent of those individuals named in the data request – See Azerbaijan: Parliament Throws Veil of Secrecy over Business Sector, June 13, 2012 - 12:00pm, by Shahin Abbasov (<http://www.eurasianet.org/node/65534>)

the fight against corruption, while state control, restrictions on and self-censorship of the media have curtailed public debate and exposure of corrupt and unethical practices among the ruling elite, including members of parliament and judges, in particular. All of this has undermined the sincerity of the anti-corruption campaign, hampering its expansion to key institutions and building accountability.

15. Of the three professional groups under review, the judiciary, in particular, is believed to be tainted by nepotism, cronyism, and corruption.⁶ According to the *2013 Global Corruption Barometer*, 42% of respondents perceive the judiciary as being an extremely corrupt public institution. Moreover, business executives surveyed in the *Global Competitiveness Report 2013-2014* indicate that courts are subject to political influence of members of government, citizens and companies. Even though the law provides for the independence of the judiciary, judges who do not comply with political considerations are allegedly subject to harassment and threats of dismissal.

⁶ See *Global Integrity 2011* and <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/azerbaijan/corruption-levels/judicial-system.aspx>

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

16. Under the Constitution of Azerbaijan, the legislative power is exercised by a unicameral National Assembly (*Milli Majlis*) composed of 125 members (MPs). Deputies are elected for a five-year term through general, equal and direct elections, within a majority voting system in single-seat constituencies. Voting is free, individual and secret. Candidates may be self-nominated or presented by political parties, their blocs or groups of voters.⁷ All citizens over 18 years of age have the right to vote, except those recognised incapable by court. Every citizen of at least 25 years of age may be elected with certain exceptions (i.e. dual citizenship, liabilities towards a foreign state, holding a position in the executive or judicial branches of power, remunerated activities - with certain exceptions, exercise of a religious profession, incapacity confirmed by court, conviction for a serious crime or serving a sentence). The integrity of election results is validated in respect of each candidate by the Constitutional Court, and the *Milli Majlis* is constituted upon confirmation in office of 83 deputies.

17. The powers and duties of MPs, as well as the legal and social guarantees for the exercise of their duties are stipulated in the Status of Deputy Law. MPs are to represent the national public interest, and any interference in their activities, including those aimed at jeopardising their immunity and safety, or that of the parliament is considered a crime. A mandate terminates in case of a falsified vote count, if citizenship of Azerbaijan is surrendered or citizenship of a foreign state is accepted, as a result of a criminal conviction, incompatibilities under the Constitution or resignation. In the case of improper vote counting, the Constitutional Court decides if a mandate is to be forfeited and in all other cases the decision is taken by the Central Election Commission and can be appealed before court.

18. The Assembly adopts constitutional laws, laws and resolutions on matters within its competence.⁸ Its internal organisation and conduct of work are governed by the Constitution, the Law on Approval of Internal Regulations of Parliament (Rules of Procedure Law) and the Law on Standing Committees of Parliament (LSCP). The Assembly elects the members of eleven standing committees and two (Disciplinary and Counting) commissions. Organisational, analytical and logistic support for their work is provided by the Office of Parliament.

19. In the most recent parliamentary elections held in November 2010, seats were obtained by the following parties: the New Azerbaijan Party (68), the Civil Solidarity Party (3), the Motherland Party (1), the Social Welfare Party (1), the Azerbaijan Democratic Reforms Party (1), the Azerbaijan Hope Party (1), the Whole Azerbaijan Popular Front Party (1), the Civil Union Party (1), the Great Liberation Party (1), the Justice Party (1), the Party of National Revival Movement (1), independent candidates (42), and three seats are currently vacant. Of those elected, 20 are women and around 40 deputies (30%) were elected for the first time. Parties other than the New Azerbaijan Party are not able to form parliamentary groups due to the fact that they hold very few seats.⁹

20. The Nakhchivan Autonomous Republic (NAR) is a constituent part of Azerbaijan with its own elected parliament (the Supreme Council) consisting of 45 deputies. Elections to the Supreme Council are regulated by the NAR Constitution.

⁷ In the case of self-nominated candidates and candidates nominated by voters, at least 450 voters' signatures must be presented to the Central Election Commission to support the nomination.

⁸ Approval of the Constitution and amendments thereto can only be decided upon by means of a nation-wide referendum – See Article 3 of the Constitution.

⁹ The establishment of a parliamentary faction requires at least 25 MPs (20% of 125).

21. In Azerbaijan, the principles of independence and separation of powers, of political pluralism and a multi-party system are enshrined in the Constitution and the key laws. However, the executive branch exercises a strong influence on parliament either directly (on this see further below) or via the New Azerbaijan Party which was set up and has been led by the President and has dominated the *Milli Majlis* since 1993. Where the ruling elite from a single party controls the presidency, the executive and the parliament and where the internal parliamentary dynamics, namely the token opposition, fails to provide the requisite checks and balances on the government's power, corruption and impunity are likely to result, as is the substantial weakening of the parliament's representative, legislative and oversight functions. Whether under a parliamentary or presidential system, elected legislatures are the principal forum for deliberating, debating and passing laws in a representative democracy. Also, in a sturdy system of checks and balances, parliaments act as a "watchdog" and barrier against corruption, alongside the judiciary, the media and civil society, and promote accessibility, accountability and transparency of state institutions, including within their own ranks. Parliaments design frameworks that can better withstand and resist corruption, scrutinise the executive office, investigate complaints of corruption and foster a genuine public debate on the pervasiveness of this scourge within society. A vocal parliamentary opposition is important, since in its absence politics cease and administration takes over. All the information gathered by the GET strongly suggests that, in Azerbaijan, major reforms are needed in order for the *Milli Majlis* to qualify as fulfilling in law and in practice the basic requirements for parliament to function as a pillar of democracy and to restore its significantly devaluated position within the country's institutional set up.¹⁰

Transparency of the legislative process

22. A legislative initiative can be taken by an MP, the President of the Republic, the Supreme Court, the Prosecutor's Office, the NAR Supreme Council and a group of 40 thousand citizens who are eligible to vote. Bills, except those presented by MPs, are to be put to the vote as they are; changes can only be made with the consent of the body exercising the right to a legislative initiative and they are to be adopted within two months, and in urgent cases - within 20 days.¹¹ Other bills are to be reviewed, considered and adopted within 6 months.¹² All bills and decisions are to be substantiated and their purpose indicated. GRECO is of the strong view that the requirement for bills to be voted on as they are, and for any changes to them to only be made with the consent of the body exercising the right to a legislative initiative is at variance with the legislator's responsibility to articulate his/her views as effectively as possible and thereby *de facto* abrogates the legislative functions of the *Milli Majlis*, interfering with its institutional autonomy. Since it represents a serious limitation on the exercise of the legislative powers of parliament, GRECO urges the authorities to abolish this rule, even if it would necessitate the revision of the Constitution.

23. After being transmitted to the relevant standing committee, all bills presented to the parliament are to be made public on its official web site. According to the Rules of Procedure Law, a bill that has passed the first reading may be subject to a public consultation, pursuant to the recently adopted Public Participation Law. For this purpose, the Office of Parliament must create a designated web page and, within three days from the moment a draft is submitted to the responsible standing committee, publish the bill, its registration number, subject, the committee assigned, schedule, location and rules, contact details of persons responsible for collecting information from the public, and periods for the review of comments and disclosure of results. There is also a requirement for the public to be informed of the outcome of the public participation procedure. After

¹⁰ See also the PACE report on "The honouring of obligations and commitments by Azerbaijan", 20 December 2012.

¹¹ Article 96, Parts II-V of the Constitution.

¹² Article 20 of the Rules of Procedure Law.

they pass the first and second reading, the updated bills must be published on the parliament's web site.

24. The entry into force in June 2014 of the Public Participation Law is a welcome development for Azerbaijan. It provides for the carrying out of public hearings and consultations on all pieces of draft legislation submitted to the parliament.¹³ However, since most of the bills adopted by the *Milli Majlis* originate from the duly authorised executive bodies and the period for their consideration and adoption is relatively short (two months, as a rule), it is unclear whether they can be systematically made subject to public consultation, as required by law, or whether such consultation can also be held by a responsible body at an earlier stage. Consequently, **GRECO recommends that public consultations be systematically held on bills, including those emanating from executive bodies and subject to an accelerated adoption procedure within the parliament.** Furthermore, since awareness of the Public Participation Law among civil society remains insufficient, it would be prudent to give broader publicity to this momentous initiative so as to solicit full and active engagement of all potentially interested actors in the legislative process.

25. The Assembly's sessions are open to the public and the media and can only be held *in camera* at the request of 83 MPs or the President of the Republic. Except for laws on election of the President, parliament, the holding of a referendum and status of MPs, which require a majority of 83 votes for approval, all other laws are adopted by a majority of 63 votes. Voting may be open or secret. Proceedings of all parliamentary sittings are recorded and published regularly on the official web site. The media have free access to open sittings and voting results (however, not per MP¹⁴) and may make video and audio recordings. Recordings of the most recent speeches by MPs are also broadcast in the weekly "Parliamentary Hour" by the State Television.

26. Standing committee meetings are, as a rule, public, and it is only in exceptional circumstances that a committee may decide to hold a closed sitting. Representatives of state bodies exercising the right to a legislative initiative, representatives of executive and judicial bodies, municipalities, political parties, trade unions, non-governmental organisations, the media as well as scholars, experts, specialists, etc. may be invited to a sitting. The committee decisions and opinions are considered adopted if voted favourably by over half of its members. Minutes and transcripts, which have the status of official documents, are kept and to reflect, *inter alia*, the voting results, the names of all attendees and minority opinions. The committee sittings are open to the media and their proceedings are published in the "Azerbaijan" newspaper. Audio recordings, photos and filming may also be allowed.

27. Within 14 days of their acceptance by the parliament, relevant laws are to be presented for signature to the President of the Republic. If not specified otherwise, they enter into force on the day of their publication in the Official Gazette.

28. Despite the lack of restrictions or prohibitions governing MPs' contacts with third parties who might try to influence their decisions, the issue of MPs being lobbied by third parties was not specifically raised as a matter for discussion on-site. Still, the significant links between political and business interests, the reliance on informal networks and *ad hoc* relations among various office holders rather than institutionally-set rules and the lack of transparency are highlighted in this report.¹⁵ Given this very specific context, GRECO reserves relevant observations for the sections on ethical conduct, conflicts of interest and asset disclosure, while encouraging the authorities to keep the issue of lobbying on their agenda and responding to it as and when necessary.

¹³ Article 18.2.2.2 of the Public Participation Law.

¹⁴ Such information is only presented on request by the Office of Parliament.

¹⁵ See the "Context" chapter.

Remuneration and economic benefits

29. Exercising parliamentary duties is considered a full-time job. Monthly salaries are fixed at the following rates by the Status of Deputy Law (SDL): Chairperson of Parliament – 2 250 Manats/EUR 2 100, First Vice-Chairperson – 90% of the above (i.e. EUR 1 890), Vice-Chairperson – 85% (EUR 1 785), chairperson of a standing committee or a commission – 80% (EUR 1 680 EUR), vice-chairperson of a standing committee or a commission – 75% (EUR 1 575 EUR), and a regular MP – 70% (EUR 1 470). Additionally, deputies receive a tax-free monthly allowance equal to 50% of their monthly salary for the discharge of parliamentary duties (i.e. EUR 720 for a regular MP). Allowances equal to two monthly salaries are also paid, on an annual basis, for MPs' representation expenses and leave. In July 2013, the average gross monthly salary in Azerbaijan was 412.7 Manats/EUR 430.

30. All official journeys are financed/reimbursed by the Office of Parliament, and vehicles are assigned for the performance of duties outside the capital. Those requiring housing in the cities of Baku, Sumgait and within the Absheron district are provided with state accommodation or a monthly allowance of EUR 220.¹⁶ On expiry of a mandate, if an MP remains unemployed, an allowance equal to 80% of his/her monthly salary is received for not more than one year. The costs of running an MP office – which are to be set in each city and district centre (and in the cities of Baku, Gandzha and Sumgait – in each constituency) can only be covered from state funds. Information on MPs' benefits is public, whereas asset disclosure by way of an annual declaration is planned but not yet in effect (see further below). The correctness of expenditure by the *Milli Majlis* is checked by the Ministry of Finance and the Accounting Chamber.

Ethical principles, rules of conduct and conflicts of interest

31. The rules of parliamentary conduct and ethical principles are laid down in the Constitution (incompatibility with other public offices and private activities), the Criminal Code (prohibition of bribery, trading in influence, divulgation of state secrets), the Law on Combatting Corruption (rules on asset disclosure, gifts and misuse of public resources), the SDL and the Rules of Procedure Law (order and comportment in the Assembly). Article 17 SDL stipulates, in particular, that a deputy shall not break the law or tolerate behaviour detrimental to his/her office or resort to rude or insulting words or acts that undermine his/her honour and dignity, and shall not induce others to commit such acts. Specific rules governing the prevention, identification and resolution of conflicts of interest have not been established, although their feasibility has been discussed.

32. A preliminary draft code of conduct for MPs has reportedly been prepared and is expected to be examined and adopted either in the form of a law or a parliamentary resolution. Its precise scope remained undetermined at the time of the visit. The GET takes the view that such a future code needs to provide for mandatory disclosure by MPs of conflicts of interest, including by putting in place a specific procedure for *ad hoc* disclosure in the course of parliamentary proceedings in relation to any matter under consideration. Until now such a practice has not been followed and, as the GET was told, it is common e.g. for an MP holding the post of a private university rector to debate and vote on a bill in the field of education without declaring a conflict of interests. The code is to establish the rules on permissible conduct with third parties seeking to influence the legislature's work as well as the specific benchmarks for building up and upholding an MP's image and reputation. To be effective and credible, the code's enforcement is to be assigned to an oversight body capable of generating broad support for a culture that values ethics and compliance within the parliament. Furthermore, the application of the Code to everyday MP activities would be facilitated if members, whether newly elected or

¹⁶ The rate is established by a decree by the Parliament's Chairperson.

experienced ones, are offered awareness raising and training activities aimed at promoting legal and ethical conduct and mitigating any corruption risks. Last, but not least, being not only an internal but also an external tool for framing behaviour and strengthening public trust, it would be important for the code, when adopted, to be presented to the public so as to create clear expectations of appropriate comportment. The aforementioned concerns can also be addressed via amendments to the Rules of Procedure Law, as was suggested by some interlocutors. Consequently, **GRECO recommends that i) in furtherance of the conflicts of interest rules in the Constitution, the Law on Combatting Corruption, the Status of Deputy Law and the Rules of Procedure Law, standards (a code) of conduct for members of parliament (covering, in particular, conflicts of interest and regulation of contacts with third parties) be adopted and enforced and made easily accessible to the public; and ii) training, guidance and counselling be provided to MPs on legal conduct, parliamentary ethics, conflicts of interest, accessory activities, gifts and other advantages, corruption prevention and boosting of reputation.**

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

33. Article 89 (4) of the Constitution imposes a ban on MPs taking up a position in another state body or a religious organisation, engaging in entrepreneurial, commercial or other paid employment unless it is of an academic, pedagogic or creative nature. Furthermore, the Law on Combatting Corruption (LCC) forbids engaging through others - including fictitious legal persons - in entrepreneurial activities or sitting on the management bodies of companies or financial or credit enterprises. Violations of the LCC are to be reported to the *Milli Majlis* by the Commission on Combatting Corruption and carry disciplinary, civil, administrative or criminal liability. There are no restrictions on MPs – or persons related to them - holding financial interests as related information is to be provided under the annual asset disclosure regime (see further below). Similarly, there are no prohibitions or restrictions on MPs' employment or engagement in other paid and unpaid activities on expiry of their mandate.

34. Although very strict incompatibility rules apply to MPs, business ownership or control – either directly or via family members – is common and not subject to any supervision, as the GET was told.¹⁷ Given that the asset disclosure rules are not yet enforced and bearing in mind the recent denial of public access to information on the organisational structures, ownership and financial assets of companies¹⁸, ensuring effective oversight of MPs' accessory activities demands to be accorded priority attention. For the sake of credibility, it would be advisable if the compliance mechanism to be set up around the future code of conduct could provide for the first level of checks, whereas it would be appropriate for ultimate decisions on these matters to be taken by the Constitutional Court, as the body in charge of interpreting relevant incompatibility rules applicable to MPs. Consequently, **GRECO recommends that accessory activities of MPs be subject to effective supervision and enforcement.** Such controls could be furthermore facilitated by lifting the confidentiality of MPs' asset declarations. Proposals to that effect are contained in the relevant sections of this report.

¹⁷ Only in times of elections, candidates' compliance with the incompatibility rules is exercised by the Central Election Commission (i.e. a written undertaking is to be submitted by each candidate) but not thereafter.

¹⁸ Previously, such information was publicly available on the Ministry of Taxes' web site, and the Ministry was obliged to provide information to any person within a week from receiving a request.

Gifts

35. By virtue of Article 8.1 LCC, officials, including MPs, may not solicit or accept for themselves or others gifts that may influence or appear to influence the objective and impartial performance of duties or represent or appear to represent a reward, except for minor gifts and conventional hospitality. Minor gifts are defined as those valued at less than 55 Manats/EUR 60 accepted during any twelve month period, and any other gifts become the property of the state body in which the official exercises his/her duties. An MP is to refuse illegal gifts, privileges or concessions, and, if they are given for reasons not dependant on him/her, is to report them to his/her direct superior and transmit the gifts to the state body concerned. The superior's guidance is to be sought also in case of any other queries. Moreover, obtaining undue privileges or advantages in the exercise of duties while entering into or performing civil contracts with any person is forbidden. Violations of the LCC carry disciplinary, civil, administrative or criminal liability. The prohibition on accepting bribes under Article 311 of the Penal Code (passive bribery), read in conjunction with Article 308 PC,¹⁹ also applies and carries a custodial sentence of up to twelve years with a deprivation of the right to hold certain positions or engage in certain activities for up to three years and property confiscation.

36. Interviews held on-site underscored MPs' overall negative attitude towards accepting gifts and it was explained that gifts were reported and registered with the parliament's Economic Department and some of them had subsequently been exhibited in the museum of the *Milli Majlis*. Although deputies may address any queries to the Office of Parliament, they have never done so and there are no known cases of MPs being sanctioned for accepting improper gifts. In this regard, the GET takes the view that communication and training activities in connection with the future code of conduct for MPs would benefit awareness and compliance with the rules pertaining to gifts.

Contracts with State authorities and misuse of public resources.

37. By virtue of Article 9.3.2 LCC, MPs are prohibited from using their position, the official powers or status of parliament or opportunities that arise therefrom to render any illicit assistance to any person for their entrepreneurial activities, for receiving subsidies, subventions, credits and other privileges with a view to obtaining material or other gains, privileges and advantages. Additionally, Article 9.3.10 LCC prohibits MPs from using the material and financial resources of state agencies or municipalities to contribute to the funds of election candidates, registered candidates, political parties, blocs of parties and referendum initiative groups. Similarly, it is prohibited to supply non-state structures with material or financial resources owned by the state or economic entities under state agencies or municipalities. Such violations carry disciplinary, civil, administrative or criminal liability. Relevant articles of the Penal Code on abuse of official powers (Article 308), exceeding official powers (Article 309), service forgery (Article 313) and negligence (Article 314) also apply.

Misuse of confidential information

38. While there are no rules on the misuse of confidential information specifically by MPs, disclosure of state secrets and loss of documents containing state secrets are qualified as criminal offences under Articles 284 and 285 PC and carry a restriction of freedom for up to three years or a custodial sentence of up to seven years with a deprivation of the right to hold certain posts or engage in certain activities for up to five years.

¹⁹ The note under Article 308 PC defines the term "official" and has the same legal force as other parts of the PC. MPs are included in the category of "officials" for the purposes of the Code's Chapter 34 on crimes against the state and interest of the public service.

Declaration of assets, income, liabilities and interests

39. Pursuant to Article 5 LCC and the Law on Approval of Rules for Submission of Financial Information by Public Officials (LARSFI), MPs and deputies of the NAR Supreme Council are to submit their asset declarations within 30 days from taking up duties, by 30 January annually and one year after departure from office. The declarations are to include: 1) annual income (type, source and amount); 2) property calculated for tax purposes; 3) bank deposits, securities and other financial holdings; 4) participation and shares held in companies, funds and other entities as a shareholder or founder; 5) debts exceeding five thousand times the nominal financial unit (5 500 Manats/EUR 5 300); 6) other financial and property-related obligations exceeding one thousand times the nominal financial unit. The reporting requirement also extends to family members of an MP: spouse, parents and children living in the same household. The data contained in the declarations is considered private and is to be kept confidential, except when reasonable enquiries are made by the Commission on Combatting Corruption, prosecution office or courts in connection with corruption-related offences. Illegally collecting and distributing such information constitute a crime.

40. In the last two decades, asset disclosure by public officials, including MPs, has gained momentum, and its prevalence has steadily grown among GRECO member States. Being part of broader attempts to curb corruption and promote transparency, asset disclosure helps detect illicit enrichment and identify and prevent conflicts of interest among those upon whom it is incumbent to safeguard the public good. In Azerbaijan, more than eight years have elapsed since the entry into force of legislation in this field, yet its enforcement has been precluded by the government's failure to agree on the format of asset disclosure forms. Another legal requirement – that the *Milli Majlis* designate an authority in charge of collecting and checking MPs' declarations²⁰ – has similarly not been met. The confidentiality of asset declarations is another feature with the potential to compromise their preventive effect. In its previous pronouncements, GRECO has already underscored the desirability of achieving a balance between the right of MPs and their relatives (as well as other officials with a reporting obligation) to privacy and the legitimate public interest in accessing information on those exercising an official function. It was also acknowledged that, in comparison to other categories of officials, elected representatives – who have a limited term of office – should be subject to more stringent transparency and accountability standards and might expect less privacy. In this light, ensuring public access to MPs' declarations, e.g. through their timely publication on the parliament's web site or that of a relevant oversight body would seem appropriate and justified. To gain credibility and to conduct unbiased checks, it would be preferable for the oversight body itself to be independent of parliament, given the absence of a viable opposition within it. Moreover, to render asset disclosure fully effective, the system needs to provide for dissuasive and proportionate sanctions for non-compliance, such as late, incomplete or false declaration. Regulations currently applicable to MPs in that regard are imprecise: Article 6.5 LARSFI refers to accountability in accordance with the national law, Article 6.3 LCC stipulates possible disciplinary liability, and Articles 45-48 of the Rules of Procedure Law only provide for MPs' liability for their comportment in the Chamber or any act discrediting the office. Therefore, whether or not any other administrative or disciplinary sanctions can be imposed on MPs specifically for infringements of the asset disclosure rules is unclear. In this light, **GRECO recommends that i) the format for asset disclosure by members of parliament be established as a matter of urgency and that the confidentiality in respect of asset disclosure be lifted, with due regard being had to MPs' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to MPs be put into effect (including through the designation of an independent oversight body), accompanied by adequate sanctions for non-compliance with**

²⁰ Pursuant to Article 3, paragraph 2 LARSFI, members of the Milli Majlis shall submit their financial information to the authority identified by the Milli Majlis.

the rules and that details, including the underlying reasoning, of the sanctions imposed be made public.

Supervision and enforcement

41. Deputies are subject to the disciplinary powers of the Disciplinary Commission of the *Milli Majlis* for breaches of order, misconduct and acts discrediting their office. The Disciplinary Commission consists of seven MPs elected for a one-year term and takes decisions by a simple majority vote, the presence of four members being sufficient for a quorum. Any dissenting opinions are reflected in the minutes, and, if requested, can be presented to the plenary. Where an MP commits an act damaging to his/her office, the Commission is to conduct an investigation within two weeks. Disciplinary measures applicable to MPs are: a warning, a prohibition to speak for the duration of the sitting, expulsion from the plenary, reprimand, and loss of mandate. Pursuant to Article 16 SDL, similar measures may be also imposed for the non-attendance of a sitting without a valid reason. Information on sanctions applied to MPs and the list of MPs who missed parliamentary sittings are published in the "Azerbaijan" newspaper and submitted by other means to the media.

42. MPs enjoy functional immunity in that they cannot be held liable for activities, statements and votes cast in parliament, nor obliged to give explanations or evidence in connection with the above without their consent. They are additionally subject to procedural immunity and cannot be held criminally liable, arrested and searched except when caught in the act of crime. In the latter case, they may be arrested and the body in charge must notify immediately the Prosecutor General thereof. Immunity of an MP may be only lifted by the *Milli Majlis* at the request of the Prosecutor General. Such a request is to be reviewed within seven days of its submission, the Disciplinary Commission being responsible for providing an opinion on lifting the immunity and terminating an MP's mandate.²¹

43. In 2012, an MP lost her mandate in the midst of a scandal allegedly involving a million-dollar purchase of a guaranteed parliamentary seat ahead of the 2005 elections. The MP in question was expelled from the New Azerbaijan Party and sentenced in December 2013 to three years' imprisonment on a charge of fraudulent misappropriation of property and concealment of crime. In the previous legislature, the immunity of another deputy who had caused bodily harm to his peer was lifted and his mandate terminated. He was subsequently sentenced to three years' imprisonment.

Training, advice and awareness

44. All regulations applicable to MPs are in the public domain and have been placed on the parliament's web site. Within 15 days of taking up office all MPs are to receive written notice of the legal obligations to which they are subject and the consequences in case of non-compliance. In case of any queries, advice is to be provided by the Office of Parliament. The desirability of on-going efforts to periodically communicate and train MPs on ethical conduct, conflicts of interest and corruption prevention within their own ranks is underlined above (cf. paragraph 32). The design of communication and training activities should be such as to not only explain basic ethical notions but also to promote the understanding of the relevant rules, policies and laws and help develop skills for applying the code to everyday parliamentary activities. It would also be appropriate for the communication and training programmes to be regularly reviewed and renewed to keep them current, relevant and effective.

²¹ The Rules of Procedure Law contains further specifications regarding the procedure applicable to the lifting of MPs' immunity and the scope of control exerted by the *Milli Majlis* when deciding on such matters. – See GRECO's Joint First and Second Compliance Report on Azerbaijan (Greco RC-I/II (2008) 4E).

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

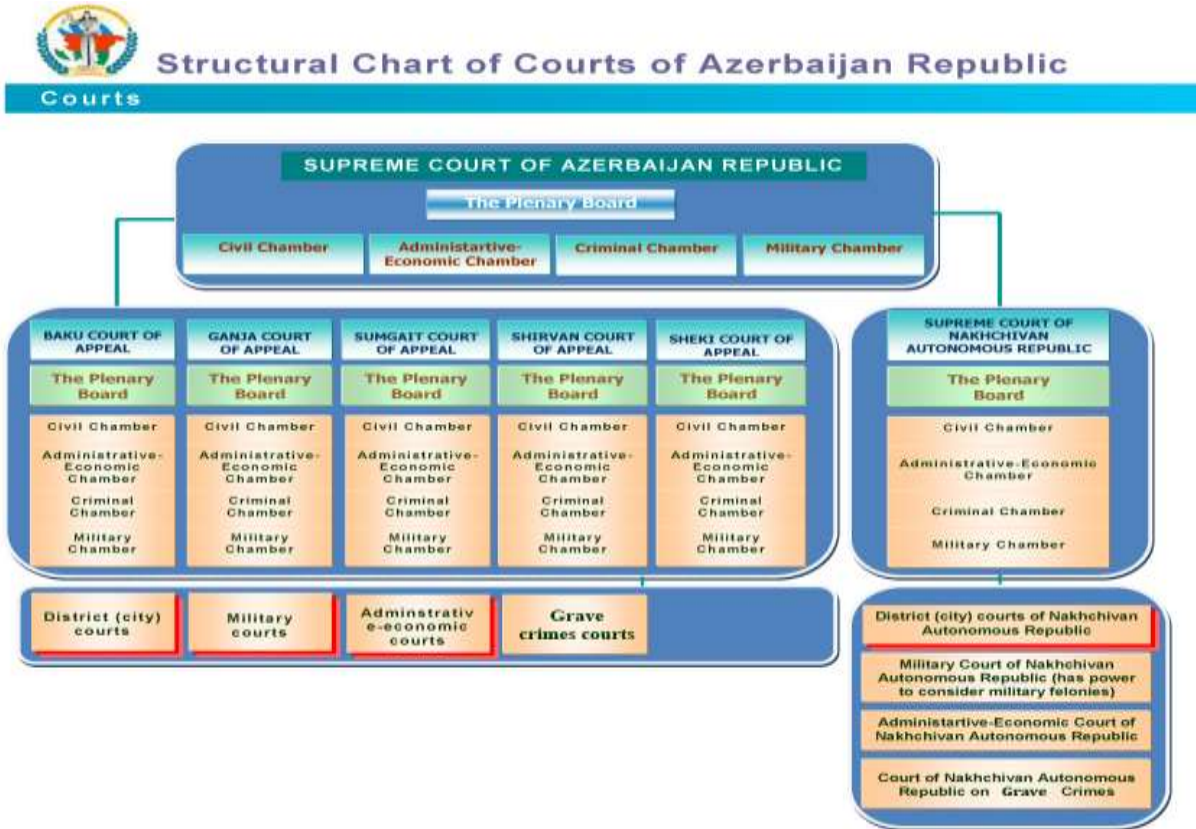
Overview of the judicial system

45. In Azerbaijan the judicial power - in a narrow interpretation of the term²² - is administered by the Constitutional Court, the Supreme Court, the courts of appeal, ordinary and specialised courts. The judicial system and legal proceedings are determined by law, and the establishment of extraordinary courts is prohibited.

46. The Constitutional Court consists of nine judges appointed for a non-renewable 15-year term. Any person may appeal before it for the restoration of his/her infringed rights and freedoms. The 2003 Law on the Constitutional Court defines the Court’s activities, as well as the status and duties of its judges. The Court’s decisions are published and their execution is mandatory.

47. Pursuant to the Law on Courts and Judges (LCJ), the judicial system encompasses general (district/city) and specialised (serious crime, administrative-economic and military crime) courts. The court system comprises three instances. The first instance includes 86 district/city courts, 5 serious crime courts, 6 military courts and 7 economic courts. Cases are heard by a single judge or a panel of judges. The second instance consists of 6 courts of appeal (“higher courts”), and the third instance - the Supreme Court - is the highest judicial body for civil, criminal, economic and military matters. It reviews the decisions of appeal courts and clarifies judicial practice. The courts in the Nakhchivan Autonomous Republic (NAR) are part of the court system. The NAR Supreme Court serves as the appeal instance and its rulings are considered in cassation by the Supreme Court of Azerbaijan.

48. Of a total of 524 judges, 461 are men and 63 are women, and of 74 court presidents 4 are female. The overview of the court system is provided below:



²² According to Chapter VII of the Constitution, one of the components of the judicial power is the Prosecutor’s Office.

49. Judges are independent and bound only by the Constitution and laws.²³ Legal safeguards include irremovability during the term of office²⁴, immunity, security and financial and social provision commensurate with the post. Judges must be impartial, fair, act on the basis of facts and according to law, and not be involved in political activity or join political parties. Direct or indirect interference in the administration of justice is a crime.²⁵ The budgets of the first instance courts are managed by the Ministry of Justice in consultation with the respective court presidents and the opinion of the Judicial Legal Council (see further below) is solicited. Presidents of the Supreme and "higher" courts draw up their own budgetary proposals which are addressed directly to the Ministry of Finance.

50. In January 2006 the President of the Republic signed a decree on judicial modernisation and thus launched a new round of judicial reforms in Azerbaijan. In the ensuing years, new regional courts were set up, some military courts were merged, the number of judges increased by 50%, and a Judicial Academy was established and became operational. Moreover, budgetary allocations to courts have augmented, including for the purpose of introducing the latest technologies (i.e. e-document and case management systems, e-network among courts, a unified web portal and an information database for court decisions). The country has also benefited from a "Judicial Modernisation Project" implemented jointly with the World Bank as well as the European Union/Council of Europe project on "Enhancing Judicial Reform in the Eastern Partnership Countries". However, the chronic weakness of the judiciary vis-à-vis the executive remains a worrying feature.²⁶ The latter not only has influence over the key judicial self-governing body - the Judicial Legal Council (see further below), but the President also retains decisive powers over judicial appointments and decides on issues such as the organisation, location, jurisdiction (including territorial) and the overall number of the country's judges.²⁷ In its previous pronouncements, GRECO has stressed that judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit society at large by protecting judicial decision-making from improper influence and are ultimately a guarantee of fair trial. It therefore encourages Azerbaijan to take further determined steps to guarantee in law and in practice the full independence and impartiality of judges and of the judiciary as a whole, within the overall system of checks and balances, in particular, by responding to the specific concerns expressed in the relevant sections of this report.

Judicial self-governing bodies

51. There are two professional unions of judges: the Public Association of General Court Judges and the Public Association of Specialised Court Judges. The key judicial self-governing body is the Judicial Legal Council (JLC). Within its competence, it ensures the organisation and operation of courts, proposes the number of judges per court and decides on the selection, evaluation, promotion, transfer and disciplinary measures against judges.²⁸ The 15 members of the JLC have a five-year tenure which is renewable once. The JLC is composed of: the Supreme Court Chief Justice (*ex officio* member); a judge appointed by the Constitutional Court; two Supreme Court justices appointed by that Court from among candidates proposed by the judges' associations²⁹; two appeal

²³ Article 127 of the Constitution, Article 100 of the Law on Courts and Judges, Article 25 of the Criminal Procedure Code and Article 7 of the Civil Procedure Code

²⁴ The principle of irremovability is stipulated in Articles 97 and 100 LCJ. Pursuant to Article 97, judges shall not be transferred to another position without their consent, except when such a measure is imposed as a disciplinary sanction.

²⁵ Under Article 286.1 of the Criminal Code

²⁶ See also the PACE report on "The honouring of obligations and commitments by Azerbaijan", 20 December 2012.

²⁷ These powers are vested with the President of the Republic pursuant to Article 109 (32) of the Constitution.

²⁸ Article 1 of the Law on the Judicial Legal Council. The JLC mandate does not cover the Constitutional Court and its judges.

²⁹ In this and other cases, each association is to suggest two candidates for each post.

court judges appointed by the Supreme Court from among candidates proposed by the judges' associations; two district court judges appointed by the Ministry of Justice from among candidates proposed by the judges' associations; a judge of the NAR Supreme Court appointed by that Court from among candidates proposed by the judges' associations; the Minister of Justice (*ex officio* member) and one person appointed by him/her; one person appointed by the President of the Republic, the parliament, and the Prosecutor General's Office respectively; and a lawyer appointed by the Bar.³⁰ The decisions of the JLC are adopted, as a rule, by an open simple majority vote of at least eight members present, the presiding member always being the last one to vote. The JLC president has a renewable five-year term and is elected from within the JLC's ranks. Since the establishment of the JLC in 2005, it has been presided over by the Minister of Justice. The transparency of the JLC's activities is ensured through broadcasting of its sessions on national television, attendance of representatives of civil society and access to the minutes of the sessions and decisions taken on the JLC's official web site.

52. The setting up of an independent judicial council, endowed with guarantees for its composition, powers and autonomy, is an appropriate way of guaranteeing judicial independence and has been pursued by many GRECO member States. In Azerbaijan, however, the observance and strengthening of judicial independence has not been included amongst the JLC's objectives.³¹ Moreover, the pluralistic composition of the JLC is dominated by appointees from branches of power other than the judiciary (8 of the 15 members), even though, according to law, nine JLC members must be, and are, judges. This creates opportunities – real and perceived – for undue influence by the executive, which undermines the JLC's status as an independent institution capable of safeguarding the values and fundamental principles of justice.³² Such a perception is reinforced by the perennial chairmanship of the JLC by the Minister of Justice and the decisive involvement of the President of the Republic in judges' appointment (this issue is addressed in more detail below). Given its influence on the selection, appointment, career and disciplinary measures against judges, the legitimacy and credibility of the JLC demand that it be free from undue influence of other branches of power. This can be achieved by providing for the majority of the JLC members to consist of judges who are appointed or elected *directly* by their peers, as required by Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities. In this light, the entire selection procedure, which is unnecessarily complex and multi-layered³³, would merit to be simplified and streamlined. Consequently, **GRECO recommends that i) the objectives of safeguarding and strengthening judicial independence be explicitly stipulated in the mandate of the Judicial Legal Council (JLC); and ii) the role of the judiciary within the JLC be reinforced, notably by providing for not less than half of its members to be composed of judges who are directly elected or appointed by their peers and by ensuring that the JLC president is elected from among the JLC members who are judges.**

Recruitment, career and conditions of service

53. Recruitment requirements are laid down in Article 126 (1) of the Constitution. Candidates to the post of judge must be citizens of Azerbaijan, of at least 30 years of age, have the right to vote, a university degree in law and at least 5 years' work experience in the legal field. As a rule, senior judicial posts (appeal, two Supreme Courts and the Constitutional Court) may be filled by persons with at least five years' work

³⁰ Persons appointed by the relevant executive bodies and Parliament and must have a university degree in law and more than five years of work experience.

³¹ I.e. in Article 1 of the Law of the Judicial Legal Council, which defines its purpose. Although Article 11.0.7 refers to the "taking of measures to ensure the independence of judges and to prevent interference in their activity" as one of the JLC's functions

³² The composition of the JLC was also subject to criticism in the previously mentioned PACE report on "The honouring of obligations and commitments by Azerbaijan, 20 December 2012, see paragraphs 145-147.

³³ Thus, it is unclear why candidate JLC members who are appeal court judges must be appointed by the Supreme Court, upon proposal by the two judges associations.

experience as a first instance court judge,³⁴ while persons prominent in the legal field, with 20 years' experience as law practitioners and high moral qualities can be subject to special recruitment and appointed directly to senior posts on a proposal by the JLC.

54. The initial recruitment³⁵ is publicly advertised and comprises written and oral exams. It is overseen by a Judges' Selection Committee appointed by the JLC for a five-year term.³⁶ The Committee consists of 11 members: two Supreme Court judges, three appeal court judges, one NAR Supreme Court judge and one representative of the Ministry of Justice, the General Prosecutor's Office, the JLC staff, the Bar and the academia respectively. Members of the Committee who are not judges must have a university degree in law and more than five years' work experience in the legal field. To have a quorum, the presence of seven members is required. Decisions are taken by an open simple majority vote and can be appealed to the JLC.

55. Applicants to the post of judge who have successfully sat the tests must undergo a one year training programme in the Legal Training Centre of the Ministry of Justice. Topics, such as human rights, the fight against corruption, and judicial ethics are included in the curriculum, as are internships in courts. At the end of the training, following another round of tests and an interview, the applicants are shortlisted according to merit and grades achieved, and successful candidatures are forwarded to the JLC for the final interview and appointment proposal to be made to the President of the Republic. The legality of the JLC's appointment-related decisions can be challenged before the Plenary of the Supreme Court. At the time of the visit, 2 600 legal professionals had participated in the selection procedure and, of those, 307 were appointed judges (72 in 2013).

56. In the NAR, judges of the general and specialised courts are appointed by the President of the Republic on the basis of a proposal by the Chair of the NAR Supreme Council (Parliament). As for judges of the NAR Supreme Court, they are appointed by the National Assembly (*Milli Majlis*) having been presented by the President of the Republic on the basis of a proposal by the Chair of the NAR Supreme Council.

57. No specific issues emerged on-site regarding the system of initial selection of judges, which appears to be based on objective and transparent criteria stipulated in the Charter approved by the Judges' Selection Committee. The structure, methodology and organisation of the selection process as well as the collegiality of the decision making and due process are safeguarded by the Committee and the JLC, with regard being had to the criticisms expressed with respect to the latter in paragraph 52 above. However, as concerns eligibility for senior judicial posts, the applicable criteria appear to be too broad and call for further refinement so as to be grounded in objective factors, merit, integrity and experience. Several proposals to that effect are made in paragraph 60 below.

58. District court judges are appointed by the President of the Republic, on the recommendation of the JLC. Initial appointments are made for a five year term, at the end of which the performance of a judge is evaluated by the JLC and, if satisfactory, his/her mandate is prolonged until the retirement age (65, or 70 in exceptional circumstances).³⁷ Judges of the Constitutional Court, the Supreme Court, the NAR Supreme Court and courts of appeal are appointed by the *Milli Majlis* on the recommendation of the President of the Republic. Presidents of the two Supreme, appellate and serious crime courts are appointed directly by the President,³⁸ while all other court presidents, their deputies and presidents of court collegiums are appointed by

³⁴ Article 93-4 LCJ.

³⁵ Governed by the LCJ, the Law on the Judicial Legal Council (LJLC) and the JLC-approved rules

³⁶ The Committee's membership is incompatible with that of the JLC.

³⁷ The age limit of the Constitutional Court judges is 70 years, and those who have reached the retirement age continue to exercise their duties until the new judge is appointed.

³⁸ Under Article 109 (32) of the Constitution

the President of the Republic on the proposal of the JLC. As a rule, court presidents have a five-year tenure which is renewable once.

59. An independent judiciary presided over by judges free of any taint of corruption, political pressure or interference is a requirement imposed by the laws of Azerbaijan. Nevertheless the information gathered by the GET strongly suggests that the executive branch wields significant powers over the judges' appointment, giving rise to suspicions of political favouritism and undue influence permeating the process. The appointments are made either by the President of the Republic alone (presidents of appeal, serious crime and the two Supreme courts), or on the recommendation of the JLC (all district/city court judges and other court presidents, their deputies and presidents of court collegiums), which since its inception in 2005 has been chaired by the Minister of Justice and relies on the majority appointed by branches of power other than the judiciary. Where judicial appointments are in the hands of the parliament (appeal, two Supreme and Constitutional court judges), they are made on the recommendation of the President without consulting a judicial body, their legitimacy being reduced by the absence of an effective parliamentary opposition capable of challenging inappropriate nominations. The judicial appointments system therefore needs to be re-examined so as to ensure that it is predominantly led by the judiciary itself and that safeguards are in place to shield the appointment process from any undue influence, within the overall system of checks and balances. The GET also notes with concern that judges are initially appointed for a five-year term. Such a lengthy probation period can undermine their independence, since judges might feel under pressure to decide cases in a particular way. Furthermore, objective and transparent criteria for the evaluation of judges specifically for the purpose of permanent appointment appears to be lacking. Consequently, **GRECO recommends that judicial independence be further strengthened by i) increasing the role of the Judicial Legal Council in the appointment of all categories of judges and court presidents; and ii) substantially reducing the five-year probation period for judges and making permanent appointments to the post of judge subject to clear, objective and transparent criteria.**

60. The performance of a judge is subject to evaluation by the JLC not less than every five years. It draws on the opinion of relevant court presidents, including presidents of superior courts, and information collected by the Ministry of Justice and the JLC.³⁹ Among the evaluation criteria, determined by the latter, is compliance with three selected provisions of the Code of Judges' Ethical Conduct (see further below), namely the precedence of judicial duties (Article 3), fairness and impartiality (Article 4) and raising professional knowledge (Article 15). The GET is of the opinion that, in the context of regular evaluation of a judge's performance, compliance with other ethical rules applicable to judicial and non-judicial activities by virtue of the Code would be a clear asset. This concerns notably the provisions of the Code on preserving the prestige of the judicial office (Article 5), impartiality with respect to relatives (Article 7), judicial independence (Article 10-11), prohibition of improper relationship with the parties (Article 13), ban on the use of judicial office for private gain (Article 17) and on the acceptance of gifts (Article 18). To this end, **GRECO recommends that, in the context of the regular evaluation of judges' performance, consideration be given to accounting for all relevant provisions of the Code of Judges' Ethical Conduct (i.e. Articles 5, 7, 10-11, 13, 17 and 18).**

61. A judge's mandate is terminated in the event of 1) resignation, 2) dismissal, 3) physical incapacity established by court, 4) death, 5) a court ruling establishing disappearance or death, 6) failure to meet recruitment requirements, 7) incompatibilities, 8) renouncement of citizenship, acquisition of citizenship or taking up of obligations in respect of a foreign state, 9) inability to fulfil duties due to sickness for more than six months established by a special medical commission under the JLC, 10) disciplinary

³⁹ Article 13 LJLC.

offences on two occasions in any calendar year, and 11) multiple gross violations of law while reviewing a case. Grounds (6)-(11) trigger disciplinary action by the JLC, following a motion by the Supreme Court President or the Ministry of Justice. If grounds (1) and (6)-(11) are present, a judge's mandate is to be terminated by the appointing body. In all other cases, it is terminated by the JLC. A decision on the dismissal of a Constitutional, Supreme and appellate court judge, which is to be taken by the parliament, requires a majority of 83 MP votes, whereas for the dismissal of other judges a majority of 63 votes is required.

62. Judges' salaries are fixed in Article 106 LCJ at the following monthly rates: Supreme Court Chief Justice – 2 070 Manats/EUR 1 960, presidents of the NAR Supreme Court and courts of appeal – 90% of the above (EUR 1 760), serious crime court presidents, including in the NAR – 80% (EUR 1 570), presidents of other courts – 70% (EUR 1 372), deputy presidents – 90% of the salary of the relevant court president (EUR 1 060), presidents of collegial boards of the Supreme Courts and courts of appeal – 85% of the salary of the relevant court president, judges at all courts – 80% of the salary of the relevant court president (EUR 950). A judge's salary cannot be decreased. Judges receive additional salary increments of 15% of their monthly salary (not exceeding 45%) for each five years of service and for holding a research degree. An additional tax-free monthly allowance is paid: 25% of salary – to the Supreme Court justice, 20% of salary – to appeal court judges, and 15% of salary – to district court judges. Those appointed for the first time receive a lump sum equivalent to two monthly salaries in the first year of service, and one month's salary – for each of the next four years of service. Two monthly salaries constitute the annual leave allowance.

Case management and court procedure

63. In first instance ordinary courts, cases are randomly assigned to judges (in an automated way) based on a coding of their first and last names,⁴⁰ with due regard to the principle of equal distribution of work. Removing a case from one judge and assigning it to another is prohibited, except when there are reasonable grounds for the withdrawal or recusal of a judge (see further below). Non-procedural relations between judges of the three instances in connection with the case are prohibited.⁴¹

64. As a rule, civil cases are to be considered within a three-month period,⁴² and no limitation applies for considering administrative cases. The examination of criminal cases depends on their gravity and simplified procedures (whereby they are not subject to pre-trial investigation) have been established for crimes with low social danger, i.e. illegal adoption, causing unintentional damage to or destruction of property, non-payment of loans, forced signature of contracts, etc. A preliminary hearing on a criminal case must be fixed within 15 days of its receipt (for complex cases, this period can be extended to 30 days by court decision) or within 7 days - for special cassation or accelerated proceedings.⁴³ Additionally, by virtue of Article 48 of the Criminal Procedure Code, entitled "Securing the expedient proceedings on a criminal case", a proceeding must be launched and finished by court within the timelines envisaged and in a manner that protects the persons concerned from unnecessary delays in the restoration of their violated rights. Human rights violations arising from undue delays are investigated by the Commissioner for Human Rights. Although unjustified procedural delays do occur in practice, they do not give rise to specific disciplinary sanctions in respect of judges.

⁴⁰ In accordance with 2007 Instruction on conducting clerical work at courts of the Republic of Azerbaijan.

⁴¹ Article 31 of the Criminal Procedure Code

⁴² Besides that, there are some exceptions, such as consideration within one month of labour disputes, alimony disputes and disputes between government organisations and citizens concerning illegal actions and decisions of state employees.

⁴³ Article 298 of the Criminal Procedure Code

65. By virtue of Article 127 (V) of the Constitution, hearings are open and may only be held *in camera* to prevent the disclosure of state, professional or commercial secrets or when consideration is to be given to respect for private or family life.⁴⁴ In all cases, verdicts are pronounced in public. Judgments delivered by district courts that have entered into force are to be published, while those delivered by cassation and appeal instances are to be published within one month and disseminated electronically.

Ethical principles and rules of conduct

66. The judges take and sign an oath of office. The obligation to refrain from acts that are damaging to the office, reputation and dignity of a judge is stipulated in Article 127 of the Constitution and Article 99 LCJ, and violation of judicial ethics is one of the grounds for instituting disciplinary procedures against a judge.⁴⁵ A Code of Judges' Ethical Conduct was elaborated by judges and their professional associations and approved by the JLC in 2007. It represents a collection of ethical principles and standards of conduct and consists of four parts: general provisions, rules on judicial duties, rules on extra-judicial activities and the Code's relevance to the evaluation of judges' performance.

67. Pertinent legal provisions and the Code of Judges' Ethical Conduct establish a suitable framework and set the appropriate tone with respect to issues of ethics and compliance within the judiciary. Nevertheless, an environment that fosters lawful and ethical behaviour is not sustainable if judges are unable to obtain advice on ethical concerns and questionable practices. Information provided on-site regarding the way in which a response can be given to judges' ethical queries was rather contradictory. While some judges were confident that such advice could be obtained directly from the JLC, others seemed not to be aware of this option or rejected the idea of counselling altogether, asserting that a judge "is to be ruled by his/her own conscience" and "must be apt to decide on ethical dilemmas". Providing advice on ethics, including specifically within the judiciary, is known to bring a positive and lasting effect on the promotion of ethical and legal conduct, and serves as a deterrent against corrupt behaviour. In Azerbaijan, institutionalising counselling within the judiciary would be justified, given the lack of controls on judges' accessory activities (cf. paragraph 69), the non-execution of asset disclosure (cf. paragraphs 74-75) and the liability of a judge to disciplinary sanctions, including dismissal, for ethical breaches. Furthermore, it would be appropriate for ethical conduct, conflicts of interest and asset disclosure to be integrated as distinct topics in the judges' on-going training since this is not currently the practice (cf. paragraph 83). Consequently, **GRECO recommends that i) a system of confidential counselling on integrity and ethical matters be established within the judiciary, including specifically on judges' accessory activities; and that ii) dedicated on-going training be provided to judges on ethical conduct, conflicts of interest and asset disclosure.**

Conflicts of interest

68. Within the judicial process, besides the Constitution and the LCJ, conflicts of interest are regulated by the Criminal and Civil Procedure Codes. These require a judge to withdraw from specific proceedings if his/her impartiality is put into doubt (see further below). Outside the judicial process, the Law on Combatting Corruption (LCC) establishes rules *inter alia* on the acceptance of gifts and asset disclosure. Violations of the LCC incur administrative and disciplinary liability. Various dimensions of conflicts of interest are furthermore explicitly covered by the Code of Judges' Ethical Conduct.

⁴⁴ Relevant stipulations are also included in Article 12 LCJ, Article 27 of the Criminal Procedure Code and Article 10 of the Civil Procedure Code.

⁴⁵ Article 111-1 LCJ.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

69. Being a judge is incompatible with any other public, private or political activity, or any other activity and remuneration thereof, except for research, pedagogical or creative work.⁴⁶ Non-compliance triggers the disciplinary punishment of dismissal. Although there was one case of a judge's dismissal from office for the carrying out of business activities, this was an isolated case, as the GET was told, and specific controls on judges' auxiliary work, such as lecturing in private universities for considerable remuneration, were not systematically performed. Given that the asset disclosure in respect of judges is yet to come into force, the provision of guidance and advice in their regard, as recommended in paragraph 67, would seem to be appropriate.

70. As in the case of MPs, there are no restrictions on judges holding financial interests as related information is to be provided under the annual asset disclosure regime, once it becomes operational (see further below). Also, former judges are free to engage in any paid or unpaid private sector activity, as no post-employment restrictions apply to them.

Recusal and routine withdrawal

71. A judge who has tried a case in the first, appeal or cassation court may not retry it in another instance,⁴⁷ and if any doubts persist as regards his/her impartiality, s/he is to recuse him/herself from proceedings. In criminal cases, a judge is to recuse him/herself or is to be disqualified following a motion by a party if: a) s/he was not lawfully appointed to the post of judge; b) s/he does not have the required authority to hear the criminal case in accordance with law; c) s/he is a victim, civil party, defendant to the civil claim or their representative or legal representative in the same case; d) s/he is or can be questioned as a witness in the same case or in another prosecution matter related to it; e) s/he has participated previously as a witness, court clerk, interpreter, specialist or expert in the same case or in another prosecution matter related to it; f) s/he has participated as a judge in the hearing of the same case or another prosecution matter in the first, appeal or cassation instance on the basis of new circumstances; g) s/he has any kinship or other dependent relationship with a party or his/her (legal) representatives; h) if there are grounds for believing that s/he has a direct or indirect interest in the prosecution, or other circumstances put into doubt his/her impartiality.⁴⁸ Similar rules apply in civil law cases⁴⁹ and are reflected in the Code of Ethical Conduct.

Gifts

72. As in the case of MPs, by virtue of Article 8 LCC, judges may not solicit or accept for themselves or others gifts that may influence or appear to influence the objective and impartial performance of duties or represent or appear to represent a reward, except for minor gifts and conventional hospitality not exceeding a total value of 55 Manats/EUR 60 during any twelve month period.⁵⁰ Furthermore, judges may not obtain undue privileges or advantages in the exercise of their duties while entering into or performing civil contracts with any person. Violations of the LCC carry disciplinary, civil, administrative or criminal liability. The acceptance of gifts, awards, favours, benefits or services with regard to a case is furthermore explicitly forbidden by the Code of Judges' Ethical

⁴⁶ Article 126 of the Constitution and Article 104 LCJ

⁴⁷ Article 16 LCJ

⁴⁸ Article 103 of the Criminal Procedure Code

⁴⁹ Pursuant to Article 19 of the Civil Procedure Code

⁵⁰ See "Corruption prevention in respect of members of parliament."

Conduct. The prohibition on accepting bribes under Article 311 of the Penal Code also applies. While on-site, the GET formed the impression that judges were conscious of the need to abide by the relevant stipulations; nevertheless, bearing in mind that judges are perceived as being corrupt, keeping this issue high on the corruption prevention agenda would seem to be justified and merit inclusion in the systematic in-service training programmes, as suggested in paragraph 67.

Third party contacts and confidential information

73. While administering justice, judges may not express their opinion on a case, until the final decision is passed. They are banned from maintaining non-procedural relations with parties and meeting any person in connection with the case. The obligation to preserve confidentiality extends to court deliberations, information revealed at a court session held *in camera*, to secret data and documents, as well as state secrets (access to the latter requires a written undertaking before the start of a court hearing).⁵¹

Declaration of assets, income, liabilities and interests

74. All judges are to declare their assets, income, liabilities and interests, in the same scope and under the same terms as MPs to the Commission on Combatting Corruption.⁵² As in the case of MPs, the lack of agreement within the government on the format of the asset declaration form has impeded the enforcement of the asset disclosure rules within the judiciary. The information to be included in a judge's asset declaration is considered as private and to be kept confidential. As in the case of MPs, its illegal collection and distribution constitute a crime. Violations of the asset disclosure requirements by a judge are subject to disciplinary measures of reproof and reprimand.⁵³

75. A well-functioning system of asset disclosure is a powerful tool in corruption prevention and detection, including specifically within the judiciary. It is therefore difficult to understand that the assets disclosure rules formally adopted in 2005 (that apply also to MPs) are still not operational for the mere reason that the Cabinet of Ministers has failed to reach an agreement on the appropriate format of the asset declaration form. In the GET's view, such a major delay not only casts doubts on the sincerity of the government's anti-corruption campaign but also deprives the Law on Combatting Corruption of its key component. In order to strengthen public trust in the judiciary and to increase transparency, the asset disclosure system not only needs to be introduced speedily, it also needs to provide public access to the annual declarations of all categories of judges. Also, the disciplinary penalties of reproof and reprimand cannot qualify as being sufficiently proportionate and dissuasive for gross violations of the asset disclosure rules (e.g. non-submission of a declaration or concealing assets). Furthermore, since the relevant oversight body – the Commission on Combatting Corruption – has been mandated, in addition to judges, to collect and verify asset declarations of a vast number of public officials (some 2 000 persons in total),⁵⁴ supplying it with commensurate administrative and expert resources, enabling quality periodic checks, would be essential. In this light, **GRECO recommends that i) the format for asset disclosure by judges be established as a matter of priority and that the confidentiality in respect of asset disclosure by judges be lifted, with due regard being had to their and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to judges be put into effect (including by allocating commensurate administrative and expert resources to the Commission on Combating Corruption), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public.**

⁵¹ Articles 99 LCJ, 200 CPC, 284 and 285 PC, as well as the Code of Judges' Ethical Conduct

⁵² See above under "Corruption prevention in respect of members of parliament."

⁵³ Article 6.3 LCC, read in conjunction with Articles 111-1 and 112 LCJ.

⁵⁴ See Article 3 (1) LARSFI.

Supervision and enforcement

Supervision over conflicts of interest and ethical conduct

76. Court presidents are entrusted with monitoring judges' compliance with the Code of Ethical Conduct, several provisions of which, additionally, serve as the criteria for the review of judges' performance by the JLC every five years. Furthermore, the Ministry of Justice is vested with the right to promote work discipline in first and second instance courts and to apply for the commencement of disciplinary procedures to the JLC. In case of failure by a first instance court president or his/her deputy to perform duties, the Ministry may temporarily assign his/her functions to another judge from the same or another court.⁵⁵

77. Within the judicial process, the observance of conflicts of interest rules is to be ensured, depending on the case, by the respective court president, a panel of judges, a judge or president of an appeal court or the Supreme Court president. Outside the judicial process, such duties are assigned to the Commission on Combatting Corruption.

78. Judges are subject to disciplinary liability for: gross or multiple infringements of law while adjudicating a case, ethical breaches, gross disciplinary violations, failure to comply with the asset disclosure rules, the commission of corruption-related offences stipulated in Article 9 LCC (see above) and acts damaging their reputation and good name. Relevant sanctions are: reproof, reprimand, demotion, transfer and dismissal. Disciplinary procedures may be launched following a complaint from any person, information published in the media, statutory violations revealed during a judge's evaluation or while preparing the summary of judicial practice, statutory violations identified by higher courts and those contained in the special decisions of higher courts in respect of a particular judge (e.g. in the case of a gross violation of procedural norms identified when reviewing a case), decisions of the Constitutional Court, the European Court of Human Rights and any other information obtained by persons authorised to file a motion with the JLC, i.e. presidents of the two Supreme and appeal courts and the Ministry of Justice. Furthermore, any person can send a complaint directly to the JLC.

79. Disciplinary procedures are initiated and conducted by the JLC. A limitation period of one year applies from the detection of a violation and three years from the moment it was committed. Whether to act on a motion is decided within two months and within a further three months the JLC is to examine the case in the presence of the judge concerned and a judge-rapporteur appointed from within the JLC's ranks. Only those JLC members who are judges, bar the Supreme Court president and the judge-rapporteur, have the right to vote. The decisions are passed by a simple majority vote, and the JLC is considered quorate if at least five of its members with the right to vote are present. A JLC member whose impartiality is put into doubt may recuse him/herself or is to be withdrawn. The principle decision is to be announced immediately, and the substantiated decision has to be prepared within ten days. A similar decision-making process applies for the consideration of motions for dismissal and the institution of criminal proceedings against judges (see below). Within twenty days of its receipt, the JLC's decision can be challenged before the Plenary of the Supreme Court on points concerning the proper application of the law. The Supreme Court judges who participated in the JLC vote must withdraw from any vote on the same matter. All JLC's decisions on disciplinary procedures are presented to the media and published in the Ministry of Justice's "Legality" journal. Decisions, including minority opinions, are published within one month from the moment they take effect. In the course of the last few years, disciplinary proceedings have been brought against 18 judges for corruption-related violations. Of those, 5 judges were dismissed, 3 demoted, 2 transferred and 7 reprimanded.

⁵⁵ Articles 24, 41, 46 and 86 LCJ

80. As stated above, the right to apply for the initiation of disciplinary procedures against judges is currently reserved to the presidents of the Supreme Court, the NAR Supreme Court, courts of appeal and the Ministry of Justice.⁵⁶ However, given their supervisory role in ensuring judges' compliance with ethics principles and conflicts of interest rules, it would seem reasonable to vest such powers also with the presidents of first instance courts. Consequently, **GRECO recommends that consideration be given to empowering the first instance court presidents to file motions for initiating disciplinary procedures against judges of those courts with the Judicial Legal Council.**

Judicial immunity

81. All judges enjoy immunity by virtue of Article 128 of the Constitution. A judge is not liable for the damage sustained by a party as the result of a judicial error.⁵⁷ Judges cannot be detained or arrested, subject to personal search, examination and criminal prosecution, without the JLC's permission, unless they are apprehended in *flagrante delicto*, in which case the Prosecutor General is to send a motion to the JLC for consideration within 24 hours. In other cases, e.g. where the use of special investigative techniques is needed to search the office or private premises of a judge, a motion is to be considered within 10 days. Criminal prosecution may only take place with the JLC's permission as well. If it is granted, the criminal prosecution is pursued in accordance with the Criminal Procedure Code, and the mandate of the judge is suspended. Moreover, when a judge commits a crime, the President of the Republic may make a statement in parliament asking for his/her dismissal, based on the conclusions of the Supreme Court which are to be submitted to the President within 30 days.

82. The successful investigation into a possible crime, including corruption, and the likelihood of subsequent criminal prosecution depend almost entirely on quality and timely collected evidence, including by way of recourse to special investigative techniques. For this reason, the use of the latter is widely regarded as a viable instrument against corrupt dealings. While on-site, the excessive length of the period prescribed for the consideration of motions for lifting the immunity of a judge filed with the JLC by the General Prosecutor (10 days) was criticised, alleging that it had precluded prompt and effective gathering of evidence in judicial corruption cases and suggestions were made that its duration should not exceed 72 hours. Therefore, **GRECO recommends that the period prescribed for considering a motion for lifting the immunity of a judge filed with the Judicial Legal Council by the Prosecutor General (with the exception of cases of *flagrante delicto*) be reviewed with a view to substantially reducing it.** GRECO is furthermore pleased with the authorities' intention to limit the judges' immunity as part of the 2012-2015 Anti-Corruption Action Plan. It lends its full support to the proposed initiative, being firmly convinced that judges should not be above the law but subject to the same criminal code as other citizens. Considering that the system of immunities had been thoroughly assessed in its Joint First and Second Round Evaluation Report on Azerbaijan,⁵⁸ GRECO refrains from issuing a separate recommendation on this matter.

Training, advice and awareness

83. There is a requirement for judges to constantly raise their professional knowledge and skills.⁵⁹ The overall responsibility for the training of candidate and first instance court judges rests with the Ministry of Justice and its Legal Training Centre. In 2012-2013, training sessions for candidate judges were held on topics such as "The concept and interpretation of corruption", "Mutual relations of the law enforcement agencies in the

⁵⁶ Article 112 LCJ

⁵⁷ Article 101 LCJ

⁵⁸ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2005\)5_Azerbaijan_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)5_Azerbaijan_EN.pdf)

⁵⁹ Article 15 of the Code of Judges' Ethical Conduct

fight against corruption” and “The fight against money-laundering”. During the initial five-year appointment, all judges undergo compulsory training at least once a year. For all other judges, around 20 optional courses are offered each year by the Academy of Justice and the annual programmes are compiled based on the judges’ needs. The courses held in the past covered e.g. “The particularities of corruption-related crimes”, “Corruption offences and related liability”, “Factors conducive to corruption in the court process and relevant preventive measures”. In 2011, an international conference on “Competence, Independence, Impartiality, Transparency and Effectiveness – Judicial and Legal Reforms in Azerbaijan as demanded by modern times” was organised, focusing on personal and professional conduct of a judge. Additionally, in 2013, court presidents were trained on “Aspects of ethical conduct of a judge.” This paragraph is to be read in conjunction with paragraph 67 in which counselling and in-service training of judges are addressed.

84. Information on the conduct expected of a judge is regularly made public via the media, information agencies and the JLC’s official web page. Pursuant to the Code of Judges’ Ethical Conduct, judges must respect the duty of mass media representatives to inform the public about judicial activities, with certain reservations.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the Prosecutor's Office

85. The Prosecutor's Office is a constitutional body which carries out criminal investigations, exercises criminal prosecution, oversees the application and execution of laws by inquiry and operational bodies, represents the state in court and acts as a plaintiff in civil, economic and administrative court cases and lodges appeals against court decisions.⁶⁰ As part of the judicial branch of power, the Prosecutor's Office is meant to enjoy an independent status within it. The Prosecutor General is accountable to the parliament and the President of the Republic: it informs the parliament annually of the Service's activities, except for criminal cases under investigation, and systematically informs the President (annually and upon request) of the same, including criminal cases under investigation.

86. The functioning of the Prosecutor's Office, the duties and rights of prosecutors and the terms and conditions of service are regulated by the Constitution, the 1999 Prosecutor's Office Act (POA) and the 2001 Act on Service in the Prosecutor's Office (POSA). The Prosecutor's Office is structured according to the state administrative division and location of military garrisons and composed of 62 territorial (district/city) prosecution offices and 10 specialised (military) prosecution offices. It operates on the principles of single and centralised management entailing the subordination of territorial and specialised prosecutors to the Prosecutor General.

87. All prosecutors are divided into two categories: those who lead criminal investigations and those who act as public prosecutors taking public or semi-public cases to court.⁶¹ The latter are employed by the Public Prosecutions Department whose internal structure reflects the court structure, with divisions of appellate court prosecutors, serious crime court prosecutors and district/city court prosecutors. The Prosecutor's Office furthermore comprises the General Prosecutor's Office, the Anti-Corruption Directorate (which reports annually to the President of the Republic and the Commission on Combatting Corruption), the Military Prosecutor's Office and the Prosecutor's Office of the Nakhchivan Autonomous Republic (NAR). The setting up and closure of prosecution offices and the determination of the structure and number of staff of the Prosecutor General's Office are presidential prerogatives.⁶² The total number of prosecutors is 994, of which 952 are men and 42 are women. Out of 219 heads of offices not one is a woman.

88. Pursuant to Article 36 POA, prosecutors are independent in the exercise of their duties. Hierarchical relations within the Office are governed by the Criminal Procedure Code, the POA and the POSA. Prosecutors may only receive instructions from their superiors as well as the Prosecutor General, and the execution of all lawful instructions is mandatory. Senior prosecutors may perform the functions of their subordinates and abrogate, recall, change or substitute their decisions or acts. The requirement for instructions to be reasoned and provided in writing is not prescribed by law but is said to be respected in practice. Verbal instructions are issued as well, and there is no need for them to be given in writing in addition. Direct or indirect restriction, influence, threats or illegal interference in the lawful activities of the Prosecutor's Office and of individual prosecutors are forbidden and incur liability according to law.⁶³ Engagement of prosecutors in political activities and membership of political parties are prohibited.

89. The Collegial Board under the Prosecutor General's Office is a consultative body whose composition is approved by the President of the Republic. It is presided over by

⁶⁰ Article 133 (I) of the Constitution and Article 4 of the Prosecutor's Office Act

⁶¹ Pursuant to Article 7.0.23 of the Criminal Procedure Code

⁶² Article 8 POA read in conjunction with Article 109 (32) of the Constitution.

⁶³ Articles 7 and 36 POA

the Prosecutor General and comprises his/her deputies and other senior employees *ex officio*. The Board discusses *inter alia* the main trends in the Prosecutor's Office's activities, the conditions for combatting crime, executive discipline and personnel management, draft orders and acts. Its decisions are adopted by a majority vote, and in case of diverging opinions, the Prosecutor General is to take an individual well-reasoned decision. The Board's decisions are binding on all employees and form the basis for the Prosecutor General's orders. Collegial boards have also been formed in the Military Prosecutor's Office, the NAR Prosecutor's Office and certain city prosecution offices.

90. The pivotal role that the President of the Republic plays in the establishment, overall functioning of and control over the Prosecutor's Office is obvious and underscored even more by the fact that s/he appoints the Prosecutor General and all senior prosecutors (see further below). In this light, any additional powers vested with the President, such as the right to familiarise him/herself with the investigation and prosecution in specific cases,⁶⁴ may be perceived as intervening in the autonomy of the Prosecutor's Office and the independence of individual prosecutors thus creating opportunities for improper influence, disguised orders or indirect pressure. Bearing in mind that the Prosecutor's Office in Azerbaijan is construed as an independent authority, it is essential, in the GET's view, that, in the performance of its duties, the Office is and is actually seen to be genuinely independent of the executive branch of power and that the influence on prosecutorial decisions by the executive is minimised; otherwise, credence can be given to allegations that political opponents in Azerbaijan are selectively targeted and due process in their regard is not followed. This is particularly important due to the fact that criminal investigations on passive and active bribery of an official (Article 311 and 312 of the Penal Code) fall within the remit of the Prosecutor's Office, which is also responsible for investigating charges against persons enjoying immunities (in this case, the investigation is in the hands of the Prosecutor General's Office) and charges concerning crimes committed by abuse of authority by the President, MPs, the Prime Minister, judges, police, security, tax and customs officials. Concerns for the effective autonomy also extend to issues, such as the setting up and closure of prosecution offices, which at the moment are regulated via presidential orders rather than laws. In view of the foregoing, **GRECO recommends that i) the Prosecutor's Office Act be reviewed so as to eliminate any undue influence and interference in the investigation of criminal cases in the exercise of statutory controls over the activities of the Prosecutor's Office; and ii) the setting up, closure and basic organisational structure of all prosecution offices be determined by law.**

Recruitment, career and conditions of service

91. Recruitment requirements for a prosecutor are laid down in Articles 29 POA and 4 POSA. Applicants must be citizens of Azerbaijan, with a university degree in law, voting rights and relevant professional skills. As a rule, persons with at least five years' experience in the Prosecutor's Office may be appointed prosecutor, and appointments to senior posts are reserved for those over 30 years of age. The recruitment procedure is governed by Decree No. 509⁶⁵ of the President of the Republic on "Rules for the recruitment of employees into the Prosecutor's Office" and Ordinance No. 10/01-11/410-k⁶⁶ of the Prosecutor General on "Rules for the competitive recruitment of candidates to the Prosecutor's Office". The provisions of the Civil Service Act, notably on competitive and transparent recruitment and regular evaluation, also apply.⁶⁷

⁶⁴ Furthermore, there appears to be a contradiction between the provisions of the POA which entitles the President of the Republic to familiarise himself with criminal cases under investigation and the provisions of the Criminal Procedure Code which contains a list of persons with such an entitlement, the President of the Republic not being part of that list.

⁶⁵ Issued on 19 June 2001

⁶⁶ Issued on 3 December 2012

⁶⁷ See Article 2.2 POSA

92. Vacancies at the entry level are announced in the media. The initial selection is overseen by a special Examination Commission composed of seven members, including prominent lawyers and academics, appointed by the Prosecutor General with the involvement of the Collegial Board. The competition comprises four stages and, among them, two written tests and an interview. Successful candidates undergo mandatory one-year training in the Scientific-Educational Centre under the Prosecutor General's Office and one year probation within the Prosecutor's Office, following which they become eligible for permanent recruitment. At the recruitment stage, checks are made for criminal records and on previous work experience, to ascertain candidates' integrity, and, during the traineeship, they may be subject to monitoring by the Internal Security Service of the Anti-Corruption Directorate.

93. Among the candidates employed by the Prosecutor's Office, approximately one per cent is recruited by the Examination Commission directly from other law enforcement bodies and thus bypasses the standard recruitment procedure. Despite their relatively low number, such appointments – the need for which may be justified by the specific operational and other exigencies – may be perceived as offering an opportunity for arbitrary decision making and favouritism, rather than relying on clear, objective, transparent and verifiable professional qualifications, knowledge and skills. Since the system of initial recruitment has been estimated to work rather well and proven to be effective, the introduction of the specific criteria and procedure for the appointment of other law enforcement agents to the ranks of the Prosecutor's Office would further uphold its image and reputation. Consequently, **GRECO recommends that objective and transparent criteria and procedure for the appointment to the Prosecutor's Office of other law enforcement staff be developed and made public.**

94. The Prosecutor General is appointed by the President subject to endorsement by the Assembly.⁶⁸ His/her deputies, chief specialised prosecutors and the chief NAR prosecutor are appointed by the President on recommendation of the Prosecutor General; territorial and specialised prosecutors are appointed by the Prosecutor General with the consent of the President.⁶⁹ The tenure of appointments is five years renewable once.

95. Prosecutors have the right to be promoted, following successful service in a particular grade for one to two years, on average. Applications to any vacant position are managed by the Personnel Department of the Prosecutor General's Office that makes relevant submissions to the Prosecutor General, based on the performance indicators⁷⁰ of the applicant and his/her superiors' references. Any change in position (promotion, transfer, demotion or dismissal) is to be formalised in a written and reasoned order issued by the Prosecutor General.

96. The GET wishes to emphasise that all senior appointments within the Prosecutor's Office are in the hands of the President of the Republic,⁷¹ as are – indirectly – all other appointments made by the Prosecutor General with his consent. Vacancies at the senior and medium level are not publicly advertised, and in such cases pre-selections are made by the Personnel Department of the Prosecutor General's Office, often without the suitable candidates' knowledge. Earlier on, the importance for the Prosecutor's Office to be and to be seen to be independent has been emphasised and one of the crucial elements in this context are competitive and transparent appointment procedures, which are furthermore explicitly provided for by the Civil Service Act. While it is adhered to at the entry level, the principle of competitive and transparent appointment is neglected higher up in the system. The review of current practices is therefore needed to reinstate

⁶⁸ Article 133 (III) of the Constitution

⁶⁹ Article 133 (IV-V) of the Constitution

⁷⁰ For example, as per Article 11.3 POSA, when a prosecutor is promoted within the grade, his/her diligence, professional qualifications, work results and personal qualities are taken into account.

⁷¹ The Prosecutor General is appointed by the President with the approval of Parliament which is controlled by the political party of the President.

compliance. Consequently, **GRECO recommends that i) all senior vacancies in the Prosecutor's Office be publicly advertised and access to them be made subject to clear, objective and transparent criteria; and ii) consideration be given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive.** In this connection, the authorities might wish to consider setting up a Prosecutorial Council composed not only of prosecutors representing all levels but also of other actors like lawyers or legal academics. The establishment of such councils is increasingly widespread in the political systems of individual states.⁷²

97. All prosecutors except senior ones are evaluated every five years by Attestation Commissions composed of prosecutors representing the Prosecutor General's Office, the Military Prosecutor's Office, the Baku Prosecutor's Office and the NAR Prosecutor's Office, respectively.⁷³ The evaluation is based on 39 criteria, including the internal division of tasks, the level of criminality in a district/city, the crime prevention dynamics, the results of prosecution in court, the work plan implementation, the quality of quarter/semi-annual/annual reports, the implementation of the Prosecutor General's orders, the registration and review of complaints, the registration and handling of crime-related information, the quality of oversight over inquiries, etc. Optional attestations can be conducted in cases of early promotion, demotion, impossibility to exercise one's duties, negligent attitude to work, or upon request. The Prosecutor's Office is furthermore subject to internal inspections by the Internal Security Service of the Anti-Corruption Directorate, which is primarily responsible for investigating internal corruption and which is to pass relevant information to the Organisational-Analytical Department of the Prosecutor General's Office.

98. The elaborated criteria against which all district/city prosecutors are to be assessed every five years do not include the requirement to comply with ethical principles and rules of conduct prescribed by the Prosecutorial Code of Ethical Behaviour (see further below). At the same time, under this Code, the highest evaluating authority - the Supreme Attestation Commission - has the right to consider violations of ethical rules and to submit motions for initiating disciplinary proceedings against prosecutors by the competent bodies. In this light and in view of the special qualities required of prosecutors in the course of their career, making periodic assessment conditional on observance of rules on ethical conduct would be consistent with the approach already pursued by judges, under the Code of Judges' Ethical Conduct (cf. paragraph 60). Furthermore, since under the Civil Service Act performance appraisal constitutes one of the key principles of the civil service, to which all prosecutors belong, there is no reason why certain categories of prosecutors, such as specialised or senior prosecutors, should be exempted from it. In view of the foregoing, **GRECO recommends that i) compliance with the Prosecutorial Code of Ethical Behaviour be assessed in the periodic evaluation of prosecutors' performance; and ii) all categories of prosecutors be made subject to periodic performance evaluation.**

99. The grounds for a prosecutor's dismissal are: 1) inability to perform official duties due to certified sickness for more than six months; 2) inaptitude for the post, as decided by the Attestation Commission; 3) a gross and systematic disciplinary breach; 4) incompatibilities (see further below); 5) resignation; 6) being subject to a court decision or order to undergo medical treatment or termination of criminal proceedings against him/her on non-rehabilitating grounds; 7) full or partial incapacity established by court; 8) not meeting recruitment requirements; 9) death or recognition by court as missing or dead. Dismissals can be challenged before court as any other employment-related

⁷² See the report of the Venice Commission on "European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service" ([http://www.venice.coe.int/webforms/documents/CDL-AD\(2010\)040.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2010)040.aspx)).

⁷³ Pursuant to Ordinance No. 10/3 of the Prosecutor General on "Rules for carrying out of an evaluation" of 2 February 2011

matter. The age of retirement is 60 years which can be extended annually by order of the Prosecutor General up to 65 years of age. This rule however does not apply to prosecutors appointed by the President of the Republic with regard to whom the age limit has not been prescribed.⁷⁴

Salaries and benefits

100. A prosecutor's base salary is set in accordance with his/her grade. The salary of the Prosecutor General is 1,785.00 Manats/EUR 1 680 and that of prosecutors at the beginning of their carrier is 630 Manats/EUR 600. Prosecutorial salaries vary depending on years of service, service category, prosecutorial rank, the level of the employing unit (i.e. district/city) and the size of the population covered (i.e. below 80 000, between 80 000 and 150 000 and above 150 000 persons). Salaries in the Prosecutor General's Office and in the Internal Security Service of the Anti-Corruption Directorate are higher than those in the district/city offices. Prosecutors are furthermore entitled to overtime compensation, a displacement allowance, per diem allowances, reimbursement of travel costs and annual financial assistance in the amount of at least two monthly wages. Accommodation is provided for the period of service by the relevant local executive body.

101. Additionally, pursuant to both the POA and POSA, prosecutors may be subject to "encouragement measures" for exceptional performance, long and flawless career and other services.⁷⁵ The list of such measures includes an acknowledgement, a pecuniary bonus, a valuable gift, an honour certificate, a badge or breastplate and accelerated conferment of a special rank. These measures are applied by the Prosecutor General (who may delegate this competence, within certain limits, to other senior prosecutors) and formalised via written orders. However, there are no internal guidelines or criteria prescribing which of those measures should be applied in which case. For example, the GET was told that it was common for intensive work-related travel to be compensated with a pecuniary bonus (not to be confused with a per diem). In the GET's opinion, there should be no doubt that a system of incentives capable of motivating exceptional performance is important for the proper functioning of the Prosecutor's Office; nevertheless, the risks are high that without clear, objective and transparent criteria it may create opportunities for unethical behaviour and corruption. **GRECO recommends that the application of "encouragement measures" within the Prosecutor's Office (and in particular, of all pecuniary bonuses) be subject to clear, objective and transparent criteria.**

Case management and procedure

102. Criminal cases are assigned to prosecutors according to the requirements of the CPC and of the Prosecutor General's decree on "Measures to ensure the proper arrangement of prosecutorial activities in the assignment of criminal cases of public and public-private prosecution"⁷⁶. It stipulates that cases are assigned depending on workload, the number and volume of cases, other materials handled and the level of professional knowledge and skills of a prosecutor.

103. In pre-trial proceedings, prosecutors are required to rely on the results of the investigation of all the circumstances of the case and be guided only by the requirements of the law and their conscience. They can institute criminal cases if there are sufficient reasons and grounds for doing so and exercise the powers of the investigator, conduct the investigation themselves or delegate it to the preliminary inquirer or investigator. Prosecutors are also in charge of the procedural aspects of an investigation and are to ensure its compliance with and application of relevant laws. By virtue of Article 84.4 CPC,

⁷⁴ Article 32.3 POSA

⁷⁵ See Article 32 POA and 23 POSA

⁷⁶ Issued on 27 January 2005

a prosecutor who has carried out the investigation in a criminal case or been in charge of its procedural aspects (i.e. has supervised the preliminary investigation and the investigation) may not take part in the court hearing as a public prosecutor.

104. In the exercise of his/her supervisory functions, a prosecutor can validate the decisions of preliminary inquirers/investigators and make his/her own decisions, notably as regards the institution or closure of criminal proceedings. A prosecutor may annul the decision of a preliminary inquirer/investigator and enforce his/her own decisions. The senior prosecutor may maintain the decision/instruction of his/her subordinate, change or annul it. At the end of an investigation, a prosecutor is to approve the bill of indictment and refer the case to court or amend or return the bill and the criminal case back to the investigator with his/her instructions. A prosecutor's act or omission may be appealed before his/her superior or court.

105. A prosecutor in charge of an investigation is to comply with the instructions of his/her superior.⁷⁷ In cases of disagreement on the prosecution of the accused, the choice of restrictive measures, the classification of the offence, the scale of the charge, the termination of the case or committal for trial, the subordinate prosecutor is to send reasoned objections to the prosecutor above his/her direct superior who can rescind the written instructions of such a superior or transfer responsibility for the investigation to another subordinate prosecutor. Similarly, if an investigator disagrees with the instructions/decisions of a prosecutor, s/he may send his/her reasoned objections to a senior prosecutor who can rescind the written instructions of his/her subordinate or transfer the case to another investigator. An objection filed does not stay the execution of the instruction.

106. Safeguards for dealing with cases without undue delay are laid down in the CPC. In pre-trial proceedings, the duration of each investigation phase is fixed (two, three or four months, depending on the gravity of the offence), and can be prolonged not more than three times, provided that the total length of the investigation does not exceed the term determined for each of the four categories of offence. Non-compliance with deadlines or where there is significant damage, qualified as an abuse of official powers under Article 308 of the Penal Code, constitute gross disciplinary offences, which may result in the suspension, demotion or dismissal of a prosecutor.

Ethical principles and rules of conduct

107. Prosecutors take and sign an oath of office at the start of their career and are subject to the two sets of rules laying down ethical principles and rules of conduct: the 2007 Act on "Rules for the ethical conduct of civil servants" and the Prosecutorial Code of Ethical Behaviour. Among the principles promoted by the former are honesty, loyalty, professionalism, responsibility, impartiality and public trust. Civil servants, including prosecutors, are obliged to familiarise themselves with the ethical rules on fighting corruption and preventing conflicts of interest, and are supposed to approach their superiors with any questions they may have.

108. The Prosecutorial Code of Ethical Behaviour was endorsed by the Collegial Session of the Prosecutor General's Office in 2008, following a broad consultation. It consists of six parts: the objectives; the main requirements for ethical conduct; the requirements for behaviour while on duty; the inadmissibility of illegal receipt of material and immaterial goods, privileges and concessions; the requirements for out-of-office conduct; enforcement and liability. Its goal is to present the essence and lay down patterns for the ethical conduct expected of a prosecutor and to demonstrate that the prestige of the Prosecutor's Office and the citizens' trust in the criminal justice and law enforcement is conditional on there being high moral values and professional skills within the

⁷⁷ Article 84.8 CPC

Prosecutor's Office. The requirements incumbent on prosecutors include serving as a model for others, avoiding conflicts of interest, refraining from using official power for personal gain and demonstrating impartiality, including specifically by withdrawing from proceedings. Violations of the standards of conduct - whether on or off duty - incur disciplinary liability.⁷⁸ Certain breaches may be subject to examination by the Supreme Attestation Commission, which may file a motion for instituting disciplinary proceedings directly with the Prosecutor General or compel the prosecutor concerned to make an apology in the media or to specific persons.

109. According to the Prosecutorial Code of Ethical Behaviour, an infringement of the rules it contains carries disciplinary liability. This interpretation was also confirmed by most interlocutors met on-site by the GET. Nevertheless, both the POA and the POSA only refer to "violations of discipline" and "improper performance of duties" as punishable disciplinary offences,⁷⁹ and to "gross and systematic violation of work discipline" as the grounds for a prosecutor's dismissal.⁸⁰ In other words, a direct link between violations of the Code of Ethical Behaviour and the disciplinary offences (and corresponding sanctions), as prescribed by the laws, has not been established. To promote clarity and greater legal certainty as regards the types of misconduct clearly punishable by disciplinary sanctions and to avoid situations where any behaviour contrary to the Code might lead to a prosecutor's dismissal, **GRECO recommends that violations of the Prosecutorial Code of Ethical Behaviour be clearly included within the range of the disciplinary offences under the Prosecutor's Office Act and the Act on Service in the Prosecutor's Office and made subject to adequate sanctions.**

Conflicts of interest

110. Similarly to judges, within the criminal justice process, the case by case identification, registration and handling of prosecutors' private interests are regulated by the CPC. It places an obligation on prosecutors to withdraw from specific proceedings in case of a conflict of interests (see further below) and imposes a ban on a prosecutor who has carried out the investigation on a criminal case or been in charge of its procedural aspects from taking part in the court hearing as a public prosecutor. Outside the criminal justice process, conflicts of interest are governed by the Law on Combatting Corruption (LCC) (receipt of gifts, assets disclosure, prohibition on employing a relative in a position of direct subordination), the "Rules for the ethical conduct of civil servants" Act (prevention of corruption and conflicts of interest) and the Prosecutorial Code of Ethical Behaviour. Violations incur criminal, administrative or disciplinary liability. According to Article 15 of the "Rules for the ethical conduct of civil servants" Act, in the case of a conflict between the interests of the service and the private interests of a civil servant, information on the character and extent of the conflict must be provided to the relevant head of office upon recruitment and thereafter - including specifically when offered a new position within the civil service.

111. In spite of a rather complex normative framework, issues pertaining to conflicts of interest tailored to the specific prosecutorial needs are not included in the mandatory initial and optional in-service training programmes offered to prosecutors. The GET was told that, instead they are made part of other training (e.g. on money laundering), which in the GET's opinion does not pursue the goals of prevention, early identification and adequate resolution of such conflicts within the Prosecutor's Office's own ranks. In light of this and in view of the upcoming implementation of the asset disclosure rules (see further below), dedicated training in conflicts of interest, asset disclosure and rules of conduct would appear to be timely and relevant. Therefore, **GRECO recommends that**

⁷⁸ Paragraphs 34, 36.7 and 37 of the Code

⁷⁹ Articles 33 POA and 26.1 POSA

⁸⁰ Article 34 POA

dedicated training (initial and on-going) be provided to all prosecutors on the application of rules on conflicts of interest, asset disclosure and ethical conduct.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

112. Being a prosecutor is incompatible with any other public, private, elected or political activity, or any other activity and related remuneration, except for academic, pedagogical or creative activity.⁸¹ In the case of substantial damage to the public interest, non-compliance gives rise to criminal liability under Article 309 PC (abuse of official powers). In less serious cases, prosecutors are subject to disciplinary (suspension and dismissal) and civil liability.⁸²

113. Various interlocutors met on-site affirmed the wide engagement of prosecutors in lawful auxiliary work, particularly of an academic and pedagogical nature. However, obtaining official consent for the performance of such accessory activities is neither required by law nor practiced and no guidance is available within the Prosecutor's Office on from whom such consent should be sought. In view of the fact that breaches of the incompatibility rules specifically by prosecutors incur several types of liability, according to law, and bearing in mind the practical non-execution of the asset disclosure requirements applicable to prosecutors (see further below), **GRECO recommends that internal guidelines for prosecutors requiring counselling on permitted accessory activities be developed and widely circulated.**

114. As in the case of judges, there are no restrictions on prosecutors holding financial interests as related information is to be made part of an annual asset declaration (see further below). Similarly, there are no post-public employment restrictions that would prohibit prosecutors from being recruited in certain private sector posts or functions or engaging in other paid or non-paid activities on leaving office.

Recusal and routine withdrawal

115. Similarly to judges, prosecutors are to recuse themselves from proceedings in case of partiality on the grounds listed under Article 109 CPC.⁸³ A prosecutor may recuse him/herself, or may be disqualified following a motion by a party. Article 112 CPC prescribes the procedure for a prosecutor's withdrawal or replacement, and each prosecution office (or court) keeps a register of such recusals/disqualifications and the re-assignment of cases.

Gifts

116. As in the case of judges (and MPs), by virtue of Article 8 LCC, prosecutors may not solicit or accept for themselves or others gifts that may influence or appear to influence the objective and impartial performance of duties or represent or appear to represent a reward, except for minor gifts and conventional hospitality not exceeding a total value of 55 Manats/EUR 60 during any twelve month period.⁸⁴ Furthermore, prosecutors may not obtain undue privileges or advantages in the exercise of official duties while entering into or performing civil contracts with any person. Violations of the LCC carry disciplinary, civil, administrative or criminal liability. Similar requirements are

⁸¹ Article 30 POA

⁸² Since the carrying out of accessory activities is considered contrary to the legislation, the Prosecutor General's Office will institute a civil suit to recover the illegally obtained income.

⁸³ See above under "Corruption prevention in respect of judges."

⁸⁴ See "Corruption prevention in respect of members of parliament."

contained in the "Rules for the ethical conduct of civil servants" Act and the Prosecutorial Code of Ethical Behaviour. The former *inter alia* imposes a ban on acting or failing to act on making decisions with a view to obtaining illegal material or immaterial benefits, privileges or advantages, and requesting or accepting gifts which may affect or may seem to affect the impartial performance of duties, with the exception of token or hospitality gifts permitted under the LCC.⁸⁵ In case of doubts on whether to accept or reject a gift, a prosecutor is to seek his/her superior's guidance. The prohibition on accepting bribes under Article 311 PC (passive bribery) also applies and carries a custodial sentence of up to twelve years with deprivation of the right to hold certain positions or engage in certain activities for up to three years as well as property confiscation. The implementation of the above legal framework does not appear to give rise to any particular concerns, and it is the GET's impression that the acceptance of gifts is not practiced by prosecutors. Nonetheless, the reported prevalence of facilitation payments in certain segments of the public sector in Azerbaijan, as referred to in GRECO's Joint and Second Evaluation Rounds Report,⁸⁶ warrants that sustained attention also be paid to the acceptance of gifts within the Prosecutor's Office.

Third party contacts, confidential information

117. Article 84.3 CPC imposes a prohibition on prosecutors disseminating information without due respect to the inviolability of private and family life or state, professional, commercial and other secrets protected by law. Administrative liability may be incurred by disseminating confidential statistical data,⁸⁷ and criminal liability by divulging state secrets and documents (Articles 284-285 PC), personal and privacy data (Article 156 PC) and commercial or bank secrets (Article 202 PC). Breaches of confidentiality rules in the exercise of official duties also trigger disciplinary liability under the "Rules for the ethical conduct of civil servants" Act and the Prosecutorial Code of Ethical Behaviour.

Declaration of assets, income, liabilities and interests

118. The Law on Approval of Rules for Submission of Financial Information by Public Officials – which has not yet become operational – provides that all prosecutors are to declare their assets, income, liabilities and interests, in the same scope and under the same terms as judges and MPs.⁸⁸ The Prosecutor General, his/her deputies, city/district and military prosecutors are to submit their declarations to the Commission on Combatting Corruption, while all others to the General Prosecutor's Office. Violations of the reporting obligation are subject to disciplinary liability. Information contained in the declarations is considered as private and to be kept confidential, and its illegal collection and distribution incur criminal liability.

119. Due to the lack of agreement on the format for the asset disclosure form, prosecutors, along with judges and MPs, have been affected by a long delay in the implementation of the Law on Approval of Rules for Submission of Financial Information by Public Officials, which is hard to justify. Its swift enforcement is fundamental and has to be accelerated, and its full implementation requires the setting of the procedure and the development of a practice for the checking and in-depth verification of declarations, as well as regular reporting by the Prosecutor General to parliament of the success, or otherwise, of such measures. Since some prosecutors are to present their declarations to the Prosecutor General's Office, the latter is to designate an internal supervisory structure. At the time of the visit, this was a pending issue, and whether this function would be assigned to a newly created commission or the existing Financial Department remained to be decided. Additionally, while the prime objective of asset disclosure is to

⁸⁵ See Article 12 -14 of the Act on "Rules for civil servants' ethical conduct".

⁸⁶ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2005\)5_Azerbaijan_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)5_Azerbaijan_EN.pdf)

⁸⁷ Under Article 191 of the Code on Administrative Offences

⁸⁸ See above under "Corruption prevention in respect of judges" and "Corruption prevention in respect of prosecutors".

promote transparency, accountability and public trust, the very strict confidentiality clause applicable to the declarations of all prosecutors appears to pursue a contradictory goal, which may be detrimental to the forging of an immaculate image for the Prosecutor's Office and may cast doubts on the holding of assets by individual prosecutors, particularly at the senior level (also given the mode of their appointment). For all of these reasons, **GRECO recommends that i) the format for asset disclosure by prosecutors be established as a matter of priority and the confidentiality in respect of asset disclosure by all prosecutors be lifted, with due regard being had to prosecutors' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to prosecutors be put into effect, including through the designation of an effective oversight structure within the Prosecutor General's Office.** Since the capacities of the Commission on Combatting Corruption, as the body in charge of monitoring the assets of senior prosecutors (as well as judges) is addressed in paragraph 75 above, GRECO refrains from making any further comments on this matter here.

Supervision and enforcement

Supervision over ethical conduct and conflicts of interest

120. Compliance with the Prosecutorial Code of Ethical Behaviour and conflicts of interest rules is meant to be supervised in an on-going manner by senior prosecutors, and the overall control over ethical rules is performed by heads of offices and superior bodies.⁸⁹ As stated earlier, ethical breaches - whether on or off duty - are qualified as improper behaviour and subject to disciplinary action.⁹⁰ Procedures may be launched on the motion of a senior prosecutor or triggered by an external complaint (but not an anonymous one) or a news item in the media. The applicable disciplinary sanctions are: reproof; reprimand; severe reprimand; demotion; demotion in special rank; temporary dismissal⁹¹; dismissal; and dismissal with deprivation of a special rank. A demotion in rank by one degree is also applicable for a disciplinary breach.

121. The disciplinary action against prosecutors may be launched within a month from the date of the detection of the misconduct (leave, travel, sickness, inspection or criminal investigation being excluded from this period) but not later than one year from the time of its commission. Such a short limitation period is a source of concern since not all cases can be disclosed in a timely manner or attempts could be made to delay the proceedings' commencement until the limitation period has expired. The practical application of sanctions acts as a powerful deterrent to disciplinary breaches and impropriety which could be potentially linked to corruption. Therefore, introducing amendments to the statute of limitations - e.g. through an adequate extension - would be desirable. Consequently, **GRECO recommends that the limitation periods for initiating disciplinary procedures against prosecutors be extended.**

122. Disciplinary procedures are carried out by the Prosecutor General and may be delegated, within certain limits, to the Military Prosecutor, the NAR prosecutor and the prosecutor of Baku. The prosecutor concerned is notified in writing of the results which can be appealed against to the higher prosecutor⁹² or to court. Certain procedures may bring about an internal inspection, the order and the contents of which are prescribed by the Prosecutor General. GRECO notes that, although the Prosecutor General may discipline all prosecutors subordinate to him/her, the sanction of dismissal from office may be only imposed in respect of senior prosecutors by the President of the Republic

⁸⁹ Article 20.1.1 of the "Rules for the ethical conduct of civil servants" Act

⁹⁰ See also Article 23.1 of the "Rules for the ethical conduct of civil servants" Act.

⁹¹ In which case a prosecutor remains assigned to the Prosecutor's Office for three months and if, during that period no grounds for discharge are uncovered, s/he is to be re-admitted to the Office.

⁹² These should be examined within one month and the reasonable response should be provided in writing - see Article 27 (27.13) POSA.

(due to the mode of their appointment). Since there appears to be no legal means of ensuring that the President is bound by the findings and conclusions of the specific proceedings leading to a prosecutor's dismissal, it is essential that in each case of rejection to dismiss a senior prosecutor, relevant explanations are provided to the Prosecutor General.

123. The statistics on disciplinary proceedings for the period between 2009 and 2014 are provided below and kept separately for ordinary and military prosecutors. Some of the measures have been taken in respect of prosecutors specifically for infringing the Code of Ethical Behaviour. The authorities furthermore indicate that gross violations of conflicts of interest rules leading to criminal cases are published on the web site of the Prosecutor General's Office and communicated to the media.

General Prosecutor's office

Year	2009	2010	2011	2012	2013	2014(01.01-10.09)	Total (for 2009-2014)
REPROOF	8	19	14	11	9	1	62
REPRIMAND	10	34	28	16	10	4	102
SEVERE REPRIMAND	10	17	11	19	8	9	74
DISCHARGE FROM OFFICE	1	5	5	6	1	3	21
DEMOTION IN OFFICE			1				1
DEMOTION IN RANK							
DISMISSION	5	5	4	10	3		27
TOTAL	34	80	63	62	31	17	287

Military prosecutor's office

Year	2009	2010	2011 ¹	2012	2013	2014(01.01-10.09)	Total (for 2009-2014)
REPROOF			3		2		5
REPRIMAND	7(1)	10 ²	6(1)	23(4)	11	5 ²	62
SEVERE REPRIMAND	2	2	4	2	5	2 ²	19
DISCHARGE FROM OFFICE							
DEMOTION IN OFFICE	1						1
DEMOTION IN RANK		1					1
DISMISSION	2(2)		1(1)	1(1)			4
TOTAL	12(3)	13	14(2)	26 ² (5)	20 ² (2)	7	92

(penalties given by the orders of the Prosecutor General indicated in brackets)

¹ Moreover, in accordance with the corresponding order of the General Prosecutor 1 employee was temporarily suspended (this person was dismissed in 2012).

² 1 person out of this number was disciplined by the corresponding order of the Military Prosecutor for violation of requirements of the Code of Ethical Conduct.

Immunity

124. With the exception of *flagrante delicto* cases, prosecutors may be subject to administrative arrest, mandatory summoning, detention, interception of communication, made the subject of criminal proceedings, arrested or searched only upon endorsement of a substantiated motion of the Prosecutor General by the Supreme Court President. The Prosecutor General may be subject to the same only upon endorsement by the Supreme Court Plenary.⁹³ Criminal proceedings against prosecutors may be initiated only by the Prosecutor General and investigations conducted only by the Prosecutor General's Office.

⁹³ Article 33 POA.

Within the Prosecutor's Office, two units may inquire into the allegations of criminal misconduct – the Organisational-Analytical Department of the Prosecutor General's Office and the Internal Security Service of the Anti-Corruption Directorate. Both may carry out inquiries, collect explanations and use special investigative techniques, if permitted by court. Substantiated written decisions of the Prosecutor General, based on the results of such inquiries, can be challenged before court. The prosecutor is suspended for the duration of the investigation.

Training and awareness

125. The enhancement of one's professional skills is an objective of each prosecutor and one of the grounds for promotion. The corresponding superiors and heads of office are to ensure the conditions are in place to provide a competent staff and to raise theoretical and practical knowledge, which include the organisation and participation of their staff in training courses and seminars, and familiarisation with the educational systems of foreign states and international organisations.⁹⁴ The Scientific-Educational Centre of the Prosecutor General's Office is in charge of training. Topics, such as corruption prevention, conflicts of interest and asset disclosure, are part of a one-year mandatory training offered to candidate prosecutors and of optional in-service training. Attendance is accounted for in the regular (every four years) evaluation. Since GRECO has already presented its views on the insufficiency of the training on conflicts of interest, asset disclosure and rules of conduct in paragraph 111 above, it refrains from making any additional comments here.

126. As per Article 15.5 of the "Rules for the ethical conduct of civil servants" Act, prosecutors can seek oral and written advice from their superiors on ethical dilemmas and the observance of provisions on combating corruption and preventing conflicts of interest. The ultimate authorities to which requests for such advice and assistance can be addressed are the Personnel Department of the Prosecutor General's Office and the Prosecutor General him/herself.

127. The Prosecutorial Code of Ethical Behaviour calls on prosecutors to respect the interest of the media to shed light on the Prosecutor's Office's activities and to assist them in obtaining correct and impartial information within the legal limits. The authorities indicate that the information on the activities of the Prosecutor's Office, including on the investigation of cases of public significance, is regularly published in the media as well as on the web page of the General Prosecutor's Office. Although the Prosecutor's Office has its own Press Service, the information gathered by the GET did not suggest that the latter was playing an active role in informing the public and the media specifically on the conduct to be expected of a prosecutor.

⁹⁴ Article 13 POSA, see also paragraph 19 of the Prosecutorial Code of Ethical Behaviour.

VI. RECOMMENDATIONS AND FOLLOW-UP

128. In view of the findings of the present report, GRECO addresses the following recommendations to Azerbaijan:

Regarding members of parliament

- i. that public consultations be systematically held on bills, including those emanating from executive bodies and subject to an accelerated adoption procedure within the parliament** (paragraph 24);
- ii. that i) in furtherance of the conflicts of interest rules in the Constitution, the Law on Combatting Corruption, the Status of Deputy Law and the Rules of Procedure Law, standards (a code) of conduct for members of parliament (covering, in particular, conflicts of interest and regulation of contacts with third parties) be adopted and enforced and made easily accessible to the public; and ii) training, guidance and counselling be provided to MPs on legal conduct, parliamentary ethics, conflicts of interest, accessory activities, gifts and other advantages, corruption prevention and boosting of reputation** (paragraph 32);
- iii. that accessory activities of MPs be subject to effective supervision and enforcement** (paragraph 34);
- iv. that i) the format for asset disclosure by members of parliament be established as a matter of urgency and that the confidentiality in respect of asset disclosure be lifted, with due regard being had to MPs' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to MPs be put into effect (including through the designation of an independent oversight body), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public** (paragraph 40);

Regarding judges

- v. that i) the objectives of safeguarding and strengthening judicial independence be explicitly stipulated in the mandate of the Judicial Legal Council (JLC); and ii) the role of the judiciary within the JLC be reinforced, notably by providing for not less than half of its members to be composed of judges who are directly elected or appointed by their peers and by ensuring that the JLC president is elected from among the JLC members who are judges** (paragraph 52);
- vi. that judicial independence be further strengthened by i) increasing the role of the Judicial Legal Council in the appointment of all categories of judges and court presidents; and ii) substantially reducing the five-year probation period for judges and making permanent appointments to the post of judge subject to clear, objective and transparent criteria** (paragraph 59);
- vii. that, in the context of the regular evaluation of judges' performance, consideration be given to accounting for all relevant provisions of the Code of Judges' Ethical Conduct (i.e. Articles 5, 7, 10-11, 13, 17 and 18)** (paragraph 60);

- viii. that i) a system of confidential counselling on integrity and ethical matters be established within the judiciary, including specifically on judges' accessory activities; and that ii) dedicated on-going training be provided to judges on ethical conduct, conflicts of interest and asset disclosure (paragraph 67);
- ix. that i) the format for asset disclosure by judges be established as a matter of priority and that the confidentiality in respect of asset disclosure by judges be lifted, with due regard being had to their and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to judges be put into effect (including by allocating commensurate administrative and expert resources to the Commission on Combating Corruption), accompanied by adequate sanctions for non-compliance with the rules and that details, including the underlying reasoning, of the sanctions imposed be made public (paragraph 75);
- x. that consideration be given to empowering the first instance court presidents to file motions for initiating disciplinary procedures against judges of those courts with the Judicial Legal Council (paragraph 80);
- xi. that the period prescribed for considering a motion for lifting the immunity of a judge filed with the Judicial Legal Council by the Prosecutor General (with the exception of cases of *flagrante delicto*) be reviewed with a view to substantially reducing it (paragraph 82);

Regarding prosecutors

- xii. that i) the Prosecutor's Office Act be reviewed so as to eliminate any undue influence and interference in the investigation of criminal cases in the exercise of statutory controls over the activities of the Prosecutor's Office; and ii) the setting up, closure and basic organisational structure of all prosecution offices be determined by law (paragraph 90);
- xiii. that objective and transparent criteria and procedure for the appointment to the Prosecutor's Office of other law enforcement staff be developed and made public (paragraph 93);
- xiv. that i) all senior vacancies in the Prosecutor's Office be publicly advertised and access to them be made subject to clear, objective and transparent criteria; and ii) consideration be given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive (paragraph 96);
- xv. that i) compliance with the Prosecutorial Code of Ethical Behaviour be assessed in the periodic evaluation of prosecutors' performance; and ii) all categories of prosecutors be made subject to periodic performance evaluation (paragraph 98);
- xvi. that the application of "encouragement measures" within the Prosecutor's Office (and in particular, of all pecuniary bonuses) be subject to clear, objective and transparent criteria (paragraph 101);
- xvii. that violations of the Prosecutorial Code of Ethical Behaviour be clearly included within the range of the disciplinary offences under the

Prosecutor's Office Act and the Act on Service in the Prosecutor's Office and made subject to adequate sanctions (paragraph 109);

- xviii. that dedicated training (initial and on-going) be provided to all prosecutors on the application of rules on conflicts of interest, asset disclosure and ethical conduct (paragraph 111);**
- xix. that internal guidelines for prosecutors requiring counselling on permitted accessory activities be developed and widely circulated (paragraph 113);**
- xx. that i) the format for asset disclosure by prosecutors be established as a matter of priority and the confidentiality in respect of asset disclosure by all prosecutors be lifted, with due regard being had to prosecutors' and their relatives' privacy and security; and that ii) the asset disclosure regime applicable to prosecutors be put into effect, including through the designation of an effective oversight structure within the Prosecutor General's Office (paragraph 119);**
- xxi. that the limitation periods for initiating disciplinary procedures against prosecutors be extended (paragraph 121).**

129. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Azerbaijan to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2016. These measures will be assessed by GRECO through its specific compliance procedure.

130. GRECO invites the authorities of Azerbaijan to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at www.coe.int/greco.
