

3. JUDICIARY

SUMMARY

Azerbaijan has a three-stage judicial system: courts of first instance and courts of appeal and cassation. The judiciary has implemented reforms since 2000, with the assistance of international organisations. However, there is still a long way to go towards modern and efficient systems of justice administration.

Most of the success so far has been focused on investment into resources: technical infrastructure (court buildings and equipment) and human resources (judge selection process and training). Though the number of courts, judges and defence lawyers has substantively increased in the past 20 years, it is still far from the average European standards and the workload of the courts remains heavy.

Though courts are more transparent than before, with the creation of the single judicial portal on the Internet and online publication of high instance court decisions, full transparency of courts is yet to be achieved through the planned E-court system.

Though judges are penalised for unethical behaviour and misconduct, the provisions on immunity of judges are too broad – thus they put limitations on bringing them to criminal responsibility.

Independence of courts shall be enhanced to allow it to represent an efficient element of the system of checks and balances in the country, through expanding powers of the Judicial Legal Council (a self-governing body of the justice system), including authority to manage the judicial budget and through closer cooperation with civil society.

JUDICIARY

Overall Pillar 52/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 62/100	Resources	75	75
	Independence	75	25
Governance 58/100	Transparency	75	50
	Accountability	75	25
	Integrity	75	50
Role 37/100	Executive oversight		25
	Corruption prosecution		50

Structure and organisation

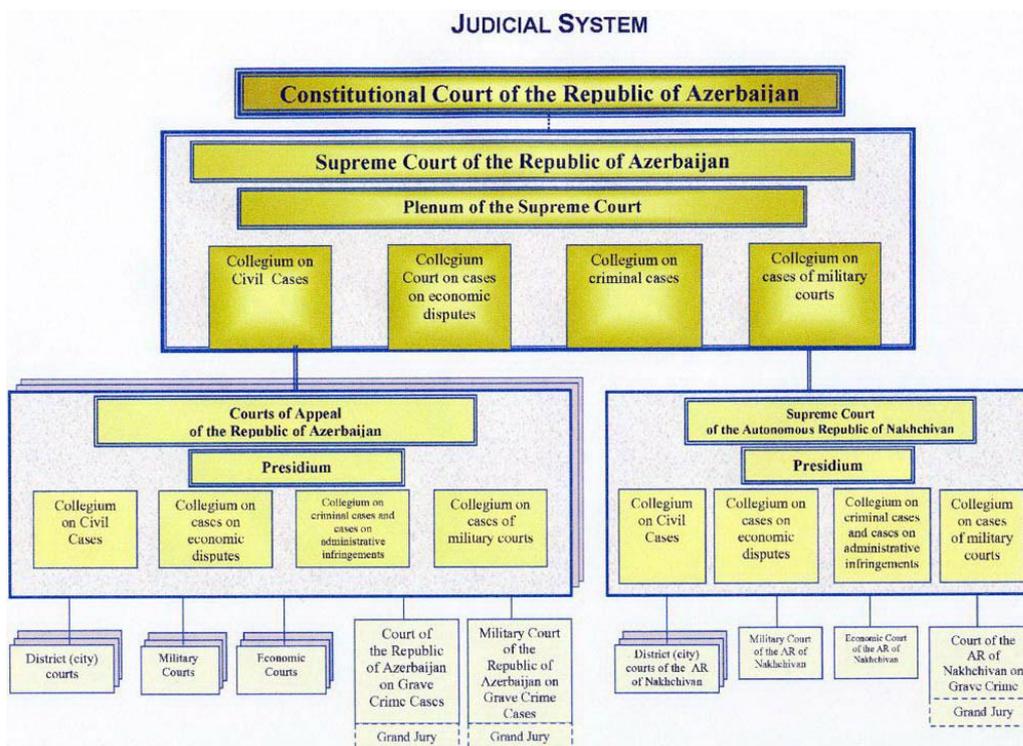
Azerbaijan has a three-stage judicial system: courts of first instance, and courts of appeal and cassation.

The courts of first instance are district courts, as well as military and administrative-economic courts and courts of grave crimes that have a jurisdiction over a certain district. The court of appeal stands as the next instance for civil, administrative and economic disputes for administrative and criminal offences. The Supreme Court of the Azerbaijan Republic is the supreme body for general and specialized courts to review civil (including administrative and economic cases) and criminal and other cases. The courts of appeal and cassation consist of 4 chambers: civil, criminal, military and administrative-economic chambers.

Along with this, the Constitutional Court being the highest constitutional justice body maintains the supremacy of the Constitution of Azerbaijan, as well as of the rights and freedoms of citizens.

The judges' are selected through a multi stage selection process and appointed by the President upon recommendation from the Judicial-Legal Council.

The following diagram represents the judicial system in detail.¹



The law does not provide for an independent and impartial jury in civil matters; all trials are decided by the judge. Though the law envisions establishment of the court of juries, this provision remains on paper and is suggested to be removed.² On the other side, supporting legislation to create elements of the e-courts system is being developed.³

Citizens have the right to bring lawsuits seeking damages for, or cessation of, human rights violations.

1 The website of Judicial Legal Council, www.jlc.gov.az

2 The Court of Juries Will Not be Established in Azerbaijan, statement by Ali Huseynov, chairman of the Parliamentary Committee on Legal Policy and State Building, 2 June 2014, www.qafqazinfo.az

3 Presidential order on Establishment of E-courts Information System, 13 February 2014, www.president.az

Complaints of violation of rights and freedoms set forth by the legislation, normative acts of executive bodies, municipal acts and court, should be submitted to the Constitutional Court.

As with criminal trials, all citizens have the right to appeal to the European Court of Human Rights (ECHR) within six months after exhausting all domestic legal options.

Assessment

Resources (law): 75

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Legal framework regulating judicial budget, including salaries and other reimbursements of the judiciary, is generally adequate and includes primarily the Law on Courts and Judges;⁴ along with the Law on Constitutional Court⁵ and other statutory legal acts.^{6 7} Under the Law on Courts and Judges,⁸ judicial budget is provided under a separate article of the state budget, however, there are no legal mechanisms that require apportion of a fixed percentage of the general budget to judiciary.

Under the law, high instance courts are entitled to send proposals with regards to their next year's budget. According to the language of Article 90 of the Law on Judges and Courts,⁹ a relevant body of the executive power (further specified by supporting legal acts as the Cabinet of Ministers and Ministry of Justice^{10 11}) shall take necessary measures to secure timely financial and logistical support of courts. The organisational chart of first instance courts, the staff schedule, cost estimate and staff salaries are also defined by the Ministry of Justice.

At the moment, a draft law is being prepared in order to ensure mechanisms that prevent external interference into the activities of judges as well as mechanisms to reinforce their independence by involving the Judicial Legal Council into preparation of draft budgets of courts and by making an explicit prohibition to reduce salaries of judges during their term of office.^{12 13}

Income of judges is set forth in the laws; therefore, income reduction can be made only through amendments to the respective laws that have to be approved by the Parliament. Though there are no mechanisms securing salary adjustment with regards to inflation, salaries of judges are growing on an on-going basis. For example, in 2013 the salary of the chairman of the Supreme Court was raised from 1,785 manat (US\$2,273) to 2,070 manat (US\$2,636). The salaries of the Supreme Court judges constitute 80 per cent of the chairman's salary. Salaries of heads of other courts are tied to the salary of the head of the Supreme Court, while salaries of judges constitute a certain percent of the salaries of the heads of their courts.¹⁴ Overall, according to the Minister of Justice, by 2011, salaries of judges have increased 30-

4 Article 106 of the Law on Courts and Judges, 10 June 1997; www.jlc.gov.az

5 Article 71 of the Law on Constitutional Court, 23 December 2003, www.e-qanun.az

6 Presidential decree on Implementation of the Law Judges and Courts and Implementation of the Judicial Reform, 1 December 1998, www.president.az

7 Presidential decree on Implementation of the Law on the Constitutional Court, 12 February 2004, www.president.az

8 Article 90 of the Law on Courts and Judges, 10 June 1997, www.jlc.gov.az

9 Law on Courts and Judges, 10 June 1997, www.jlc.gov.az

10 Presidential decree on Application of the Law on Courts and Judges and Implementation of Judicial Reforms, 1 December 1998, www.president.az

11 Presidential decree on Implementation of the Law on the Constitutional Court, 12 February 2004, www.president.az

12 Proposals Have Been Made to Reinforce Independence of Judges, 22 May 2014, 525 newspaper, www.525.az/site/?name=xeberprint&kecid=1&news_id=18918

13 Website of the Judicial Legal Council, www.jlc.gov.az

14 Article 106 to the Law on Courts and Judges, 10 June 1997, with amendments of 27 December 2013, www.e-qanun.az

fold as compared to the year 2000.¹⁵ Though there are no laws that correlate judicial salaries to the salaries of other government employees, judges are among one of the most highly paid groups of public sector employees. The average nominal wage of civil servant was 447 manat (US\$568) in 2012 (unfortunately, the 2013 statistics was not available as of the date of this report),¹⁶ as compared to the judicial salaries described above.

On the top of the salaries, judges enjoy other material benefits. Thus, the Law on Judges and Courts¹⁷ provides the right of accommodation for judges. According to article 108, judges in need of residential facilities at the place of their appointment, or improvement of their living conditions, shall be provided for by the relevant executive body, within six months after their appointment. Article 109 of the same law regulates social security of the judges. According to this article, life and health of judges are insured at the rate of their 5 year wage and insurance expenditures paid from the state budget. Insurance is further detailed in a specialised law.¹⁸ Also, amendments were passed in 2010, allowing judges to be reimbursed for expenses related to their office duties, such as travel and communication costs and to claim per diems.¹⁹ Benefits are exempt from taxes.

Resources (practice): 75

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Though in comparison to budgets of the EU countries, Azerbaijan judicial budget is relatively low, along with this, the budget of courts is increasing every year.²⁰ Since 2007, the country saw several on-going big-scale projects aimed to improve judicial infrastructure and resources led by the World Bank,²¹ and estimated at approximately \$400 million.²² Under these projects, three new court buildings equipped with modern equipment have been built, construction of 4 more court buildings and 2 court complexes has started, and layouts for 30 more court buildings have been prepared.²³

Large investments have been made into new court buildings (22.8 per cent of the 2008 -2010 judiciary budgets),²⁴ however, small court rooms in some local and regional courts still cause problems for citizens who want to attend open trials.²⁵

There are well developed programmes and courses aimed to enhance a judge's knowledge of the law, judicial skills, including court and case management, judgment writing and conflicts of interest, provided by a newly established education institution – Justice Academy. The Academy was set up in 2009 pursuant to a presidential decree²⁶ to conduct training for the judiciary, including successful semi-finalists for positions of judges, as well as clerical staff, members of the bar, and prosecutors. It is

15 Judicial Reforms are Highly Evaluated by the International Community, interview of Fikrat Mammadov, Minister of Justice, Chairman of the Judicial Legal Council, 23 December 2011, www.jlc.gov.az

16 Table Salaries of public officials: Dynamics 2012 www.stat.gov.az/source/labour/

17 Law on Courts and Judges, 10 June 1997, www.e-qanun.az

18 The Law on Mandatory Health Insurance of the Employees of the Prosecutor General's and Judiciary, 5 October 1999 with latest amendments of 17 December 2013, www.e-qanun.az

19 Law on Courts and Judges, 10 June 1997 with amendments of 8 October 2010, www.e-qanun.az

20 Eastern Partnership, Enhancing Judicial Reforms in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Directorate General of Human Rights and Rule of Law of the Council of Europe, Strasbourg, March 2013, www.coe.int

21 Azerbaijan: Judicial Modernization Project, www.worldbank.org

22 The Assessment of Additional Funding for Judicial Modernization Project to Last Until February 16, FINEKO/abc news agency,

30 January 2014, <http://abc.az/eng/news/79055.html><http://abc.az/eng/news/79055.html>

23 Court Reforms Continue With Success, website of the Judicial Legal Council, www.judicialcouncil.gov.az

24 Eastern Partnership: Enhancing Judicial Reform in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Strasbourg, March 2013, www.coe.int

25 Azerbaijan 2013 Human Rights Report, by the US State Department, www.state.gov

26 Presidential decree on Development of Justice Bodies, 17 August 2006, www.president.az

reported to provide good training programmes²⁷ on its own and jointly with other public agencies. For example, a joint training on detection of suspicious financial transactions was arranged together with the Financial Monitoring Service under the National Bank to judges and employees of law-enforcement bodies.²⁸

Despite recent increases of salaries,²⁹ judicial clerks are underpaid and need to improve their skills through targeted training programmes.³⁰

According to the current legislation, people without access to paid legal aid shall be provided with free legal assistance by the state. However, free defence provided by the state is not adequate due to low reimbursement rates fixed at 2 manats (US\$2.50) per hour, whereas a fee for interpreter, specialist and expert is symbolic at 0.35 manat (\$0.43).³¹ Along with this, absence of any concrete rules regulating free legal aid, provided by the state absence creates certain problems in access to this aid.³²

Azerbaijan expands the number of courts on an on-going basis, thus 20 new regional courts – including the courts of appeal, the court for grave crimes, administrative economic courts – have been established in Azerbaijan in 2000-2011,³³ but with less than 1 court per 100,000 inhabitants, the country is still to reach the European median standard.³⁴ Even if 307 new judges have been appointed through a total four rounds of judges' selection processes, still judges are overloaded and it would be desirable to increase the number of judges.³⁵ The judicial system would benefit if the Bar more proactively advocated for an increase in the number of defence lawyers as well.³⁶

Indeed, current salaries of judges, though high as compared to public servants, are not commensurate with incomes of practicing lawyers. Especially, members of the Bar, with their profound experiences, who make much more and usually charge 300 manat (US\$382) and 5,000 manat (US\$6,371) per case³⁷ and generally are not very high as compared to income of other qualified legal professionals.³⁸

Equipment of courts with computers and library resources is not even at the moment as courts are in the process of modernisation.³⁹

Independence (law): 75

To what extent is the judiciary independent by law?

The judiciary is based on self-governance principles that are administered by the Judicial Legal Council.⁴⁰ The authorities of this body include: organisation of election of the candidates for the position of judges; organisation of induction and subsequent training programmes for judges; assessment of the judges

27 Interviews with several applicants for position of judges, 4 December 2013

28 Website of the Financial Monitoring Service www.fiu.gov.az

29 Presidential order on Increase of Salaries of Public Servants, 2 December 2013, Modern agency, 5 December 2013, www.modern.az

30 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

31 Decree No 31 of the Cabinet of Ministers On the Rate of Reimbursement for Translators, Specialists and Experts, 1 February 2001, www.e-qanun.az

32 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

33 Single Investigation Committee and Court of Jury Are Not Excluded, Lent.az news agency, 15 March 2013, <http://news.lent.az/news/119243>

34 Eastern Partnership: Enhancing Judicial Reform in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Strasbourg, March 2013, www.coe.int

35 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

36 Rule of Law by Monica Martinez, in the Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, www.fpc.org.uk

37 Interview with independent lawyer Samir Isayev by the author, 22 April 2014

38 Interview with Samira Agayeva, Lawyer by author, 23 September 2013

39 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

40 Website of the Judicial Legal Council, www.judicialcouncil.gov.az

performance; change of work place of judges; promotion; bringing to administrative responsibility; and other functions as set forth by the law.⁴¹

The Constitution broadly guarantees judicial independence along with immunity.⁴² According to Article 14 of the Law on Constitution Court,⁴³ nine judges of Constitutional Court shall be appointed by the Parliament upon recommendation of the President for a period of 15 years, while the Chairman and Deputy Chairman of Constitutional Court shall be appointed by the President, from among the list of those previously approved by the Parliament. After expiration of his/her term of office, a judge of the Constitutional Court may not be re-appointed to the same post.

The initial term of appointment for judges is five years. During their first term, judges are invited to take part in training programmes at least once a year, with a performance assessment to follow at the end of this term. Should the performance assessment fail to reveal any professional deficiencies; the Judicial Legal Council extends his/her term of office until the retirement age of 65. In case there is a need for a professional judge over the retirement age, upon recommendation from the Judicial Legal Council, the term of office may be extended until 70 years of age.⁴⁴

Judges of the first instance courts are appointed by the President of the Republic of Azerbaijan; whereas, judges of the courts of appeal and Supreme Courts are appointed by the Parliament, upon recommendation from the President. The candidates for appointment to the high instance courts shall have at least five years of experience as judges of low instance courts.⁴⁵

According to article 127 of the Azerbaijan Republic Constitution and article 97 of the Law on Courts and Judges, the judges' term of service is not subject to change. Except for cases set forth in the legislation, judges cannot be alienated from their positions, neither their term of office terminated before its time.

Independence (practice): 25

To what extent does the judiciary operate without interference from the government or other actors?

According to some international research^{46 47 48} and local experts,⁴⁹ the judicial system does not represent a very strong wing of the system of checks and balances in the country. The legal provisions, as discussed above, leave room for subtle interference of the executive branch over the Judicial Legal Council, in the matters of judges' selection and execution of the judicial budget.

However, there are cases that are encouraging and show that the reforms aimed to ensure full independence of the judicial system are under way. In general, statistical data of the newly created administrative-economic courts shows that over 80 per cent of the claims raised by the citizens against public entities are resolved in favor of citizens.^{50 51}

41 Law on Judicial-Legal Council, 28 December 2004 with amendments of 21 December 2012, www.e-qanun.az

42 Article 127 (independence) and 128 (immunity), the Constitution of the Republic of Azerbaijan, 12 November, 1995 (entered into force on 27 November), www.e-qanun.az

43 Law on Constitution Court, 28 December 2003, www.e-qanun.az

44 Law on Courts and Judges, 10 June 1997, www.e-qanun.az

45 The Law on Courts and Judges, 10 June 1997, www.e-qanun.az

46 Bertelsmann Transformation Index 2012: Azerbaijan Country Report, www.bti-project.de

47 Resolution 1917 (2013): The honouring of obligations and commitments by Azerbaijan,

Council of Europe Parliamentary Assembly, www.europarl.europa.eu

48 Adam Hug, Introduction to Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

49 Interview with Samira Agayeva, lawyer by the author, 23 September 2014

50 An Important Step in Ensuring Human Rights and Freedoms, interview by Ramiz Rizayev, Chairman of Constitutional Court, 7 July 2012, www.azerbaijan-news.az

Transparency (law): 75

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Transparency of judiciary is regulated by the general law on access to information,⁵² respective procedural legislation, as well as by other legal acts regulating court activities. The legislators made a considerable effort to adopt a special law regulating access to judicial information,⁵³ which was to enter into force as of 1 January 2011. However, the draft law passed in the second reading in mid-2010 but has not been adopted so far.

The existing legal framework provides for public trials, except in cases involving state, commercial, or professional secrets or confidential, personal, or family matters.

Article 5 of the Law on Courts and Judges sets forth that all decisions by the courts of cassation and appeal shall be published. The law also sets forth online distribution of these decisions. Along with this, decisions by the low instance courts that have been annulled or amended shall also be published. Decisions of the first instance courts that have legally entered into force are to be disclosed in a manner set forth in the legislation.

According to the law, decisions on closed trials shall be also published and made accessible to the public. The laws require provision of information on activities and decisions of Courts to the public, in a timely manner.⁵⁴

Along with this, the recent presidential decree on Electronic Courts,⁵⁵ which established the electronic court system, envisions application of audio, video and other recording equipment during the court trials, as well as the possibility of the online regime allowing the following of court trials on the Internet.

According to the 2005 law,⁵⁶ officials, including judges, should disclose⁵⁷ their assets to the Anti-corruption Commission.⁵⁷ Though the plans to ensure submission of declarations by judges were announced back in 2008,⁵⁸ legal mechanisms to implement it have not been designed so far, as the Cabinet of Ministers to date has not drawn up such forms and rules. Therefore, though the legal framework is in place, a lack of supporting legislation does not allow for its implementation.

Transparency (practice): 50

To what extent does the public have access to judicial information and activities in practice?

A local NGO provided monitoring of all court websites in 2012 and presented their findings regarding online transparency of the courts. The report's main finding⁵⁹ was the absence of a clear single standard for the type of information and the degree of detail that would oblige courts to publish information on the Internet. The courts also do not provide annual narrative reports on their activities, except the

51 Public Agencies Shall Build Their relations With Citizens on the Basis of Precise and Clear Rules, interview by Nigar Rasulbayova, judge of Supreme Court, 5 December 2013, www.azerbaijan-news.az

52 Law on Right to Obtain Information 30 September 2005, www.e-qanun.az

53 Draft Law on Right to Obtain Information about Court Activities, second reading 5 May 2010, www.monitoring.az/public/print.php?lngs=aze&ids=1481

54 Law on Right to Obtain Information 30 September 2005, www.e-qanun.az

55 Presidential decree on Electronic Courts, 13 February 2014, www.president.az

56 Law on Approval of Procedures for Submission of Financial Information by Public Officials, 24 June 2005, www.e-qanun.az

57 Website of the national Anti-corruption Commission www.antikorupsiya.gov.az

58 Judges in Azerbaijan Will Submit Information on Their Incomes: by Member of Parliament, by K Zarbaliyeva, Trend news agency 4 September 2008, www.az.trend.az/news/society/1285997.html

59 Online Transparency of Courts, publication by Media Rights Institute, December 2012, www.mmediarights.org

Supreme Court of Nakhchivan Autonomous Republic. According to the monitoring results,⁶⁰ the average transparency of courts was found at about 30 per cent.

Along with this, a single court Internet portal was created (www.courts.az) to improve access to court services for the population. This portal allows citizens to apply to the courts and receive responses online, to obtain samples of court claim applications, as well as of other court documents, to enquire into court reception days and to obtain other relevant information.⁶¹

In practice, observers, both foreign and domestic, can freely attend trials,⁶² except those involving espionage or treason charges, as set forth in the law.⁶³ Along with this, sometimes there are problems with video and audio recording of the trial process.⁶⁴

Accountability (law): 75

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Judicial Legal Council - a self-governing body of the judicial power - is composed of 15 members, mainly judges, but also includes representatives of the President of Azerbaijan, Milli Majlis, the Prosecutor's office, and the Bar Association. Unfortunately, the Council does not have any representative of civil society amongst its members; neither has it any other mechanism to receive feedback from civil society on an ongoing basis.

The Council is entrusted to start disciplinary proceedings and bring judges to administrative responsibility, whereas Judges Selection Committee⁶⁵ was established by the Council, to select candidates for positions of judge.

The Law provides ample protection against discretionary rulings (order, verdict) of the judges. According to the Article 295 of the Criminal Code, those who knowingly pass unfair judgments; face at minimum a fine of 5,000 manats (US\$6,370) and at maximum a 3 year prison term. In case a wrong decision of a judge resulted in an imprisonment verdict and/or other serious consequences for the convicted, penalty for a defaulting judge increases from 5 to 8 years in prison. The Parliament plans to make these provisions even more stern and to increase the prison term to 6 year and, in case of serious consequences, from 8 to 12 years.⁶⁶

Accountability (practice): 25

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Judges are held accountable for their actions in practice. According to the Chairman of the Judicial Council (and simultaneously the Minister of Justice), the Council alienated 70 judges for gross and other

60 Interview of Rashid Hajili, director, Media Rights Institute to Azerbaijan desk of Voice of America www.amerikaninnesi.org/content/azerbaijan-mehkeme-/1568622.html

61 Electronic Courts Have Been Assesses as Serving to the Wellbeing of People, Interview of Minister of Justice and Chairman of the Judicial Legal Council, APA news agency, 8 April 2014, <http://www.az.apa.az/news/337896>

62 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

63 Article 127-5, Constitution of the Republic of Azerbaijan, 12 November 1995, www.e-qanun.az

64 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

65 Website of the Judicial System www.courts.gov.az

66 Judges Purposely Passing Unfair Judgments May Face up to 12 Years Imprisonment in Azerbaijan, by Mubariz Aslanov, APA news agency, 9 September 2013

www.en.apa.az/xeber_judges_purposely_passing_unfair_judgment_199076.html

violations, and started disciplinary proceedings against 161 judges.⁶⁷ . Though there are no cases of prosecution of a judge for corruption filed by the law enforcement agencies of Azerbaijan since 2000,⁶⁸ (as the provisions regulating immunity of judges are considered to be broad – an issue discussed elsewhere in this report), judges are penalised for other violations of the law.⁶⁹

However, some lawyers' claim that their complaints filed with the Judicial-Legal Council about illegal actions and unprofessionalism of some particular judges are not always attended to.⁷⁰

Integrity Mechanisms (law): 75

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

The Code of Ethics for Judges is a collection of the principles and standards of ethical norms regulating judge's activity.

The selection of judges is based on written and verbal exams followed by a substantive training for applicants, final interview and appointment to the position of a judge.⁷¹ This detailed procedure is handled by the Judges Election Committee⁷² under the Judicial Legal Council⁷³, the governing body for the judicial system, followed by appointment described above. According to civil society, the exams are organised in a rather transparent environment and monitored by civil society.⁷⁴ However, the law does not define duration of the training course and in practice the training takes six months, plus another six months of court practice,⁷⁵ after which successful candidates are invited to a final interview.

There is a legal mechanism that allows a by-pass of procedures of selection to the position of judges as envisaged in Article 93-3 of the Law on Courts and Judges. According to Article 93-4 of the same law, candidates eligible under general requirements, with 20 and more years of professional experience, authority in the sphere of jurisprudence and of high moral standards, can be appointed by executive authorities for the position of senior judges upon the recommendation of the Judges Selection Commission, by-passing the examination system. However, no appointments under this procedure have been made within the last five years.⁷⁶

If selection process is rather transparent, promotion of judges is regulated by multi-stage and technical procedures.⁷⁷ Even if the Law on the Judicial Legal Council⁷⁸ sets some general provisions, clear systems of performance reviews that form grounds for career advancement are not regulated in details.

67 Judicial Reform Continues with Success, website of Judicial Legal Council, www.judicialcouncil.gov.az

68 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, www.oecd.org

69 Website of the Judicial Legal Council, www.jlc.gov.az

70 Discussions by the civil society at the advocacy round table on Increasing Transparency of Courts, organised by Transparency Azerbaijan with the Judicial Legal Council, 30 March 2011, Caspian Plaza, www.transparency.az

71 Article 93-3 of the Law on Courts and Judges, 10 June 1997, www.jlc.gov.az

72 The Judges Election Committee was established by the Legal Judicial Council as envisaged by Article 14 of the Law on the Legal Judicial Council, 28 December 2004, www.jlc.gov.az

73 Judicial Legal Council was established under the Presidential decree 30, 1 December 1998 and functions in accordance with the Law on the Legal Judicial Council, 28 December 2004, www.president.az

74 Personal experience of Transparency Azerbaijan

75 Interviews with several candidates for the judges positions, 4 December 2013

76 Interview with Javid Huseynov, head of the Judicial Legal Council Office by the author, 30 May 2014

77 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

78 Article 13, Law of on Judicial-Legal Council, 28 December 2004 with amendments of 21 December 2012, www.e-ganun.az

The language of legislation regulating immunity of judges is considered to be too broad by international observers. There is a need to amend the laws to allow: primary investigation of the reported crimes allegedly committed by judges;⁷⁹ to enable prosecution bodies to collect sufficient material to raise before the Judicial Legal Council; a motion to lift immunity of the judges in question or to drop a case. At the moment, the immunity status of judges does not allow prosecutors to investigate; prosecutors cannot raise a motion to lift immunity without sufficient evidence, to be collected during primary investigation.

In line with this OECD recommendation, Azerbaijan put an obligation to prepare respective legislative proposals under the National Anti-corruption Action Plan 2012-2015⁸⁰ and currently the process is under way,⁸¹ though no further details are available.

Introduction of an electronic system for random distribution of cases to judges is a commendable step; however, further improvement of procedures will minimise opportunities for discretionary decisions of court administration.⁸²

Integrity Mechanisms (practice): 50

To what extent is the integrity of members of the judiciary ensured in practice?

According to the *Global Corruption Barometer 2013*,⁸³ judiciary along with the health sector is perceived by the population to be the most corrupt of the sectors and assessed at the score of 3.1 at a scale from 1 (minimum corruption) to 5 (for extremely corrupt), though a minor decline from the score of 3.2 in 2010 is noted.⁸⁴ The Information and Cooperation Network of NGOs for Combating Corruption⁸⁵ reports that the largest numbers of citizens' complaints about corruption involve the courts.⁸⁶ This echoes with the experience of Transparency Azerbaijan, through its five Advocacy and Legal Advice Centres providing free advice to the population since 2005. However, it cannot be ruled out that to a certain degree this is fed by frustrations of the party that has lost a court case.⁸⁷

Indeed, ethical training is offered to judges,⁸⁸ however, little is known to the general public about the content of these trainings and whether the judges are coached as to how to behave in concrete situations, to avoid violation of the code provisions.⁸⁹

Executive oversight: 25

To what extent does the judiciary provide effective oversight of the executive?

79 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, www.oecd.org

80 National Anti-corruption Action Plan for 2012-2015 approved by the presidential decree of 5 September 2012, www.president.az

81 Interview with Alimamed Nuriyev, Coordinator of the Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption and member of the Ad-hoc Working Group under the National Anti-corruption Commission by the author, 29 November 2013

82 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, www.oecd.org

83 Global Corruption Barometer 2013, publication by Transparency International, www.transparency.org

84 Global Corruption Barometer 2010, publication by Transparency International, www.transparency.org

85 Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption, www.anticorrupt.net

86 Discussions by the civil society at the round table on Increasing Transparency in the Judicial System organised by Transparency Azerbaijan, 30 March 2011, Caspian Plaza

87 Judicial Reforms, Presentation by Javid Huseynov, head of the Judicial Legal Council Office at the round table on Increasing Transparency in the Judicial System organised by Transparency Azerbaijan, 30 March 2011, Caspian Plaza

88 Website of the Judicial Legal Council, www.jlc.gov.az

89 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, www.oecd.org

Under the law, the courts have jurisdiction to review the actions of the executive, however, very little information is available to general public.

Corruption prosecution: 50

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

The Department to Combat Corruption under the General Prosecutor's Office is the only public agency that provides the statistical information about the cases that have been sent to the courts; also there is no statistical information about corruption related cases reviewed by courts on the websites of the courts.

In 2011, information that the judicial system began the process of summarising court decisions on corruption related offenses was released to media. Analysis also planned to include mistakes committed by judges during the litigation process. Even if the findings were intended to be published by the Supreme Court,⁹⁰ no data on implementation of these plans is available.

Recommendations:

Continue the reform of the judiciary and adopt the Judiciary Reform Program beyond 2014.

To amend legal framework in order to:

- Increase the court budget and to apportion judiciary budget to the general state budget; to delegate the authority to manage judiciary budget to the courts themselves and/or Judicial Legal Council.
- Simplify the multi-stage and complicated process of judges selection; to annul the legal mechanism that allows by-pass of procedures of selection to the position of judges; to adopt regulation clearly stating judges performance assessment and promotion.
- Adopt the Law on the Right to Obtain Judicial Information that will set up clear standards on the type and format of judicial information available to the general public.
- Prepare legislation limiting judges' immunity.

Other steps:

- Cover judicial clerks with adequate training programmes and increase their salaries substantially.
- Prepare and publish court statistics on corruption cases reviewed.
- Include representatives of civil society into the Judicial Legal Council; to arrange regular monitoring of the court decisions by the Judicial Legal Council with participation of civil society.
- Further develop the electronic system for random distribution of work load among judges.
- Increase the number of judges in order to relieve their workload.
- Adopt a separate law regulating free legal aid provided by the state and increase the number of lawyers.
- Conduct a nation-wide public opinion survey to enquire into perception of the population of the judicial system and its reasons.

⁹⁰ Азербайджане обобщаются решения судов по коррупционным преступлениям, Day az agency, 12 October, 2011 www.news.day.az/society/293118.html