



TRANSPARENCY AZERBAIJAN

REPORT ON RESULTS OF MONITORING OF IMPLEMENTATION OF RECOMMENDATIONS PROVIDED TO PUBLIC AGENCIES



Baku, June 2016

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	LABOUR AND SOCIAL PROTECTION (Ministry of Labor and Social Protection of Population & State Social Protection Fund)	
	Labor Relations, Targeted Social Aid and Pension	5
	Social Protection of People with Disability	9
III.	NOTARY PUBLIC (Ministry of Justice)	13
IV.	REAL ESTATE REGISTRATION AND MANAGEMENT (State Committee on Property Issues)	14
V.	UTILITIES (Azerigas PU & Azersu OSJ & Azerishiq OSJ)	20
VI.	OTHER AREAS	
	i. Taxation on Sales of Real Estate (Ministry of Taxes)	23
	ii. Performance assessment for civil servants (Civil Service Commission)	24
	iii. Business inspections and Licensing (Ministry of Economy)	25
	iv. Mandatory health check-up and provision of medical consultations to people willing to enter into a marriage (Ministry of Health)	27
	v. Applications to Government	28
	vi. Performance assessment for teachers (Ministry of Education)	30

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 1 May 2016. Nevertheless, Transparency Azerbaijan cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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I. INTRODUCTION

Azerbaijan Partnership for Transparency (APT) Project is a four-year activity of Transparency Azerbaijan (TA) designed to strengthen key civil society organizations' role in the fight against corruption, while supporting the Government of Azerbaijan (GOAJ) on a few strategic and high impact areas of its anti-corruption strategy and commitments to the Open Government Partnership (OGP). The overall objective of APT Project is to make civil society more effective at increasing transparency and reducing corruption.

The APT project builds on the previous Advocacy and Legal Advice Centers (ALACs) project run by TA since March 2005. The ALAC project has been a grassroots-based attempt to reveal, address, and further analyze corruption dynamics in the country. Within the years of the ALAC Project implementation period a wide range of clients, who had approached TA's regional centers regarding the corruption-related matters, indirectly contributed to the collection of statistical and narrative data, that further helped develop a clearer picture of a corruption portfolio, existing threats, tendencies, and mainstreams in a systemic and societal ways. With the data in hand, the TA was able to better understand needs of local communities and further define more concrete targets for advocacy programs and initiatives that are aimed at achieving positive changes in existing policies, strategies, and practices related to combating corruption at the institutional and systemic levels.

Over the years the TA conducted 12 rounds tables with various public institutions under ALAC project in 2010-2012 and 16 round tables in 2013-2016 under APT project. This report summarizes implementation of the recommendations provided by TA to the public institutions providing basic services in the areas of civil registration, provision of utilities, rendering social assistance, registration of property rights with a special focus on provision of electronic services, as per the respective decisions of the government^{1,2} that instructed central executive bodies within their official internet information resources to ensure delivery of electronic services in competence with their powers.

All recommendations provided by TA can be divided broadly into several major directions:

- Enhancement of the legal framework;
- Attending to institutional vulnerabilities, including management of hotlines;
- Provision of electronic services and organization of website;
- Ensuring transparency and accountability of public institutions.

¹ Second State Program Electronic Azerbaijan for 2010-2012, www.mincom.gov.az

²AR Prezidentinin "Dövlət orqanlarının elektron xidmətlər göstərilməsinin təşkili sahəsində bəzi tədbirlər haqqında" 23.05.2011-ci il tarixli 429 nömrəli fərmanı, www.e-qanun.az

II. LABOR AND SOCIAL PROTECTION OF POPULATION

Ministry of Labor and Social Protection of Population State Social Protection Fund

Introduction

The goal of TA is to encourage and assist the government to manage an efficient system of labor and social protection of population.

Implementation of recommendations

Several round tables were conducted with the Ministry of Labor and Social Protection of Population (MLSPP) to discuss reforms in distribution of targeted social aid³ and protection of the rights of people with disabilities⁴, registration of labor contracts⁵, as well as with the State Social Protection Fund (SSPF) to discuss reforms in the pension system⁶. As of date, the following changes have been accomplished.

Labor Relations, Targeted Social Aid and Pension

Legal framework

TA recommended increasing minimum wage rate to reach consumption basket and raise basic labour pensions to adapt to need standards. Through 2015, Manat has devaluated twice with the decision⁷ of Board of Central Bank of Azerbaijan and as a result, prices increased in the country, making it a requirement to evaluate need criteria and minimum living standards and recalculate basic labour pensions and consumption basket.

TA recommended on a roundtable in 2015 that the provisions of the law on compulsory insurance contract shall be applied to persons employed on service contract. Thus, the provisions of the relevant law work for persons hired by an employment contract; therefore employees with service contract cannot benefit from compulsory insurance and their years of work are not taken into account while calculating traineeship. This also touches women employed on service contract; they cannot receive maternity benefits from the state, despite the payment of social insurance.

Institutional reforms

Crucial development within the legal framework is attachment of the State Social Protection Fund to the Ministry of Labor and Social Protection of Population.⁸ Many experts, including TA roundtables have several times expressed the idea to merge these two state agencies that have overlapping functions, and therefore saw the realization of this idea as a necessary step in the field of social protection of population.

³ (1) Roundtable on "assignment of targeted social aid" dated 21.06.2011; (2) roundtable on "the role of targeted social aid in the area of social provision and the state of electronic services" dated 11.03.2013; www.transparency.az

⁴ Roundtable on "protection of the rights of people with disabilities" dated 21.02.2014, www.transparency.az

⁵ 1) "Legal problems in labor relations" dated 06.12.2011; (2) "Problems in labor relations and their solutions" dated 02.04.2015, www.transparency.az

⁶ (1) Roundtable on "Problems in assignment of pensions" dated 04.10.2011; (2) "Problems in social insurance and provision of pension" dated 19.02.2016-, www.transparency.az

⁷ Decisions dated 21 February 2015 and 18 December 2015, <http://en.cbar.az>

⁸ Presidential Decree on "Measures to improve management in the area of social protection of people" dated 18.03.2016, www.president.az

Yet, establishment of private pension funds, as recommended by TA, is still not reflected in the legislation. Though, if the law on private pensions is adopted, this will lead to competition among pension funds and create circumstances for circulation of money.

TA at a round table on 4 October 2011 stated that it is necessary to change the structure of the authorities dealing with pension administration, in order to eliminate delays in calculation of retirement benefits and preparation of plastic cards. Thus, registration of pension status and directing retirees to the bank is now one of the functions of ASAN service center, making it easy for those who live in the area in which ASAN service centers operate. However, in regions where there are no ASAN service center, registration of pensioners and provision with plastic cards are realized at the regional offices of the Ministry of Labor. In practice, this leads to delays in calculating pension amounts and preparation of plastic cards and paves the way for informal demands and payments.

E-government

TA recommended that e-services of SSPF be integrated into www.e-gov.az portal. Beginning from September 2015, employer-insurer (both physical and legal persons) can apply for online registration. Besides, citizens can now also apply through the www.e-gov.az portal to change their insurance certificates and obtain duplicate thereof⁹.

TA recommended in a roundtable on 11 March 2013 to create online tools to apply for targeted social aid and further simplify procedures. E-Application and Assignment of Targeted Social Aid through VEMTAS system¹⁰ is now open to citizens on www.e-gov.az portal (since 15 Feb 2016). The system enables access also to e-database owned by other public agencies that supports application for the aid.¹¹ According to the new rules, applications must be answered within 15 days. Moreover, the period of the assignment of the targeted social aid has been increased from 1 to 2 years.¹²

The services provided by the fund that need electronization the most are social insurance registration and reporting. In many cases, employees are unaware of whether their social insurance cards are ordered by their employers. The biggest difficulty of the employer (insurer) in this direction is acquisition of insurance cards by going to the relevant body.

Another problem, the insurer waits months sometimes to receive a code and password to the system to provide electronic reporting to the Ministry of Labor. It is easy to solve the problem with electronic signatures and ASAN signature.

There are also technical difficulties in submitting reports to the fund. Thus, the B1 and B3 applications must be downloaded first to the computer, filled and then uploaded to individual electronic account. But the procedure is not that simple. In most cases the applications show inconsistency with the computer files, making it impossible for ordinary citizens and force to involve IT specialists.

⁹Sosial sığorta iştirakçılarının uçotu sahəsində xidmətlər tam elektronlaşdırılıb? 16.10.2015, www.az.trend.az

¹⁰<https://www.e-gov.az/az/services/read/3421>

¹¹Ünvanlı sosial yardım elektron sistemdə qeyri-şəffaf tıyinat mümkündür, 03.04.2016-cı il, www.525.az

¹² Law on "Changes to the Law on Targeted Social Aid" dated 24.02.2015, www.president.az

Moreover, the two reports - B1 (information on salary fund) and B3 (insurance per employee from salary fund) submitted separately and in different times and periods lead to an incorrect calculation of pension capital in a number of cases.

In general, there is a need to electronize pension-related services, such as informing the pensioners of assignment of pensions, the accumulated sum of pensions, payments and other services, as well as receiving by the insurer electronically personal account statement of the pensioner.

Transparency and accountability of public institutions

The MLSPP is active on social networks, such as Facebook and Twitter, information is regularly updated and placed on its website, including English version. Thus, nearly 300 press releases were published in 2015¹³.

The steps taken by the Ministry to improve transparency and accountability, that TA encourages all state agencies to take, is cooperation with civil society institutions and provision of public control in labour and social protection system. On 28 September 2015, MLSPP established its next Public Council comprised of 15 civil society organizations. Simultaneously, 10 non-state agencies have been accredited by the Ministry to give social services to the people who suffered from the domestic violence.¹⁴

Furthermore, TA recommended that pensioners should be informed in advance of any change, including decrease and increase of pensions. The law also states that in this case the notification must be sent to pensioners before application to the court and after the court gives decision. In practice, pensioners learn about reduction the day they receive their pension or while deducting money from their pension card.

TA has always stressed the importance of signing labor contract. In this respect, one of the positive initiatives is placing in public places banners and videos that stress the importance of signing the employment contract. Also, in accordance with the TA recommendations, public is regularly informed of the job fairs. However, these initiatives are not sufficient to solve the problems existing in this area. That is to say, workers are employed first for a trial period through employment service, but then are refused to sign a labor contract at the end of the trial period. Despite the complaints, there is no result.

TA recommended approval of the list of documents for the determination of allowances regularly and applications to the state authorities. In this regard, approval of the rules¹⁵ on legalization, consideration and maintenance of the documents submitted for the determination of social benefits, pensions and compensation, as well as transparency of the list of documents requested are positive developments.

Functioning of 142 and 190 "hot lines" is not good as much as desired. In fact, it is observed that sometimes phone calls are not responded and in some cases respondents

¹³www.mlsp.gov.az

¹⁴ MLSPP report 2015, <http://www.mlsp.gov.az/>

¹⁵ NK-nın 21 sentyabr 2015-ci il tarixli Qərarı; <http://e-qanun.az/framework/31208>

are unaware of the law. After structural changes in the fund the cases have increased in number.

Conclusions and key recommendations

Legal framework

- In accordance with the reality, the minimum living standards and consumer basket should be counted again, the need criteria should be raised at least by the level of the living wage and basic part of labor pensions by should be brought in line with the new need criteria.
- The calculation of the basic pension, the procedure for calculation of years employed, allowances and other numerous issues should be reflected in the law.
- In order to realize social protection rights of migrant workers living in Azerbaijan and Azerbaijani citizens living abroad the number of agreements among governments should be increased and the procedure for the calculation of the basic part of pensions of labor migrants should be determined.
- Considering the migration, additions to the Azerbaijani legislation should be made regarding insurance payments accumulated in their personal accounts before they reach retirement age.
- The provisions of the law on "Industrial accidents and compulsory insurance against disability resulting from occupational diseases" shall be applied to persons working on service contract.
- 4th paragraph in the Article 8 of the law on social insurance shall be corrected as follows: insurance record of the insured is a general accumulation of employment and service periods through which compulsory state social insurance is paid in favor of the insured. In other words, "when calculating social insurance record, the length of service, along with employment, should be taken into account.

Institutional reforms:

- To adopt a law on private pension funds. In order to stimulate the creation of private pension funds, tax exemptions should be applied to them. Or state provision documents should be adopted. The payments to private pension funds should be in proportion to the payments made to the state funds and citizens should be given the right to choose to make payment.
- Improve regulatory framework in the area of pensions, and increase control over the circle and non-circle operations, and ensure issuing of the plastic cards by banks all over the country.
- To increase the number of insurance agencies for compulsory insurance
- Determination of unemployment status and assignment of its benefit should be made by ASAN service centers.

E-government:

- To provide to employees information on their social insurance registration with authorities by their employers upon registration (in other words, information on existence or absence of social insurance cards) electronically or through SMS;

- Insurers will benefit from a postal service with to receive social insurance cards from the Ministry of Labor; the postal fee can be pre-paid by the insurer through online payment tools;
- Unlike reports to the tax authorities that offer three options, reports to MLSPP can be submitted only directly to the MLSPP through their code and password that often come very late and are not technically very secure. More tools shall be created for the entities' reports to be submitted through the single e-government portal with the help of ASAN signature or E-signature as well.
- The B1 report (report on the payroll) and B3 report (on social insurance of the employees on payroll) shall be merged into one report. At the movement these two reports are submitted at different times and for different periods which creates problems for calculation of pensions.
- B1 and B3 reports for submission to the Fund should be made online to fill in on the webpage, without downloading it into computer..
- Decision to award pensions shall be delivered electronically; in other words, this service shall be elevated from the stage of e-application to e-service per se;
- Insured employees shall receive instant sms notifications of their deductions to the pension fund once a transfer enters his/her account.
- Electronic tools shall be created to enable reconciliation of social insurance deductions between the employer and authorities;

Transparency and accountability of public institutions

- Educational programs on tax, social security and pension issues should be made regularly on TV and radio channels with the participation of employees of the Fund and Civil Society representatives.
- Legal aid centers should be established on tax, social security and pension issues and free legal aid should be rendered.
- Pensioners should be informed of any reduction or raise of their pensions in advance by notification (email or sms) and changes to the pensions should be made only with their consent.
- Service and management of 142 and 190 "hot line" information systems should be processed with unified methodology in order to further improve this system. Detailed examination of, prompt and substantive respond to the questions requires that those who respond to calls receive qualification (the degree) programs.

Social Protection of People with Disability

Legal framework

Transparency Azerbaijan constantly stated that there is a need to legally define disability on perpetuity terms. The Presidential decree¹⁶ and Cabinet of Ministers' decision¹⁷ approved "Regulation of criteria for evaluation of disability and health restrictions". According to the decision, all 1st group PWDs, as well as, 2nd group PWDs after 10 years of disability status and 3rd group PWDs after 15 years were defined on perpetuity terms. The rest of 2nd and 3rd group PWDs' terms were extended by 5 years, and terms of children with disability less than 18 years were prolonged for 3 years.

¹⁶ Decree no 595 of the President "On the improvement of assessment system of restriction of disability and health care opportunities" dated September 14, 2015, www.president.az

¹⁷ Cabinet of ministers resolution the criteria for determining disability dated 30.12.2015, www.cabmin.gov.az

Institutional reforms

TA recommended increasing the number of medical and social rehabilitation centers and enhancing quality of their services, basing on international experience. According to the report of the Ministry, regional centers for rehabilitation of children – victims of domestic violence have insituted in Ganja, Lankaran, Ujar. Moreover, a dedicated State entity is being established to provide services to children with special needs¹⁸. However, the process of application to rehabilitation centers is still not accessible to many.

TA advised to adopt a rule on organization of mobile services by state agencies for people with disability. Though certain agencies provide mobile services to general people in the regions, this is not enough to solve problems of people with disability.

E-government

TA has consistently recommended simplifying eligibility procedures for disability status. The Ministry of Labor and Social Protection of Population is developing an information system on results of disability eligibility examinations. The Medical Social Examination Commission under the MLSPP will be able to access this database and receive relevant information on health condition of citizens, who apply for disability status and make appropriate decisions based on this information. This information system is still being test-run¹⁹.

Although the Ministry does a substantial job towards people with disability, they often are not informed. For instance, they cannot follow information on allowances, events, employment opportunities, people with similar conditions, as well as services by the state and other changes in a respective legislation. In this regard, TA continues its recommendation for creation of a single platform for PWD.

Transparency and accountability of public institutions

TA continuously emphasizes improving conditions for people with disabilities and in a roundtable of 21 Feb 2014 presented its recommendations to the Ministry. Accordingly, MLSPP regularly organizes vocational trainings for unemployed people, including people with disabilities.²⁰ The Ministry also continues providing PWDs with free housing by the state. According to official information by the Ministry, about 284 PWDs were provided with relevant jobs in January-May 2016. 128 of them were employed in the framework of quote system considered for people with special need for social protection, having hard time finding a job.²¹

According to the Ministry's report²², veterans with disability and families of martyrs are occasionally provided with apartment houses and individual houses in different regions of Azerbaijan. Also certain privileged PWDs received automobiles.

¹⁸Cabinet of Ministers decision on Establishment of State Rehabilitation Center for Children Needing Special Care was established under State Medical-Social Expertise and Rehabilitation Service , dated 10.06.2015 www.cabmin.gov.az

¹⁹ Decree no 595 of the President "On the improvement of assessment system of restriction of disability and health care opportunities" dated September 14, 2015, www.president.az

²⁰MLSPP on Facebook

<https://www.facebook.com/154642084594835/photos/a.155595424499501.31512.154642084594835/1047394038652964/?type=3>

²¹ƏƏSMN 17.06.2016 press reliz <http://www.mlsp.gov.az/az/pages/17/39/information/843>

²² MLSPP report 2015, <http://www.mlsp.gov.az/>

It is worthy to note that the list of people privileged to stay on hold for building of apartment and private house in accordance with the lists of Executive Authorities in the regions, as well as the dates of being on hold and other information are public on official website of the Ministry.²³

In accordance with TA's recommendations, ramp building process was accelerated for persons with disabilities at state institutions, public places and transport. It is an important step that ramps were taken into account while building ASAN service centers that every citizen applies, as well as replacing taxi and buses with the new ones. However, the technique to use ramps in transport means is not known by many, even persons with disability. In addition, installation of voice incorporated traffic lights is still in process.

Furthermore, there is no opportunity for organizations of people with disabilities to publish their publications.

Conclusions and key recommendations

Legal framework

- “To adopt the Law on Protection of Rights of People with Disabilities;
- Allowances and pensions of the PWDs should be increased by minimum living average. Living minimum standards as well, should be recalculated in accordance with international standards.
- To adopt a rule on organization of mobile services by state agencies for people with disability
- To adopt amendments to the legal framework to ensure free of charge quota for education of students with disabilities at the university level, as well as for employment of PWDs and to increase penalties for the failure to do so. State agencies should be removed from the list of institutions to which quota is not applicable.
- The legislation should be amended to include all (public and private) hospitals on the territory of the country for a free diagnosis, treatment and medical operations of persons with disabilities and to be realized at the expense of the state budget.

Institutional reforms:

- To arrange that at least a part of medical check-up required for award of the disability status is arranged at ASAN centers;
- To simplify the process of application rehabilitation centers.

E-government:

- To create a dedicated portal for people with disabilities and to ensure the following e-services are available through the above portal:
 - To set up personal accounts;
 - To receive information on benefits, events and job opportunities for people with disabilities through personal accounts;
 - To learn of the public services available to people with disabilities and of supporting legal acts;

²³ <http://www.mlsp.gov.az/az/pages/6/34>

- Platform for discussion of the problems of people with disabilities.

Transparency and accountability of public institutions

- To ensure participation of PWD in public life, such as representation in elective bodies, political parties, civil society, etc., with the decision making power.
- To show the rules for using ramps in transport means through video or pictures in buses and taxis.
- To accelerate the installation process of available voice traffic lights and signs (convex-shaped yellow lines) and bring into line with international standards. To provide the names of the public (government) buildings in a Braille alphabet and understandable way to PWDs.
- To publish comprehensive waiting lists of all PWD eligible for free public housing.
- To inform persons with disabilities of state allowances by clearly writing on the boards and hanging in every state institution.
- To allocate the budget for publications of the PWD communities.

III. NOTARY PUBLIC

Ministry of Justice

TA closely monitored reforms in the notary public system²⁴ and establishment of the on-line services related to notary public activities: service enabling to (1) make online payments for the services of notary public, civil act registration desks and apostil; (2) make an appointment with a notary public (or any other structure under the Ministry anywhere all over the country); (3) receive information about notary public offices; (4) receive information on types of services rendered by notary public. It shall be mentioned that the website²⁵ of the Ministry presents information on notary public offices and on their activities as two different services, whereas legislation envisions and the single government portal²⁶ presents this as one service. This single service was recently²⁷ activated at the single e-government portal.

TA recommended tightening control over licensing of notary publics and their professional level. According to the new changes by the Ministry of Justice, a candidate for the certificate is obliged to fill in an application to the Ministry of Justice and indicate the notary public office they apply for. A change made to the application sets that in case of several successful applicants for the same position, the job offer goes to the candidate with the highest score and other candidates might be offered a job at a different notary counter in accordance with the scores collected. Also, computer based test is made mandatory for all applicants²⁸.

If the number of candidates – who received 15 score or more – exceeds the number of vacancies for notary publics, the candidate with the highest score in relation to vacancy indicated in the application is considered as a winner of the interview. The other candidates are offered the other notary public vacancies with respect to their scores, in case if they initially indicated the vacancy in their applications. Also, TA conducted monitoring of notary public offices in November 2015²⁹.

Recommendations:

- To introduce the system of electronic queue
- To improve conditions for customers waiting for their turn (customer friendly environment) and provide workers at notary public with the uniform.

²⁴Advocacy round tables of 26 April 2012 under ALAC project and 17 May 2013 under APT project

²⁵www.justice.gov

²⁶www.e-gov.az

²⁷ Between 16 April and 1 December 2015

²⁸ Ministry of Justice, Collegial decision on “Rules of examination and interviews to get certificate in order to engage in notary activity” m dated 30 June 2015, e-qanun.az/framework/30376

“ƏDLİYYƏ NAZİRLİYİ KOLLEGİYASININ “Notariat fəaliyyəti ilə məşğul olmaq məqsədi ilə şəhadətnamə almaq üçün imtahanın və müsahibələrin keçirilməsi Qaydası”na dəyişikliklər edilməsi barədə 30” iyun 2015-ci il tarixli, 8 nömrəli qərarı, <http://e-qanun.az/framework/30376>

²⁹ Report on monitoring and assessment of notary public offices by Transparency Azerbaijan, December 2105, www.transparency.az

IV. REAL ESTATE

STATE COMMITTEE ON PROPERTY ISSUES

(Along with other relevant state agencies involved in state regulation of real estate)

Purpose

The goal of TA is to encourage and assist the government in developing and managing an efficient system of real estate registration.

Introduction

In the past year, notwithstanding that there has been certain progress in the registration and management of real estate, problems in this area that were not addressed in previous periods still remained to be solved. Transparency Azerbaijan (TA) submitted its recommendations on mechanisms of addressing some of these problems in two roundtables attended by representatives of State Committee on Property Issues (hereinafter "the Committee") – namely, on "Problems and ways of solving them in registration of private houses" dated July 28, 2015 and "State registration of undocumented real estate" dated February 3, 2016. In the previous reporting period, we presented our propositions on "Problems in registration of apartment houses and issues of transparency" (dated December 12, 2014) to the Committee and other concerned state agencies.

Despite steps taken toward implementation of recommendations from the previous monitoring report and the foregoing packages of recommendations, the current state of affairs is overall unsatisfactory. One of the main reasons is the inadequate coordination by competent state agencies of their activities in this area and the lack of effective cooperation between them. As well as, the non-existence of a common strategic vision regarding the registration and management of real estate among state agencies reduced the efficacy of efforts to tackle the problems in this area.

Cooperation with the civil society

The failure to set up a Public Council (PC), made up of civil society institutions, under the Committee, hinders the forging of systematic cooperation between the latter and the NGOs. The absence of a PC also curtails opportunities for participation of the civil society in the Committee's undertakings. As a result of the inability of the Committee to establish effective relations with non-state actors, public oversight of its activities remain insignificant, and questions concerning the issues of transparency and accountability in its operation are left unanswered. Collaboration with the civil society lies at the heart of our recommendations and therefore, for the relations between the Committee and the civil society organizations to qualitatively improve, it is necessary that a functional PC be established.

Transparency

Information on the Committee's activities is regularly placed on the organization's website. The e-database of the journal of "Real estate" and the newspaper of "Property" is consistently updated, which makes information on the Committee's activities and

developments in the real estate market accessible to the public. The Committee's efforts in this area are generally commendable.

Certain positive developments in terms of transparency are worth mentioning in the performance of State Committee for Urban Building and Architecture, too. It is commendable that the agency made available on its website the information, such as regional maps (schemes), general plans of several cities and other relevant information.³⁰ As regards zoning schemes ("müfəssəl plan"), only a map of 1,500 ha of central Baku is publicly accessible.³¹

There is information that in the framework of a joint project by the Committee and the World Bank, zoning schemes for certain regions have already been produced (Ganja, Sumgait, Zagatala, etc.)³², but they have not been made accessible to the public. It should be added that at the moment, only Shirvan out of Azerbaijan's regions, has its urban cadastral map publicly available.³³

Legislation

The Committee's 2015 report states that it drafted more than 90 legislative acts and 44 of them were approved.³⁴ The scrutiny of the amendments in the legislation reveals that the bulk of them were necessitated by the needs of the new economic reality, and aim to stimulate business activities and efficient use of state property.

One of the recent changes is the simplified rules for issuing commissioning permits for non-residential properties.³⁵ Under the new rules, opinion of the Ministry of Emergency Situations (MES) on the readiness of small enterprises and other properties shall be issued within 20 days; the commissioning permit shall be issued by the local executive authority within 5 days. The positive side of these changes is that non-residential houses (buildings), to projects of which the local executive authority had given its consent by 2013, but which were built without due examination (by MES), will now be registered through simplified procedures.

At the same time, the President's recent decree on reorganization of the process of privatizing state property raises hope for further steps to make privatization more transparent and accountable.³⁶ Against the backdrop of economic slowdown and shrinking state revenues it has become particularly important to make an efficient use of state property. Some of the complaints filed with our organization allege that the sale and lease of state property is not always competitively conducted and that they are sold or leased well under their market value.³⁷

³⁰ General Plans, http://www.arxkom.gov.az/40/bas_planlar.html

³¹ Baku city, http://www.arxkom.gov.az/100/baki_seheri.html

³² Interview with a real estate expert, June 2016

³³ Cadastre of urban planning, http://www.arxkom.gov.az/42/sehersalma_kadastr.html

³⁴ AR State Committee on Property Issues Annual Activities Report 2015, <http://emdk.gov.az/images/pdf/HESABATLAR/komiteillik2015gorulmusisler.pdf>

³⁵ AR Presidential Decree on "The simplification of commissioning permits for some construction units", May 19, 2016, <http://www.president.az/articles/19821>

³⁶ AR Presidential "Decree on Additional measures for improvement of privatization of state property", May 19, 2016, <http://president.az/articles/19822>

³⁷ The notification procedure, http://www.arxkom.gov.az/202/melumatlandirma_icraati.html

Despite the adoption of the rules on state registration of buildings and the availability of the information on some of these buildings on the website of the State Committee for Urban Planning and Architecture, the scope of the provided information is very limited. While the section (of the website) entitled State Registry of Constructions includes information on apartment houses built on the state's order, it is recommended that the scope be expanded to include all construction units officially registered.

Another development is the adoption of a law, which sets down the legal and economic grounds for "Build-Operate-Transfer" financing model of investment projects in construction and infrastructure, which is widely used across the globe.³⁸ Under this form of project financing, investor is responsible for the funding of construction, and the investment costs are paid for through consumers' or competent authority's procurement of the goods and services offered by the investor, within the period indicated in the agreement.³⁹

However, some of recent amendments to the legislation are regressive. As a case in point, now State Agency for Control over Construction Safety (under MES) may decide to suspend construction and installation work at buildings (which are required to notify rather than be authorized by local authorities), if it is revealed that it was constructed in breach of Article 80.4 of Code of Urban Planning and Construction.⁴⁰ This rule contradicts the "notification procedure", which has been introduced to reduce red tape in construction of private houses and creates additional extra bureaucratic burden. If a citizen fails to construct a building in accordance with the normative guidelines (provided it does not violate safety regulations), it is sufficient to impose a certain amount of fine through the proceeding of an administrative offence to address the problem. It is not expedient to suspend the construction for the aforementioned reason.

Another negative amendment involves the delegation of wide authority to State Agency for Control over Construction Safety to suspend construction work and decide whether to demolish a building. These norms risk increasing red tape for ordinary citizens.⁴¹

Overall, recent adoption of significant amendments to the legislation regulating the construction sphere is positive on account of their filling the loopholes.

Implementation status of recommendations

Registration of real estate

Despite the progress made in the implementation of TA recommendations to state agencies, including the Committee, there remain problems in this area. The majority of these recommendations cover undocumented (real estate, which lack or may not be issued documents required to officially register property rights to them) real estate, including problems in the registration of apartment houses and private houses.

³⁸ "On implementation of investment projects in connection with the construction and infrastructure facilities on the basis of special funding", April 21, 2016, <http://www.president.az/articles/19517/print>

³⁹ Ibid, Article 2.0.2

⁴⁰ AR Presidential Decree on "Rules on exercise of state oversight of construction", Article 2.10, 17 November, 2014, <http://www.e-qanun.az/framework/28677>

⁴¹ AR Presidential Decree on "Rules on demolition of construction units", 22 May, 2015, <http://www.e-qanun.az/framework/30041>

The identification of “The list of documents confirming acquisition of rights over real estate” approved by presidential decree dated January 13, 2015 has resulted in an expedited registration of property rights over residential and non-residential areas. The Committee’s mass distribution of extracts from registry in the capital and the regions evidences that there is an increase in the scope of activities in this field. In another positive development, the Committee has introduced the single-window system vis-à-vis preliminary registration of property rights. It offers its services, such as receipt and preparation of documents containing diverse content, from one center.

Registration of undocumented, including unauthorized constructions

TA recommended as one way of documenting residential areas that were built in public or municipal lands without due authorization and which were inhabited over 5 years, to privatize the lands by way of their sale to the citizen. On a positive note, the Committee, under its direct supervision and through announcements on its website, organizes auctions for privatization of lands by involving the citizens. But Absheron region and Baku are left out of the scope of these auctions, despite the fact that underprivileged families and families from different vulnerable categories reside in these unauthorized buildings. Our recommendations stress that in order to solve the problem of undocumented housing involving families that fall under this category (and not to demolish residential buildings), it is expedient to sell the land areas to the residents on preferential terms.

Recommendations also asked for classification of the courses of action per specific cases on the basis of the documented unauthorized buildings and implementation of a full-package of actions in that regard, as well as establishment of a special state commission to address the problems of buildings, whose construction was completed, but which were yet to be commissioned.

In 2011, a Commission was set up under AR Presidential Administration to deal with the problem and to register unauthorized buildings. Unfortunately, the Commission’s work is not open to public and in spite of a long period of its existence, it has not been accountable to the public and no information is available as to its current operations.

Registration of apartment houses

In the past year, problems remained regarding the commissioning of apartment houses, certification of property rights over these buildings and apartments in them. The reports about the Committee’s activities show that in 2015 property rights to 57 apartment buildings were registered.⁴² For comparison, the number of apartment houses registered was 45 in 2013⁴³ and 56 in 2014.⁴⁴ These numbers pale in comparison to many undocumented apartment houses in the country.

Over hundred documents are required to build an apartment house and the scope of these documents remains opaque. Our recommendations to cut the red tape by reducing

⁴² AR State Committee on Property Issues Annual Activities Report 2015, <http://emdk.gov.az/images/pdf/HESABATLAR/komiteillik2015gorulmusisler.pdf>

⁴³ AR State Committee on Property Issues Annual Activities Report 2013, <http://emdk.gov.az/images/pdf/HESABATLAR/EMDK2013Tillik.pdf>

⁴⁴ "Record in apartment registration", 3 April, 2015, <http://www.anspress.com/iqtisadiyyat/03-04-2015/menzil-qeydiyyatinda-rekord>

the number of documents remain unimplemented.⁴⁵ But thanks to a number of regulatory changes the ranking of Azerbaijan in 2016 Doing Business report of World Bank on construction permits improved by 24 steps to 114th.⁴⁶

Nonetheless, the excessive demands and lack of a centralized service delivery for diverse services in competency of separate state agencies hinder investors from entering Azerbaijan's real estate market and creates fertile ground for corruption in this sector. To avoid red tape, businessmen or construction cooperatives building apartment houses are forced into shady deals with the bureaucrats. Moreover, the complexity of the regulations lead to a situation, in which construction companies embark on construction without authorization and public safety is jeopardized as a result. Empirical evidence indicates that expediting permit for 22-month construction project period by 3 weeks leads to a 5.7% increase investments in construction and a 16% in the amount of collected property tax.⁴⁷

A cobweb of requirements negatively impacts the work of state agencies. Local and international experience, as well as research indicates that the more bureaucratic demands, the less is the efficacy of public oversight in that area and the favorable the situation is for corruption. TA's recommendations to clearly indicate the list of documents needed for constructions permits for apartment houses and cutting down the number of these documents still remain valid. As well as, the recommendation to provide the services of different regulatory state agencies through single window policy is still in force.

It is also suggested that the single window policy for issuing construction permits and commissioning apartment houses, which has been in force since January 1, 2013 should be improved and the competences of the aforementioned Commission should include settlement of problems pertaining to the registration of apartment houses, too.

Access to information on apartment houses, whose construction is planned or ongoing

Individuals wishing to purchase an apartment do not have access to information on apartment houses. There has not been considerable progress in the implementation of our recommendations, such as the creation of a website by the legal person doing the construction, the placing of information on apartments in the ongoing or planned construction unit, progress with the construction process and other relevant information on this webpage. Moreover, there has been no development, excluding few exceptions, in regard to our recommendations to create a single database of buildings, and place construction permits, the building and its structure, the characteristics of engineering installations, the list of documents required for commissioning the building and other relevant recommendations by TA.

Registration in actual residential address

⁴⁵ "Don't hurry to buy an apartment", 12 April, 2016, <http://sputnik.az/life/20160412/404608634.html>

⁴⁶ Dealing with Construction Permits, Doing Business 2016, <http://www.doingbusiness.org/data/exploreconomies/azerbaijan#dealing-with-construction-permits>

⁴⁷ Dealing with Construction Permits, Doing Business 2016, <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Topics/dealing-with-construction-permits.pdf>

There was no progress, despite TA's recommendations, toward creating a legal framework for resident registration based on the actual residential address. This state of affairs leads to a number of problems. Citizens, who cannot register in the address they live, do not pay local taxes, cannot use their voting rights (e.g. local elections), face red tape in court proceedings (courts are chosen based on the place of citizens' registration), the state lacks adequate information on its citizens, etc. Taking into account the complexity of the problems besetting undocumented buildings, the Committee should develop legal-normative guidelines for registration of the citizens per residential addresses.

Registration of property right by residential address in apartment houses

TA recommended that documents required for registration of property rights over buildings be electronically circulated. The Committee has started to employ the single window policy for state registration of property rights over real estate. But the single window policy entails centralization of service delivery as it pertains to the Committee's sub-organizations. The e-management of documents among different concerned state agencies, but primarily between local executive authorities and the Committee such as ones required for registration of newly constructed apartment houses, or private houses, whose construction requires authorization by or notification to local authorities, could serve to increase transparency and accountability of state agencies.

Some of the problems arise from lack of clarity of demands, which exist at the level of local executive authorities and often are accompanied with abuse of power. For instance, the lack of zoning schemes (at the national level) or the failure to timely update them encourages artificial barriers to constructions. Local executive authorities sometimes refuse to authorize construction claiming that they are not in conformity with zoning schemes, and the citizens cannot verify whether these claims are true, because of lack of access to these schemes. Although the approval by the Cabinet of Ministers of rules on determining conformity of construction projects to requirements, in cases when rules on preparing zoning schemes and zoning schemes are missing (or their period has expired), has brought clarity to normative requirements, they do not expedite bureaucratic procedures.⁴⁸

Operation of call center

The Committee operates No 148 call center for issues related to registration of property rights over real estate. The center's work is satisfactory.

⁴⁸ AR Cabinet of Ministers decision on "Rules on preparation, authorization and confirmation of zoning schemes, as well as the list of entities authorizing those schemes", 12 January, 2015, http://www.e-qanun.az/alpdata/framework/data/30/f_30375.htm

V. UTILITIES

Azerigas PU & Azersu OSJ& Azerishiq OSJ

Introduction

Efficient supply of gas is one of the main preconditions for quality standard of life for every family or operation of a business. In Azerbaijan three national monopolists: Azerigas Open Joint Stock Company under the SOCAR, Azersu and Azerishiq supply utilities both to household and commercial consumers. All three companies are inefficient which is supported both by the multiple complaints from citizens⁴⁹ and huge arrears before the budget⁵⁰. In case of electricity supplier, problems in this sector became an issue of discussion in the Parliament⁵¹ pursuant embezzlement⁵² and restructuring of the supplier⁵³ and resulted in recent increase of tariffs for water consumption and utilization of sewage water for household consumers⁵⁴.

Goal

The goal of TA is to encourage and assist in establishment of an efficient system of supply of utilities to consumers.

Implementation of recommendations

So far TA conducted 7 round tables to discuss reforms and problems in supply of utilities in Azerbaijan⁵⁵. As of date, few changes have been made to improve efficiency, accountability and transparency in the supply of utilities to population.

Legal framework

Round table of 25 June 2014 with Azerigas recommended to simply procedures to extend Technical Terms for building owners to connect to the system of gas supply, as well as other services related to gas supply. The issuance of Technical Terms has been delegated to ASAN centers⁵⁶, for example, in Ganja the process has been launched. The Ganja center renders the whole range of services (9 in total) to gas consumers.⁵⁷

Institutional reforms

⁴⁹ Advocacy and Legal Resource centers in Baku, Ganja and Quba run by Transparency Azerbaijan

⁵⁰ "Azərenerji" ASC-nin SOCAR-a olan borcunun məbləğivə borcunu ödəyə bilməməsinin səbəbləri açıqlanıb,

<http://news.lent.az/news/234998>

⁵¹ "Azərenerji" vƏBŞİH-də maliyyə pozuntuları Parlamentdə müzakirə edilir, www.qafqazinfo.az, 15.04.2016-ci il

⁵² Счетная палата обвиняет «Азербэнержи» в растрате бюджетных средств, 15.12.2015,

<http://haqqin.az/oldage/59207>

⁵³ "Azərişiq" Açıq Səhmdar Cəmiyyəti haqqında Azərbaycan Respublikası Prezidentinin 10/02.2015-ci il tarixli Sərəncamı, www.president.az

⁵⁴ Decision of the Tariff Council, 16.05.2016, www.e-qanun.az

⁵⁵(1) Elektrik enerjisi təchizatı sahəsində vətəndaşların qarşılaşdıqları problemlər və onların həlli yolları, 14.06.2011-ci il; (2) Gas təchizatı sahəsində vətəndaşların qarşılaşdıqları problemlər və onların həlli yolları, 28.06.2011-ci il; (3) Su təchizatı sahəsində vətəndaşların qarşılaşdıqları problemlər və onların həlli yolları, 11.11.2011-ci il; (4) Elektrik enerjisi təchizatı sahəsində vətəndaşların qarşılaşdıqları problemlər və onların həlli yolları, 28.06.2013-cü il (5) Qaz təchizatı sahəsində şəffaflığın artırılması, 25.06.2014-cü il; (6) Su təchizatı sahəsində şəffaflığın artırılması, 28.01.2015-ci il; (7) Qaz təchizatı prosesində istehlakçıların hüquqlarının qorunması, əffaflığın artırılması və mövcud problemlərin həlli yolları, 24.12.2015-ci il, www.transparency.az

⁵⁶ "Azəriqaz"ın səlahiyyəti alındı - Texniki şərtləri "Asan xidmət" verəcək. 11 November 2015

<http://www.qafqazinfo.az/iqtisadiyyat-4/qaz-cekdirmek-pulsuz-olacaq-rovneq-abdullayev-video-128294>

⁵⁷ Gəncə "ASAN" xidmət mərkəzində vətəndaşlara "Azəriqaz" İB-nin xidmətləri təklif edilir, 11 November 2015,

<http://www.olaylar.az/news/social/148080>

The process of installation of smart meters for gas suppliers has been launched⁵⁸, however, the process is slow and cases when payment is demanded from household consumers, that shall receive new meters free of charge, can be encountered with. Also, in case of old meters practically no devices to read readings of the meter and produce electronic bills are available in the regions⁵⁹. The process of installation of water meters is expected to be expedited by a new presidential decree⁶⁰.

TA's recommendations emphasized the importance of provision of controllers with indexer apparatus. Presently, all three communal service providers' controllers are provided with indexer apparatus.

E-government

In accordance with TA's recommendations, the service providing information about users of "Water provision and canalization services" through e-government portal is active. Simultaneously, according to the information from Azersu OSJ, electronic version of the service generating document, proving that a subscriber is not in debt is on the way; it's been tested and will be active soon.

Transparency and accountability of public institutions

TA has always advised to privatise these agencies. However, no step has been made in this regard. TA has also recommended that certain services should be given to ASAN centers. Respectively, ASAN communal centers are being established in accordance with presidential decree.

Conclusions and key recommendations

The major recommendation is to privatize the utilities suppliers and establish several companies in each sector to create competition.

Legal framework

- To review legal framework regulating the customer-supplier relationship and to set forth responsibilities of the supplier.

Institutional reforms:

- To expedite the process of smart meters installation in line with the provisions of the law for free installation of new meters for household consumers.

E-government:

- To create online payment tool for installation of smart-meters;
- To integrate payment for utilities supply and installation of meters into the single e-government portal;

Transparency and accountability of public institutions

- To tighten control over violation of procedures by the suppliers' inspectors;
- To place comprehensive information about suppliers' its activities;

⁵⁸ Interview with Alekper Agasiyev, expert in supply of utilities dated 16.12. 2015

⁵⁹ Complaints submitted by customers of Transparency Azerbaijan Advocacy and Legal Advice Centers

⁶⁰ "İstehlakçıların suölçən cihazlarla təmin edilməsi ilə bağlı tədbirlər haqqında" Azərbaycan Respublikası Prezidentinin 29.03. 2016-cı il tarixli sərəncamı, www.president.az

- To create dedicated complaints hotlines;
- To adopt Code of Ethics for employees of the water, gas and electricity supply system;
- To annually organize opinion surveys with participation of independent experts, media and civil society.

VI. OTHER AREAS

i. Taxation on Sales of Real Estate

Ministry of Taxes

In February 2015 the Ministry of Tax announced new interpretation of some provisions of the 2001 Tax Code and extended profit tax regulation onto sales of real estate^{61,62}. The profit tax is calculated on the basis of the difference between expenditure and revenue. With regards to the real estate in practice, many sellers had documented cost of real estate at the time of purchase, but could not prove other investments, such as costs of amenities, utilities, repair and renovation, etc. In cases of real estate purchased 15 years and more ago, the documented original cost of purchase was so low that it unfairly increased the profit tax. In the result, similar properties were subject to different amounts of tax depending on the time of purchase. In cases when the original cost is unknown, for example, if the property was privatized after demise of the former Soviet Union, the legislation allows applying a special formula⁶³ to calculate the profit and respectively profit tax can be derived⁶⁴. In this case the profit is estimated at 1/6 of the revenue, of which the tax is calculated at 20%. This formula is much more beneficial for sellers who cannot prove the cost of real estate than for those who have purchase documents of 15 and more years ago, when the real estate prices were much lower and the purchasing power of manat (Azerbaijan national currency) much stronger than today. This interpretation caused many problems and led to shrinking of the real estate market⁶⁵ and growth of investment into real estate abroad.⁶⁶

Therefore, in August 2015 and at subsequent the round table of 20 November 2015 TA⁶⁷ recommended instead introducing a flat rate based on the size (footage), geography and destination (residential, commercial, and agricultural). This recommendation was adopted with regards to buildings/constructions⁶⁸, but taxation of land was unchanged. In the result, since 2016 two different methods are applied to taxation of the two types of real estate, which creates confusion and unfair taxation. Taxation of profit from sales of agricultural land at the same rate as the land used for commercial purposes without taking into account the quality of soil⁶⁹, evokes special concerns as it will inevitably harm agricultural production and lead to rise of their prices.

⁶¹ "Министерство налогов информирует о налогообложении сделок по продаже недвижимости", Алена Салаева, 1st news, 11.02.2015, http://www.1news.az/economy/banks_n_finance/20150211111833364.html

⁶² В Азербайджане изменились условия продажи недвижимого имущества", Азад Гасанли, агентство Тренд, 10.02.2015, <http://www.trend.az/business/economy/2362928.html>

⁶³ Vergi ödəyicisinin mənfəəti birbaşa müəyyən etmək mümkün olmadığı hallarda mənfəətin hesablanması Qaydalarının təsdiq edilməsi barədə" Azərbaycan Respublikası Nazirlər Kabinetinin 2001-ci il 1 mart tarixli 55 nömrəli qərarı, [www/cabmin.gov.az](http://www.cabmin.gov.az)

⁶⁴ Vergidən yayınmaya meyllik və real rentabelliğin qiymətləndirilməsi, Məruzəçi: Vergilər nazirinin vergi siyasəti məsələləri üzrə müşaviri, Akif Musayev, 10/ 04/2015, akif.musayev@taxes.gov.az

⁶⁵ Рынок недвижимости просел на треть, 10 Июля 2015, <http://haqqin.az/news/48748>

⁶⁶ Азербайджанцы и турки скупают жилье в Грузии, ykpou.org, 13.06.2015

⁶⁷ The round table on Real Estate Taxation dated 20 November 2015 by Transparency Azerbaijan, www.transparency.az

⁶⁸ Amendments to the Tax Code dated 7 December 2015 to enter into force as of 1 January 2016

⁶⁹ NK-nın 230 nömrəli 29 dekabr 2000-ci il tarixli Kənd təsərrüfatı təyinatlı torpaqlar haqqında qərarı <http://www.taxes.gov.az/modul.php?name=qanun&news=506>

Recommendation:

To adopt respective changes to the legislation:

- Enabling to calculate the tax from the sales of the land depending on its footage, geographic location and destination (residential or non-residential). In other words, to establish a fixed rate for 100 sq. m., for example, at 20 AZN multiplied by geographic coefficient multiplied by a coefficient for the land used for non-residential purposes.
- Agricultural land shall be taxed separately. A fixed rate, for example 20 AZN for 100 sq.m. multiplied by geographic coefficient multiplied by a coefficient for the soil quality (the system of bonitet scale).

ii. Performance assessment for civil servants

Civil Service Commission

Merging of the Commission with the Students' Admission Commission ⁷⁰ into a public legal entity will give more flexibility to conduct further reforms in the recruitment to the public service. The analysis below covers activities of the Commission prior to the merge.

In the previous monitoring period ⁷¹ and in line with TA recommendation ⁷², the Commission on Civil Service adopted the "Rules on Evaluation of Job Performance of Civil Servants" approved by the Cabinet of Ministers decree⁷³. The Rules provide a legal framework for merit-based assessment and rewarding of public employees annually. Also, the Commission developed and discussed with all stakeholders involved, including civil society, the draft Civil Service Code⁷⁴.

Increasing transparency in recruitment to the civil service

Pursuant introduction in 2014 of a system enabling to follow the test examination live online starting from 2014 and of a new system of online "mock" test examination in 2015, both aimed to help the applicants for the civil service to test their knowledge and better prepare for the examination to the civil service⁷⁵; numerous TV programs have been organized and advertisement video clips⁷⁶ released to assist applicants for the civil service to understand the application process and shall serve as a model for other public agencies.

⁷⁰M.M.Abbaszađanın Azərbaycan Respublikasının Dövlət İmtahan Mərkəzi publik hüquqi şəxsin Direktorlar Şurasının sədri vəzifəsinə təyin edilməsi haqqında Azərbaycan Respublikası Prezidentinin Sərəncamı 12 aprel 2016-cı il, www.president.az

⁷¹Prior to 01.06.2015

⁷² Advocacy round table on Improvement of Good Governance Principles in Civil Service, 02.02.2011, www.transparency.az

⁷³"Dövlət qulluqçusunun attestasiyasının keçirilməsi Qaydaları"nın təsdiq edilməsi haqqında Nazirlər Kabinetinin 19.11. 2015-ci il tarixli qərarı № 367, www.csc.gov.az

⁷⁴Dövlət Qulluğu Məcəlləsi" layihəsinə dair keçirilmiş ictimai 24.12. 2014-cü il tarixli -müzakirədə verilmiş təkliflər, <http://csc.gov.az/index.php/home/post/1286>

⁷⁵www.csc.gov.az

⁷⁶ www.csc.gov.az

Recommendations:

- to expedite final adoption of the Civil Service Code;
- to publish results of application of the Rules on Evaluation of Job Performance of Civil Servants" which provide a legal framework for merit-based assessment and rewarding of public employees annually.

iii. Business inspections

Ministry of Economy

Pursuant to the public denunciation of corruption and monopolies by the President of Azerbaijan⁷⁷, the government launched a series of reforms to improve the business environment. One of the developments was in full accord with the TA recommendation to keep accurate records of inspections of the private sector and minimize them⁷⁸. In August 2015 access to the Single Information Registry on Inspections of Entrepreneurial Sphere operated by the Ministry of Justice has also been given to the Ministry of Economy⁷⁹ as the main regulator for business activities in the country. Moreover, in order to give businesses a respite, the new law⁸⁰ and subsequent presidential decrees^{81, 82} provide legal basis for considerable limitation of inspections. A hotline was established for businesses to report on illegal inspections. Although, in practice, illegal inspections do take place⁸³, the number of inspections (except tax inspections) has decreased strikingly from 19.300 to 34 in the first quarter of 2015.⁸⁴

Recommendation:

- To explicitly state penalties for individual officials and agencies involved in illegal inspections;
- To publish information about violators and penalties imposed in this regard.

Licensing

In 2014 TA made some recommendations to simplify licensing procedures⁸⁵, namely:

- To award business permits and licenses through e-services (e-license);

⁷⁷Ильхам Алиев призвал бороться с монополиями, 12.10.2015, <http://haqqin.az/news/54802>

⁷⁸ Advocacy round table on "ASAN Business", 09.06.2015 under TA National Integrity System project, www.transparency.az

⁷⁹Azərbaycan Respublikası Prezidentinin 15.02.2011-ci il tarixli Fərmanı ilə təsdiq edilmiş "Sahibkarlıq sahəsində aparılan yoxlamaların vahid məlumat reyestrinin forması və aparılması qaydası haqqında Əsasnamə"də dəyişikliklər edilməsi barədə Azərbaycan Respublikası Prezidentinin 10.08.2015-cil il tarixli Fərmanı, www.president.az

⁸⁰ Sahibkarlıq sahəsində aparılan yoxlamaların dayandırılması haqqında Qanunu, 26.10.2015-ci il tarixli, www.president.az

⁸¹"Sahibkarlıq sahəsində aparılan yoxlamaların dayandırılması haqqında" Azərbaycan Respublikasının 20.10. 2015-ci il tarixli 1410-IVQ nömrəli Qanununun tətbiqi və sahibkarlıq sahəsində aparılan yoxlamaların dövlət tənzimlənməsinə dair əlavə tədbirlər barədə 26.10. 2015-ci il tarixli Prezidentinin Fərmanı, www.president.az

⁸²Sahibkarlıq sahəsində aparılan yoxlamaların dayandırılması haqqında" Azərbaycan Respublikasının Qanununa əsasən insanların həyat və sağlamlığına, dövlətin təhlükəsizliyinə və iqtisadi maraqlarına mühüm təhlükə yaradan hallar üzrə aparılmasına yol verilən yoxlamaların 26.10.20150 cil il tarixli Siyahısı, www.president.az

⁸³Interviews with 6 business owners by TA in December 2016

⁸⁴ EU Business Climate Survey Report, 2016

⁸⁵National Integrity Systems Assessment: Azerbaijan 2014, www.transparency.az

- To provide license provision services under the centralised agency (ASAN centres).

In October 2015 President of Azerbaijan, inter alia, underlined problems of the SMEs in seeking licenses and permits for entrepreneurial activities⁸⁶. This was followed by a presidential decree aimed to simplify the process of licensing and increase its transparency and efficiency⁸⁷.

According to the new legislation, the number of areas requiring license decreased from 56 to 37. Moreover, provision of licenses in a centralised way through ASAN and electronic services is to be provided by Ministry of Economy and ASAN centers. In other words, separate state agencies are deprived of giving all kinds of licenses and only Ministry of Economy is empowered to do that. The Ministry is going to deliver this service in a consultancy with the other state bodies (in case if the Ministry needs an advise) at ASAN centers' assigned points and through e-license portal considered to be established soon. Currently, 26 permanent licenses are being provided to businesses at ASAN centers.⁸⁸ Electronic portal on licenses is on the way.

Indeed, this decree is a serious step to alleviate administrative burden on businesses. However, some questions remain.

It is unclear whether permits (certificates and other similar documents) will still be issued by respective public agencies through single e-portal or by the Ministry through ASAN centres. Practice shows that public agencies manage to downgrade the concept of e-service to e-application for services to be rendered by the state.

Hopefully, a dedicated law on licenses and permits will bring clarity to this issue and set clear guidance for the process of licensing.

Recommendations:

- To expedite adoption of the "Law on Licenses and Permits,"
- To create equal licensing regime for state owned and private companies;
- To streamline the system of permits and certificates;
 - to give a clear definition of permits and certificates,
 - to make a list of permits and certificates and respective issuing agencies;
 - to clearly state their terms of validity;
 - to establish a simplified mechanism to renew permits and certificates;
 - to fix a lower price for renewal.
- To make sure that business permits and licenses are awarded through e-services (e-license) rather than information is provided (e-information) or applications are accepted (e-application).

⁸⁶Ильхам Алиев призвал бороться с монополиями, 12.10.2015, <http://haqqin.az/news/54802>

⁸⁷Sahibkarlıq fəaliyyətinin xüsusi razılıq (lisenziya) tələb olunan növlərinin sayının azaldılması, xüsusi razılıq (lisenziya) verilməsi prosedurlarının sadələşdirilməsi və şəffaflığının təmin edilməsi haqqında Azərbaycan Respublikası Prezidentinin 10.10.2015-cil il tarixli Fərmanı; www.president.az

⁸⁸ <http://asan.gov.az/az/content/index/412#.V2hP5LiLSM8>

iv. **Mandatory health check-up and provision of medical consultations to people willing to enter into a marriage**

Ministry of Health

In line with TA recommendations⁸⁹ recent changes to the Family Code ensure mandatory health check-up and provision of medical consultations to people willing to enter into a marriage.⁹⁰ The results of TI Az monitoring⁹¹ revealed that there were several implementation problems that require attention.

According to the law, mandatory health check-up and provision of medical consultation is based on application to state and/or municipal medical institution. In practice, Ministry of Health assigned one medical institution and a concrete doctor at that for each administrative district. This information is not available to the general public on the internet and it takes a personal visit to the registration department⁹² to obtain this information. The certificate can also be obtained from a designated medical institution from one of the ASAN centers⁹³.

A copy of national ID shall be submitted at the application process, this information is also not publicized, and as medical institutions do not offer photocopying services, applicants have to make a return visit to a medical institution.

Under the law⁹⁴, check up shall include blood analysis (for haemoglobin pathological diseases; HIV/AIDS and syphilis). Also, medical-genetic, medical-physiologic and family planning consultations shall be provided. In practice, medical check-up is limited to blood analysis.

Though the law specifically mentions that medical services are free of charge, in practice, blood analysis turns out to be a fee based service.

Alongside with this, concrete results of the health check-up are recognized as confidential. Only a medical certification of adequate health condition shall be submitted to the respective body along with the application for marriage registration. This provision is observed.

Recommendations:

- to accept medical certificates from all medical institutions duly licensed by the Ministry of Health;
- meanwhile, to place information on authorized medical institutions and documents required at the website of Ministry of Health;

⁸⁹ Round table of 28 August 2014 on issues in registration of civil status acts

⁹⁰ Azərbaycan Respublikasının Ailə Məcəlləsində dəyişikliklər edilməsi haqqında AR 17.10.214-il tarixli Qanunu, www.president.az

⁹¹ Nikaha daxil olmaq üçün lazım olan sənədlər, onlaən aləmma prosedurları, və orqnları, 09.2015, www.transparency.az

⁹² Department of registration of civil status acts under Ministry of Justice

⁹³ Медсправку для заключения брака можно получить в АСАН, <http://minval.az/news/123463858>
4 August 2015

⁹⁴ Azərbaycan Respublikası Nazirlər kabinetinin 122 nömrəli 28.04. 2015il tarixili qərarı 2 nömrəli 05.08.2015 tarixli əlavə, www.e-qanun.az

- in order to ensure that the service is rendered free of charge at public institutions to set up a dedicated information and complaint hotline or e-service at the website of the Ministry of Health;
- to add hepatitis C to the list of diseases for mandatory check up.

v. Applications to Government

a) Government hotlines

At the end of 2008 TA monitored existing hotlines⁹⁵ (only four were available at the time at Ministry of Education, Ministry of Tax, State Social Protection Fund and Prosecutor General's) and put together a report with findings and recommendations. The main observation was that both telephone and internet based hotlines of public agencies lacked single methodology and guidance for setting up and operation. Since 2008 TA repeatedly recommended the government through ALAC and subsequent APT project to adopt single regulation. The newly adopted Rules⁹⁶ will attend to this problem.

Government hotlines are in general very good in provision of legal advice and information, but not very efficient in tackling complaints. According to the Article 1.2.2 Call centers shall ensure rule of law in activities of public; conduct unbiased investigation of the appeals; prevent facts of abuse of office; conduct analysis in order to enhance their operations; keep citizens satisfied

In order to be efficient, a hotline has to be technically equipped and have technical support, eg., user feedback mechanisms. Article 11 sets forth technical equipment standards.

The staff has to undergo multi-aspect training: legal, technical, procedural, and psychological and Article 7 of the above rules envisions monthly and annual testing of the call centers staff knowledge and regular training programs

The hotline shall have a toll free number which is set forth in the 2.1 and says that the hotline renders service free of charge.

Accountability and transparency is the key to the credibility of the hotlines - regular statistics shall be published. Article 10 regulates reporting of call centers; however, does not mandate public disclosure of their reports.

Civil society hotline can work to bolster effectiveness of government hotline by providing support in the form of training in procedures and push for accountability and transparency of the information gathered by public hotlines. The Rules do not refer to any form of cooperation with the civil society.

⁹⁵Hökumət qaynar xəttlərinin daha da effektivləşdirilməsi, Transparency International, 2009, www.transparency.az

⁹⁶Dövlət orqanlarında çağrı mərkəzlərinin fəaliyyətinin təşkili Qaydaları'nın təsdiq edilməsi haqqında Azərbaycan Respublikasının Nazirlər Kabinetinin 25.02.2015-cil il tarixli qərarı, www.taxes.gov.az

The hotline shall have the status of a separate structural unit; have its own budgets and formal procedures in writing. Good advertisement campaign, especially in the provinces, is a key to the hotline success. These issues are not covered in the regulation.

Recommendations:

- To mandate public disclosure of the hotlines statistic and analytical reports;
- To add provisions that ensures certain freedom of action within set boundaries for the hotlines, i.e., status of a separate structural unit, their own budgets and formal procedures in writing;
- To mandate cooperation with the civil society and specify its forms;
- At citizens' request to make audio records of the appeal available to the caller.

b) Protection of whistle blowers

TA repeatedly⁹⁷ recommended adopting the law on whistle blower protection. The legislative work group was established and two NGOs (TA and its partner under APT project CRF) were invited along with two public agencies (National A-C Commission and Civil Service Commission)⁹⁸. The draft law has been developed and input from respective public agencies and experts collected. The draft is expected to be included into the parliament's agenda for discussion⁹⁹.

On the practical side, Ministry of Defence dismissed several high rank officials¹⁰⁰, including the official that featured in a complaint filed by TA on behalf of a whistle blower¹⁰¹ and features in TA documentary on whistle blowers under NIS project¹⁰².

Recommendations:

- to expedite adoption of the whistle blower protection law;
- to encourage law enforcement bodies to act upon complaints filed by whistle blowers independently and through civil society organizations.

c) Citizens' registration at the place of residence

TI Az suggested¹⁰³ to reduce the number of documents required for sales of real estate, including Form No 2, a document testifying to permanent registration of Azerbaijan nationals at the place of residence and issued by passport desks, a local structural unit within the police. In principle, this form is redundant and shall be annulled altogether, as the national ID has respective information, which is also available in YAMAS data base run by the same Ministry of Internal Affairs. This recommendation is partially

⁹⁷ Advocacy round table arranged jointly with the Parliament, 14.05.2012, www.transparency.az

⁹⁸The Law on Whistle blower protection will be publicly discussed in Azerbaijan, Trend news agency, 31.07. 2014, <http://az.trend.az/news/society/2295039.html>

⁹⁹ Correspondence of Transparency Azerbaijan with the working group dated November 2015

¹⁰⁰Ильхам Алиев снял с должности двух генералов, 14.08.2015, <http://haqqin.az/news/50947>

¹⁰¹НПО - участники мероприятия осуждают коррупцию, contact.az, 29.04.2015

¹⁰²www.transparency.az

¹⁰³ Advocacy round table on Addressing problems and raising transparency in registration of apartment houses, dated 12 Dec 2014; and Advocacy round table on addressing problems in registration of private houses, dated 28 July 2015, www.transparency.az

implemented. According to new regulation¹⁰⁴, the Form No 2, will now be easily obtained from ASAN centers within one working day. The new tool does not annul the previous paper based form issued by local bodies that will still be in demand by rural and small town residents outside of ASAN coverage.

Another problem with registration is that due to difficulties with processing title documents for real estate and mass movement of people from provinces to big cities, many people do not actually live at the place of registration, which creates many problems for authorities in finding people¹⁰⁵.

Recommendations:

- to annul the form No 2
- to introduce the institute of actual residence along with residential registration, analogue to legal and actual address for legal entities.

vi. Performance assessment for teachers

Ministry of Education

In line with TA recommendations to conduct performance assessment for teachers¹⁰⁶, pursuant completion of the pilot performance assessment launched in 2014¹⁰⁷, the process is in full swing in the regions of the country. 10% of increase of salaries for the teachers that have successfully passed the pilot performance was started¹⁰⁸.

Recommendations:

- To disclose detailed statistics on teacher performance assessment results, i.e. how many teachers participated; what is the percentage of those who failed; the percentage of those with highest scores; financial and administrative repercussions for participants depending on the results of assessment, etc.

¹⁰⁴ Dövlət xidmətlərinin göstərilməsində şəffaflığın artırılması, yaşayış yeri üzrə qeydiyyat və lisenziyalaşdırma prosedurlarının elektronlaşdırılması sahəsində bəzi tədbirlər haqqında Azərbaycan Respublikası Prezidentinin 31.08.2015-ci il tarixli Fərmanı, www.president.az

¹⁰⁵ Advocacy round table on taxation of real estate, 20 November 2015, www.transparency.az

¹⁰⁶ Advocacy round table Current situation in pre-school education, problems and development perspectives, 29.11.2010, www.transparency.az

¹⁰⁷ Микаил Джаббаров обещает поднять зарплаты учителям, 11.09.2014, <http://haqqin.az/news/29828>

¹⁰⁸ İmtahandan keçmiş müəllimlərin maaşı artırıldı, 18.03.2016, www.transparency.az/cnewsandwww.edu.gov.az