

Overall Score:

63 - Weak

Legal Framework Score:

89 - Strong

Actual Implementation Score:

38 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁵Anti-Corruption Non-Governmental Organizations

1. Are anti-corruption/good governance NGOs legally protected?

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

According to Article 58 of the Constitution of the Republic of Azerbaijan, adopted in 1995, the "Right to association" states that everyone has a right to join other people. And that shows that any legal or physical person has this right, can enjoy it and that this right is provided by the Constitution.

Paragraph 2 of the Article says that "Everyone has the right to establish any union, including political party, trade union and other public organization or join the existing organizations" and shows that the scope of right to association is broad. This includes establishment and activity of political parties, establishment and activity of trade unions, establishment and activity of any other union in any form and therefore adheres to the frames of the classic right to assembly.

The Constitution also guarantees and emphasizes free activity of the unions established within the frameworks of the right to assembly.

Paragraph 4: "Activity of unions intended for overthrow of legitimate state power by force on the whole territory of the Republic of Azerbaijan or on any of its part is prohibited." This determines the limit of assembly from the purpose point of view. The only legitimate purpose that gives grounds for the restriction of the freedom of association is "overthrow of legitimate state power by force" and that clearly shows tracks of two overthrows of power and one attempt to overthrow power that occurred between 1991 when the country gained its independence and November 1995, when the Constitution was adopted, and only relatively corresponds to one of four different grounds mentioned in paragraph 2 of Article 11 of the European Convention for the Protection

of Human Rights and Fundamental Freedoms. At the end of paragraph 4 it is said that activities of the unions may be terminated only with court decision and no executive or any other institution has such an authority.

As it is seen, the law makes provisions for the procedure of foundation of NGOs. According to the law, the registration of NGOs is conducted only in Baku and with corresponding structures of the Ministry of Justice. The legal entities' state registration is carried out as per the single window principle.

References:

1. Situation with the right to association in NGOs examples report on analysis of the legislation, Prepared by Alasghar Mammadli, Published by Democracy Learning Public Union
2. The Constitution of the Azerbaijan Republic
3. The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Unions and Funds)

Yes: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

No: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

According to the Law of Azerbaijan Republic "On Grant," any natural entity and legal entity of Azerbaijan Republic whose basic objective according to a charter is charity or collection of means for projects and programs that may be a subject of a grant and whose activity is not aimed at generation of profit, could provide the grant to legal and natural entities of Azerbaijan Republic and foreign countries.

References:

1. The Law of Azerbaijan Republic "On Grant"

Yes: A YES score is earned if anti-corruption/good governance NGOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

No: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

The New Decree aims at ensuring the implementation of the law of 30 June 2009, which introduced a set of changes and amendments to the Law on Non-Governmental Organizations (Public Associations and Foundations) (hereinafter the NGO Law). The New Decree provides, in pertinent part, the following:

1. Annual financial reports of NGOs will be submitted to the Ministry of Finance (MoF). If an NGO fails to submit the report by the deadline, the MoF can send a written warning to the organization and issue an instruction to submit the relevant report within 30 days.
2. The Ministry of Justice (MoJ) will have the authority to hold negotiations on agreements for the state registration of branches or representations of foreign NGOs.
3. No transactions may be made with funds provided under grant agreements unless the agreement is registered with the Ministry of Justice.
4. NGO Council and Mass Media Support Fund will ensure that the grants provided from the state budget are used for their intended purposes.

The New Decree also prohibits NGOs from making any transactions with grant funds unless the grant is registered with the MoJ, a requirement that already exists in Articles 4.4 and 4.5 of the Law on Grants. We believe that the New Decree merely reiterates this grant registration requirement, perhaps sending a message to relevant state bodies that they should be more rigorous in ensuring compliance with this part of the legislation. While there have been occasional problems in practice (see discussion below), the Law on Grants provides for registration of a grant agreement or contract upon the submission of a notarized copy. The MoJ does not have authority under the law to 'approve' grants, only to register them. The Administrative Code provides financial penalties for failure to register a grant, and from December 2008 this fine was increased from 50 AZN (US\$63) to an amount ranging from 1000 AZN (US\$1250) to 2500 AZN (US\$3125).

The basic aim of restricting measures applied by the government to the activity of civil society is to weaken the financial opportunities of NGOs that are objectionable to the government. It is possible to observe how the absence of clear regulations on registration of grant contracts creates the basis for bureaucracy, corruption and misuse of power at the Ministry of Justice. Besides, if one considers that the financial sources of most active NGOs are foreign-donor organizations, and there is no experience (among some of them) related to signing any written contracts with grantees, it is possible to accept the practical implications of the mentioned norms to be non-democratic.

ICNL research indicates that almost no European countries have a grant registration requirement for NGOs. Requirements of this type exist in Belarus, Turkmenistan, Uzbekistan and Azerbaijan, along with several countries in the Middle East. These provide no basis for an analysis of model laws or best practices.

References:

1. Decrees of the President concerning implementation of the law on making changes and amendments to some legislative acts of the Republic of Azerbaijan (# 842-IIIQD), dated 30 June 2009.
2. The International Center for Not-for-Profit Law (ICNL) report on grant registration problem in Azerbaijan, January 21, 2010
3. The Law on Grant

Yes: A YES score is earned if anti-corruption/good governance NGOs are required to publicly disclose their sources of funding.

No: A NO score is earned if no such public disclosure requirement exists.

2. Are anti-corruption/good governance NGOs able to operate freely?

50

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

Analysis of legislation related to the state registration of legal entities, international practices, official reports, survey and interviews identify the scope of problems with regard to the state registration of NGOs. The legal basis that regulates the state registration of NGOs and the current registration practices have a negative impact on NGO registration because of its restrictions and lack of clarity. The steady decline in a number of NGOs registered over the past years is mainly attributable to the hardships

of state registration.

Since 2002, citizens of Azerbaijan have submitted hundreds of applications to the ECHR. Many citizens faced problems with registering an NGO with the Ministry of Justice, the authorized registration body. Domestic courts have not been supportive of NGOs and their founders in lawsuits against the registration body. Frustrated founders have submitted several appeals relating, in particular, to problems with NGO registration.

The government has a free hand in effect to restrict virtually any NGO activity related to public policy on the grounds that it was an unlawful “appropriation” of or “interference” with the state’s powers. NGOs are now obliged to provide lists of members, thus raising privacy concerns. Stricter financial reporting procedures allow the authorities to revoke registration on technicalities. A December 2009 presidential decree further toughened these provisions, formally banning bank transactions involving NGO grant money, unless the grant is registered by the justice ministry.

Though the various amendments and the presidential decree do not outlaw unregistered NGOs, as initially proposed, they put them in limbo, at the government’s mercy. “The unregistered NGOs can still operate, but now they may be unable to get grants and register them,” a lawmaker said. The government has so far been restrained in using the discretionary authority, but it amounts to a Damocles sword over the heads of NGOs.

In Azerbaijan the registration of NGOs is political. Decisions concerning what organization has to be registered are usually made only after consultations with the social-political department of the president’s administration. In this case, the personalities of founders and the devotion of an organization to be linked to what forces is well-examined. If these organizations are ranked among independent or opponent forces, their registration will be rejected. Therefore, only 2,460 NGOs have been registered in Azerbaijan up to 2010.

References:

1. Current status of the state registration of NGOs, report on the survey results among NGOs, prepared by Vugar Huseynov, Baku, 2011. Published by Democracy Learning Public Union
2. The International Journal of Not-for-Profit Law Volume 12, Issue 3, May 2010, http://www.icnl.org/knowledge/ijnl/vol12iss3/art_2.htm
3. The International Crisis Group, Europe Report, “Azerbaijan: Vulnerable Stability.” N°207 – 3 September 2010 [http://www.crisisgroup.org/~media/Files/europe/caucasus/azerbaijan/207%20Azerbaijan%20-%20Vulnerable%20Stability.ashx](http://www.crisisgroup.org/~/media/Files/europe/caucasus/azerbaijan/207%20Azerbaijan%20-%20Vulnerable%20Stability.ashx)
1. Freedom House Report on Nationals in Transit 2010, prepared by Magdalena Frichovo Grana
2. NGO Sustainability Index 2010
3. Civil Society Defence Committee Statement <http://www.civilsociety.az/content/view/855/28/lang.eng/>
4. Human Rights Watch statement <http://www.civilsociety.az/content/view/854/28/lang.eng/>
5. Freedom House Statement. <http://www.freedomhouse.org/template.cfm?page=70&release=1009>

100: NGOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: NGOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, NGOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | **25** | 0

Comments:

The government-sided Alliance established on behalf of NGOs anti-corruption networks involved to the political debates and at the same time formally to the decision-making process. This network was established in 2005, the procedure of membership has been complicated and became impossible for independent NGOs. At the same time, the government-sided NGOs have been involved to the decision-making process in some ministries. For example, there was established the Public Counsel in the Ministry of Labor and Social Safety of Population. 2 civic society representatives being members of the NGOs Support Counsel and leaders of the government-sided national NGOs Forum are represented in this Counsel. Only the government-sided representatives are taking part in the Counsels in the Ministry of Education. Despite the founding and recommendations of the

independent NGOs are submitted to the related state authorities, in many cases they are not taken into account. For example, despite the National Budget Group seeking for strengthening the budget transparency has submitted numerous offers to the government aiming at preventing the unavailing budget expenses, they are rejected to conduct a dialogue. Though this organization is not invited to the budget discussions held in Parliament. And the activity of the Azerbaijani organization TI is reduced. Since this organization is waiting on the government and even implementing projects due to their funds has lost its self-dependence.

References:

1. Freedom House Report on Nationals in Transit 2010, prepared by Magdalena Frichovo Grana
2. NGO Sustainability Index 2010
3. Civil Society Defence Committee Statement
<http://www.civilsociety.az/content/view/855/28/lang.eng/>
4. Human Rights Watch statement <http://www.civilsociety.az/content/view/854/28/lang.eng/>
5. Freedom House Statement. <http://www.freedomhouse.org/template.cfm?page=70&release=1009>

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

No

Comments:

Despite the absence of any decisions in connection with any anti-corruption / good governance NGOs, last year the activity of two foreign NGOs — the Washington-based National Democratic Institute (NDI) and the Oslo-based Human Rights House Network (HRHN) — was shut down.

References:

Azerbaijani Government Shutting Down Two International NGOs, http://azerireport.com/index.php?option=com_content&task=view&id=2732

Yes: A YES score is earned if there were no NGOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

No: A NO score is earned if any NGO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | **No**

Comments:

In Azerbaijan, anti-corruption activist and member of the “coalition for improving transparency in extractive industries” Ilham Huseynli has been freed, following his arrest by Azeri authorities. On Huseynli’s arrest, the PWYP-affiliated national coalition called on the government of Azerbaijan to respect citizens’ rights to freedom of expression and assembly as prescribed in the Constitution. But it is to be noted that Huseynli is one of the active members of Azerbaijan Popular Front Party, the opposition party.

Also, on March 4, police arrested Bakhtiar Hajiyev in the town of Ganja for draft evasion. Hajiyev, 29, a Harvard University graduate and a member of the youth movement “Positive Change,” ran for Parliament from his hometown, Ganja, in November 2010.

References:

1. Statement of NGO Coalition for Improving Transparency in Extractive Industries , www.eiti-az.org
2. PWYP Update — 27 April 2011, <http://createsend.com/t/r-FD271D92075BC42E>
3. Eastern Partnership NGO Forum Statement, <http://www.eap-csf.eu/en/news-events/news/eastern-partnership-statement/>
4. Oslo — The Norwegian Human Rights House <http://humanrightshouse.org/Articles/16083.html>

Yes: A YES score is earned if there were no NGO activists imprisoned because of their work covering corruption. YES is a positive score.

No: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person’s work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. “Imprisoned” is defined here as detention by the government lasting more than 24 hours.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

Legal defense organizations have experienced problems in this area. For example, Mirvari Gahramanli, who is active in the field and revealed the employment rights and the cases of corruption in the projects sponsored by the State Oil Fund, was repeatedly threatened along with her family. The office of Leyla Yunus, the director of the Peace and Democracy Institute, was demolished. Idak Abbasov, an employee of the Institute of Freedom and Security of Pressmen, and his family have been pressured. These cases have been registered and the number of such cases has increased.

References:

1. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan.
2. Bureau of Democracy, Human Rights, and Labor, 2010 Country Reports on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>

Yes: A YES score is earned if there were no documented cases of NGO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

No such case has been observed in Azerbaijan.

References:

1. Local newspapers materials and articles of the Yeni Musavat and Azadliq
2. U.S. State Department Bureau of Democracy, Human Rights and Labor

Yes: A YES score is earned if there were no documented cases of NGO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Yes, the law encourages this opportunity. Article 3 of the Law on Trade Unions stipulates that employees, pensioners, students have the right to organize into trade unions voluntarily without any permission beforehand. There must be at least seven persons in order to establish a trade union. The law only prohibits organizing into trade unions for people who are serving in the military in Azerbaijan.

References:

1. The Constitution of Azerbaijan
2. The Law on Trade Unions of Azerbaijan Republic
3. The Labor Code of Azerbaijan Republic

Yes: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

No: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

We can confirm that the primary trade union organization is established depending on the intention of the higher Trade Union Organization. This process is initiated from a higher instance. And there are no trade union organizations within any foreign organization.

The Azerbaijan Trade Unions Confederation (ATUC) was founded on February 5-6, 1993, in the Congress of Azerbaijan Trade Unions. It is a voluntary alliance of intersectorial unions representing and defending labor, socioeconomic rights and the interests of trade union members. ATUC includes 18,610 trade union organizations. The total number of trade union members is 1.6 million. ATUC also includes 28 sectorial trade union alliances.

At present, ATUC (<http://www.ahik.org>) acts as a sub-agency of the Azerbaijan government. Observations indicate that Azerbaijan's trade union organizations are on the government's side rather than on the workers' side. The lack of independence of ATUC decreases its role in the solution of existing labor and social problems in the country, diminishes its status and distorts its classical essence. It seems as if ATUC believes its work is confined to the issuance of sanatorium vouchers. Such an indifferent onlooker's approach, displayed by ATUC to labor and social problems, has reduced its social influence to a significant degree and spoiled its reputation.

References:

1. Azerbaijan Trade Unions Confederation, <http://www.ahik.org>
2. Magazine Toplum, <http://az.toplum.az/sekiller/toplum2.pdf>
3. Economic Research Report on the role of trade unions in social dialogues in Azerbaijan, www.erc-az.org
4. Interview with Fuad Rasulov, professor at Khazar University, September 2011

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

Under Article 50.2 of the Constitution, freedom of mass media is guaranteed. State censorship in mass media is prohibited. Furthermore, Article 1 of the Law on Mass Media ensures freedom of media in Azerbaijan. According to this provision, freedom of media is based on the guarantee by the state of the citizens' right to legally seek, acquire, prepare, transfer, produce and distribute information. Moreover, under Article 2 of the Law on Television and Radio Broadcasting, television and radio broadcasting is free.

According to one of the permanent commissions of Parliament, the president of the republic of Azerbaijan submitted draft law on amendments and changes in the laws on Mass Media and television and radio broadcasting, as legislative initiative to Parliament.

The relevant commissions of Parliament have already discussed the draft law and approved it. They recommended adopting this law. According to the information disseminated, these changes address matters which will allow the mass media to act independently and effectively. Besides important principles regulating television and radio broadcasting, these changes and amendments concern principles on shutting down the mass media as well.

References:

1. The Constitution of the Republic of Azerbaijan
2. The Law on Mass Media
3. The Law on Television and Radio Broadcasting
4. Law of the Republic of Azerbaijan 'On information and protection of information'
5. Law of the Republic of Azerbaijan 'On access to information'
6. Interview with Osman Gunduz , president of Azerbaijan Internet Forum, September 2011

Yes: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Under Article 47 of the Constitution, everyone may enjoy freedom of thought and speech. Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions. Propaganda provoking racial, national, religious and social discord and animosity is prohibited.

References:

1. The Constitution of Azerbaijan Republic, http://www.azerbaijan.az/portal/General/Constitution/constitution_01_e.html

Yes: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

No: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Barriers are put before the print media and journalists who criticize the government. These barriers are set in some cases by the government-backed Press Counsel. Sometimes, the Press Counsel puts newspapers, remarkable for their position, on a black list or appeals to law enforcement organizations to investigate their activity. It is to be noted that numerous print media engaging in corrupt activity are included on this list.

At the same time we have to note that the amount of assistance for the press from the state budget is increasing — and in some cases newspapers supporting independent and political parties (for example, Yeni Musavat, Azadlig) receive state support.

References:

1. Report of the International Freedom of Expression Mission to Azerbaijan 7-9 September 2010, <http://www.article19.org/data/files/pdfs/publications/free-expression-under-attack.pdf>
2. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may

occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

According to Article 14 of the Law on Mass Media, no print license is necessary. For the establishing of print publications there is no need to get agreement from the authorities. The legal or physical person wishing to establish a print publication is obliged to apply officially to the relevant organ of executive authority seven days before printing the publication.

References:

1. The Law of the Azerbaijan Republic on Mass Media
http://dam.az/az/law_on_mass_media.html

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

No: A NO score is earned if there is no appeal process for print media licenses.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100

75

50

25

0

Comments:

In practice, no license is required. According to Article 14 of the law, no license for print media is required; an official application to the MoJ must be filed seven days before printing the publication.

References:

1. Interview with Osman Gunduz, president of Azerbaijan Internet Forum

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No print media license or state fee is required to form print media. Citizens can form print media entities.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan, 11-08-2011, <http://www.state.gov/documents/organization/160448.pdf>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, Resolution 1750 (2010), <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1750.htm>
3. Freedom House, Nations in Transition, Report on Azerbaijan, 2010

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

25

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The establishment and activity of TV and radio broadcasting in Azerbaijan is totally controlled by the government. All TV channels carrying out their activity, regardless their property origin, are not independent and are supported by the government, because they are dependent on government. There is no economic competition among them. Those striving to be relatively independent are inflicted a penalty. For example, in 2009, the ANS TV channel was shut down temporarily and then its activity extended upon consent. As to sound-broadcasting companies, the frequencies of Freedom and the BBC have been placed before FM and their audience has decreased. Presently, the sound-broadcasting Freedom is tracked via Internet. In practice, it is nearly impossible for regular citizens to form a broadcast media entity. Issuance of TV and radio licenses is a purely political decision, depending on the president's administration.

The National Television and Radio Council (NTRC), the body responsible for issuing broadcast media licenses, is not an independent body because all its members are appointed by the president of Azerbaijan, who is also empowered to issue instructions to the NTRC. It should also be noted that NTRC is directly financed from the state budget, which allows direct political pressure by the government.

According to the NTRC, at present there are eight national and 12 regional television broadcasters, 12 radio broadcasters and 13 cable television broadcasters in Azerbaijan, also one satellite television broadcaster.

However, in practice, all of them adhere to a pro-government line in their news coverage and operate under the strong control of the government.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan, 11 08 2011, <http://www.state.gov/documents/organization/160448.pdf>
 - 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, Resolution 1750 (2010), <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1750.htm>
 3. Freedom House, Nations in Transition, Report on Azerbaijan, 2010
 4. http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf
2. Interview with Osman Gunduz , president of Azerbaijan Internet Forum, September 2011

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

Comments:

Under Article 14 of the Law on Television and Radio Broadcasting, a broadcast media license is necessary and the body responsible for issuing the license is the National Television and Radio Council. According to Article 18.5, rejection decisions shall be in writing and reasoned. The applicant may appeal to the administrative body and/or court within one month from receiving the rejection letter. The procedure for appealing to the administrative body is governed by the Law on Administrative Proceeding which will be effective as soon as the Code on Administrative Procedure is adopted by Parliament. The procedure for lodging a complaint with a court is governed by the Code of Civil Procedure. Under Article 296 of the Code, an interested party may start a proceeding regarding decisions and actions (inactions) of public bodies. Based on Article 299.1, an appeal shall be reviewed by court within one month with participation of officials of relevant body of executive authority and local self-regulating bodies, other bodies and organizations whose decisions and actions (or inaction) are complained upon. The court shall hear the case as to matters of facts and law in bench trial. Both parties may appeal this decision to the Appellate Court and the Supreme Court.

References:

1. The Law of Azerbaijan Republic on TV-Radio Broadcasting.
2. The Code of Civil Procedure.

Yes: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

No: A NO score is earned if there is no appeal process for broadcast media licenses.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The matter of broadcast licenses is dealt with by the president. The last license issued was to the Sport and Culture TV channels, which do not engage in any political activity. In this case, there was a formal tender. It is only these kinds of TV and radio broadcasting channels — channels that do not engage in political activity — in which licenses can be obtained in a timely manner.

References:

1) U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As licenses are issued based on political decisions, the amount doesn't play a considerable part in this matter. TV channels are created and sponsored as a rule by oligarchs; they don't seek any political aim; they are established to support the government.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan

2. Report of the International Freedom of Expression Mission

to Azerbaijan 7-9 September 2010, <http://www.article19.org/data/files/pdfs/publications/free-expression-under-attack.pdf>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

50

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | **50** | 25 | 0

Comments:

In practice, there is no problem related to access to the Internet. But the cost of linking to the Internet, especially via ADSL, is expensive.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan
2. Exclusive interview of Rahid Alekberli, Technical Director of Delta Telecom company to Turan news agency, <http://xeberler.az/eng/2010/08/30/price-reduction-should-be-accompanied-with-improvement-of-quality-says-rahid-alekberli/>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Despite the absence of an official censor on the Internet, law enforcement bodies, especially the national security bodies, are tracking seriously after it and collecting ideas against the government to make corresponding decisions. Especially discussions held in social networks are observed attentively. There are cases of punishing youths for anti-government calls. For example, Elnur Majidlu, residing in France, has been brought in a criminal case.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan
2. Interview with the Osman Gunduz, president of Azerbaijan Internet Forum, September 2011

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

The Law on Mass Media does not prohibit reporting of accurate news — even if it damages the reputation of a public figure. It should also be noted that according to Article 46.2 of the Code of Criminal Procedure, information reported by the mass media is enough grounds to initiate a criminal case.

References:

1. The Law on Mass Media.
2. The Code of Criminal Procedure.
3. Criminal Code

Yes: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

No: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The print media tied to independent and opposition parties are publishing articles about corrupt practice. These articles are devoted to the activity of the oligarch ministers and plundering of state funds. Only the sound-broadcast “Freedom” prefers to address these themes. Other broadcasts and TV channels don’t address these topics.

References:

- 1). U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan
- 2). Interview with Osman Gunduz, president of Azerbaijan Internet Forum, September 2011

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is prior government restraint (pre-publication censoring) in TV channels. Decisions concerning the politicians and experts who will participate in sociopolitical and socioeconomic broadcasting are made beforehand. There is a “black list” in some TV channels of experts chosen because of their oppositional position. These people are prohibited from taking part in various broadcasting as experts; and it is prohibited to transmit stories from the events where these people participated.

As to the print media, there is no prior government restraint (pre-publication censoring). They are free to publish any articles on anti-corruption stories, even though some convictions in these articles are not proved by facts.

References:

- 1) U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan.
- 2) Interview with Osman Gunduz, president of Azerbaijan Internet Forum, September 2011

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

50

10a. In law, print media companies are required to publicly disclose their ownership.

Yes

No

Comments:

Under Article 28 of the Law on Mass Media, print media entities should publish some information, including information about the founder (or co-founder) on each publication. Publication of products of print media entities without stating information about their founders or deliberately stating inaccurate information is prohibited.

References:

1. The Law on Mass Media

Yes: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

Yes

No

Comments:

Under Article 28 of the Law on Television and Radio Broadcasting, a broadcaster should announce its name and other information (calling code, emblem, etc) at least four times a day. But as it is seen, "other information" is not explicitly defined.

References:

1. The Law on Television and Radio Broadcasting

Yes: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

No: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

TV journalists and editors don't set a balance while preparation of broadcasting. They don't adhere to any professional practice and in some cases they infringe these rules. In most cases, the journalists became a party in broadcasting joined by the opposite sides. And when this fact is occurred, the editors don't approve any reproofing decisions against them.

As to the print media, the situation is different. The independent media bodies prefer to balance creating articles, and ideas are published without any correction and the journalists protect their position. Whenever in some cases the professional practice is violated in a print media too.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan
2. Legal Status of Media in Azerbaijan, Annual Report 2010 by Media Rights Institute, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to "sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Comments:

The last elections in the reporting period were for Parliament. During these elections, only the representatives of the political party in power were provided with a large amount of broadcasting time. The candidates of the independent political parties couldn't use the paid broadcast time offered by TV channels.

As to the print media, it has allocated the most space and time to the propaganda of the representatives of political parties representing the mentioned camp in the independent media bodies of opposition tendencies. The same situation has been observed in the official and government-related newspapers. They provided the candidates supported by the parties in power with a large amount of coverage.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan
2. Legal Status of Media in Azerbaijan, Annual Report 2010 by Media Rights Institute, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

Comments:

Each candidate is provided with free-of-charge broadcasting time once lasting four minutes, along with the election campaign by decision of the Central Election Committee. Written materials have been published in the official print media with the same capacity.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan,
2. Legal Status of Media in Azerbaijan, Annual Report 2010 by Media Rights Institute, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf
3. Report of the Central Election Commission, September-October 2010, <http://www.cec.gov.az/en/common/statements/report2010.htm>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all

other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

Yes

No

Comments:

In the reporting period, there were recorded the cases of arrest of journalists for various reasons, but not directly corruption-related investigations. The families of some journalists were threatened. The editor-in-chief of the newspaper "Azadlig" has immigrated to France because of these threats.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan.
2. Legal Status of Media in Azerbaijan , Annual Report 2010 by Media Rights Institute, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf

Yes: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

No: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

Yes

No

Comments:

While investigations were under way by members of the Investigating Journalists Association, they were subjected to various

threats by state officials.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan,
2. Legal Status of Media in Azerbaijan, Annual Report 2010 by Media Rights Institute, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf

Yes: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

No: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

Yes | No

Comments:

No cases have been recorded. The 2005 killing of the editor-in-chief of Monitor Magazine, Elmar Huseynov, has not been solved.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan

Yes: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

No: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

58
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

12a. In law, citizens have a right to request government information and basic government records.

Yes

No

Comments:

Article 50 of the Constitution ensures freedom of information. Article 29 of the Law on Access to Information stipulates that citizens have the right to access government information and basic government records. State bodies should provide this information unless it is restricted. Article 10 of the Law on Freedom of Information states the list of restricted information.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Freedom of Information.
3. The Law on Access to Information. http://www.commission-anticorruption.gov.az/upload/file/Law_on_right_to_obtain_information_done.pdf

Yes: A YES score is earned if there is a formal right to request government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

No: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if a request for a basic government record is denied.

Yes

No

Comments:

Under Article 12 of the Law on Freedom of Information, there is a formal process of appeal for rejected information requests to the higher body, or the Commissioner on Information Matters, or to the court.

References:

1. The Law on Freedom of Information.
2. The Law on Access to Information http://www.commission-anticorruption.gov.az/upload/file/Law_on_right_to_obtain_information_done.pdf

Yes: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

No: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

Yes

No

Comments:

There is no centralized institution available through which citizens can request government records. However, under Article 30 of the Law on Freedom of Information, public information should be disclosed on the Internet, in media, official publications, libraries, public information centers, and other available public places. Furthermore, under paragraphs 10-16 of the Plan of Action on Implementation of the National Strategy for Increasing Transparency and Combating Corruption for 2007-2011, specific departments within agencies that are in charge of access to information should be improved, hotlines should be established, all public information and reports should be available on the Internet, and Internet services should be provided to the public.

References:

1. The Law on Freedom of Information
2. The Plan of Action on Implementation of the National Strategy for Increasing Transparency and Combating Corruption (2007-2011)

Yes: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

No: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right to information requests effective?

46

13a. In practice, citizens receive responses to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Pursuant to Article 24 of the law on access to information, an inquiry about information must be responded to within seven working days. Despite the law, in practice we observe cases of long delays.

However, in a monitoring of access to public information that was conducted through financial support from the Open Society Institute-Assistance Foundation, responses of any kind (full, partial or written rejection) were provided to only 84 out of the total 169 inquiries submitted. The remaining 85 inquiries were not answered at all. Response of any kind implies refusal in writing, incomplete answer or complete answer.

References:

1. Report on the monitoring of access to public information conducted through financial support from the Open Society Institute – Assistance Foundation, <http://www.renewwatch.org/files/Access-to-information-Azerbaijan.pdf>
2. Interview with Osman Gunduz, president of Azerbaijan Internet Forum, September 2011

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law doesn't call for any payment for an information request. In practice, citizens are free to receive it online, via mail and at the same time through a telephone request.

References:

1. Report on the monitoring of access to public information conducted through financial support from the Open Society Institute-Assistance Foundation, <http://www.renewwatch.org/files/Access-to-information-Azerbaijan.pdf>
2. Interview with Osman Gunduz, president of Azerbaijan Internet Forum

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

In practice, responses given to information requests are not satisfactory –especially information required to investigate corrupt practices. These information requests are not detailed, and it creates difficulties in conducting all-inclusive investigations.

References:

1. Report on the monitoring of access to public information conducted through financial support from the Open Society Institute-Assistance Foundation, <http://www.renewwatch.org/files/Access-to-information-Azerbaijan.pdf>
2. Interview with Osman Gunduz, president of Azerbaijan Internet Forum

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Some NGOs are forced to appeal to the court because of the unavailability of a response to their information requests, and they receive the corresponding responses via courts. These appeals have been made by the Association of Assistance to the Free Economy and the Civil Society "Kur." The Centre of Assistance to the Free Economy and the Civil Society "Kur" have received information from the Ministry of Transport and the Ministry of Melioration and Water Economy via the courts, but it took a long time.

On September 7, 2011, the Supreme Court of the Republic of Azerbaijan and Baku Local Economic Court 1 heard the case of residents of a building on Fuzuli Street who saw their apartments demolished to make room for the construction of the Winter Park development.

According to a press release from the Public Association for Assistance to Free Economy, the Supreme Court of Azerbaijan heard the appeal filed against the Baku Appeals Court decision on Ismayil Bagvanov's lawsuit demanding the restoration of his property rights. Bagvanov is one of the residents of the building at 44 Fuzuli Street.

Bagvanov, who rejected the Baku Appeals Court decision offering compensation of 1,500 AZN per square meter, went to the court to seek compensation for his violated property rights. He demanded 5,000 AZN per square meter, 30,000 for moral damage and 20,000 for material damage.

References:

1. Press release on Public Association for Assistance to Free Economy (PAAFE), 07 September 2011, http://freeeconomy.az/index.php?option=com_content&view=category&layout=blog&id=1&Itemid=27&lang=en#
2. Interview with Osman Gunduz, president of Azerbaijan Internet Forum

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Fees are required by the court to provide the requested information. The amount is equal to 100 manat.

References:

1. Media Rights Institute, Report on Freedom of information, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf
2. Interview with Osman Gunduz, the president of Azerbaijan Internet Forum

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government denies information requests as the sought-after information is available on the government's website.

References:

1. Media Rights Institute, Report on Freedom of information, http://www.mediarights.az/docs/2010_ILLIK_ENG.pdf
2. Interview with Osman Gunduz, president of the Azerbaijan Internet Forum, September 2011

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

2.1. ⁵⁹Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes

No

Comments:

According to Article 56 of the Constitution, citizens of the Azerbaijan Republic have the right to elect and be elected to state bodies and also to take part in referendums. Furthermore, Articles 3 and 4 of the Election Code respectively ensure universal and equal adult suffrage to all citizens.

References:

1. The Constitution of the Republic of Azerbaijan, http://www.country.az/ GeneralInfo/ Constitution/ constitution_e.html
2. Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

No: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

Yes

No

Comments:

According to Article 7.1 of the Election Code, holding parliamentary, presidential, and municipal elections at intervals stated in the Constitution and Election Code is mandatory. Under Article 84 of the Constitution, elections for the Parliament (Milli Majlis) take place every five years on the first Sunday of November. Under Article 178.1 of the Election Code, presidential elections are held every five years on the third week of October, on Wednesday. Under Article 211 of the Election Code, municipal elections take place every five years.

References:

1. The Constitution of the Republic of Azerbaijan, http://www.country.az/ GeneralInfo/ Constitution/ constitution_e.html

Yes: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

No: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

58

15a. In practice, all adult citizens can vote.

100 | 75 | **50** | 25 | 0

Comments:

The participation level in elections is decreasing from election to election because Azerbaijani citizens are giving up on fair elections. The voters are displaying passive positions and consider that voting has no meaning. Regardless of the results of elections, the party in power declares whatever winner it wants.

In the last parliamentary elections the Central Election Commission said the level of participation was 50.1 percent out of a total 4.9 million people eligible to vote; however, independent observers have noted that the real indices was around 12 percent to 15 percent.

References:

1. OSCE/ODIHR Election Observation Mission Final Report
2. Azerbaijani parliamentary election, 2010, http://en.wikipedia.org/wiki/Azerbaijani_parliamentary_election,_2010

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | **25** | 0

Comments:

In practice the secrecy of ballots is infringed. In most cases, voters are given ballots beforehand and they are told whom they are to cast their ballot for. There are organized round-robins in the polling station; the same voters are provided with possibilities to vote in favor of the same persons in various polling stations. As the voting commissions are controlled totally by the government they are not against the cases of infringing the secret ballots in favor of a candidate supported by the party in power.

References:

1. OSCE/ODIHR Election Observation Mission Final Report

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are conducted regularly and based on a strict schedule.

References:

1. OSCE/ODIHR Election Observation Mission Final Report
2. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
3. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

16a. In law, all citizens have a right to form political parties.

Yes

No

Comments:

Under Article 58 of the Constitution, everyone has the right to associate with others, and, particularly, the right to form a political party. Under Article 4 of the Law on Political Parties, a political party should have at least 1,000 members in order to get registered by the Ministry of Justice.

References:

1. The Constitution of the Republic of Azerbaijan; http://www.country.az/GeneralInfo/Constitution/constitution_e.html
2. The Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)

Yes: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

No: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

Yes

No

Comments:

Under Article 55 of the Constitution, every person has a right to run for political office.

References:

1. The Constitution of the Republic of Azerbaijan, http://www.country.az/GeneralInfo/Constitution/constitution_e.html

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

No: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can form political parties, but in practice, there are no possibilities to form political parties without the consent of the political government. The government controls the registration process of political parties. There are, however, more than 50 parties in Azerbaijan.

In fact, though, the ruling party, the New Azerbaijan Party, controls everything. According to its website, it has more than 500,000 members. President Ilham Aliyev's ruling Yeni Azerbaijan Party got a majority of 73 out of 125 seats.

Major parties are below:

New Azerbaijan Party (Yeni Azərbaycan Partiyası)
Equality Party (Müsavat Partiyası)
Azerbaijan Popular Front Party (Azərbaycan Xalq Cəbhəsi Partiyası)
Azerbaijan Democratic Party (Azərbaycan Demokrat Partiyası)
Motherland Party (Ana Vatan)
Civic Solidarity Party (Vətəndaş Həmrəyliyi Partiyası)

References:

- 1.OSCE/ODIHR Election Observation Mission Final Report
2. Reports by the Central Election Commission
3. Newspaper materials and articles of the Radio Liberty-Aze

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Generally all citizens can run for political office. However, some barriers, such as registration or harassment problems may occur.

References:

- 1.OSCE/ODIHR Election Observation Mission Final Report, January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>

2. 2010 Country Reports on Human Rights Practices in Azerbaijan, Bureau of Democracy, Human Rights and Labor, April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154413.htm>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the opposition parties have no representatives in the legislature. But, some parties simulating the opposition (established and named by the government as opposition parties) are represented in the Parliament in little numbers.

In 2005, there were a few representatives of the Musavat and People Front political parties in Parliament, but in 2010 the Parliament was closed to these representatives.

Summary of the November 2010 National Assembly of Azerbaijan election results
Parties (Ranked by Percentage of Votes Received) — Seats Won in Parliament
Yeni Azerbaijan Party (Yeni Azərbaycan Partiyası) — 72
Civic Solidarity Party (Vətəndaş Həmrəyliyi Partiyası) — 3
Motherland Party (Ana Vətən Partiyası) — 2
Independents, candidates who did not indicate their party affiliation, and others — 48
Total (turnout 50.1 percent) — 125
Source: Adam Carr's Election Archive

References:

1. OSCE/ODIHR Election Observation Mission Final Report, January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. 2010 Country Reports on Human Rights Practices in Azerbaijan, Bureau of Democracy, Human Rights and Labor, April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154413.htm>
3. Central Election Commission reports, <http://www.cec.gov.az/en/common/statements/report11.htm>
4. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes

No

Comments:

The Central Election Commission is the election monitoring agency that ensures preparation and conduct of parliamentary, presidential and municipal elections as well as referendums. Articles 24-28 of the Election Code regulate its legal status and operation.

References:

1. The Election Code of the Republic of Azerbaijan, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

45

18a. In law, the agency or set of agencies/entities is protected from political interference.

Yes

No

Comments:

According to Article 24 of the Election Code, the Central Election Commission shall consist of 18 members. The members of the Central Election Commission shall be elected by the Milli Majlis. Six members of the Central Election Commission shall represent the political party nominating them, deputies of which constitute a majority in the Milli Majlis. Six members of the Central Election Commission shall represent the nonpartisan (independent) deputies, which nominate them, and six members shall represent the political parties nominating them, deputies of which obtained a minority in the Milli Majlis. The independent deputies shall, as a rule, be represented in the Central Election Commission by independent lawyers, nominated by them, who are not in state service. Nomination of two candidates shall be agreed among the interested parties: One of the nominees will be agreed on by representatives of the political party constituting a majority in the Milli Majlis, and the other nominee will be agreed on by representatives of the political party constituting a minority in the Milli Majlis.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100

75

50

25

0

Comments:

As the majority of these agencies and observing missions are controlled by the government, there is no efficiency in their activity. In practice, the Central Election Commission appointments do not support the independence of the agency. A recommendation from an advisory body of the Council of Europe- Venice Commission about eliminating the dominance of government representatives in the Central Election Commission has not been enacted. Thus, the composition of the Commission continues to remain unbalanced.

References:

1. OSCE/ODIHR Election Observation Mission Final Report, 25 January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. Interview with Gulaga Aslanli, former (2010-11) member of Central Election Commission, September 2011

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the Central Election Commission has a full-time staff, but as a rule their staff is not consisted of professionals. Regardless of training held for a staff, the paltry payment for them causes problems for them to be responsible for their activity.

References:

1. OSCE/ODIHR Election Observation Mission Final Report, 25 January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. 2010 Country Reports on Human Rights Practices in Azerbaijan, Bureau of Democracy, Human Rights, and Labor, April 8, 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154413.htm>
3. Central Election Commission of Azerbaijan, http://www.cec.gov.az/en/cec/office/msk_secretariat.htm

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

Comments:

The reports are not timely.

References:

- 1) OSCE/ODIHR Election Observation Mission Final Report, 25 January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
- 2) Report on Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission in fact is not an independent body and executes the directions of the government. Under Article 116 of the Election Code, the Central Election Commission, constituency election commissions and precinct election commissions may apply to the courts for issuing an administrative protocol and penalizing offenders. However, in practice, it is a highly political decision.

References:

1. OSCE/ODIHR Election Observation Mission Final Report, 25 January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. Interview with Gulaga Aslanli, former (2010-11) member of Central Election Commission, September 2011

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

50

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the election system is not effective. Despite improvements in technical supplies and voting conditions in the polling

stations, elections are accompanied by violations. Voting protocols are, for instance, falsified in favor of a candidate supported by the party in power.

References:

1. OSCE/ODIHR Election Observation Mission Final Report, January 2011, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and “ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

Yes

No

Comments:

According to Article 112.3 of the Election Code, election results can be contested through the judicial system. Furthermore, under Articles 290-292 of the Code of Civil Procedure, election complaints should be considered by appellate courts within three days. If the complaint is made on election day or after this day, the appellate court should immediately consider it. The decision of the appellate court can be appealed to the Supreme Court within three days and the Supreme Court should consider it within three days. If the complaint is made on election day or after this day, the Supreme Court should immediately consider it.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>
2. The Code of Civil Procedure, <http://www.unhcr.org/refworld/country,,,LEGISLATION,AZE,4562d8cf2,4417f5c84,0.html>

Yes: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

No: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

Comments:

Elections-related appeals are involved in court trials, but the courts don't make fair investigations and don't take right decisions. For instance, after the parliamentary election of 17 November 2010, Vidadi Isganderov spoke out about election fraud in the Gochay region where he ran for election, and reportedly presented video and material evidence of falsification during the elections. He got himself accused of interference in the electoral process, and the General Prosecutor's Office launched a criminal case against him with the following charges: "forcing a citizen to vote against will and obstruction to voting," under part 3 of Article 159, and "impeding in the activity of voting commissions" under part 1 of Article 160 of the Criminal Code of the Republic of Azerbaijan. The criminal proceedings were quickly abandoned.

References:

1. OSCE/ODIHR Election Observation Mission Final Report, January 2011, Parliamentary Elections in Azerbaijan, November 2010, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. Case of Namat Aliyev v. Azerbaijan, The European Court of Human Rights, <http://legislationline.org/documents/action/popup/id/15818>
3. <http://www.frontlinedefenders.org/ru/node/15105>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

Comments:

In practice, the military and security forces are voting under the control of the party in power. Ballots in favor of the party in power are provided to soldiers and others in the military system.

References:

1. OSCE/ODIHR Election Observation Mission Final Report on the January 2011, Parliamentary Elections in Azerbaijan, November 2010, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. The parliamentary elections in Azerbaijan, Report by The European Parliament Election Observation Delegation, http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/azerb_parl_2010_ep.pdf

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

Comments:

Under Articles 40-44 of the Election Code, local and international election observers registered at the Central Election Commission are allowed to monitor elections.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

No: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

In practice, observers who will support the position of the party in power and will carry out their mission in a manner planned beforehand are provided with favorable conditions. Observers of independent and opposition parties are not provided with same conditions. As a rule they are removed from polling stations. People protesting against election violations are removed from polling stations by the police.

References:

1. OSCE/ODIHR Election Observation Mission Final Report on Parliamentary Elections in Azerbaijan in November 2010, <http://www.osce.org/odihr/elections/azerbaijan/75073>
2. The parliamentary elections in Azerbaijan, Report by The European Parliament Election Observation Delegation, http://www.europarl.europa.eu/intcoop/election_observation/missions/2009-2014/azerb_parl_2010_ep.pdf

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

65 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

67

20a. In law, there are limits on individual donations to political parties.

Yes

No

Comments:

According to Article 19 of the Law on Political Parties, political parties have the right to receive donations. The law does not specify any limits. However, the law prohibits any donations from state authorities, trade unions, public movements, charity or religious organizations. Furthermore, the law states that parties cannot receive donations which are given to obtain economical or political benefits.

The amount of donations should be included in financial reports along with other details. However, under Article 156.4.3 of the Election Code, during the Parliamentary elections, voluntary donations of citizens and legal entities. The limit of voluntary donations cannot be more than 150 times the conventional financial unit for citizens, which is in force on the day of publication of the decision on determination of the elections.

1 conventional financial unit = 1,1 AZN.

References:

1. The Law on Political Parties; [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)
2. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | **No**

Comments:

Under Article 19 of the Law on Political Parties, political parties have the right to receive donations. The law does not specify any limits. However, the law prohibits any donations from state authorities, trade unions, public movements, charity or religious organizations. Furthermore, the law states that parties cannot receive donations which are given to obtain economical or political benefits. The amount of donations should be included in the financial reports.

According to Article 156.4.3. of Election Code, the limit of voluntary donations cannot be more than 25,000 times the conventional financial unit for legal entities, which is in force on the day of publication of the decision on determination of the elections.

(1 conventional financial unit = 1.1 AZN)

References:

1. The Law on Political Parties; [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)
2. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

Yes | No

Comments:

Neither the Election Code nor the Law on Political Parties defines any limits on total political party expenditures during election campaigns.

References:

1. The Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)
2. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

Comments:

According to Article 97.1 of the Election Code, the so-called supervisory-control service within election commissions shall be established to ensure the control of party finances and expenditures. Under Article 18 of the Law on Political Parties, state tax agencies also exercise control on sources of income, the amount of donations to political parties as well as payment of taxes under the tax legislation.

References:

1. The Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)
2. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

According to Article 97.1 of the Election Code, the so-called supervisory-control service under the Central Election Commission and constituency election commissions shall be established to ensure control of party finances and expenditures. Under Article 18 of the Law on Political Parties, state tax agencies also exercise control on sources of income, the amount of donations to political parties as well as payment of taxes under the tax legislation.

References:

1. The Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)
2. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes

No

Comments:

Under Article 97.1 of the Election Code, the so-called supervisory-control service under the Central Election Commission and constituency election commissions shall be established to ensure control of party finances and expenditures. Under Article 18 of the Law on Political Parties, state tax agencies also exercise control on sources of income, the amount of donations to political parties as well as payment of taxes under the tax legislation.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

Yes

No

Comments:

According to the Article 156.2.4. of Election Code, voluntary donations from citizens to political parties can amount to not more than 500 times the conventional financial unit, which is in force on the day of official publication of the decision on determination of the elections. Political parties and blocks of political parties, which have nominated or registered candidates in more than 60 single-mandate constituencies, can create a unified election fund.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

No: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

According to Article 156.2.4 of the Election Code, legal entities (corporate contributions) are limited to not more than 10,000 times the conventional financial unit which is in force on the day of official publication of the decision on determination of the elections. Under Article 156.3., the political parties and blocks of political parties, which have nominated or registered candidates in more than 60 single-mandate constituencies, can create a unified election fund.

References:

The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

No: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

Comments:

Under Article 95.1 of the Election Code, copies of financial reports of registered candidates shall be published within five days after their receipt by the relevant election commissions.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

Under Article 97.1 of the Election Code, a supervisory audit service shall be established in the Central Election Commission and

Constituency Election Commissions to ensure the control of expenditures of funding allocated to election commissions for election purposes, correct voter registration and use of election funds and sources of funding.

References:

The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

Comments:

Under Article 97.1 of the Election Code, the supervisory-control service at the Central Election Commission and constituency election commissions shall be established to ensure the control of finances and expenditures of political candidates.

References:

1. The Election Code, <http://www.cec.gov.az/en/codemain.htm>

Yes: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

No: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

25

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The individual donations for various political parties are of a confidential nature. The government uses various means to all but eliminate the financial resources of opposition parties. The government often punishes donors to opposition parties via various

illegal means (e.g., shutting down their business, confiscating their properties). Therefore, individuals who intend to financially support parties are afraid of donating — and the opposition parties are left with little financial resources to wage successful campaigns.

Financial support to the political parties varies according to the proximity of the individual/group to the government. Opposition parties (which are opposition parties in name only) are allowed and are funded by the ministers. For example, according to documents published by WikiLeaks, the Party of Democratic Reforms (or, the so-called democratic party, but known as sub-government party) is financed by Kamaladdin Heydarov, the Minister of Emergencies.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. OSCE/ODIHR Election Observation Mission Final Report on the January 2011, Parliamentary Elections in Azerbaijan, November 2010, <http://www.osce.org/odihr/elections/azerbaijan/75073>
3. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.
4. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | **25** | 0

Comments:

The various opposition political parties are deprived of corporate donations because companies are afraid of making corporate donations for fear they will be punished by the government. But the political parties in power benefit from corporate donations, and the ruling party in particular receives corporate donations, especially from big companies.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. OSCE/ODIHR Election Observation Mission Final Report on the Parliamentary Elections in Azerbaijan in November 2010, <http://www.osce.org/odihr/elections/azerbaijan/75073>
3. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.
4. Newspaper materials and stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

Comments:

In practice there is no limit for the political parties in power on financing their expenditures. But opposition political parties (parties not in power) can finance only part of their expenditures because of financial restrictions.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.
3. Newspaper materials and stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

Comments:

As to the “opposition” parties adhering to the position of the government, the funds allocated to them are satisfactory to finance their expenditures.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.
3. Newspaper materials and stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

Comments:

There is no record of penalties imposed on political parties violating the financing rules. According to Gulaga Aslanli, a former member of the Central Election Commission, there was no case imposing penalties on offenders.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.
3. Newspaper materials and stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

During parliamentary elections, contributions to political parties are audited by the Central Election Commission. As to other cases, according to Article 21 of the Law on Political Parties, parties should prepare financial reports, but in practice, the political parties are not audited.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

10

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

According to the former officer of the Central Election Commission, during elections special election funds accounts are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if a donation exceeds the limit the bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual and corporate donations to opposition parties are tracked and monitored and those who make donations to opposition parties are harassed in different ways. As a result, only the ruling party benefits from donations, especially from big companies.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>
3. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | **25** | 0

Comments:

According to the former officer of the Central Election Commission, during elections special election funds accounts are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if a donation exceeds the limit the bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual and corporate donations to opposition parties are tracked and monitored and those who make donations to opposition parties are harassed in different ways. As a result, only the ruling party benefits from donations, especially from big companies.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>
3. Interview with Gulaga Aslanli, a former (2010-11) member of the Central Election Commission, September 2011.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual

candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There has been no indication the agency has initiated investigations of the financing of individual candidate's campaigns during the study period.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There has been no indication the agency has imposed penalties on offenders during the study period.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There has been no indication the agency has audited individual candidate's campaigns during the study period.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

25

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The political parties don't disclose their financial information, only the opposition parties make disclosures as to the amount of funds to conduct election campaigns. According to the representatives of political parties, in Azerbaijan parties usually operate with membership dues. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures and therefore, timeliness cannot be evaluated.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>
3. Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no practice of giving information to persons interested.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>
3. Law on Political Parties, [http://www.venice.coe.int/docs/2004/CDL\(2004\)043-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)043-e.pdf)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no practice of giving information to persons interested.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

In practice the citizens cannot access the financial records of political parties.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

31

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In practice the individual candidates disclose data relating to financial support and expenditures to the election commissions within a reasonable time period.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The citizens have no access to information relating to the financial sources of candidates.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The citizens have no access to information relating to the financial sources of candidates. The Central Election Commission does not publish this information as it is required by the Election Code.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | **25** | 0

Comments:

Representatives of political parties submit their election campaign expenditures to the district polling commissions.

References:

1. Reports by the Central Election Commission, <http://www.cec.gov.az/en/common/statements/report11.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁵⁰Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

No

Comments:

Under Article 60 of the Constitution, judicial protection of the rights and liberties is guaranteed and everyone may sue the government for infringement of their civil rights.

References:

1. The Constitution of Azerbaijan Republic.

Yes: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

No: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

27. Can the chief executive be held accountable for his/her actions?

44

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the chief executive is not accountable for his activity. The executives don't substantiate their political decisions. Azerbaijan is the only European state with a strong presidential system of government whose chief executive is not subject to term limits. The constitutional amendments finalized President Ilham Aliyev's process of consolidating power. With a marginalized and demoralized opposition, almost no influential independent media, and elites who have vested interests in the preservation of his power, Aliyev has gained a level of control over society that his father never possessed. An Azerbaijani analyst wrote: "Oil and gas exports have enriched the government's coffers and contributed to regime stability, allowing the government – through patronage, public spending and rent-seeking – to buy public support and to keep the society immobilized and disorganized."

References:

1. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan.
3. "Azerbaijan: Vulnerable Stability," Crisis Group Europe Report No. 156, September 2010.
4. Farid Guliyev, "End of term limits: monarchical presidencies on the rise," Harvard International Review, February 2009.
5. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

Yes

No

Comments:

Article 60 of the Constitution broadly ensures everyone's right to go to court against the decisions, actions (or inactions) of the public agencies. Furthermore, under Article 296 of the Code of Civil Procedure, any interested party may start a proceeding regarding decisions and actions (inactions) of the executive. Article 25.2 of relevant Code stipulates that judicial review of agency decisions is implemented by courts of general jurisdiction.

Under Article 6 of the Law on Complaining to Courts against Decisions and Actions (Inactions), Violating Rights and Liberties of Citizens, the judiciary can pass judgments on the legality of actions taken by the executive. However, under Article 130 of the Constitution, the constitutionality of actions taken by the executive can be considered only by the Constitutional Court of the Republic of Azerbaijan.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Complaining to Courts against Decisions and Actions (Inactions), Violating Rights and Liberties of Citizens.
3. The Code of Civil Procedure, <http://www.unhcr.org/refworld/country,,,LEGISLATION,AZE,4562d8cf2,4417f5c84,0.html>

Yes: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100

75

50

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0

Comments:

The practice of judiciary review of the chief executive is rare and only started in 2011. Nevertheless, executives have been held accountable for corruption-related activity especially in the district departments of the Ministry of Labour and Social Security of Population. Executives have also been held accountable for corruption in the Ministries of Education, Health and Ecology.

References:

1. Website of the Constitutional Court of Azerbaijan, <http://www.constitutionalcourt.org.za/site/judgments/judgments.htm>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 113 of the Constitution, the president of the Republic of Azerbaijan issues decrees. If not specified otherwise, these decrees or executive orders become effective from the day of their publication.

References:

1. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan.
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.rferl.org/section/Azerbaijan/151.html>

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

Comments:

Under Article 107 of the Constitution, the head of state can be prosecuted for alleged crimes. If the president of the Republic of Azerbaijan commits a grave crime the question of dismissal may be submitted to Milli Majlis (the National Assembly) on the initiative of the Constitutional Court based on conclusions of Supreme Court presented within 30 days. The president may be dismissed from his post by decree of Milli Majlis with a majority of 95 votes of deputies. This decree is signed by the chairman of the Constitutional Court. If Constitutional Court fails to sign said decree within one week it shall not come into force. The decree

about dismissal of the president must be accepted within two months from the date of application of Constitutional Court to Milli Majlis. If said decree is not taken within said term, then accusation against the president is considered rejected.

Under Article 123 of the Constitution, the prime minister may not be arrested, called to criminal responsibility except in cases when he has been caught in the act of a crime, disciplinary measures may not be applied to him by a court of law, and he may not be searched.

References:

1. The Constitution of the Republic of Azerbaijan.

Yes: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes

No

Comments:

Articles 107 and 123 of the Constitution regulate immunity and immunity-lifting procedures for the president and the prime minister respectively. The Constitution does not specifically talk about ministerial-level officials. In this regard, ministerial-level officials can be prosecuted for crimes they commit on general grounds without any specific procedure.

References:

1. The Constitution of the Republic of Azerbaijan

Yes: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

No: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

50

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes

No

Comments:

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, detailing sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, the president and the prime minister shall file asset disclosure forms to the Commission on Combating Corruption.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, detailing sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, ministerial-level officials are required to file an asset disclosure form to the Commission on Combating Corruption.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

No: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

Under Article 14 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not demand or accept any gifts for himself/herself or other persons which may influence or appear to influence the impartial performance of his/her duties, or may be or appear to be reward relating to his/her duties or might create an impression of such influence, or are given as reward for performance of his/her duties, or might create an impression of such reward. This rule shall not apply to cases of awarding minor gifts in regard to hospitality and with a value not over the amount described in the Law on Combating Corruption.

In addition, Article 8 of the Law on Combating Corruption stipulates that public officials may not solicit or accept multiple gifts from any natural or legal persons during any 12-month period where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority or municipal body in which that official is performing his/her service duties. Under the law, if a civil servant is not able to decide whether to take or refuse the gift, or benefit from the hospitality or not, he/she shall get his/her direct supervisor's opinion about it.

References:

1. The Law on Rules of Ethics Conduct of Civil Servants.
2. The Law on Combating Corruption.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

Yes | No

Comments:

Article 5 of the Law on Combating Corruption and Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials state that among others, ministers and heads of state and government should file regular asset disclosure forms to the Commission on Combating Corruption. However, the legislation does not define an independent auditing of the executive branch asset disclosure forms. Under Article 8 of the latter law, the commission itself controls the accuracy of the information submitted.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

Comments:

The Law on Combating Corruption does not address this issue.

References:

1. The Law on Combating Corruption.

Yes: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

No: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is no formal restriction of post-government private-sector employment. It should also be noted that the majority of high-level politicians and officials have illegal private businesses, and they keep them after leaving the government.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan.
3. "Azerbaijan's Anti-Corruption Drive: Fact or Fallacy?" by Rashad Aliyev, http://azerireport.com/index.php?option=com_content&task=view&id=2796

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate "cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the regulations governing gifts and hospitality offered to members of the executive branch don't work. Despite the formal requirements, in fact the regulations are routinely ignored and not enforced.

References:

1. Reports of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, Joint First and Second Evaluation Round, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)4_Add_Azerbaijan_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)4_Add_Azerbaijan_EN.pdf)
3. Bureau of Democracy, Human Rights, and Labor 2010 Country Reports on Human Rights Practices Report, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. "Azerbaijan's Anti-Corruption Drive: Fact or Fallacy?" by Rashad Aliyev, http://azerireport.com/index.php?option=com_content&task=view&id=2796

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, executive branch asset disclosures (defined here as ministers and above) are not audited — despite the formal requirements based on new rules of the Extractive Industries Transparency Initiative and the Law of the Republic of Azerbaijan "On Chamber of Accounts."

References:

1. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
2. Reports activity of the Chamber of Accounts of Republic of Azerbaijan for 2010, 2009, 2008, <http://www.ach.gov.az/?/en/content/440/>
3. EITI new rules, http://eiti.org/files/EITI_Rules_Validations_April2011.pdf

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes

No

Comments:

According to Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private information, and therefore citizens cannot access the records. These asset disclosure records may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in cases alleging corruption-related offenses.

References:

1. Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100

75

50

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0

Comments:

There is no access to the asset disclosure records of the heads of state and government. In this case, the time issues cannot therefore be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to the asset disclosure records of the heads of state and government. In this case, the time issues cannot therefore be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, 2010.
2. Interview with Osman Gunduz, the president of Azerbaijan Internet Forum, September 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to the asset disclosure records of the heads of state and government. In this case, the quality issues cannot

therefore be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, 2010.
2. Interview with Osman Gunduz, the president of Azerbaijan Internet Forum, September 2011.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

State budget funds, government equipment and personnel are regularly used to support ruling party activities.

References:

1. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
2. Reports activity of the Chamber of Accounts of Republic of Azerbaijan for 2010, 2009, 2008, <http://www.ach.gov.az/?/en/content/440/>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
4. Azeri Report, http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

83

32a. In law, the judiciary can review laws passed by the legislature.

Yes

No

Comments:

Under Article 130 of the Constitution, as well as the Law on the Constitutional Court, the Constitutional Court can review the constitutionality of laws passed by the legislature.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on the Constitutional Court.

Yes: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

No: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100

75

50

25

0

Comments:

In practice, when necessary, the judiciary reviews the laws passed by the legislature. Under Article 130 of the Constitution, as well as the Law on the Constitutional Court, the Constitutional Court is in charge of reviewing the constitutionality of laws passed by the legislature.

References:

1. Website of the Constitutional Court of Azerbaijan, http://constcourt.gov.az/en/index.php?option=com_content&view=frontpage&Itemid=1
2. Website of the Ministry of Justice of Azerbaijan Republic, <http://www.justice.gov.az/eng175.html>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes

No

Comments:

Under Article 90 of the Constitution, members of the national legislature can be subject to criminal proceedings. According to this provision, each parliamentarian has a personal immunity during the time in office, however, when caught red-handed, he/she can be subject to criminal proceedings. In this case, the relevant body that arrested the parliamentarian must immediately inform the General Prosecutor.

The immunity of a member of the legislature can be lifted only by the decision of the Parliament on the basis of the opinion of the General Prosecutor. As a result, the legislative branch itself has some control in terms of the immunity-lifting process.

References:

1. The Constitution of the Republic of Azerbaijan.

Yes: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

No: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes

No

Comments:

According to Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, detailing sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.2 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that members of the Parliament shall file asset disclosure forms to the special body, defined by the Parliament.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes

No

Comments:

The Law on Combating Corruption does not address this issue. However, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under the consideration in Parliament, may restrict national legislators from taking positions in the private sector after leaving the government.

References:

1. The Law on Combating Corruption.

Yes: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

According to Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.2 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that members of the Parliament shall file asset disclosure forms to the special body, defined by the Parliament.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | No

Comments:

According to Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.2 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that members of the Parliament shall file asset disclosure forms to the special body, defined by the Parliament. However, the legislation does not define an independent auditing of the asset disclosure forms of members of the national legislature. According to Article 8 of the latter law, the responsible body in charge of accepting asset disclosure forms itself controls the accuracy of the information submitted. No impartial third party auditing is established by law.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

Comments:

In practice, there is no formal restriction for governing conflicts of interest by members of the national legislature. It should be noted that many of the members of the national legislature have illegal private businesses, and they would continue operating them after leaving the government.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=35>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
4. Azeri Report, http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

Comments:

In practice, the regulations governing gifts and hospitality offered to members of the national legislature don't work. Despite the formal requirements, the regulations are routinely ignored and not enforced.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=35>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
4. Azeri Report, http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, national legislative branch asset disclosure statements are not audited.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=35>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Reports activity of the Chamber of Accounts of Republic of Azerbaijan for 2010, 2009, 2008, <http://www.ach.gov.az/?/en/content/440/>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

Comments:

According to the Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private information, and therefore citizens cannot access the records of members of the national legislature. The asset disclosure records may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in case of alleged corruption-related offenses.

References:

1. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access legislative asset disclosure records. Therefore, timeliness cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, 2010.
2. Expert Opinion on Regulation of Lobbying in the Republic of Azerbaijan, Prepared by: Quentin Reed, United Kingdom Long-term Adviser, AZPAC Project, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-lobbying%20QR.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot get access to legislative asset disclosure records. Therefore, whether access to the records is available at reasonable cost cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access legislative asset disclosure records. Therefore, the quality of the records cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

Articles 50 and 57 of the Constitution ensure citizens' rights to access to information. Specifically, based on Articles 37.1.16 as well as 29.1.11, records and transcripts of open sessions of the Parliament and adopted legal acts should be publicly available.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Access to Information.

Yes: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

No: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can generally access records of legislative processes and documents. Citizens can file a request online, and these are answered within seven working days, as spelled out in the Law on Access to Information.

References:

1. Website of the Parliament (Milli Majlis), <http://www.meclis.gov.az/?/az/law/197#comment>
2. Expert Opinion on Regulation of Lobbying in the Republic of Azerbaijan, Prepared by: Quentin Reed, United Kingdom Long-term Adviser, AZPAC Project, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-lobbying%20QR.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can generally access records of legislative processes and documents without payments.

References:

1) Website of the Parliament (Milli Majlis),
<http://www.meclis.gov.az/?/az/law/197#comment>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

53

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

Article 126 of the Constitution regulates the general requirements for judges. Judges must be a citizen of Azerbaijan; no younger than 30 years; have a complete legal education; have more than five years of legal experience.

Under Article 93-3 of the Law on Courts and Judges, the selection procedure of the judges in Azerbaijan includes the following stages:

1) written test; 2) oral interview; 3) special training; 4) proposal by the Judicial Council; 5) appointment by the president of Azerbaijan or Parliament.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Courts and Judges.

Yes: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

No: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the professional criteria are partly followed in selecting national-level judges. As prescribed by legislation, the selection process for national-level judges includes the following: written exam, oral interview, special training, proposal by the Judicial Council, and final appointment by the president or Parliament.

The problem is that the Judicial Council, the body in charge of organizing the exams, is currently chaired by the Minister of Justice, which raises some concerns in terms of separation of powers. Furthermore, at the final stage, it is the President who appoints judges of the district courts, and suggests the nominations to Parliament for judges of the appellate courts, Supreme Court, and Constitutional Court. This easily leads to a practice where judges do not perform their work independently of the executive power.

References:

1. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
2. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
3. Interview with Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union. September 2011.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes

No

Comments:

According to Article 93.3 of the Law on Courts and Judges, the selection procedure of the judges in Azerbaijan includes the following stages:

1) written test; 2) oral interview; 3) special training; 4) proposal by the Judicial Council; 5) appointment by the president or Parliament. The responsible body which is in charge of organizing judiciary exams is the Judicial Council. Under Article 4 of the Law on Judicial Council, it is stated that it is an body independent from the executive, legislative and judiciary.

The Judiciary Council establishes the Selection Committee of Judges in order to choose candidates for a judge position. The results of the test and interview are evaluated by the Selection Committee of Judges. The applicants who have succeeded in these areas are automatically admitted to a long-term training period. At the end of this training, each applicant is evaluated by the Selection Committee based on a grading system.

Finally, the applicants are listed in a row according to their grades. The results of this evaluation are submitted to the Judicial Council. The Council proposes the appointment of the successful candidates to the president of Azerbaijan, according to the number of vacancies.

According to Article 109 of the Constitution, the final stage-appointment of judges is held merely by the president in respect of the judges of the first instance court for five years without any approval by the Parliament. As to the judges of superior courts, the Constitution defines that the president gives proposals to Parliament for appointing the judges of the Constitutional Court, Supreme Court, Appellate Courts, and then Parliament appoints them.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Courts and Judges.
3. The Law on Judicial Council.

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

75

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

Comments:

According to Article 129.3 of the Constitution, court decisions should be reasoned and based on evidence. Under Article 100 of the Law on Courts and Judges, court decisions should be based on the free inner conviction of judges and outcomes of the court investigation. Article 349 of the Code of Criminal Procedure and Article 217 of the Code of Civil Procedure provide that judges should reason their decisions.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Courts and Judges.
3. The Code of Criminal Procedure; The Code of Civil Procedure.

Yes: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

No: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

Comments:

According to the Report of the Commission for Combating Corruption on Implementation of the National Strategy, the majority of courts created websites and, for instance, the decisions of the appellate courts and the Supreme Court are currently published, as per the requirement of the National Strategy. This requirement made a significant impact on delivering more reasoned decisions by the national-level judges, since now the decisions are published on the website and judges feel more responsibility (<http://www.ach.gov.az/?en/content/440/>).

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=35>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Reports activity of the Chamber of Accounts of Republic of Azerbaijan for 2010, 2009, 2008, <http://www.ach.gov.az/?en/content/440/>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

According to Article 93-1 of the Law on Courts and Judges and Article 11.0.11 of the Law on Judicial Council, the Judicial Legal Council is a disciplinary agency for the national-level judicial system.

References:

1. The Law on Courts and Judges.
2. The Law on Judicial Council.

Yes: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

No: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

According to the Article 4 of the Law on Judicial Council, the Judicial Council is an independent body that acts on a permanent basis and is not dependent on the legislative, executive, and judicial branches of the government or local governments as well as natural persons and legal entities. Under Article 6 of the relevant Law, the Judicial Council has 15 members: judges, members of executive, legislative authorities, prosecutor's office, and representatives of the Bar Association. In reality, almost all members of the Judicial Council are known as government-minded people, which makes a negative impact on its real independence.

Article 26.1 states that the president of the Judicial Council is elected by its members with a simple majority of votes. It should be noted that despite the fact that formally the Judicial Council is stated as an independent body, the minister of justice is the president of the Judicial Council and that leads to interference by the executive branch.

References:

1. The Law on Judicial Council.
2. Interview with Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union. September 2011
3. Judicial-Legal Council Act, <http://www.justice.gov.az/eng173.html>

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

No: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Council was mandated with the power to initiate proceedings against judges accused of corruption.

References:

1. 2009 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. Expert Opinion on Regulation of Lobbying in the Republic of Azerbaijan, Prepared by: Quentin Reed, United Kingdom Long-term Adviser, AZPAC Project, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/AZPAC/951-AZPAC-TP-lobbying%20QR.pdf>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to the Report on Implementation by the Commission on Combating Corruption, during 2008 disciplinary proceedings were started against 22 judges, of whom 10 were reprimanded, three were transferred to other courts by the Judicial Legal Council and one was dismissed. More current information about the judicial disciplinary agency and any penalties imposed on offenders is not available.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

According to Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, detailing sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, judges shall file asset disclosure forms to the Commission on Combating Corruption.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

According to Article 8 of the Law on Combating Corruption, no public official (including members of the national-level judiciary) shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her duties, or may be or appear to be rewarded relating to his/her duties. This does not include minor gifts and the use of conventional hospitality. The law stipulates that public officials may not solicit or accept multiple gifts from any natural or legal persons during any 12-month period where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority for which that official is performing his/her duties.

References:

1. The Law on Combating Corruption.

Yes: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

No: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | **No**

Comments:

According to Article 5 of the Law on Combating Corruption and Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials judges should file regular asset disclosure forms to the Commission on Combating Corruption. However, the legislation does not define an independent auditing of the asset disclosure forms of the national-level judiciary. Under Article 8 of the latter law, the commission itself controls the accuracy of the information submitted.

References:

1. The Law on Combating Corruption.
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

Comments:

The Law on Combating Corruption does not address this issue.

References:

1. The Law on Combating Corruption.

Yes: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence

their former government colleagues.

No: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there are no regulations covering post-government private-sector employment for national-level judges.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast by Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary don't work. Despite the formal requirements, the regulations are routinely ignored and not enforced.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Despite the requirements, there is no asset disclosure system for national-level judges. In practice they cannot be audited in Azerbaijan.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and news stories broadcast on Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

Comments:

According to Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private information, and therefore citizens cannot access the asset disclosure records of judges. The asset disclosure records may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in cases of alleged corruption.

References:

1. The Law on Approval of the Rules on Filing Financial Data by Public Officials.

Yes: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

No: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Asset disclosure provisions have not yet been implemented. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by all officials, including judges, are considered confidential private information, and, accordingly, citizens cannot access them. Therefore, timeliness from request for access to receipt cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by all officials, including judges, are considered confidential information, and, accordingly, citizens cannot access them. Therefore, cost issues related to citizens' gaining access of these records cannot be evaluated. Citizens cannot access disclosure records of the national-level judiciary. Therefore, the cost issues cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. Interview with Azer Mehtiyev, chairman of the Center for Economic Initiatives, September 2011.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens cannot access asset disclosure records of the national-level judiciary. Therefore, the issue of whether the asset disclosure records are of high quality or not cannot be evaluated.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption.
2. U.S. State Department Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report on Azerbaijan, April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154413.htm>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

According to Article 95 of the Constitution, the Parliament, based on the recommendation of the president, approves the national budget and controls its execution. Article 13 of the Law on Budget System states that the draft law on the upcoming year's budget shall be submitted to Parliament for discussions no later than October 15 of the instant year and under Article 15.3 the Parliament shall approve it by December 20. Article 14 also stipulates that the draft law should be published in the media within 10 days from its submission to Parliament. Until approval of the budget as well as after its approval, the Parliament may amend the budget, if necessary.

References:

1. The Constitution of the Republic of Azerbaijan.
2. The Law on Budget System, http://www.maliyye.gov.az/store/5/budce_siyaseti_en.pdf

Yes: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

No: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100

75

50

25

0

Comments:

In practice, the state budget is approved by the Parliament. The discussions centering on the draft budget for the next year last about a week. Then discussion is ended and any changes or modifications, put forth by Parliament members, are considered. After this, the minister of finance presents the final draft project and the parliament approves it. During the budget year, the

executive branch makes amendments to the budget's significant expenditures without the agreement of the Parliament. In the middle of a year the same year's budget is appended and approved by the Parliament.

References:

1. International Budget Partnership Open Budget Index-2010 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Review of the National Budget Group on the 2011 state budget, http://www.nbg.az/index.php?option=com_content&view=article&id=132%3A2011-ci-ilin-doevlt-buedcsi-bard-milli-buedc-grupunun-ryi&catid=82%3Arylr&Itemid=126&lang=en
3. Interview with Azer Mehtiyev, a member of the National Budget Group, September 2011.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

As a rule, there is not any significant difference between the budgets submitted by the president and the Parliament. The discussions in the Parliament center on amendments to the budget. The Parliament remains outside the process of the execution of the budget.

References:

1. International Budget Partnership Open Budget Index-2009 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Reports by the Ministry of Finance, http://www.finance.gov.az/index_en.jsp?mod=2&id=12&lang=en

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

17

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The budget debate in Parliament is conducted in a transparent manner and the media publishes articles on it.

References:

1. International Budget Partnership Open Budget Index-2009 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Reports by the Ministry of Finance, http://www.finance.gov.az/index_en.jsp?mod=2&id=12&lang=en

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The budget hearings do not allow for much citizen input. The National Budget Group organizes budget hearings within the framework of the projects executed in the regions. These hearings involve the deputies from affected districts, and in the last Parliament year, deputies representing Sumgait, Guba, Imishli and Gadabay have participated in these hearings.

References:

1. International Budget Partnership Open Budget Index-2009 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Reports by the Ministry of Finance, http://www.finance.gov.az/index_en.jsp?mod=2&id=12&lang=en

100: Citizens, usually acting through NGOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | **25** | 0

Comments:

The draft budget for the next year, with allotments in a generalized form, is published in an official newspaper (and on the paper's website) before Parliament starts debate on budget. But citizens cannot access itemized budget allocations.

References:

1. International Budget Partnership Open Budget Index-2009 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Reports by the Ministry of Finance, http://www.finance.gov.az/index_en.jsp?mod=2&id=12&lang=en

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

Under the legislation, the Chamber of Accounts is the legislative committee that provides control over the implementation of the national budget and reports to Parliament.

References:

1. Constitution of the Republic of Azerbaijan.
2. The Law on Budget System; http://www.maliyye.gov.az/store/5/budce_siyaseti_en.pdf
3. The Law on Chamber of Accounts.

Yes: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

No: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | **50** | 25 | 0

Comments:

Reports are regularly submitted but not always updated.

References:

1. International Budget Partnership Open Budget Index-2009: <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Azerbaijan.pdf>
Azerbaijan and Open Budget Questionnaire-Azerbaijan..
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Reports by the Ministry of Finance: <http://www.finance.gov.az/en/node/971>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

No representatives of opposition parties are represented on the committee.

References:

1. International Budget Partnership Open Budget Index-2010 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.
3. Freedom House report, <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Azerbaijan.pdf>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

This committee has not initiated independent investigations into financial irregularities. The committee has no right other than organizing the budget debates at the beginning of the budget process. The independent experts and the specialized NGO experts are not invited to the budget discussions in the committee.

References:

1. International Budget Partnership Open Budget Index-2009 Azerbaijan and Open Budget Questionnaire-Azerbaijan.
2. Interview with Azer Mehtiyev, an economist-expert of the National Budget Group, September 2011.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. ~~C1~~ Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

The Law on Civil Service and the Law on Combating Corruption establish specific formal rules for an impartial, independent and fairly managed civil service.

References:

1. The Law on Civil Service; http://www.commission-anticorruption.gov.az/upload/file/CivilServiceLaw%20_eng_.pdf
2. The Law on Combating Corruption, <http://www.transparency.az/transpfiles/37.doc>

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

The above-mentioned laws, especially the Law on Combating Corruption, stipulate regulations to prevent nepotism, cronyism and patronage within the civil service. It should be noted that this applies to all civil servants since the subjects of the corruption offenses are widely defined by Article 2 of the Law on Combating Corruption.

References:

1. The Law on Civil Service
2. The Law of the Republic of Azerbaijan on Combating Corruption
3. The Law on Rules of Ethics Conduct of Civil Servants

Yes: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

No: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | **No**

Comments:

Under Article 5 of the Law on Civil Service, the Council on Civil Service Management is a special mechanism that controls the implementation of the Law on Civil Service, in particularly adjudicates complaints brought by civil servants. However, the Council is not independent in practice. There is also an appeals mechanism available to the Ombudsman and/or to the administrative body or to courts.

References:

1. The website of the Council on Civil Service Management
2. The Law on Civil Service

Yes: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

According to the Criminal Code, there are certain corruption crimes which in addition to imprisonment also define the punishment as "prohibition of holding a certain position." However, under Article 46.1 of the Criminal Code, the maximum period for prohibition

is five years, so it is not a lifetime ban. Furthermore, under Article 27.2.2 of the Law on Civil Service, if a person has an unpaid or unremoved conviction, he or she cannot apply for government jobs. Under Article 83 of the Criminal Code, depending on the gravity of the crime, a certain time period should pass in order for a person to be considered without conviction; otherwise, a convicted person should apply for the removal of a conviction ahead of time. Only after this can a person apply for government jobs. The law does not specifically talk about corruption crimes. Thus, civil servants convicted of corruption may work for the government after being considered without conviction. Put another way, the ban is not a lifetime ban.

References:

1. The Law on Civil Service
2. The Criminal Code

Yes: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

No: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

33

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are obliged to support the political line of the party in power and to support its activity. They are invited to political events organized by the party in power and make statements in favor of the party. Those who don't accept these invitations are dismissed from work.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants answer professional test questions to start working. And those who have passed this stage with great success will be obliged to pass the interview of the commission established with the corresponding state authority. Currently, civil servants older than 65 are dismissed.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the testing system on job admittance is not interfered with, but it may occur that the persons collecting the highest points in the test are failed. As the interviewing process is closed, the decisions are approved based on bribery and interventions (nepotism, cronyism or patronage). Families and persons aligned with the opposition have no chance to pass these interviews. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism or patronage. In practice, civil servants are passing competitions and evaluations within the job period, and no transparency is secured in this process. Nepotism, cronyism or patronage plays an important part in the decision-making process.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on

Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, civil servants have no clear job descriptions. They are obliged to execute the tasks given by the party in power and to take part in the political events of the party in power.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | **25** | 0

Comments:

In practice, civil servants are paid a bonus as an additional payment to the main salary. These cases are met especially in the state authorities, such as the state Customs Committee, the Ministry of Taxes, the State Property Committee and so on, where there are possibilities to accept bribes from citizens.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the government publishes information concerning civil servant positions. It is placed as a rule together with announcements of competition.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Azerbaijani legislation guarantees judicial independence, but in practice the judiciary is deeply dependent on the executive. Although internationally led reform efforts have had some limited, positive impact, the judiciary remains inefficient and rife with corruption. This prevents courts from providing an effective redress mechanism against violations of human, civil and property rights. Unfair trials and violations of due process are commonplace, and Azerbaijan has not complied with a number of ECHR rulings — owing to the judiciary's dependence on the executive, its failure to provide a redress mechanism, and its complicity in silencing critics.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are working in addition to the normal working time, as well as on Saturdays. Even in some ministries (Ministry of Taxes, Economic Development) and in the state committees (Customs, Property, Land and so on) it is a tradition. The government doesn't pay the civil servants for additional work.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | **25** | 0

Comments:

In practice we observe this type of case. For example, Salim Muslumov was arrested because of financial frauds when he was employed as head of department in the Ministry of Finance. Then he was employed as deputy chairman of the State Customs Committee, and now he is the chairman of the State Social Safety Fund.

References:

1. Newspaper materials and articles on Radio Liberty-Azerbaijan
2. 2010 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

56

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

Under Article 5 of the Law on Combating Corruption, officials should file regular asset disclosure forms, illustrating sources, types,

and amount of income, stock holdings, taxable properties, and other assets. Article 18 of the Law on Civil Service defines that a civil servant shall submit annual asset disclosure forms to their employers. Moreover, Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials also lists officials who should file asset disclosure forms to the Commission on Combating Corruption.

References:

1. The Law on Approval of the Rules on Filing Financial Data by Public Officials
2. The Law on Combating Corruption
3. The Law on Civil Service

Yes: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

No: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes

No

Comments:

Under Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his or her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the same Law, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of a contradiction between the service duties and the private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including the future period. It should also be noted that the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under Parliament's consideration, may also regulate it.

References:

1. The Law on Rules of Ethics Conduct of Civil Servants

Yes: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

No: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes

No

Comments:

According to Article 15 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall fulfill everything prescribed by law in order to prevent conflicts of interest. Specifically, Article 15.3 states that after leaving the government for the period prescribed by law, a civil servant cannot work at the organization or their branches which were under his/ her supervision.

References:

1. The Law on Rules of Ethics Conduct of Civil Servants

Yes: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

No: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

According to Article 5 of the Law on Combating Corruption, officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 18 of the Law on Civil Service defines that a civil servant shall submit annual asset disclosure forms to their employers. Moreover, Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials also lists officials who should file asset disclosure forms to the Commission on Combating Corruption.

References:

1. The Law on Combating Corruption
2. The Law on Civil Service
3. The Law on Approval of the Rules on Filing Financial Data by Public Officials

Yes: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

No: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

Comments:

According to Article 5 of the Law on Combating Corruption, officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 18 of the Law on Civil Service defines that civil servants shall submit annual asset disclosure forms to their employers. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials also lists officials who should file asset disclosure forms to the Commission on Combating Corruption.

References:

1. The Law on Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=21>
2. The Law on Approval of the Rules on Filing Financial Data by Public Officials

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

No: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is no formal restriction on post-government private sector employment for civil servants. In this case, we cannot evaluate the efficiency of this. It should be noted that, in practice, civil servants have illegal private businesses, and keep them after leaving the government.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate “cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the regulations governing gifts and hospitality offered to civil servants don't work. Despite the formal requirements, in fact, the regulations governing gifts and hospitality to civil servants are routinely ignored and unenforced.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the requirements for civil service recusal from policy decisions affecting personal interests are not effective. Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where they have personal interests.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil service asset disclosures are not audited . There is no requirement in Azerbaijan.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

According to Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by civil servants are considered confidential private information and therefore citizens cannot access the asset disclosure records of senior civil servants. The Law says that responsible entrusted authorities shall ensure the privacy of those records and they may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court, in case of corruption-related offenses.

References:

1. The Law on Approval of the Rules on Filing Financial Data by Public Officials

Yes: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

No: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens will not have access to these records. Therefore, time is not a relevant issue.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens will not have access to these records. Therefore, cost is not a relevant issue.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records' costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens will not have access to these records. Therefore, the quality issue is not relevant.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes

No

Comments:

The legislation in force is silent about reporting cases of corruption for civil servants. There is also no legal statute for public sector whistle-blowers. In other words, no specific protection is provided to civil servants reporting corruption cases other than general security measures for witness protection prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings.

References:

1. The Law on State Protection of Persons Participating in Criminal Proceedings

Yes: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100

75

50

25

0

Comments:

In practice, civil servants who report cases of corruption, graft, abuse of power or abuse of resources are not protected from recrimination or other negative consequences, as there are no laws on whistle-blower protections for individuals who lodge complaints about corruption.

References:

1. Newspaper materials and articles of www.azerireport.com

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

Yes | **No**

Comments:

The legislation in force is silent about reporting cases of corruption. There is also no legal statute for private sector whistleblowers.

References:

1. The Law on State Protection of Persons Participating in Criminal Proceedings

Yes: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

No: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are not protected from recrimination or other negative consequences. There is also no legal statute for private sector whistle-blowers.

References:

1. Newspaper materials and articles from www.azerireport.com

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Yes

No

Comments:

The legislation is silent about specific internal mechanisms for reporting corruption cases for civil servants. However, civil servants like other citizens may apply to the specialized body in the area of the prevention of corruption, which is the Commission on Combating Corruption. It should also be noted that the majority of agencies have websites, hotlines and emails where they can be contacted.

References:

1. The Commission on Combating Corruption
2. The Statute of the Commission on Combating Corruption

Yes: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

No: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

Comments:

The Commission on Combating Corruption has a permanent secretariat, which is a public body and has a professional, full-time staff.

References:

1. Commission for Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=0>
2. Interview with Osman Gunduz, President of the Azerbaijan Internet Forum, September 2011

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Combating Corruption receives regular funding from the state budget.

References:

1. The Law of the Republic of Azerbaijan on State Budget of the Republic of Azerbaijan for 2011
2. Decree of the President of the Republic of Azerbaijan on application of the Law of the Republic of Azerbaijan 'On State Budget of the Republic of Azerbaijan for 2011
3. Interview with Azer Mehtiyev, board member of the National Budget Group, September 2011

1. THE LAW OF THE REPUBLIC OF AZERBAIJAN ON STATE BUDGET OF THE REPUBLIC OF AZERBAIJAN FOR 2011, http://www.finance.gov.az/store/1/qanun_26_11_2010_e.pdf

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law on the Procedure for Consideration of Applications from Citizens, they are to be reviewed within one month, or 15 days if no additional review or inspection is needed, unless shorter periods are provided for in legislation. Generally, in practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Freedom House, Nations in Transitions, Report on Azerbaijan, 2010, <http://www.freedomhouse.eu/images/Reports/NIT-2010->

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

According to Article 7.8 of the Charter of the Commission on Combating Corruption, if there are complaints of corruption offenses, the Commission shall send materials to the relevant authorities for consideration. The Commission itself does not investigate but it cooperates with other investigative bodies such as the Department on Combating Corruption under the General Prosecutor's Office and the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs. It should be noted that since there is high political dependency, the Commission is unwilling to take on politically powerful offenders or do something without top approval.

References:

1. Third Round Evaluation Report on Azerbaijan by GRECO, 18 November 2010, [http://www.coe.int/t/dghl/monitoring/greco/news/news\(20101118\)eval3azerbaijan_EN.asp](http://www.coe.int/t/dghl/monitoring/greco/news/news(20101118)eval3azerbaijan_EN.asp)
2. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

4.3. ⁶⁰ Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

83

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

Comments:

Article 13 of the Law on Public Procurement regulates conflicts of interests for public procurement officials. According to it, public procurement officials, their relatives and dependents do not have the right to participate in procurement. Furthermore, under Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his/her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the same Law, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of a contradiction between the service duties and the private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including a future period.

References:

1. The Law on Public Procurement
2. Law on Rules of Ethics Conduct of Civil Servants

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

No: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

Yes

No

Comments:

According to Article 4.1.4 of the Law on Public Procurement, the Agency on Public Procurement shall organize professional development courses, seminars and conferences as well as prepare educational materials for its officials.

References:

1. The Law on Public Procurement

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

No: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

In practice, conflicts of interest in the public procurement process are not prevented. The interests of the governmental body regulating this process come to the fore. The unavailability of transparency and accountability in the public procurement process, plus an exemption from punishment of officials for violation of laws, makes them free to secure their interests.

References:

1. Reports by the State Agency On Procurement of the Republic of Azerbaijan
- 2 . 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption
3. Interview with Azer Mehtiyev, board member of the National Budget Group, September 2011
- 3 . Newspaper materials and articles of Radio Liberty-Azerbaijan

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Yes | No

Comments:

According to Article 4.1.2 of the Law on Public Procurement, the Public Procurement Agency shall supervise the legality of procurement of goods (works and services) on a competitive basis at the account of state funds and performance of contracts, consider disputes, suspend procurement procedures for up to seven banking days in case of revealing breach of law, and, if necessary raise the matter of cancellation of tender results. Furthermore, under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that public officials are required to file an asset disclosure form to the Commission on Combating Corruption.

References:

1. Law on Public Procurement
2. Law on Combating Corruption
3. Law on Approval of the Rules on Filing Financial Data by Public Officials

Yes: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

No: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

Yes

No

Comments:

According to the Law on Public Procurement, major procurements require competitive bidding. Article 11.1 states that if the number of submitted proposals to take part in the tender is less than three, the procurement agency shall refuse to continue the tender and shall publish relevant information in the press, where announcements about tenders must be published within five banking days.

References:

1. The Law on Public Procurement

Yes: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

No: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes

No

Comments:

According to Article 45 of the Law on Public Procurement, strict formal requirements limit the extent of sole sourcing. All negotiations should be secret, and information cannot be disclosed without consent.

References:

1. The Law on Public Procurement

Yes: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

No: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

According to Article 56-59 of the Law on Public Procurement, unsuccessful bidders can instigate an official review of procurement decisions.

References:

1.The Law on Public Procurement

Yes: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

No: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

According to Article 60 of the Law on Public Procurement, unsuccessful bidders can challenge procurement decisions in courts.

References:

1.The Law on Public Procurement

Yes: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

No: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

According to Article 4 of the Law on Public Procurement, the State Agency on Public Procurement has the right to prohibit companies guilty of major violations of procurement regulations from participating in future procurement bids.

References:

1.The Law on Public Procurement

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

According to paragraph 39 of the National Strategy on Increasing Transparency and Combating Corruption 2007-2011, a mechanism should be established which will prohibit physical and legal persons, being guilty of major violations of procurement regulations, to participate in future procurement bids for a certain period.

References:

1. Reports by the State Agency On Procurement of the Republic of Azerbaijan
2. Reports by the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

71

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

According to Article 5.3 of the Law on Public Procurement, public procurement rules should be available under the procedure prescribed by law. Furthermore, citizens can access public procurement regulations either through the website of the State Agency on Public Procurement or the official newspaper.

References:

1. The Law on Public Procurement

Yes: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

No: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

According to Article 5.3 of the Law on Public Procurement, information on procurement contracts, concluded as a result of tender, shall be published within five working days in the press entity where the announcement about the tender was published.

References:

1. The Law on Public Procurement

Yes: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to reports by the State Agency on Public Procurement, public procurement regulations are posted on the website of the State Agency on Public Procurement.

References:

1. Website of State Procurement Agency of the Republic of Azerbaijan ; <http://tender.gov.az/new/index.php?inc=tender>
2. Public Procurement System in Azerbaijan, <http://www.revenuewatch.org/grants/public-procurement-system-azerbaijan>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As it is seen from the website, all information about open bids, request for proposals, etc., is available on www.tender.gov.az/LawAz.html free of charge.

References:

1. State Procurement Agency of the Republic of Azerbaijan, <http://tender.gov.az/new/index.php?inc=tender>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

In practice, information relating to major public procurements is placed only on the website of the State Procurement Agency of the Republic of Azerbaijan. You cannot find wide information on the State Procurement Agency in other mass media.

References:

1. State Procurement Agency of the Republic of Azerbaijan, <http://tender.gov.az/new/index.php>
2. Public Procurement System in Azerbaijan, <http://www.revenuewatch.org/grants/public-procurement-system-azerbaijan>
3. Interview with Azer Mehtiyev, Chairman of the Public Union "Support to Economic Initiatives" (SEI)

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Tenders on the majority of investment projects paid out of the state budget have not held to this, and contractors are defined on the basis of mysterious decisions. These types of problems happen especially in the Ministry of Transport, Ministry of Labor and Social Protection of Population, Ministry of Education and the State Oil Company. The relevant bodies such as Chamber of Accounts, the Ministry of Finance as well as the State Agency on Public Procurement close their eyes to all this. As a result, citizens cannot access the results of major procurement bids.

References:

1. State Procurement Agency of the Republic of Azerbaijan <http://tender.gov.az/new/index.php>
2. Public Procurement System in Azerbaijan, <http://www.revenuewatch.org/grants/public-procurement-system-azerbaijan>
3. Interview with Azer Mehtiyev, Chairman of the Public Union "Support to Economic Initiatives" (SEI)

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

According to the Law on Privatization of State Property, all businesses are eligible to compete for privatized state assets.

References:

1. The Law on Privatization of State Property

Yes: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

No: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes

No

Comments:

The Law on Privatization of State Property does not specifically address this issue. However, according to Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his/her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of contradiction between service duties and private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including future period.

References:

1. The Law on Privatization of State Property
2. The Law on Rules of Ethics Conduct of Civil Servants

Yes: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

In practice, conflicts of interest in privatization are not prevented. The interests of the governmental body regulating this process come to the fore. The unavailability of transparency and accountability in privatization and the exemption from punishment of officials for violation of laws makes them free to secure their interests.

References:

1. Reports by the State Committee on Property Issues of the Republic of Azerbaijan
2. Reports by the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption
3. Newspaper materials and articles of the Liberty-Azerbaijan
4. Korrupsiometr, 10.07.2011, www.azadliqradiosu.az/content/article/24243935.html

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

75

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

According to Article 25.1 of the Law on Privatization of State Property, information on privatization of state-owned property should be published in the official media 30 days prior to selling that property.

References:

1. The Law on Privatization of State Property

Yes: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

No: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | **50** | 25 | 0

Comments:

In practice, information relating to property declared open for privatization is placed only on the website of the state-owned property administration committee, and in its publications (magazine). As a rule, these publications contain information only about businesses and properties that are not attractive from the point of view of privatization. You cannot find wide information on privatization in other mass media. The majority of the population has no information regarding privatization vouchers whose turnover term has expired on January 1, 2011. This information is of episodic character and displayed only in TV short news.

References:

1. Reports by the State Committee on Property Issues of the Republic of Azerbaijan
2. Reports by the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption
3. Newspaper materials and articles of Radio Liberty-Azerbaijan

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

Comments:

According to Article 25.3 of the Law on Privatization of State Property, information on results of the privatization process should be published in the media within 15 days.

References:

1. The Law on Privatization of State Property

Yes: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

No: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

It depends on the attractiveness of a property declared open for privatization. Citizens can access some information within a reasonable time period. At the same time, citizens calling up through a hotline can access information relating to these enterprises.

References:

1. Reports by the State Committee on Property Issues of the Republic of Azerbaijan, <http://www.emdk.gov.az/?en/>
2. Reports by the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption
3. Center for Organising Auctions, <http://auksion.az/>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

The expenses of privatization for ordinary citizens and a business not linked with the political party in power are expressed in small amounts. This amount includes unofficial payments exceeding several times the legal fees.

References:

1. Reports by the State Committee on Property Issues of the Republic of Azerbaijan, <http://www.emdk.gov.az/?/en/>
2. Center for Organising Auctions, <http://auksion.az/>
3. Reports by the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=0>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁷⁵National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

According to Article 1 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman), the Commissioner is established in order to restore human rights and liberties violated by officers of public authorities and municipalities. In addition, under Article 57.1 of the Law on Obtaining Information, the Commissioner on Information matters should have been established

in Azerbaijan within six months from the period the Law became effective, i.e. Sept. 30, 2005. Although about six years have passed, the Commissioner has not been appointed yet.

References:

1. The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman);
2. The Law on Obtaining Information.

Yes: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

No: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

56. Is the national ombudsman effective?

55

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

According to Article 2.1 of the Constitution, the commissioner is elected for seven years by Parliament (Milli Meclis) from the three candidates nominated by the president, with 83 out of 125 votes required for election. Under Article 5, the commissioner is independent and obeys only the Constitution and the laws of Azerbaijan.

The independence of the commissioner shall be ensured by the following four legal guarantees: a) the commissioner shall not be replaced, while in office; b) the commissioner shall enjoy immunities; c) It shall be inadmissible to interfere with the commissioner's activities by any public authority, municipality or officials; d) the commissioner shall enjoy financial and social guarantees.

References:

1. The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman), <http://www.commission-anticorruption.gov.az/upload/file/Law%20Ombudsman.pdf>

Yes: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

Comments:

During the last two years, the Ombudsman has made some attempts to be seen as independent. For instance, he holds regular meetings with political prisoners, imprisoned journalists and bloggers.

References:

1. Reports by Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=73>
2. Interview with Elchin Abdullayev, the Chairman of Democratic Institutions and Human Rights Social Union (DIHRU), September 2011

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

Comments:

The head of the Ombudsman agency serves the political power's interests. His appointment to the post was approved by Parliament in under the direction of the presidential administration. It means that the illegal approval of his appointment could lead to the possibility of his illegal dismissal. Because of this, the Ombudsman agency doesn't act independently.

References:

1. Reports by the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=73>
2. Interview with Elchin Abdullayev, Chairman of the Democratic Institutions and Human Rights Social Union (DIHRU), September 2011

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The institute has a professional and full-time staff. But dependence on political power has reduced the role of the professional staff in the decision-making process to a minimum.

References:

1. Annual Reports by Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=0>
2. Interview with lawyer Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

In practice, agency appointments are not independent.

References:

1. Annual Reports by Ombudsman Office <http://www.ombudsman.gov.az/view.php?lang=en&menu=0>
2. Interview with lawyer Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the ombudsman agency receives regular funding from the state budget.

References:

1. Annual Reports by Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=az&menu=0>
2. The law of state budget of the Republic of Azerbaijan for 2011, http://www.finance.gov.az/store/1/qanun_26_11_2010_e.pdf

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Each year the agency submits a report to Parliament, and you can access to this report via their website.

References:

1. Annual Reports by Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice you can see such cases. But it happens in connection with matters that have gotten the attention of the international community. In this case, the Ombudsman appeals to the president to protect his reputation or meets with the persons whose rights are infringed. But to date the Ombudsman doesn't conduct independent investigation in the required cases.

References:

1. Website of the Ombudsman Office <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>
2. Interview with lawyer Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

We didn't see these cases in practice.

References:

1. Annual Reports of the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>
2. Interview with lawyer Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It happens rarely and only in cases when international organizations start to put pressure on the government. The president, starting an investigation namely after the appeal of the Ombudsman institute, demonstrates his will to ignore foreign pressure. Since its operation to 2010, 8,800 applications were received by the Commissioner; 7,365 (83.7%) of them were complaints; 982 (13.3%) of those complaints were related to courts; 415 (5.6%) were related to Prosecutor's Offices; 1,239 (16.8%) were related to police officers; 112 (9%) were related to state traffic police; 688 (9.3%) were related to local executive powers; 441 (6%) were related to nonexecution of court decisions; and 205 cases (2.8%) were related to municipalities.

References:

1. Annual Reports of the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, when citizens appeal to the Ombudsman Institute, its reaction depends on the political content of the complaints. If the complaint is of a civil nature, the Ombudsman agency acts within a reasonable time period. In the case of political complaints

and where human rights are infringed by the state authorities coarsely deliberately, the Ombudsman agency acts according to the results of political consultations that take a long time.

References:

1. Annual Reports of the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>
2. Interview with lawyer Azar Rasulov, attorney, member of the Bar Association of Republic of Azerbaijan, and head of Lawyer Department of Democratic Institutions and Human Rights Social Union.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

Comments:

According to Article 14.5 of the Constitutional Law, the annual reports of the Ombudsman are published in the official newspaper “Azerbaijan” and “Legislation Database of the Republic of Azerbaijan.” Furthermore, all annual reports are published on the website of the Commissioner.

References:

1. The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman), <http://www.commission-anticorruption.gov.az/upload/file/Law%20Ombudsman.pdf>

Yes: A YES score is earned if all ombudsman reports are publicly available.

No: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the reports of the Ombudsman Institute within a reasonable time period. These reports are placed on the agency's websites. But they are not interesting in their content and don't become a source for investigations.

References:

1. Annual Reports by the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>
2. Interview with Elchin Abdullayev, Chairman of the Democratic Institutions and Human Rights Social Union (DIHRU), September 2011

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the reports of the Ombudsman Institute without cost. The reports are public and available via the website of the Ombudsman Institute.

References:

1. Website of the Ombudsman Office, <http://www.ombudsman.gov.az/view.php?lang=en&menu=72>
2. Interview with Elchin Abdullayev, Chairman of the Democratic Institutions and Human Rights Social Union (DIHRU), September 2011
3. Newspaper materials and articles of Radio Liberty-Azerbaijan

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes

No

Comments:

The Chamber of Auditors is a specific agency that covers the entire public sector. The Law on Audit Service regulates its operation.

References:

1. Law of Republic of Azerbaijan "On Chamber of Accounts", <http://www.ach.gov.az/?/en/content/343/>
2. The Law on Audit Service

Yes: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

No: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

59. Is the supreme audit institution effective?

63

59a. In law, the supreme audit institution is protected from political interference.

Yes

No

Comments:

According to par. 1 of the Charter on the Chamber of Auditors, the Chamber is an independent financial institution.

References:

1. Law of Republic of Azerbaijan "On Chamber of Accounts", <http://www.ach.gov.az/?/en/content/343/>

Yes: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the head of the audit agency may be removed at any time. He serves at the will of Parliament. But the dependence of Parliament on the executive power means he could lose his job at any time.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>
2. Interview with Azer Mehtiyev, board member of the National Budget Group, September 2011

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the audit agency has a professional and experienced full-time staff.

References:

1. Staff of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/338/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the Chamber of Accounts as a supreme audit agency is not considered an independent institute. The members of the Chamber of Accounts are appointed based on the interests of the presidential administration by Parliament.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>
2. Review of National Budget Group, <http://www.nbg.az/index.php?lang=en>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the audit agency receives funding from state budget.

References:

1. The reports by Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>

2. The law on the state budget of the Republic of Azerbaijan for 2011

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Each year the Chamber of Accounts submits a report to Parliament, and you can access this report via the agency's website.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?en/content/364/>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Chamber of Accounts as a supreme audit agency is not considered an independent institute. The members of the Chamber of Accounts are appointed based on interests of the presidential administration by Parliament.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>
2. Review of National Budget Group, <http://www.nbg.az/index.php?lang=en>
3. Interview with Azer Mehtiyev, member of the National Budget Group

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, they are able only to conduct analysis within the scope of their competencies; investigations and monitoring may be conducted only with the consent of the presidential administration.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>
2. Review of National Budget Group, <http://www.nbg.az/index.php?lang=en>
3. Interview with Azer Mehtiyev, member of the National Budget Group

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

The Law on Audit Service is silent about the accessibility of its reports. However, citizens can request them under freedom of information laws.

References:

1. The Law on Audit Service, http://www.intosaitaudit.org/mandates/mandates/Mandates/Azerbaijan.html#Azerbaijan_H1

Yes: A YES score is earned if all supreme auditor reports are available to the general public.

No: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the opinions drawn up by the Chamber of Accounts, the supreme audit agency on the state budget, give rise to great interest. Parliament members can access these documents. Then, the documents are placed on the website of the Chamber of Accounts.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?/en/content/364/>
2. Interview with Azer Mehtiyev, board member of the National Budget Group, September 2011

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

In practice, citizens can access the audit reports at no cost.

References:

1. Annual Reports on Activities of Chamber of Accounts, <http://www.ach.gov.az/?en/content/364/>
2. Interview with Azer Mehtiyev, board member of the National Budget Group, September 2011

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

82 5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The Ministry of Taxes is a national agency formally mandated to collect taxes.

References:

1. Tax Code of the Republic of Azerbaijan, <http://www.taxes.gov.az/>

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the tax collection agency has a professional, full-time staff. Application to work at the agency is conducted via test. There are many professionals in the ministry and in its regional departments.

References:

1. The Ministry of Taxes, www.taxes.gov.az
2. Interview with Vugar Bayramov, chairman of the Center for Economic and Social Development (CESD)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Ministry of Taxes is funded from the state budget.

References:

1. The Ministry of Taxes , <http://www.taxes.gov.az/>
2. The Law on the state budget of the Republic of Azerbaijan for 2011
3. Interview with Vugar Bayramov, chairman of the Center for Economic and Social Development, September 2011

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

In practice, tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax officers regularly demand bribes from business owners. Despite some measures and success stories such as the computerization of tax declarations, training on internal inspections and on the Code of Ethics of Tax Officers, the creation of hotlines, etc., it is considered as one of the most corrupt areas in Azerbaijan. However, the Ministry of Taxes has a comprehensive website. It also has an active hotline service where citizens can call and ask different questions on tax issues as well as complain about the illegal actions and inactions of tax officers.

References:

1. Ministry of Taxes, <http://www.taxes.gov.az/>
2. Interview with Vugar Bayramov, chairman of the Center for Economic and Social Development, September 2011

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

The Customs Committee is a national agency formally mandated to collect excises and inspect customs.

References:

1. The Customs Committee of the Republic of Azerbaijan; <http://www.customs.gov.az/en/>
2. Customs Code of the Azerbaijan Republic, <http://www.customs.gov.az/en/ccode.html>

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the functions of a customs and excise agency are combined and assigned to the customs body. This authority has a professional and full-time staff.

References:

1. State Customs Committee of the Azerbaijan Republic, <http://www.customs.gov.az/en/ldsc.html>
2. Interview with Vugar Bayramov, chairman of Center for Economic and Social Development (CESD)

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, 25% of misappropriation of funds revealed by the employees of this body is transferred to the prize fund. And this organization operates on funding from the budget.

References:

1. State Customs Committee, <http://www.customs.gov.az/en/ldsc.html>
2. Interview with Vugar Bayramov, chairman of Center for Economic and Social Development, September 2011

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In practice we cannot observe any independence granted to customs based on the law. They are not able to work without discrimination or under equal conditions.

References:

1. State Customs Committee, <http://www.customs.gov.az/en/ldsc.html>
2. Interview with Vugar Bayramov, chairman of Center for Economic and Social Development, September 2011

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes

No

Comments:

There is no centralized agency which oversees state-owned companies as a whole. However, there are specialized agencies which are responsible for different aspects of state-owned companies. For instance, the State Committee on Property Issues deals with privatization of state-owned companies; the Ministry of Taxes deals with taxation of state-owned companies; the Ministry of Finance deals with financial issues of state-owned companies; the State Committee on Securities deals with securities of state-owned companies; and the State Social Protection Fund deals with social protection issues.

References:

- 1 . The State Committee on Property Issues, www.statepropety.gov.az
2. The Ministry of Taxes <http://www.taxes.gov.az/>
- 3 . The Ministry of Finance [www.finnace.gov.az /](http://www.finnace.gov.az/)
4. The State Committee on Securities
5. The State Social Protection Fund

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

45

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

All agencies that are responsible for different aspects of state-owned companies, such as the State Committee on Property Issues; the Ministry of Taxes; the Ministry of Finance; the State Committee on Securities; and the State Social Protection Fund are considered as governmental agencies — in other words, central executive authorities.

References:

1. Reports by the State Committee on Property Issues www.stateproperty.gov.az
2. Reports by the Ministry of Taxes, www.taxes.gov.az
3. Reports by the Ministry of Finance www.finance.gov.az
4. Reports by the State Committee on Securities
5. Reports by the State Social Protection Fund, www.sspf.gov.az/
6. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/archive/news/20110914/1/1.html?id=24327772>

Yes: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

Recruitment to all state agencies is done by the Civil Service Commission, a centralized agency under the president of the Republic of Azerbaijan.

References:

1. Reports by the State Committee on Property Issues www.stateproperty.gov.az
2. Reports by the Ministry of Taxes, www.taxes.gov.az
3. Reports by the Ministry of Finance www.finance.gov.az
4. Reports by the State Committee on Securities
5. Reports by the State Social Protection Fund, www.sspf.gov.az/
6. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/archive/news/20110914/1/1.html?id=24327772>

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

All state agencies receive regular funding from the state budget.

References:

1. Reports by the State Committee on Property Issues www.statepropoerty.gov.az
2. Reports by the Ministry of Taxes, www.taxes.gov.az
3. Reports by the Ministry of Finance www.finance.gov.az
4. Reports by the State Committee on Securities
5. Reports by the State Social Protection Fund, www.sspf.gov.az/
6. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/archive/news/20110914/1/1.html?id=24327772>

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, state-owned companies are able to initiate investigations only for internal purposes. Initiating investigations on the sector or national level has to be agreed to by the president administration or made by their order. All these agencies are dependent on political leadership in initiating investigations, especially in high-profile cases.

References:

1. Reports by the State Committee on Property Issues www.statepropoerty.gov.az
2. Reports by the Ministry of Taxes, www.taxes.gov.az
3. Reports by the Ministry of Finance www.finance.gov.az
4. Reports by the State Committee on Securities

5. Reports by the State Social Protection Fund, www.sspf.gov.az/

6. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/archive/news/20110914/1/1.html?id=24327772>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

In practice, we rarely observe this in regards to people who have the highest political positions. But we observe such cases with those having middle and inferior positions.

References:

1. Reports by the State Committee on Property Issues www.stateproperty.gov.az

2. Reports by the Ministry of Taxes, www.taxes.gov.az

3. Reports by the Ministry of Finance www.finance.gov.az

4. Reports by the State Committee on Securities

5. Reports by the State Social Protection Fund, www.sspf.gov.az/

6. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/archive/news/20110914/1/1.html?id=24327772>

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

According to Article 29 of the Law on Access to Information, financial reports are considered public information and are publicly accessible through information requests.

References:

1. The Law on Access to Information

Yes: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

No: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

In practice, financial records are released only in financial reports. And the financial reports are published once a year. Therefore, the changes are made once a year.

References:

1. Newspaper materials and articles of Radio Liberty-Azerbaijan
 2. Report on SOCAR financial flows, by Public Association for Assistance to Free Economy (PAAFE), http://www.freeeconomy.az/attachments/095_SOCARfinancialflow.pdf

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

In practice, although compliance of the state-owned companies accounting systems to internationally recognized principles has been finished in recent years, we are observing problems in its application.

Outcomes of a company's financial activity as of 2010 are made public at SOCAR's site on the basis of Ernst & Young Holding audit report. Note that 2009 outcomes were accessible for the public only in October of last year.

References:

1. International Financial Reporting Standards Concolidated Financial Statements

2010 <http://www.socar.az/uploads/FinancialRepoting2010.pdf>

2. Report on SOCAR financial flows, by Public Association for Assistance to Free Economy

(PAAFE), http://www.freeeconomy.az/attachments/095_SOCARfinancialflow.pdf

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can access these documents by visiting a company's Internet page. These documents are published in very restricted number and are distributed mainly among state authorities and partners.

References:

1. International Financial Reporting Standards Concolidated Financial Statements

2010 <http://www.socar.az/uploads/FinancialRepoting2010.pdf>

2. Report on SOCAR financial flows, by Public Association for Assistance to Free Economy

(PAAFE), http://www.freeeconomy.az/attachments/095_SOCARfinancialflow.pdf

3. <http://www.contact.az/docs/2011/Economics&Finance/08038045en.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, accessing these documents doesn't require any cost.

References:

1. International Financial Reporting Standards Consolidated Financial Statements 2010 <http://www.socar.az/uploads/FinancialReporting2010.pdf>
2. Report on SOCAR financial flows, by Public Association for Assistance to Free Economy (PAAFE), http://www.freeeconomy.az/attachments/095_SOCARfinancialflow.pdf
3. <http://www.contact.az/docs/2011/Economics&Finance/08038045en.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or NGOs trying to access this information.

70
5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

Yes

No

Comments:

Article 10 of the Law on Entrepreneurship Activity regulates the state registration of the entrepreneurship activity. Entrepreneurship activity may be exercised individually or by creating a legal entity. Under Article 33 of the Tax Code, any individual may apply to the tax agency for a business license in order to do private business, and the agency opens a tax account for the individual entrepreneur within five days. Article 7-1 of the Law on State Registration of Legal Entities stipulates that a business license for establishing commercial organizations should be issued within no more than three days by tax authorities. It is worth noting that as of Jan. 1, 2008, registration of commercial organizations is done according to the "single window" principle with a unified procedure centralized and implemented under the responsibility of the Ministry of Taxes. Under the new system, now it takes only three days and one procedure to get registration after the required documents have been submitted.

References:

1. The Law on Entrepreneurship Activity
2. The Law on State Registration of Legal Entities
3. The Tax Code of the Republic of Azerbaijan

Yes: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

No: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes

No

Comments:

According to Article 11.5 of the Law on State Registration of Legal Entities, an applicant may go to the superior agency or court for appealing a rejected license. Furthermore, under Article 15.1.9 of the Tax Code, the applicant may appeal against the action (inaction) of the tax authority to the administrative body and/or to court.

References:

1. Superior Administrative Agency and/or courts
2. The Law on Entrepreneurship Activity
3. The Law on State Registration of Legal Entities
4. The Tax Code of the Republic of Azerbaijan

Yes: A YES score is earned if there is a formal process for appealing a rejected license.

No: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

Comments:

The licensing of business activity in the country is currently regulated by Decree No 510, issued by the country's president on 29 December 2006, and by a number of legal acts.

The studies show that small businesses normally apply for licenses to sell alcoholic beverages and tobacco. For example, only 44.3 percent or 310 respondents who participated in the poll said they had to apply for a license. Of them, only 30.6 percent said that they faced certain difficulties while applying for a license. 53.4 percent of respondents who faced difficulties while applying for a license said that the main difficulty was red tape. 26.2 percent of respondents complained that they had to collect a great number of documents. Finally, 20.4 percent or 21 respondents expressed their dissatisfaction that the rules were ambiguous and unclear. http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf

In practice, entrepreneurs receive corresponding business licenses while import from the State Veterinary Service, State Phytosanitary Service and corresponding customs body. According to investigations made by the Economic Research center within the framework of USAID Competitiveness and Trade Project in Azerbaijan, time spent by the companies on import procedures is 82 hours based on the legislation and factually – 59 hours. As the research proves, the most time losses arise in customs.

References:

1. Report on the the Project "Improvement of the Business Climate in Azerbaijan," financed by the Center for International Private Enterprise (CIPE, Washington) http://www.edf.az/ts_general/download/NBA_Azerbaijan_2008_10_05_e_final.pdf
2. The results of a face-to-face poll conducted among 700 small businesses in the Azerbaijan Republic, On September 9, 2011, http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf
3. Doing business and investing in Azerbaijan Guide for 2011, <http://www.pwc.com/az/en/assets/document/az-dbg-2011.pdf>
4. Doing Business 2011, Making a difference for entrepreneurs, <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/aze.pdf>
5. Report by Economic Research Center, www.erc-az.org

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

Comments:

The majority of respondents who answered the question about bribes (55.8 percent or 53 respondents) said that it was impossible to get a license without a bribe. 27.4 percent or 26 respondents said it was possible but took a lot of energy and time. Only 16.8 percent or 16 respondents said it was possible to get a license without a bribe.

References:

1. Report on the the Project "Improvement of the Business Climate in Azerbaijan," financed by the Center for International Private Enterprise (CIPE, Washington) http://www.edf.az/ts_general/download/NBA_Azerbaijan_2008_10_05_e_final.pdf
2. The results of a face-to-face poll conducted among 700 small businesses in the Azerbaijan Republic, On September 9, 2011, http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf

3. Doing business and investing in Azerbaijan Guide for 2011, <http://www.pwc.com/az/en/assets/document/az-dbg-2011.pdf>
4. Doing Business 2011, Making a difference for entrepreneurs, <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/aze.pdf>
5. Report by Economic Research Center, www.erc-az.org

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes

No

Comments:

Public health standards are generally in place and they are publicly available.

References:

1. Regulations for the Antimonopoly Policy and Consumer Rights Protection State Service of the Ministry of Economic Development of the Republic of Azerbaijan (Juridical documents/Regulations), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=51:regulations&id=448:regulations-for-the-antimonopoly-policy-and-consumer-rights-protection-state-service-of-the-ministry-of-economic-development-of-the-azerbaijan-republic
2. Law of the Republic of Azerbaijan On protection of consumer rights (Juridical documents/Laws), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=47:laws&id=445:law-of-the-republic-of-azerbaijan-on-protection-of-consumer-rights-

Yes: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

Public environmental standards are generally in place and they are publicly available.

References:

1. Regulations for the Antimonopoly Policy and Consumer Rights Protection State Service of the Ministry of Economic Development of the Republic of Azerbaijan (Juridical documents/Regulations), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=51:regulations&id=448:regulations-for-the-antimonopoly-policy-and-consumer-rights-protection-state-service-of-the-ministry-of-economic-development-of-the-azerbaijan-republic
2. Law of the Republic of Azerbaijan On protection of consumer rights (Juridical documents/Laws), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=47:laws&id=445:law-of-the-republic-of-azerbaijan-on-protection-of-consumer-rights-

Yes: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

Public safety standards are generally in place and they are publicly available.

References:

1. Regulations for the Antimonopoly Policy and Consumer Rights Protection State Service of the Ministry of Economic Development of the Republic of Azerbaijan (Juridical documents/Regulations), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=51:regulations&id=448:regulations-for-the-antimonopoly-policy-and-consumer-rights-protection-state-service-of-the-ministry-of-economic-development-of-the-azerbaijan-republic
2. Law of the Republic of Azerbaijan On protection of consumer rights (Juridical documents/Laws), http://www.economy.gov.az/eng/index.php?option=com_content&view=article&catid=47:laws&id=445:law-of-the-republic-of-azerbaijan-on-protection-of-consumer-rights-

Yes: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

No: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

1. Report on the the Project “Improvement of the Business Climate in Azerbaijan,” financed by the Center for International Private Enterprise (CIPE, Washington)http://www.edf.az/ts_general/download/NBA_Azerbaijan_2008_10_05_e_final.pdf
2. The results of a face-to-face poll conducted among 700 small businesses in the Azerbaijan Republic, On September 9, 2011, http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf
3. Doing business and investing in Azerbaijan Guide for 2011, <http://www.pwc.com/az/en/assets/document/az-dbg-2011.pdf>
4. Doing Business 2011, Making a difference for entrepreneurs, <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/aze.pdf>
5. Interview with Sabit Bagirov, the president of Entrepreneurs Development Foundation, October 2011

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

1. Report on the the Project “Improvement of the Business Climate in Azerbaijan,” financed by the Center for International Private Enterprise (CIPE, Washington)http://www.edf.az/ts_general/download/NBA_Azerbaijan_2008_10_05_e_final.pdf
2. The results of a face-to-face poll conducted among 700 small businesses in the Azerbaijan Republic, On September 9, 2011, http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf
3. Doing business and investing in Azerbaijan Guide for 2011, <http://www.pwc.com/az/en/assets/document/az-dbg-2011.pdf>

4. Doing Business 2011, Making a difference for entrepreneurs, <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/aze.pdf>
5. Interview with Sabit Bagirov, the president of Entrepreneurs Development Foundation, October 2011

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

Comments:

Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

References:

1. Report on the the Project "Improvement of the Business Climate in Azerbaijan", financed by the Center for International Private Enterprise (CIPE, Washington) http://www.edf.az/ts_general/download/NBA_Azerbaijan_2008_10_05_e_final.pdf
2. The results of a face-to-face poll conducted among 700 small businesses in the Azerbaijan Republic, On September 9, 2011, http://www.edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf
3. Doing business and investing in Azerbaijan Guide for 2011, <http://www.pwc.com/az/en/assets/document/az-dbg-2011.pdf>
4. Doing Business 2011, Making a difference for entrepreneurs, <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/db11/aze.pdf>
5. Interview with Sabit Bagirov, the president of Entrepreneurs Development Foundation, October 2011
6. Interview with Fuad Rasulov, the professor of Khazar University, September 2011

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

6.1. ⁷⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

Chapter 33 of the Criminal Code criminalizes corruption crimes. Based on Article 27.3 of the Criminal Code, criminal liability for attempted crimes shall be defined in accordance with articles setting liability for completed crimes by referring to Article 28 of the Criminal Code, which regulates attempted crimes. Accordingly, attempted corruption is illegal.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes

No

Comments:

According to Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code, extortion is illegal. The maximum punishment is eight years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

No: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

Comments:

According to Article 312 of the Criminal Code, offering a bribe (active bribery) is illegal. The maximum punishment is eight years imprisonment. The article states that the person giving a bribe shall not be held criminally liable if the presentation of the bribe took place as a result of threats by the official concerned or if the person has voluntarily informed the appropriate state body about the solicitation of a bribe.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

Comments:

According to Article 311 of the Criminal Code, receiving a bribe (passive bribery) is illegal. The maximum punishment is 12 years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

Comments:

There is no separate article on bribing a foreign official, so it falls under Article 312 (giving a bribe) of the Criminal Code on common grounds.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

Comments:

There is no separate article on using public resources for private gain, so it falls under Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code. The maximum punishment is eight years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if using public resources for private gain is illegal.

No: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

Comments:

Using confidential information for private gain is illegal under Article 284 of the Criminal Code, which criminalizes disclosure of state secrets. The maximum punishment is seven years imprisonment. In addition, it can also fall under Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code. The maximum punishment is eight years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if using confidential state information for private gain is illegal.

No: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

Yes | No

Comments:

According to Article 193-1 of the Criminal Code, money laundering is illegal. The maximum punishment is 12 years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

No: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

Comments:

According to Article 218 of the Criminal Code, organized crime is illegal. The maximum punishment is 15 years imprisonment.

References:

1. Criminal Code of the Republic of Azerbaijan

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

Article 4.2 of the Law on Combating Corruption creates a specialized body in the area of preventing corruption — the Commission on Combating Corruption. Under Article 5 of the Statute of the Commission, the duties of the Commission include participating in the formation of state policy on combating corruption, coordination of the work of state bodies and other entities on this area, analyzing efficiency and situations in the struggle against corruption, supervising execution of the State Program on combating corruption, gathering, analyzing and summarizing the information on corruption law violations, making recommendations to the relevant state authorities and realization of cooperation with the state and other types of entities for combating corruption.

Furthermore, the Presidential Decree on the Implementation of the Law on Combating Corruption was issued on March 13, 2004. According to this Decree, the Department of Combating Corruption under the General Prosecutor's Office was established, which is mainly in charge of investigating and prosecuting all corruption crimes.

Moreover, in May 2005, the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs was established. The Unit is in charge of preliminary investigative measures on corruption crimes in close cooperation with the Department of Combating Corruption under the General Prosecutor's Office.

References:

1. The Commission on Combating Corruption
2. The Law on Combating Corruption
3. The Decree of the President of the Republic of Azerbaijan on implementation of the Law on Combating Corruption
4. The Statute of the Commission on Combating Corruption

Yes: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

No: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

75. Is the anti-corruption agency effective?

58

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

The Commission on Combating Corruption is a specialized separate agency on combating corruption that is composed of 15 members. Five members of the Commission are appointed by the president of Republic of Azerbaijan, five by the Parliament (Milli Majlis), and five by Constitutional Court of the Republic of Azerbaijan. It should be noted that despite the fact that it is a separate body, all 15 members of the Commission are high-ranking officials.

References:

1. Statute on the Commission on Combating Corruption

Yes: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

No: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, both organizations (the Commission for Combating Corruption and Anti-Corruption Department under the General Prosecutor's Office of Azerbaijan) are politicized. Political interventions to their activity are made by the presidential administration. Neither of them has the power to make decisions — especially regarding matters at the center of the community.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Currently, the director of the Commission for Combating Corruption is the head of the Presidential Administration, who is appointed by the president of Azerbaijan. He can also be removed at the will of political leadership. The same situation can be observed on the Anti-Corruption Department under General Prosecutor's Office of Azerbaijan.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Under the provisions of the United Nations Convention against Corruption (UNCAC), there are two specialized anti-corruption agencies in Azerbaijan. The Anti-Corruption Department of the Prosecutor General's Office of the Republic of Azerbaijan (ACD) is the national anti-corruption agency in charge of detection and investigation of corruption-related offenses. Set up in the course of implementation of the recommendations by ACN OECD, the department is best placed in the Prosecutor's Office. Thereby the ACD enjoys all the law enforcement and prosecutorial powers of the Prosecutor's Office. At the same time, in accordance to its charter, the ACD maintains a sufficient level of autonomy allowing it to launch and investigate cases and submit them to court.

Headed by the director, the ACD consists of three units: an investigation division, an analytical information division (with jurisdiction over complaints dealing with non-law enforcement agencies) and an internal security division (covering complaints about law enforcement agencies). Subject to the statute of the department, the ACD has a staff of 40 prosecutors and investigators.

The Commission on Combating Corruption of the Republic of Azerbaijan (hereinafter "Anti-Corruption Commission") is the second organization. The Anti-Corruption Commission was established by the Anticorruption Act of 2005. Its statute was endorsed in a special act by Parliament. The Anti-Corruption Commission represents the first entity, which is a strategic body charged with prevention, as well as elaboration and monitoring of the implementation of the anticorruption strategies. The Anti-Corruption Commission comprises 15 senior ranking political-level government officials (5 from the executive, 5 from the legislature, and 5 from the judiciary). By law, the Commission coordinates anti-corruption policy across Azerbaijani government institutions and has in particular the responsibility for monitoring asset declarations which any extensive range of government officials are required by law to submit annually.

Appointments to the Anti-Corruption Department under the General Prosecutor's Office of Azerbaijan are held through competitive exams, which consists of a written test and oral interview. It is publicly accepted that despite the fact that the written portion of the exams is held fairly, interviews are held in a highly subjective manner. As a result, only a handful of applicants are selected according to professional criteria.

Appointments to the Commission on Combating Corruption are based on political considerations rather than professional criteria. The Commission functions with the structure composed of 15 members. Five members of the Commission are appointed by the president of Republic of Azerbaijan, five by the Parliament (Milli Majlis), and five by Constitutional Court of the Republic of Azerbaijan Republic. It should be noted that despite the fact that it is a separate body, all 15 members of the Commission are high-ranking officials. Currently, the director of the Commission is the head of the Presidential Administration, who is directly appointed by the president. Furthermore, the Commission has a permanent Secretariat, which is a public body and has a full-time staff. Appointment procedure is not transparent either.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. The website of Anti-Corruption Department under General Prosecutor's Office of Azerbaijan, <http://www.genprosecutor.gov.az/?/az/content/38/>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency (the Anti-Corruption Department under the General Prosecutor's Office of Azerbaijan) has a professional, full-time staff.

So, generally, the staff is professional (educated, qualified, etc.) but it still follows the instructions of political leadership.

The Commission on Combating Corruption has a permanent Secretariat, which is a public body and generally has quite qualified full-time staff, sufficient to fulfill its basic mandate.

References:

1. Interview with the employer Anti-Corruption Department under General Prosecutor's Office of Azerbaijan.
2. The website of Anti-Corruption Department under General Prosecutor's Office of Azerbaijan, <http://www.genprosecutor.gov.az/?/az/content/38/>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Both organizations, the Anti-Corruption Department under the General Prosecutor's Office of Azerbaijan and the Commission on Combating Corruption, receive regular funding from the state budget.

References:

1. Interview with the employer Anti-Corruption Department under General Prosecutor's Office of Azerbaijan.
2. The website of Anti-Corruption Department under General Prosecutor's Office of Azerbaijan, <http://www.genprosecutor.gov.az/?/az/content/38/>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Anti-Corruption Department under the General Prosecutor's Office of Azerbaijan makes regular statements and disseminates press releases. The Commission on Combating Corruption makes annual reports and submits them to the president, Parliament and the Constitutional Court. All reports of the Commission are available to the public on its website: <http://www.commission-anticorruption.gov.az/view.php?lang=en&menu=31>

References:

1. Interview with the employer Anti-Corruption Department under General Prosecutor's Office of Azerbaijan.
2. The website of Anti-Corruption Department under General Prosecutor's Office of Azerbaijan, <http://www.genprosecutor.gov.az/?/az/content/38/>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Although under the Charter, the Commission on Combating Corruption has sufficient powers to carry out its mandate, in practice the problem is with its political dependence on the government.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. Anticorruption agencies in Azerbaijan, <http://www.twinningproject.info/fight-against-corruption/anticorruption-agencies-in-azerbaijan>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the anti-corruption agencies are not able to initiate investigations independently especially against the corrupt practice in the state authorities. But, in some cases you can meet information in connection with arrest of junior (little) officials because of corruption. It serves to create a scene of fight against the corrupt practice. As a rule, in such cases the small corrupt officials are traded.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of the Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Complaints to the Commission for Combating Corruption are generally resolved according to the Law on the Procedure for Consideration of Applications from Citizens. They should be reviewed within one month, or 15 days if no additional review or inspection is needed, unless shorter periods are provided for in legislation.

In practice, some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | **25** | 0

Comments:

It usually depends on the nature of the complaint. Whistle-blowers are sometimes able to come forward without negative consequences if the complaint is about professors, doctors or low-level civil servants. But, in some cases you see the arrest of low-level officials because of corruption. It serves to create the impression of a fight against corruption. In other cases, especially if the complaint is about high-ranking officials, whistle-blowers are punished for disclosing information, either through official or unofficial means.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

65
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

77a. In law, there is a general right of appeal.

Yes

No

Comments:

According to Article 65 of the Constitution, every convicted person has a right to appeal for reconsideration of the judgment and also for pardon and mitigation of the sentence.

Under Article 35 of the Code of Criminal Procedure, participants in a criminal case have a right to appeal to the superior court. Restriction of the convicted person's right to appeal is inadmissible.

References:

1. The Constitution of the Republic of Azerbaijan
2. The Code of Criminal Procedure

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

No: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100

75

50

25

0

Comments:

Generally, appeals are resolved within a reasonable time. Some backlog may be expected, mostly in criminal cases. Politically sensitive cases may take a longer time. It should be noted that for criminal cases the Criminal Procedure Code does not define a certain time period.

References:

1. Interview with Aslan Ismayilov, an attorney, September 2011
2. Interview with Osman Kazimov, an attorney, September 2011

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In general, citizens can use the appeals mechanism at a reasonable cost, which mainly includes state fees and attorney fees. It should be noted that generally no state fees are needed in criminal cases. Legal representation fees vary from attorney to attorney.

References:

1. Interview with Aslan Ismayilov, an attorney, September 2011
2. Interview with Osman Kazimov, an attorney, September 2011

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

25

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

In practice, the courts are not independent. They make decisions in most cases related to corruption and other politically sensitive cases based on political orders.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
4. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
5. http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

Comments:

In practice, many political and civil cases are sent from Azerbaijani courts to the European Court. Because of these appeals, the European Court imposes penalties on the Azerbaijani government amounting to 100 thousand dollars.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. US Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of the Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
4. http://azerireport.com/index.php?option=com_content&task=view&id=2561&Itemid=48

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

Yes

No

Comments:

According to Article 127 of the Constitution, judges are dependent only on the Constitution and laws. Judges shall act impartially, fairly, based on the equality of the parties, facts and law. Direct and indirect restriction of the court proceeding, illegal influence, threat and interference due to any reason are not allowed.

Article 8 of the Law on Courts and Judges and Article 25 of the Code of Criminal Procedure also stipulate the principle of independence of judges in criminal proceedings.

Article 100 of the Law on Courts and Judges more specifically describes the principle of independence of judges, which includes the following guarantees: depoliticizing of judges during their terms of office; inalterability and immunity; restrictions on appointment, liability, and termination of their office; independent nature of the judiciary; regulation by law; prohibition of any restrictions and interferences in court proceedings by any party; ensuring personal safety of the judges; financial and social safeguards.

References:

1. The Constitution of the Republic of Azerbaijan
2. The Law on Courts and Judges
3. The Code of Criminal Procedure

Yes: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

No: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100

75

50

25

0

Comments:

The courts carry out their activity by orders and bribes under political intervention. We can ascertain that decisions issued independently are rare. Decisions in cases of a political nature are issued by the presidential administration and are simply officialized in court. In such cases, the court hearing is merely a formality.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>
4. <http://azerireport.com/>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes

No

Comments:

According to the Law on Courts and Judges, the president of a court is in charge of distributing cases, taking into account the volume and number of cases (Articles 22, 28, 30-4, 34, 39, 45, 57, 66, 83, 84). Thus, the case assignment system is under the discretion of the president of the court in all three court tiers: district courts, appellate courts and the Supreme Court. However, there are some discussions on moving to a blind assignment system.

References:

1. The Law on Courts and Judges

Yes: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

No: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes

No

Comments:

Article 128 of the Constitution regulates the immunity of judges. Under this provision, judges are immune. A judge may be held criminally liable only in accordance with the law. Judges' authority may be stopped only based on reasons and rules envisaged by the law. If judges commit a crime, the president of the Republic of Azerbaijan, based on the opinion of the Supreme Court, may bring the issue in Parliament (Milli Majlis) with the initiative to dismiss judges from their posts. Respective opinions of the Supreme Court must be presented to the president of Azerbaijan within 30 days of his request. The decision on the dismissal of judges of the Constitutional Court, Supreme Court and Economic Court requires 83 votes in Parliament, whereas the decision about the dismissal of other judges requires 63 votes out of 125. Article 101 of the Law on Courts and Judges also regulates the immunity of judges.

References:

1. The Constitution of the Republic of Azerbaijan
2. The Law on Courts and Judges

Yes: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

No: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes

No

Comments:

In practice, no judges have been physically harmed while adjudicating corruption cases in the last year .

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia
Istanbul Anti-Corruption Action Plan , Second Round of Monitoring
Azerbaijan, Monitoring Report, Adopted at the 8th Monitoring Meeting of the Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on 31 March 2010 at the OECD Headquarters in Paris.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes

No

Comments:

In practice, no judges have been killed while adjudicating corruption cases in the last year.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

79

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

In practice, judicial decisions were not affected by racial or ethnic bias during the last year.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia
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100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

Comments:

In practice, women have full and equal access to the judicial system. There are no exceptions or gender problems in the judicial system.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan , Second Round of Monitoring Azerbaijan, Monitoring Report, Adopted at the 8th Monitoring Meeting of the Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on 31 March 2010 at the OECD Headquarters in Paris.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

The Constitution provides that everyone has the right to high-quality legal assistance. In cases prescribed by law, legal aid should be rendered free, at the expense of the government.

Article 19.4.4 of the Code of Criminal Procedure and Article 20 of the Law on Advocates and Advocate Activity also ensure legal counsel in criminal cases for defendants (and also for accused persons) who cannot afford it.

References:

1. The Constitution of the Republic of Azerbaijan
2. The Code of Criminal Procedure
3. The Law on Advocates and Advocate Activity

Yes: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

No: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the state provides adequate legal counsel for defendants, but it is of a formal nature.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia
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100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens earning the median yearly income (US\$4,800) can afford to bring a legal suit if corruption is not an issue. Officially, legal fees mainly include state fees, court fees and attorney fees. Legal representation fees vary from attorney to attorney (US\$50-5,000).

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia
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100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

Comments:

The situation for businesses is the same as for citizens. In practice, a typical small retail business can afford to bring a legal suit if corruption is not an issue. Officially, legal fees mainly include state fees, court fees and attorney fees. Legal representation fees vary from attorney to attorney (between US\$50-5,000).

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
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100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | **75** | 50 | 25 | 0

Comments:

In practice, all citizens residing in the capital of the country and in big cities have access to the courts. But the number of appeals to the courts is very low. One of the reasons is, especially in the outlying districts, the shortage of lawyers. The other and main reason is a loss of faith in the court system by ordinary people.

References:

1. Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, <http://www.commission-anticorruption.gov.az/upload/file/18%20month%20NAP.pdf>
2. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
3. OECD Anti-Corruption Network for Eastern Europe and Central Asia
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100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | **25** | 0

Comments:

According to the legislation, appointments to police and prosecution bodies are held through competitive exams, which consist of a written test and oral interview. It is publicly accepted that despite the fact that the written portion of the exams is fair, interviews are held in a highly subjective manner. As a result, only a handful of applicants are selected. Only those endorsed by supreme state authorities pass the interview. But in any case, they have to collect satisfactory points from the test. Thus the cases of admission to law enforcement without passing the test and collecting unsatisfactory points have been reduced.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>

2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, law enforcement agencies such as the Ministry of Internal Affairs or the General Prosecutor's Office have a sufficient budget to carry out their mandate. Both organizations are financed by the state budget.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, both organizations are politicized. Political intervention in their activity is made by the presidential administration. Neither of them has the power to make decisions, especially regarding the matters at the center of the community.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes

No

Comments:

According to the Law on Police, citizens may apply to the Ministry of Internal Affairs under administrative procedure about police actions. Furthermore, under the Law on the Ombudsman, citizens may apply to the ombudsman. If there are allegations about corruption offenses, citizens may report to the Anti-Corruption Committee. Finally, citizens may complain in court about police actions or inactions.

References:

1. The Law on Police
2. The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman)

Yes: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

No: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens' complaints are addressed within a reasonable time period. The Ministry of Internal Affairs has one of the best records on this matter.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of the Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

According to the legislation, the Department for Combating Corruption under the General Prosecutor's Office and the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs work closely together to investigate and prosecute corruption committed by law enforcement officials.

References:

1. Department for Combating Corruption under the General Prosecutor's Office
2. Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs

Yes: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

No: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | **25** | 0

Comments:

In practice, law enforcement agencies are not able to initiate investigations independently — especially against corrupt practices by state authorities. But, in some cases, lower-ranking officials are arrested for corruption. It serves to give the appearance of a fight against corruption.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. Newspaper materials and articles of Radio Liberty-Azerbaijan, <http://www.azadliq.org/>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

Yes | No

Comments:

According to Article 33 of the Law on Police, police officers are accountable for their actions and can be investigated and prosecuted.

References:

1. The Law on Police

Yes: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

No: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | **25** | 0

Comments:

Though law enforcement officials are responsible before the law and are not immune from criminal proceedings, in many cases police who are accused of political actions against citizens and journalists aligned with the opposition are not disciplined.

References:

1. Materials of Legal Education Society <http://www.monitoring.az/index.php?cats=13&lngs=aze>
2. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2010 Human Rights Report: Azerbaijan on Human Rights Practices, April 8, 2011, <http://www.state.gov/documents/organization/160448.pdf>
3. The project of Radio Liberty-Azerbaijan, Corruptionometr <http://www.azadliqradiosu.az/section/Corruption/1082.html>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
