

Transparency Azerbaijan

Overview of the judiciary system in Azerbaijan 2003-2004

Compiled by Rena Safaraliva on the basis of

1. Interim report on NIS study
2. Corruption, publication by TA, Baku, 2002
3. Media monitoring for 2003- first half of 2004

Judicial system

In Azerbaijan practice the judicial system is fully dependent on the ruling political elite for a number of reasons, foremost due to loopholes in the legislation regulating the judiciary. Candidates for the positions of judges are elected by the Judicial and Legal Council established by the Azerbaijan Republic President and headed by the Ministry of Justice, on the basis of the principles established by the Council, rather than in accordance with legislative norms. Some of these rules are contradictory and create conditions favourable for corrupt practices. The 2000 appointment of judges in accordance with the above rules have negatively affected the confidence of the public in judicial power.

Contradictory nature is perceived by experts and public at large as an intrinsic feature of all of the Azerbaijan legal framework. According to the nation wide household opinion survey, conducted by Transparency Azerbaijan in April 2004, only 14,2 % of respondents agree that the laws of the country have strict and clear norms, which discourage corrupt practices, while 49,5 believe that imperfect laws create corruption favorable environment. In addition, 20,6 believe that contradictory norms have been deliberately included into the legislative framework to facilitate corrupt practices of public officials.

Besides, provisions establishing the terms of office for judges do not ensure their independence either. The judges of the Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic are appointed for 10 years and other judges for 5 years only. According to the article 127 of the Azerbaijan Republic Constitution and article 97 of the Law on Courts and Judges, judges can not be dismissed before expiry of their terms. However, recently Shukur Mammedli, a judge of Ismailli region court was released from his position by a presidential instruction and decree signed by the Charmin of Supreme Court without any legal justification.

After five years in order to be re-appointed judges are "screened" by the Ministry of Justice in accordance with the "regulations" described above (and in fact, without any regulations). Current practice show that judges are mostly concerned with the evaluation of their activities by the Ministry of Justice, rather than with due administration of justice and law enforcement, or with the fear that the higher instances will refute their illegal and ungrounded verdicts.

Another reason for judges' dependence on the Ministry of Justice is related to regulation empowering the Ministry to start disciplinary proceedings against judges. According to current regulations, the Ministry of Justice is entitled to start disciplinary proceedings in respect of all judges, with the exception for chairmen of the Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic.

The salaries of judges make it extremely difficult for the judges to achieve independence and resist corruption. Despite the fact that judges' salaries were somewhat increased recently and are rather high compared to official salaries of other public officials, it is doubtful that the salaries provide a decent standard of living.

Another reason lies in the funding procedures. Courts are financed by the Ministry of Justice. Except for the Supreme Court, the Court of Arbitration, the Court of Appeal, and the Supreme Court of Nakhichevan Autonomous Republic, the organisational chart of other courts, the staff schedule, the cost estimate and staff salaries are defined by the Ministry of Justice. In addition, the Ministry of Justice is entitled to audit courts, including processing papers by courts.

There have been no cases where corrupt judges were prosecuted so far. On the contrary, there have been several instances when courts have been used by authorities as an instrument in political struggle. The most notorious case being the case of naval captain Jan Mirza Mirzoyev, Janmirza Mirzoev, who on 5 November 2000 was sentenced to eight years imprisonment on charges of arranging the murder in 1993 of Rear Admiral Eduard Huseinov. Mirzoev, a former naval captain, has publicly made detailed allegations of mismanagement and corruption within the Defence Ministry. Mirzoyev' lawyers and human right defenders persist that the case was fabricated and court ruling ordered by authorities. Documents and manuscripts by Mirzoyev, testifying to his whistle blowing activities, have been made public. He was released from prison in May 2004 under heavy pressure from the international community.

Another example of using courts against political opponents is more or less regular claims raised by individual public officials against independent and opposition media on the grounds of "libel" or "contempt of honour and dignity", which are viewed by independent experts as response to public criticism. More often than not courts would satisfy claims of officials and sentence newspapers to ruinous financial penalties.

The poor state of the judiciary system was publicly recognized by the president Ilham Aliiev at his meeting with representatives of the businesses circles in February 2004. (Zerkalo newspaper, No 29, 14.02.2004)

Other components of the judicial system

The Prosecutor's office is also dependant on executive power. The Chief prosecutor is appointed by the President with the approval of the Parliament. The law does not contain any special provisions envisioning conditions for the release of the Chief Prosecutor from duties. Deputy chief prosecutors (prosecutors in charge of specialised branches) are also appointed by the President. District prosecutors are appointed with the approval of the President. Prosecutors do not have guarantees set forth by the law and supported by the social and political system to enable them to refuse "orders" coming from the executive authorities.

In order to effectively fight corruption in Azerbaijan, an institute of an independent prosecutor must be established. If cases of corruption in high echelons of the ruling power are revealed, the advantages of an independent prosecutor will be obvious, as the public will never believe that the state would organise necessary work against itself. A law on an independent prosecutor would be a very valuable addition to an independent judicial system.

