

FRONTICE SHEET

Decree of the President of Azerbaijan Republic

***On The Modernization of the Judicial System of the Azerbaijan Republic and
the Application of the Law of the Azerbaijan Republic: An Introduction to
Necessary Amendments to Pertinent Laws of the Azerbaijan Republic'***

Since the adoption of the Constitution of Azerbaijan Republic in 1995, the main purpose of consecutive reforms in the judicial sector has been to provide the rule of law in our country, to establish the judicial power in the state's mechanism as an influential and independent institution, provide protection of human rights and freedoms during the process of the administration of justice, implement democratic principles during criminal and civil proceedings, form of the corps of professional judges, provide transparent activity of judges and conceptual settlement of other issues.

Pres. Aliyev Jan. 19, 2006

INTRO

An independent Azerbaijan will live as a model of democratic principles, human freedom, and democratic economy for the other states.

Heydar Aliyev

Azerbaijan took the path of independence and the creation of a democratic and civil society!

Heydar Aliyev

My Little Red Book is designed for quick reference during criminal trials and related hearings. It contains most of the fundamental rules and principles of the Rule of Law as should be used in Azerbaijani courtrooms and as taught to judges. It contains critical provisions of the Azerbaijani Constitution, selected conventions of the European Convention of Human Rights, selected portions of the Azerbaijani Rules of Criminal Procedure; part of the Bail Act, selected discovery rights, selected professional/ethical duties and standards, trial objections, a model complaint for the ECHR, a table of lesser included offenses, and a listing of judicially and code recognized extenuating and mitigating circumstances.

The book is a quick reference. Azerbaijan has recently joined the democratic community of nations, and is in the unique position of having one of the most progressive and Human Rights-based Constitution and Criminal Procedure Codes in the world, a legacy of Heydar Aliyev. As with many things that are written in haste, it is underutilized. The old Soviet ways also linger, in the form of the over-used “Protocol” for instance. These remnants fly in the face of the new Constitution and will be abandoned, especially by the newly trained judiciary.

Judges need to be reminded their role is to decide applying the facts to the law, not just approve the Protocol. They also need to be reminded to let lawyers do their job, and stop asking questions that support the prosecution. This book will be a guide to implement these lofty principles, set at your fingertips.

Special thanks go to Jonathon Greenblatt, the Fellows of the Legal Advocacy Clinic, Mahir Mushteidzada, Nikhil Dutta, and especially Judy Clarke and Speedy Rice, the ultimate defenders.

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Today the most important issue is to learn from the Constitution and utilize it.

Heydar Aliyev

GENERAL PRINCIPLES: THE AZERBAIJAN CONSTITUTION (“AC”)/CODE OF CRIMINAL PROCEDURE (“CCP”)

ACCESS TO JUSTICE:

AC: Article 60. The guarantee of rights and liberties by a court of law

- I. Every person is ensured legal protection of his/her rights and liberties.
- II. Everyone may petition a court of law regarding the decisions and activity (or inactivity) of state bodies, political parties, trade unions, other public organizations and officials.

AC: Article 61. The right of Legal Assistance

- I. Everyone has the right to obtain qualified legal assistance.
- II. In cases specified by law, legal assistance shall be rendered free, at the expense of the government.
- III. Every person has the right to a lawyer from the moment of detention, arrest or charging of a crime by competent state bodies.

CCP: Article 19. Guarantee of the right to legal aid and the right to conduct one’s defence

19.1. During the criminal prosecution the preliminary investigator, prosecutor and court shall take measures to guarantee the right of the victim, the suspect and the accused to proper legal aid.

19.2. During the criminal proceedings the prosecuting authority shall secure the right of the victim (victim bringing a private prosecution), the civil party or his legal representative, the legal representative of the suspect or accused and the defendant to the civil claim to use the legal aid of the representatives invited by them.

19.3. During the questioning of the victim or witnesses, the prosecuting authority may not prevent the lawyer invited by them as their representative from accompanying them.

19.4. The prosecuting authority shall secure the following rights of the suspect or accused:

19.4.1. to have the assistance of the counsel for the defence from the moment of detention or arrest, as the suspect before the first interrogation or as the accused as soon as charges have been laid;

19.4.2. to explain his rights;

- 19.4.3. to give him adequate time and opportunity to prepare his defence;
- 19.4.4. to be able to defend himself in person or with the aid of counsel for the defence chosen by him or, if unable to pay for defence counsel, to receive free legal aid;
- 19.4.5. to interrogate any witness against him.
- 19.5. The prosecuting authority shall involve the legal representative of the suspect or the accused in the manner provided for in this Code.
- 19.6. The presence of counsel for the defence or the legal representative of the suspect or the accused at the criminal proceedings may not limit the rights of the suspect or the accused.
- 19.7. The suspect or the accused may not be forced to give evidence, to give the prosecuting authority any documents or to assist them in any way.
- 19.4.3. to give him adequate time and opportunity to prepare his defence;
- 19.4.4. to be able to defend himself in person or with the aid of counsel for the defence chosen by him or, if unable to pay for defence counsel, to receive free legal aid;
- 19.4.5. to interrogate any witness against him.
- 19.5. The prosecuting authority shall involve the legal representative of the suspect or the accused in the manner provided for in this Code.
- 19.6. The presence of counsel for the defence or the legal representative of the suspect or the accused at the criminal proceedings may not limit the rights of the suspect or the accused.
- 19.7. The suspect or the accused may not be forced to give evidence, to give the prosecuting authority any documents or to assist them in any way.

SOURCES OF LAW/APPLICABILITY OF ECHR:

CODE OF CRIMINAL PROCEDURE:

Article 2. Sources of Legislation on Criminal Procedure

- 2.1. The legislation on criminal procedure of the Azerbaijan Republic consists of the following:
- 2.1.1. the Constitution of the Azerbaijan Republic;
- 2.1.2. this Code;
- 2.1.3. the other laws of the Azerbaijan Republic;
- 2.1.4. the international instruments to which Azerbaijan is a signatory;
- 2.2. The norms of the Constitution of the Azerbaijan Republic have supreme legal authority throughout the territory of the Azerbaijan Republic and shall apply directly. In case of conflict between the norms of the Constitution of the Azerbaijan Republic and this Code, the norms of the Constitution of the Azerbaijan Republic shall be applied.
- 2.3. If there are rules in the international agreements to which Azerbaijan is signatory that are different from those in this Code, the rules of the international agreements shall be applied.

Article 10. Legislation

10.1. Courts and participants in criminal proceedings shall conform to the Constitution of the Azerbaijan Republic, this Code, other laws of the Azerbaijan Republic as well as provisions of the international agreements to which Azerbaijan is a signatory.

ADVERSARIAL SYSTEM/ORDER OF PROOF

AC, Article 127. Principles of Justice.

- I. Judges shall be autonomous, they shall be subordinate only to the Constitution and the Laws and shall be irremovable in accordance with the Law.
- II. Judges decide the cases in an unbiased, fair way, following the legal equality of the sides, on the basis of facts and in accordance with the Law.
- III. Direct or indirect restriction of legal procedure on somebody's part and for some reason, illegal influence, pressure, threat interference shall not be permitted.
- IV. Justice shall be administered on the basis of legal equality of citizens before Law and Court.
- V. Trial in all the courts shall be public. Hearing of the case behind closed doors can be authorized in case when the court assumes that open trial can lead to revealing the State, professional or commercial secret, or when the court perceives the necessity of keeping secrecy of a personal or family life.
- VI. Legal proceeding of criminal cases by default shall not be authorized in court of first instance.
- VII. **Legal proceedings shall be implemented based on the principle of Controversy.**
- VIII. Every Person shall have the right get qualified legal help at any stage of legal proceedings.
- IX. Justice is based on Presumption of Innocence.
- X. Legal proceedings in the Republic of Azerbaijan shall be conducted in the official language of the Republic of Azerbaijan or in the language of the population which constitute the majority in the area concerned. Persons - participants of court examination who do not know the language in which legal proceedings are held shall be guaranteed via the interpreter the right to get fully familiarized with the materials of the case, participate in legislative enactment and speak in the native language in the court.

Code of Criminal Procedure (CCP), Art. 12.

12.3. During criminal proceedings everyone shall have the right to defend their rights and liberties as set down by the Constitution in any manner not prohibited by law.

Code of Criminal Procedure, Article 32 Participation of both sides in criminal proceedings

32.1. In the Azerbaijan Republic the conduct of criminal proceedings shall be based on the adversarial principle.

32.2. In order to guarantee participation of both sides in criminal proceedings in accordance with this Code:

- 32.2.1. Each party shall be represented in court;
- 32.2.2. Each party shall have equal rights and opportunities to defend its position;
- 32.2.3. The prosecution shall seek to prove the criminal act, the ingredients of the statutory offence, the involvement of the accused in committing this offence and the possible criminal responsibility of the accused, and shall offer suggestions as to the legal classification of the accused person's act and the final decision of the court;
- 32.2.4. The defence shall refute the prosecution's arguments concerning the criminal charge, draw the attention of the judicial authority to the circumstances which preclude or mitigate criminal responsibility and offer suggestions as to the legal classification of the accused person's act and the final decision of court;
- 32.2.5. Each party shall independently choose its own position and determine its means and methods;
- 32.2.6. The court shall assist in obtaining any additional documents required at the request of each party in the criminal proceedings;
- 32.2.7. The court judgment shall be based only on the evidence secured and examined with the equal participation of the parties;

Article 138. The Burden of Proof

138.2. The prosecutor shall be responsible for proving the grounds for the criminal responsibility of the accused and whether or not he is guilty.

PRESUMPTION OF INNOCENCE

Azerbaijan Constitution: Article 63. Presumption of Innocence

- I. Everyone is entitled to a presumption of innocence. Anyone accused of crime shall be considered innocent until his guilt is proven legally and until a verdict of the court has been rendered. **If a reasonable suspicion as to guilt exists, guilt must not be adjudged.**
- II. A person accused of crime must not be compelled to prove innocence.
- III. No evidence illegally obtained can be used in administering justice.
- IV. Determination of guilt occurs only upon a verdict of a court of law.

Code of Criminal Procedure: Article 21. Presumption of Innocence:

21.2. Even if there are reasonable suspicions as to the guilt of the person, this shall not cause the latter to be found guilty. The accused (the suspect) shall receive the benefit of any doubts which cannot be removed in the process of proving the charge in accordance with the provisions of this Code, within the appropriate legal proceedings. He shall likewise receive the benefit of any doubts which are not removed in the application of criminal law and criminal procedure legislation;

Convention for the Protection of Human Rights and Fundamental Freedoms

Art. 6, Right to a Fair Trial

2. Everyone charged with a criminal offence shall be presumed innocent

until proved guilty according to law.

RIGHT TO SILENCE/BE INFORMED OF CHARGES

AC: Article 66. The Right Against Compelled Testimony Against Self/Relatives

Nobody shall be compelled to testify against oneself, his/her wife (husband), children, parents, brother, or sister. A complete list of relations against whom testifying may not be compelled shall be determined by law.

Article 67. The Rights of Individuals Detained, Arrested, and Accused of Crime

Every person, detained, arrested, and accused of a crime should be immediately informed by competent state bodies about his/her rights, reasons for his/her arrest, and the institution of criminal proceeding against him/her.

CCP: Article 20. Incrimination of the suspect and his relatives

20.1. Nobody may be forced to testify against himself or his close relatives, or be prosecuted on this basis.

20.2.. During the investigation or court hearing, a person asked to give information which may incriminate him and his close relatives in respect of an offence shall have the right to refuse to incriminate them without fear of negative legal consequences for himself.

Article 233. Questioning of an accused

233.11. During the interview, the silence of the accused may not be construed as an admission of guilt. The investigator shall suggest to the accused that he testify about the charge against him and any other circumstances which he deems to be of significance to the case.

RIGHT TO CONFRONT ACCUSER

CCP:12.3. During criminal proceedings everyone shall have the right to defend his rights and liberties as set down by the Constitution in any manner not prohibited by law.

Convention for the Protection of Human Rights and Fundamental Freedoms

Art. 6.3, Right to a Fair Trial

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

JUDICIAL IMPARTIALITY

CCP Art. 2: Legislative Precedence

2.4. Under criminal procedure, normative legal acts that abolish or restrict human and civil rights and liberties, violate the independence of the judge and the principle of a fair trial or give definitive legal force to prior evidence shall not be applied. Procedural rules of other laws shall be adjusted to the provisions of this Code.

CCP: Article 25. Independence of judges and jurors:

25.1. Judges and jurors shall be independent and shall obey only the legislation of the Azerbaijan Republic.

25.2. Judges and jurors shall not be bound by the conclusions reached by the prosecuting authorities during the investigation.

25.3. Judges and jurors shall decide criminal cases and other prosecution matters in accordance with their conscience and legal opinions, on the basis of their examination of the evidence adduced by the parties to the criminal proceedings.

CCP Art. 28. The objectivity, impartiality and justice of criminal proceedings

28.1. Courts shall hear criminal cases and other prosecution matters in accordance with the legal procedures established by this Code, on the basis of the facts and of impartiality and justice.

28.4. During the criminal proceedings, courts shall perform the following functions:

28.4.1. ensure that the parties to the proceedings are able to examine thoroughly, fully and objectively all the circumstances relating to the prosecution;

28.4.5. guarantee the right of the parties to criminal proceedings to participate.

28.5. The court decision regarding the guilt of the person charged may not be based on opinion but shall be supported by all the reliable evidence concerning the case.

28.6. The rules concerning the administration of justice may not be unilaterally altered for different cases and persons or in particular circumstances or at given times.

Article 33. Assessment of evidence in criminal proceedings

33.3. No advance decision shall be taken on any evidence or other material in the criminal proceedings.

CP Article 109. Objections to a judge: 109.1.8. if there are grounds for believing that the judge has a direct or indirect interest in the prosecution, as well as in other circumstances when there is a doubt as to his impartiality.

OTHER RIGHTS

Article 25. Right to Equality.

Article 26. Protection of Human and Civic Rights and Freedoms.

CCP: Article 12. Guarantee of the human and civil rights and liberties established by the Constitution

Article 28. Right to Freedom.

Article 29. Right to Property.

Article 46. Protection of Honor and Dignity/NO TORTURE.

Article 62. Right Banning Change of Court Jurisdiction

Article 64. Prohibition against Repeated Conviction for the Same Crime

Article 65. The Right of Automatic Appeal

Article 69. Rights of Foreign Citizens and Stateless Persons

Article 71. Protection of the Rights and Liberties of Persons and Citizens

In order to create a Constitution, obviously we should review our history; however, at the same time, we should use the universal values, and should derive advantage from democratic states and their experiences.

Heyder Aliyev

RULES OF EVIDENCE

Trials should be conducted fairly so the truth may be ascertained based on solid facts applied to the law, and the rules of evidence secure fairness in the administration of justice. They protect the rights of the Azerbaijan people. Evidentiary rules also eliminate unjustifiable expense, waste of time, and undue prejudice to one side or the other alone.

RELEVANT EVIDENCE

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would be without the evidence. In other words, irrelevant evidence is evidence that has little to do with this case or these issues. When evidence is offered in a criminal case, it must be more probative of an important fact than merely prejudicial to the defense.

- a claim or an element of a cause of action or a defense;
- a matter that is important to tell story;
- a matter that goes to the credibility of a witness; and
- matters that are significant as a matter of persuasion, but are not technically required, the principle examples being: (1) motive, (2) ability & opportunity, (3) scheme or plan, (4) intent or lack of intent, or (5) mental condition.

Evidence is not relevant if it is inherently untrustworthy, is a collateral matter that will waste time, or is offered just to show the person has done bad things in the past, and hence, has a propensity to do bad things (“where there is smoke, there is fire”). Evidence must always be more probative of an important fact than prejudicial.

Prejudicial Evidence: Relevant evidence is excluded if the probative value of the evidence is substantially outweighed due to unfair prejudice. Unfair prejudice means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one. Also includes, in the case of juries, evidence that may result in confusion of issues or misleading evidence. Prejudice includes undue delay and waste of time.

AC Article 127. Principles of Justice.

- II. Judges decide the cases in an unbiased, fair way, following the legal equality of the sides, on the basis of facts and in accordance with the Law.

CCP Article 126. Statements By The Suspect, Accused, Victim And Witnesses

126.2. Only statements based on the information or conclusions of a person directly comprehending the act and its causes, character, mechanism or development may be considered as evidence.

126.3. Information given to the prosecuting authority by the suspect, accused, victim or witnesses on the basis of hearsay may not be used as evidence. Only information derived from the words of a deceased person may exceptionally be accepted as evidence by court decision.

TRUSTWORTHY EVIDENCE ONLY

Evidence must be trustworthy. That usually means evidence taken under oath or documents properly admitted into evidence. Truth can only be ascertained when a witness is cross examined and his/her perceptions tested. Thus, the “Protocol” as used in the past is an inherently unreliable document and ought only be used by an unbiased judge when a witness’ in-court statement deviates from a prior statement.

AC: Article 63. Presumption of innocence

- I. Everyone is entitled to a presumption of innocence. Anyone accused of crime shall be considered innocent until his guilt is proven legally and until a verdict of the court has been rendered. If a reasonable suspicion as to guilt exists, guilt must not be adjudged.
- II. A person accused of crime must not be compelled to prove innocence.
- III. **No evidence illegally obtained can be used in administering justice.**

AC Article 46. Protection of Honor and Dignity.

III. Nobody can be tortured or tormented, nobody shall suffer from a treatment or punishment humiliating human dignity. Nobody shall be experimented upon-medically, scientifically or any other way without his/her volunteer consent.

CCP: Article 124. Concept and Types of Evidence

124.1. Reliable evidence (information, documents, other items) obtained by the court or the parties to criminal proceedings shall be considered as prosecution evidence.

Such evidence:

124.1.1. shall be obtained in accordance with the requirements of the Code of Criminal Procedure, without restriction of constitutional human and civil rights and liberties or with restrictions on the grounds of a court decision (on the basis of the investigator’s decision in the urgent cases described in this Code);

125.2. Information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained in the following circumstances:

125.2.1. if the accuracy of the evidence is or may be affected by the fact that the parties to the criminal proceedings are deprived of their lawful rights, or those rights are restricted, through violation of their constitutional human and civil rights and liberties or other requirements of this Code;

125.2.2. through the use of violence, threats, deceit, torture or other cruel, inhuman or

degrading acts;

125.2.3. through violation of the defence rights of the suspect or accused, or the rights of a person who does not know the language used in the criminal proceedings;

125.2.9. where evidence is taken from a person unknown at the trial or from an unknown source;

126.3. Information given to the prosecuting authority by the suspect, accused, victim or witnesses on the basis of hearsay may not be used as evidence. Only information derived from the words of a deceased person may exceptionally be accepted as evidence by court decision

Article 145.1 Assessment of Evidence All evidence shall be assessed as to its relevance, credibility and reliability. The content of all evidence collected for the purposes of prosecution shall be assessed in terms of whether it is sufficient to substantiate the charge.

ECHR: Article 3 . Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment

OBJECTIONS

The judgment must be based on admissible evidence. Objections are the means evidentiary disputes are raised and resolved. They are a signal to the judge that there may be something wrong with the attorney's questions, the witness' testimony, the introduction of and use of evidence, a lawyer's behavior, or the conduct of judge. We object to exclude prejudicial evidence, make a record on appeal, prevent unfair treatment, and call attention to unfair tactics.

AC Article 127. Principles of Justice.

II. Judges decide the cases in an unbiased, fair way, following the *legal equality of the sides*, on the basis of facts and in accordance with the Law.

VII. Legal proceedings shall be implemented based on the principle of Controversy.

VIII. Every Person shall have the right get qualified legal help at any stage of legal proceedings.

CCP Article 84. The Prosecutor

84.1. The prosecutor in the criminal proceedings shall rely on the results of the investigation of all the circumstances of the case and shall be guided only by the requirements of the law and his conscience.

84.6. Except in the case of private prosecutions the prosecutor, when taking part in court hearings as public prosecutor, shall have the following rights pursuant to the rules provided for in this Code:

84.6.1. to make objections;

CCP Article 92.9 Defence Counsel Shall Exercise The Following Rights In Accordance With This Code:

92.9.6. to lodge objections and applications;

92.9.7. to object to the acts of the prosecuting authority, and to require them to be noted in the record of the investigative or other procedure;

92.9.16. to object to acts and decisions of the preliminary investigator, investigator or prosecutor;

92.9.20. to raise objections to circumstances made known to him through information given to him by the prosecuting authority or through complaints of other parties to the proceedings;

92.9.23. to object to unlawful acts by the opposite party;

EXCLUSIONARY RULE

In most systems of justice, there must be a penalty when rights are violated. This usually means that any evidence obtained by this violation will not be accepted by the court. There is little other way to curb abuses by the State.

AC Article 63. Presumption of Innocence

III. No Evidence Illegally Obtained Can Be Used In Administering Justice.

CCP 125.2. Information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained in the following circumstances:

125.2.1. if the accuracy of the evidence is or may be affected by the fact that the parties to the criminal proceedings are deprived of their lawful rights, or those rights are restricted, through violation of their constitutional human and civil rights and liberties or other requirements of this Code;

125.2.2. through the use of violence, threats, deceit, torture or other cruel, inhuman or degrading acts;

125.2.3. through violation of the defence rights of the suspect or accused, or the rights of a person who does not know the language used in the criminal proceedings;

125.2.4. where the rights and duties of a party to the criminal proceedings are not explained, or not explained fully and accurately and, as a result, he exercises them wrongly;

125.2.5. where the criminal prosecution and investigative or other procedures are conducted by a person who does not have the right to do so;

125.2.6. where a person whose participation should be objected to, and who knows or should know the reasons precluding his participation, takes part in the criminal proceedings;

125.2.7. where the rules governing investigative or other procedures are seriously violated;

125.2.9. Where Evidence Is Taken From A Person Unknown At The Trial Or From An Unknown Source;

125.2.10. where evidence is taken through means conflicting with modern scientific views.

125.3. Information, documents and other items taken in the circumstances described in Article 125.2. of this Code shall be regarded as **invalid** and may not be used to prove any circumstance with a view to determining a charge correctly.

125.4. Material obtained through the violations described in Article 125.2. of this Code may be used as evidence of the violations concerned and the guilt of those committing them.

WITNESSES:

Witnesses must generally base their testimony on what they see, hear, or perceive. That is trustworthy evidence, especially after being tested through cross examination. Information based on rumor is generally unreliable

CCP Article 126. Statements By The Suspect, Accused, Victim And Witnesses

126.2. Only statements based on the information or conclusions of a person directly comprehending the act and its causes, character, mechanism or development may be considered as evidence.

EXPERT WITNESSES

Expert opinion can assist the court, but only in certain circumstances. The court should assess: if the subject matter is so distinctly specialized and related to some science, profession, business, or occupation as to be beyond the knowledge of the average laymen; the witness has sufficient knowledge, experience or skill in that field that his opinion will probably aid the trier of fact; the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted. Put another way, the court must determine that the scientific method used by the expert is sufficiently established to have gained general acceptance in that field.

Article 264. Principles Governing Expert Opinions

Article 268. Rights Of The Suspect Or Accused With Regard To The Commissioning And Preparation Of An Expert Report.

The Nation does not exist for the state; the state exists for the nation.

Heydar Aliyev

SELECTED RULES OF CRIMINAL PROCEDURE

PRETRIAL

AC: Article 67. Rights of Detained, Arrested, and Charged Committing Crime.

Every Person who has been detained, arrested, charged with a crime on the part of authoritative State bodies must be given immediate explanation of his/her rights and the reason for being arrested and sued to court.

CCP: 12.3. During criminal proceedings everyone shall have the right to defend their rights and liberties as set down by the Constitution in any manner not prohibited by law.

CCP Article 91. The Accused

91.4. The investigator, prosecutor or court shall guarantee the rights of the accused, shall not prevent him from exercising his right of defence by all lawful means and methods and, if he so requests, shall allow him sufficient time for the preparation of his defence.

91.5. The accused shall exercise the following rights in accordance with this Code:

91.5.1. to know what he is accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought, the accused is remanded in custody or the decision on the choice of restrictive measure is announced;

91.5.2. to receive written notification of his rights from the person who detained or arrested him or from the preliminary investigator, investigator or prosecutor;

91.5.3. to acquaint himself with the record of detention and arrest immediately after it is drawn up and to make observations for inclusion in the record;

91.5.4. to have defence counsel from the time of the arrest or the announcement of the charge;

91.5.5. to have the help of defence counsel free of charge;

91.5.6. to inform his family, relatives, home, workplace or place of study immediately after detention, by telephone or other means;

91.5.7. to choose his defence counsel independently, to dismiss counsel and to conduct his own defence if he waives the right to defence counsel;

91.5.8. to have unlimited opportunities and time to meet his defence counsel in private and in confidence;

91.5.9. to be questioned at his own request with his defence counsel present;

91.5.10. to give statements, not to incriminate himself or his relatives and in general to refuse to testify as well as to give or refuse to give statements concerning the charge against him;

91.5.11. to give statements in his mother tongue or in a language he knows;

91.5.12. to have the help of an interpreter free of charge;
91.5.13. to raise objections and to submit applications.

SEARCH & SEIZURE

One of the most indispensable rights of a free society is the right of protection against unreasonable searches and seizures. The Azerbaijan Constitution excludes evidence improperly seized, and Constitutional and statutory protections abound.

SEIZURE: (See exclusionary rule above.)

AC Article 31. Privacy

I. Every Person shall have the right to Secure Life.

II. With the exception of cases specified by Law, infringement upon Person's life, his/her physical and mental health, property, residence, use of force against him/her shall be prohibited.

CCP Article 15. Guarantee of the right to inviolability of the person

15.2. During the criminal prosecution the following shall be prohibited:

15.2.1. the use of torture and physical and psychological force, including the use of medication, withdrawal of food, hypnosis, deprivation of medical aid and the use of other cruel, inhuman or degrading treatment and punishment;

15.2.2. the imposition of long-term or severe physical pain or acts which are detrimental to health, or any similar ill-treatment;

15.2.3. taking evidence from victims, suspects or accused persons or from other participants in the criminal proceedings using violence, threats, deceit or by other unlawful acts which violate their rights.

CCP Article 16. Guarantee of the right to inviolability of private life

16.1. During the criminal prosecution the right to privacy (one's own and one's family's) and the confidentiality of information sent via correspondence, telephone conversations and other means of communication, and of other information, may be limited only by this Code.

16.2. Interception and checking of mail delivered by post, telegraph and other communications, and interception of conversations via telephone or other means of communication, information sent via other communication and technical channels and other information shall be permitted only by court order and in accordance with this Code.

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3 . Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Convention for the Protection of Human Rights and Fundamental Freedoms

Article 8 . Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

SEARCH

AC Article 29. Right to Property.

- I. Every Person shall have the right to Property.
- II. No form or kind of property shall have any advantage. The Property right, including the private property right, shall be protected by Law.
- III. Every individual may possess movable and immovable Property. The Property right shall consist of the owner's right to possess, use and dispose the Property, individually or jointly.
- IV. No one shall be dispossessed without the decision of court. The Property shall not be totally expropriated. The alienation of the Property for the State needs or social needs shall be allowed only upon preliminary fair reimbursement of its value.

Article 33. Inviolability of Residence.

- I. Every Person shall have the right to the Residence Inviolability.
- II. With the exception of cases specified by Law or Court no one shall be authorized to enter the Apartment against the will of the Resident.

CCP: Article 17. Guarantee Of The Right To Inviolability Of Domicile

- 17.1. Except in the circumstances provided for in this Code, nobody may enter a dwelling without the consent of those living there.
- 17.2. The examination and searching of residential, service or industrial buildings, and other investigative and procedural acts which limit the right to property may be carried out only in accordance with this Code on the basis of a court decision.

CCP Article 243. Grounds for conducting a search and seizure

- 243.1. As a rule, searches and seizures shall be conducted by decision of a court. A court may decide to give permission for a search or seizure in response to a reasoned request from the investigator and submissions made by the prosecutor in charge of the procedural aspects of the investigation. The search or seizure shall be conducted in accordance with the requirements of Articles 177.2-177.6 of this Code.
- 243.2. The decision to authorise the search or seizure shall state the following:

243.3. In circumstances which admit no delay, the investigator may conduct a search or seizure without court permission only if there is precise information indicating that:

243.3.1. objects or documents concealed in a residential building constitute proof of the commission of an offence or of preparations for the commission of an offence against a person or the state;

243.3.2. a person who has prepared or committed an offence against a person or the state or a person who has escaped from a remand facility or prison is hiding in a residential building;

243.3.3. there is a human corpse (or parts of a corpse) in the building;

243.3.4. there is a real danger to someone's life or health in the building.

243.4. In the circumstances provided for in Article 243.3 of this Code, the investigator shall give a reasoned decision to conduct a search or seizure. The investigator's decision shall be drawn up in accordance with the requirements of Article 243.2 of this Code and shall give due consideration to the need to conduct the search and seizure without court permission and the reasons why it cannot be delayed.

REMEDY?

124.1. Reliable evidence (information, documents, other items) obtained by the court or the parties to criminal proceedings shall be considered as prosecution evidence. Such evidence:

124.1.1. shall be obtained in accordance with the requirements of the Code of Criminal Procedure, without restriction of constitutional human and civil rights and liberties or with restrictions on the grounds of a court decision (on the basis of the investigator's decision in the urgent cases described in this Code);

125.2. Information, documents and other items shall not be accepted as evidence in a criminal case if they are obtained in the following circumstances:

125.2.1. if the accuracy of the evidence is or may be affected by the fact that the parties to the criminal proceedings are deprived of their lawful rights, or those rights are restricted, through violation of their constitutional human and civil rights and liberties or other requirements of this Code;

125.2.2. through the use of violence, threats, deceit, torture or other cruel, inhuman or degrading acts;

125.2.3. through violation of the defence rights of the suspect or accused, or the rights of a person who does not know the language used in the criminal proceedings;

BAIL

Too often, individuals are kept in custody when they should be released on bail. In most countries, there is a presumption that one should be released on bail. Bail is a device which should be granted unless the person is a danger to the proceedings or a real risk of flight. The bail amount should be high enough to ensure the person will appear for future proceedings but not so high he/she could not possibly raise it.

Counsel should argue consideration of the seriousness and nature of the offence with which the suspect or accused is charged and the conditions in which it was committed (155.2.1); the client's personality, age, health and occupation and his family, financial and social positions, including whether he has dependents and a permanent residence (155.2.2); and whether he has committed a previous offence, the previous choice of

restrictive measure and other significant facts. (155.2.3).

AC Article 63. Presumption of Innocence.

I. Every Person shall have the right to the Presumption of Every Person who is charged with crime shall be considered innocent until he/she is pleaded guilty in order specified by Law, and a verdict passed by the court has come effect. In case there are grounded suspicions concerning a Person's guilt, it shall not be permitted to bring in a verdict of guilty with respect to the Person.

II. A Person who is charged with crime shall not be obliged to his/her innocence.

III. Evidence obtained via violating Law cannot be used when exercising justice.

IV. No one can be found guilty of committing a crime without the verdict passed by the court.

AC Article 67. Rights of Detained, Arrested, and Charged Committing Crime.

Every Person who has been detained, arrested, charged with a crime on the part of authoritative State bodies must be given immediate explanation of his/her rights and the reason for being arrested and sued to court.

CCP Article 13. Respect For The Honour And Dignity Of The Person

13.1. It shall be prohibited to take decisions or allow acts during the criminal prosecution which debase the honour and dignity of the person or may threaten the life and health of the participants in the proceedings.

13.2. During a criminal prosecution nobody shall:

13.2.1. be subjected to treatment or punishment that debases human dignity;

13.2.2. be held in conditions that debase human dignity;

13.2.3. be forced to participate in carrying out procedures that debase human dignity.

Article 14. Guarantee Of The Right To Liberty

14.1. The right to liberty may be limited only in cases of detention, detention on remand or imprisonment in accordance with the law.

14.2. Nobody may be detained or arrested other than on the grounds provided for in the Code and other laws of the Azerbaijan Republic.

14.3. Only a court decision shall permit the detention on remand of a person or placement in a medical or care institution by force.

14.4. The person detained or arrested shall be immediately informed of the reasons for detention or arrest, the nature of the suspicion or charge and his right not to give a statement and to seek legal aid from defence counsel.

14.5. The preliminary investigator, investigator, prosecutor or judge shall immediately release any person illegally taken into custody or arrested.

Article 155. Grounds For The Application Of Restrictive Measures

When the Accused has:

- hidden from the prosecuting authority; 155.1.1.

- obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding material significant to the prosecution or engaging in falsification; 155.1.2
- committed a further criminal act or created a public threat; 155.1.3.
- failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment; 155.1.4.
- prevented execution of a court judgment. 155.1.5.

WHAT CHOICES?

154.2. Restrictive measures may be the following:

154.2.1. arrest;

154.2.2. house arrest;

154.2.3. bail;

154.2.4. restraining order;

154.2.5. personal surety;

154.2.6. surety offered by an organisation;

154.2.7. police supervision;

154.2.8. supervision;

Democracy is the basis of our sovereignty.
Heydar Aliyev

SELECTED RULES OF CRIMINAL PROCEDURE TRIAL BURDEN OF PROOF:

AC: Article 127. Principles of Justice.

II. Judges decide the cases in an unbiased, fair way, following the legal equality of the sides, on the basis of facts and in accordance with the Law.

AC Article 63. Presumption Of Innocence

- I. Everyone is entitled to a presumption of innocence. Anyone accused of crime shall be considered innocent until his guilt is proven legally and until a verdict of the court has been rendered. If a reasonable suspicion as to guilt exists, guilt must not be adjudged.
- II. A person accused of crime must not be compelled to prove innocence.
- III. No evidence illegally obtained can be used in administering justice.
- IV. Determination of guilt occurs only upon a verdict of a court of law.

CCP Article 8. Purposes Of Criminal Proceedings

8.0. The purposes of criminal proceedings are the following:

8.0.2. to defend individuals against abuse of power in connection with the commission of a real or possible offence;

CCP Article 9. Basic Principles Governing Criminal Proceedings

9.1.2. to ensure a defence against restrictions on human and civil rights and liberties.

CCP Article 32 Participation of Both Sides in Criminal Proceedings

32.1. In the Azerbaijan Republic the conduct of criminal proceedings shall be based on the adversarial principle.

32.2.3. The prosecution shall seek to prove the criminal act, the ingredients of the statutory offence, the involvement of the accused in committing this offence and the possible criminal responsibility of the accused, and shall offer suggestions as to the legal classification of the accused person's act and the final decision of the court;

CCP Article 138. The Burden of Proof

138.2. The prosecutor shall be responsible for proving the grounds for the criminal responsibility of the accused and whether or not he is guilty.

ORDER OF PROOF

CCP ARTICLE 32

32.2.3. The prosecution shall seek to prove the criminal act, the ingredients of the statutory offence, the involvement of the accused in committing this offence and the possible criminal responsibility of the accused, and shall offer suggestions as to the legal classification of the accused person's act and the final decision of the court;

32.2.4. The defence shall **refute** the prosecution's arguments concerning the criminal charge, draw the attention of the judicial authority to the circumstances which preclude or mitigate criminal responsibility and offer suggestions as to the legal classification of the accused person's act and the final decision of court;

EUROPEAN CONVENTION OF HUMAN RIGHTS

Article 6 . Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

JUDGE

Article 127. Principles of Justice.

I. Judges shall be autonomous, they shall be subordinate only to the Constitution and the Laws and shall be irremovable in accordance with the Law.

II. Judges decide the cases in an unbiased, fair way, following the legal equality of the sides, on the basis of facts and in accordance with the Law.

III. Direct or indirect restriction of legal procedure on somebody's part and for some reason, illegal influence, pressure, threat interference shall not be permitted.

IV. Justice shall be administered on the basis of legal equality of citizens before Law and Court.

V. Trial in all the courts shall be public. Hearing of the case behind closed doors can be authorized in case when the court assumes that open trial can lead to revealing the State, professional or commercial secret, or when the court pursues the necessity of keeping secrecy of a personal or family life.

CCP 2.4. Under criminal procedure, normative legal acts that abolish or restrict human and civil rights and liberties, violate the independence of the judge and the principle of a fair trial or give definitive legal force to prior evidence shall not be applied.

Article 25. Independence Of Judges And Jurors:

25.1. Judges and jurors shall be independent and shall obey only the legislation of the Azerbaijan Republic.

25.2. Judges and jurors shall not be bound by the conclusions reached the prosecuting authorities during the investigation. **25.3.** Judges and jurors shall decide criminal cases and other prosecution matters in accordance with their conscience and legal opinions, on the basis of their examination of the evidence adduced by the parties to the criminal proceedings.

Article 28. The Objectivity, Impartiality And Justice Of Criminal Proceedings

28.1. Courts shall hear criminal cases and other prosecution matters in accordance with the legal procedures established by this Code, on the basis of the facts and of impartiality and justice.

28.4. During the criminal proceedings, courts shall perform the following functions:

28.4.1. ensure that the parties to the proceedings are able to examine thoroughly, fully and objectively all the circumstances relating to the prosecution;

28.4.2. take into consideration circumstances which incriminate or exonerate the suspect or accused as well as circumstances which mitigate or aggravate his criminal responsibility;

28.4.5. guarantee the right of the parties to criminal proceedings to participate.

28.5. The court decision regarding the guilt of the person charged may not be based on opinion but shall be supported by all the reliable evidence concerning the case.

28.6. The rules concerning the administration of justice may not be unilaterally altered for different cases and persons or in particular circumstances or at given times.

Article 109. Objections to a Judge

109.1. An objection to a judge may be considered justified and be granted unconditionally if there is at least one of the following grounds for exclusion of the person as a judge:

109.1.8. If there are grounds for believing that the judge has a direct or indirect interest in the prosecution, as well as in other circumstances when there is a doubt as to his impartiality.

PROSECUTORS & DEFENSE COUNSEL

General Department:

CCP Article 310. Keeping order in court

310.2.8. not interrupt those making speeches at the hearing, provide explanations or make comments;

310.2.9. refrain from insulting and improper statements and actions as well as from asking leading questions during the questioning of the accused, the victim, the witnesses or other parties to the proceedings.

PROSECUTORS:

CCP Article 84. The Prosecutor

84.1. The prosecutor in the criminal proceedings shall rely on the results of the investigation of all the circumstances of the case and shall be guided only by the requirements of the law and his conscience.

84.6. Except in the case of private prosecutions the prosecutor, when taking part in court hearings as public prosecutor, shall have the following rights pursuant to the rules provided for in this Code:

84.6.1. to make objections;

84.6.2. to submit applications;

84.6.3. to give his opinion on matters being resolved in court and on applications by other parties to the criminal proceedings;

84.6.4. to present the evidence for the prosecution and to take coercive procedural measures by court decision so as to ensure the submission of evidence to the court;

84.6.5. to take part in the court's examination of the case file in the courts of first instance and appeal;

84.6.6. to take part in the selecting of the jurors in court hearings at first instance;

84.6.7. to raise objections to unlawful acts by the defence;

84.6.8. to require the inclusion of acts subject to mandatory recording in the record of the investigation, other procedural records or the record of the court hearing;

84.6.9. to withdraw the criminal prosecution of the accused in the circumstances provided for in Article 41.3 of this Code;

84.6.10. to make introductory and summing up speeches and replies in courts of first instance and appeal, and to speak on cases heard in the Supreme Court;

84.6.11. to appeal against judgments and other decisions of the court;

DEFENSE COUNSEL

92.9. Defence counsel shall exercise the following rights in accordance with this Code:

- 92.9.1. to be informed of the nature of the suspicion or the charge;
- 92.9.2. to have unlimited opportunities and time to meet his client in private and in confidence;
- 92.9.3. to participate at the suggestion of the prosecuting authority in investigative and other procedures conducted by the authority as well as in any investigative or other procedures involving the participation of his client;
- 92.9.4. to remind the suspect or the accused of his rights and to draw the attention of the person conducting investigative or other procedures to infringements of the law by that person;
- 92.9.5. during pre-trial or court proceedings, to collect evidence and other material for inclusion in the case file or examination in court and to submit them to the prosecuting authority;
- 92.9.6. to lodge objections and applications;
- 92.9.7. to object to the acts of the prosecuting authority, and to require them to be noted in the record of the investigative or other procedure;
- 92.9.8. to acquaint himself with the records of the investigative and other procedures held with his participation or that of his client and with the records of the court hearings; to make observations on the accuracy and completeness of the written records of the investigation and other procedures in which he participates; when participating in investigative and other procedures, to require the inclusion of the necessary circumstances in the appropriate record;
- 92.9.9. to collect evidence to elucidate matters connected with the defence of the suspect or the accused; for this purpose, when the criminal prosecution takes the form of a private prosecution, to question individuals and legal entities with their consent, and to consult experts and specialists on the basis of an agreement;
- 92.9.10. further to a decision of the prosecuting authority to appoint experts, to acquaint himself with the decision, with the expert opinion and with the documents submitted to the court by the prosecuting authority to certify that detention, arrest or detention on remand is legal and justified;
- 92.9.11. to acquaint himself with the case file from the end of the investigation or the discontinuation of the criminal proceedings, and to make copies of the necessary documents relating to his client;
- 92.9.12. to participate in court hearings at first instance and on appeal and in the examination of the case file;
- 92.9.13. to participate in selecting jurors at the hearing at first instance;
- 92.9.14. to speak and reply at court hearings at first instance and on appeal and to speak on the matters examined in the Supreme Court;
- 92.9.15. to be informed by the prosecuting authority of decisions which affect his rights and legal interests and, on request, to receive copies of those decisions, including those concerning the choice of restrictive measures, the conduct of investigative or other coercive procedures, the charging of the accused and the announcement of the charge, as well as the indictment, civil claim, judgment and other final decisions of the court, and appeals and complaints to the court of appeal or the Supreme Court;

92.9.16. to object to acts and decisions of the preliminary investigator, investigator or prosecutor;

92.9.17. to appeal against the judgment or other decisions of the court to the court of appeal or, on appeal or additional appeal, to the Supreme Court;

92.9.18. withdraw any complaint he has filed, except an appeal against the conviction;

92.9.19. on his client's instructions, to promote the reconciliation of the suspect or the accused with the victim;

92.9.20. to raise objections to circumstances made known to him through information given to him by the prosecuting authority or through complaints of other parties to the proceedings;

92.9.21. to participate in the hearing of the criminal case before the Supreme Court concerning a complaint relating to his client's legal rights, either on appeal, on additional appeal or on the basis of newly discovered facts, and in the examination of the case file;

92.9.22. at court hearings, to express his opinions about applications and suggestions by other parties to the criminal proceedings and about matters to be decided by the court;

92.9.23. to object to unlawful acts by the opposite party;

92.9.24. to receive payment for the legal aid furnished to the suspect or the accused in the course of the criminal proceedings, from his client or, if legal aid is rendered free of charge, from the state budget of the Azerbaijan Republic;

92.9.25. to exercise the other rights proved for in this Code.

92.10. Defence counsel shall be prohibited from:

92.10.1. taking any action that is at variance with the legal interests of his client, which includes confirming his link with the offence and his guilt, admitting the civil claim against him, refusing to participate in the procedures involving him and preventing him from exercising his rights;

92.10.2. divulging information made known to him in connection with the provision of legal aid if it can be used in a manner contrary to the legal interests of his client, except if he receives information about the planning or commission of a further offence or if he objects to the reasons given by his client during examination of the lawyer's liability further to a claim by his client that he is not defending him properly;

92.10.3. unilaterally refusing to defend his client or withdrawing as counsel for the defence, or defending two or more accused persons whose legal interests conflict;

92.10.4. preventing the participation or instruction of another defence counsel;

92.10.5. entrusting his authority to participate in the criminal proceedings to another counsel;

92.10.6. without his client's consent, calling somebody as a witness or expert, announcing a link between the suspect or accused and the offence or his guilt of the offence, announcing his reconciliation with the victim, admitting the civil claim or withdrawing his client's complaint or his appeal against the conviction

92.11. Counsel for the defence shall fulfil the following duties in accordance with this Code:

92.11.1. when taking part in criminal proceedings, to observe the requirements of the law; to defend the suspect or the accused using all legal means; to give the necessary legal advice to his client in order to terminate the case to his advantage as far as possible, and to act in accordance with the position chosen by the defence; to observe professional confidentiality and the lawyers' oath.

92.11.2. to present to the prosecuting authority a document confirming the authority

- of defence counsel and to observe legal ethics during the proceedings;
- 92.11.3. to attend as required by the prosecuting authority in order to provide legal aid to the suspect or the accused;
- 92.11.4. to submit, with the consent of his client, items and documents to the prosecuting authority if they are not contrary to the interests of his client;
- 92.11.5. to comply with the instructions of the court president;
- 92.11.6. to not leave the courtroom without the permission of the president before a break is announced;
- 92.11.7. to comply with the rules of court;
- 92.11.8. not to divulge the information about circumstances concerning the inviolability of private and family life or state, professional, commercial and other secrets protected by law;
- 92.11.9. to fulfil the other duties provided for in this Code.

Democratic principles are the basis of our present and future.

Heydar Aliyev

POST-TRIAL

REQUIREMENTS OF WRITTEN DECISIONS

CCP Article 349. General Requirements Governing Court Judgments

349.1. The court judgment shall be given on behalf of the Azerbaijan Republic.

349.2. The court judgment may be either a conviction or an acquittal.

349.3. The court judgment shall be lawful and well-founded.

349.4. The court judgment shall be considered lawful if it fulfils the requirements of the Constitution of the Azerbaijan Republic, this Code and the criminal and other legislation of the Azerbaijan Republic.

349.5. In the following cases the court judgment shall be considered well-founded:

349.5.1. if the conclusions at which the court arrives are based only on the evidence examined during the court's investigation of the case;

349.5.2. if the evidence is sufficient to assess the charge;

349.5.3. if the facts established by the court are consistent with the evidence investigated.

Article 351. Conviction

351.1. A conviction by the court represents the final decision on the results of the court's examination of the case, finding the accused guilty of the offence committed and imposing a penalty (or in the circumstances directly provided for by criminal law, not imposing a penalty or releasing him from punishment).

351.2. A conviction by the court may not be based on assumptions and shall be handed down only where guilt of the accused is proved during the court's examination of the case.

351.3. If the court gives an affirmative answer on the matters set out in Article 346.1.1-346.1.6 of this Code, the guilt of the accused may be regarded as proven, as follows:

351.3.1. bearing in mind the presumption of innocence;

351.3.2. on the basis of the results of the court's examination of the charge in accordance with the rules set out in this Code;

351.3.3. on the basis of the reliable and admissible evidence examined during the court's investigation of the case;

351.3.4. interpreting in his favour any doubts as to the guilt of the accused which cannot be removed.

Article 353. Content of the Court Judgment

353.1. The introduction to the court judgment shall state the following:

353.1.1. that the court judgment is adopted on behalf of the Azerbaijan Republic;

353.1.2. the date, time and place of its adoption;

- 353.1.3. the name of the court that adopted the judgment;
- 353.1.4. the members of the court (family name, first name, father's name of each judge);
- 353.1.5. the court clerk (family name, first name and father's name);
- 353.1.6. the public prosecutor (family name, first name, father's name and title);
- 353.1.7. the victim bringing a private prosecution (family name, first name, father's name);
- 353.1.8. defence counsel (family name, first name, father's name, the bar association to which he is affiliated);
- 353.1.9. the victim, the civil party, the defendant to the civil claim and their representatives (family name, first name and father's name of each one of them);
- 353.1.10. the accused (family name, first name, father's name, year, month, day and place of birth, marital status, citizenship, workplace, occupation, education and other information about his identity);
- 353.1.11. the article of criminal law under which the accused was brought before the court.
- 353.2. The statement of the facts and reasons in a judgment convicting the accused shall include the following:
 - 353.2.1. a description of the criminal act considered by the court to be proven, stating the place, time and method of commission of the offence, the nature of the charge, the motives and the results of the offence committed;
 - 353.2.2. the evidence on the basis of which the court came to its conclusions, and its reasons for not accepting other evidence;
 - 353.2.3. any circumstances which aggravate or mitigate the responsibility of the accused;
 - 353.2.4. if a part of the charge is considered groundless, the reasons for this;
 - 353.2.5. if the classification of the acts of the accused is changed by the court, the reasons for this;
 - 353.2.6. the legal rules on which the court bases its decisions;
 - 353.2.7. the reasons for the conclusions reached by the court in settling the matters provided for in Article 346.1.11 –346.1.14 of this Code;
 - 353.2.8. the reasons for any decision on imposing an additional type of penalty;
 - 353.2.9. the reasons for the decision on the settlement of the civil claim and the payment of court expenses.
- 353.3. The statement of the facts and reasons in a judgment acquitting the accused shall include the following:
 - 353.3.1. the substance of the charge brought against the accused;
 - 353.3.2. the facts determined by the court during its examination of the case;
 - 353.3.3. the grounds for acquittal of the accused indicating the evidence on which the court bases its conclusions and the reasons for its rejection of the evidence presented in support of the charge;
 - 353.3.4. the matter of compensation for damage caused to the acquitted person by any unlawful acts of the prosecuting authorities, the payment of court expenses and the reasons for the decision on the civil claim.
- 353.4. The conclusion of a judgment convicting the accused shall state the following:
 - 353. 4.1. the family name, first name and father's name of the accused and his guilt of the offence provided for in a specific article of criminal law;
 - 353. 4.2. the type and length of the sentence imposed for each offence proved to have been committed by the accused;
 - 353.4.3. the final sentence to be served;

- 353.4.4. the type of prison or corrective institution in which the sentence involving deprivation of liberty is to be served;
- 353.4.5. the date from which the sentence is to be served;
- 353.4.6. in the case of probation, the length of the probation period, the duties of the person on probation and the body or institution to which supervision of the person sentenced to probation is entrusted;
- 353.4.7. if a decision is made to this effect, exemption of the accused from serving the sentence on the grounds provided for by criminal law;
- 353.4.8. if the accused is detained on remand, the inclusion of the period of pre-trial detention in the term of the sentence;
- 353.4.9. the imposition of an additional type of penalty in the cases provided for by criminal law;
- 353.4.10. the settlement of the civil claim and the payment of court expenses (by whom and how much);
- 353.4.11. the steps to be taken regarding material evidence;
- 353.4.12. the adoption of a restrictive measure concerning the sentenced person until the court judgment becomes final;
- 353.4.13. how the court judgment becomes final, and an explanation of the appeal procedure.

THE RIGHT OF APPEAL:

AC Article 65. The Right of Appeal : Every person convicted by a court of law has the right to appeal, as specified by the law, to a higher court of law asking for reconsideration of the verdict, for pardon, or for mitigation of the sentence.

CCP 7.0.11. A court of appeal is a court empowered to examine complaints and appeals against judgments or other decision of the court of first instance which have not become final, in accordance with this Code;

CCP 7.0.12. The Supreme Court is a court empowered to examine complaints, appeals and submissions against judgments or other decisions given by the court of first instance with the participation of a jury and against judgments or other decisions of the appeal court which have become final;

CCP 7.0.46.

An “appeal” is a complaint by the prosecutor to a higher court against the judgment or other court decision concerning the criminal case or other prosecution material involving the public prosecutor.

CCP Article 9. Basic Principles And Conditions Governing Criminal Proceedings

9.2. Under the circumstances provided for in this Code, violation of the principles or conditions governing criminal proceedings may render the completed criminal proceedings invalid, cause the decisions taken during them to be annulled and deprive the evidence collected of its value.

CCP Article 51. Obligation To Record The Course And Outcome Of Procedural Acts In Criminal Proceedings.

51.7. The record of a court hearing shall be signed by the president and the clerk within 3 (three) days of the end of the hearing. After that the court shall give those persons who have the right to acquaint themselves with the record 3 (three) days in which to do so. In the case of annotations to the record, the president of the court shall examine these and sign them if he agrees with them or, if not, adopt an appropriate decision with regard to them. Whether or not he is in agreement with the annotations to the record, these annotations and the decision relating to them shall be appended to the record of the court hearing.

Article 387. Requirements to be Met When Lodging an Appeal

387.1. The following shall be indicated in a complaint or appeal:

387.1.1. the name of the court of appeal to which the complaint or appeal is addressed;

387.1.2. the name of the person lodging the complaint or appeal;

387.1.3. the name of the court of first instance which gave the judgment or decision;

387.1.4. a summary of the judgment or other final decision of the court and the reason why the person lodging the complaint or appeal considers it unlawful, groundless or unjust;

387.1.5. the request of the person lodging the complaint or appeal;

387.1.6. a list of the documents attached to the complaint or appeal.

387.2. The grounds given for the amendment or annulment of the judgment in the complaint or appeal shall refer to the appropriate pages of the case file. This requirement shall not apply to sentenced persons in detention or minors.

387.3. Complaints and appeals shall be submitted in writing and signed by the person lodging them.

387.4. If the document confirming the status of the legal representative or representative is not in the criminal case file, the file on simplified pre-trial proceedings or the file on a complaint with a view to a private prosecution, the document confirming the status of the legal representative or representative shall be attached to the complaint or appeal.

387.5. The use in the complaint or appeal of new evidence not presented to the court of first instance shall be admissible only if it is proved that it was impossible to present it to the court of first instance or that the court refused to accept it.

CCP Article 399. Grounds For Setting Aside Or Amending The Judgment Or Decision Of The Court Of First Instance

399.1. The grounds for setting aside or amending the judgment or decision of the court of first instance as a result of the examination of the complaint or appeal shall be the following:

399.1.1. the court's failure to investigate all the facts of importance for its conclusions;

399.1.2. inconsistency between the court's conclusions and the facts of the case;

399.1.3. failure to prove the facts determined by the court of first instance as being of significance to the case;

399.1.4. failure to apply the provisions of criminal law correctly;

399.1.5. the fact that the penalty imposed is unsuited to the seriousness of the offence or the personality of the offender.

399.2. The court of appeal may not alter a judgment to acquittal solely on the grounds

that the rights of the accused were seriously violated.

399.3. A judgment or decision of the court of first instance which is substantively correct and was given after examination of all the facts of the case may not be set aside solely on the formal grounds that the requirements of this Code were violated.

Article 461. Grounds For Examining Court Judgments Or Decisions On The Basis Of Newly Discovered Facts

APPENDICES

1. DETENTION HEARING MATTERS

2. COMMON AZERBAIJAN OBJECTIONS

3. RULES OF CONDUCT

a. ART. 310 OF THE CCP

b. PROSECUTORS' CODE OF ETHICS

c. CODE OF JUDICIAL ETHICS

4. ECHR APPLICATIONS/TEMPLATES

DETENTION HEARING SHEET:

Bail is a device which should be granted unless the person is a danger to the proceedings or a real risk of flight. Courts generally consider:

- The seriousness and nature of the offence with which the suspect or accused is charged and the conditions in which it was committed (CCP: 155.2.1);
- His personality, age, health and occupation and his family, financial and social positions, including whether he has dependents and a permanent residence (155.2.2);
- Whether he has committed a previous offence, the previous choice of restrictive measure and other significant facts. (155.2.3).

Your Fact-Based Focus:

- **Nature and Seriousness of event**
 - Violent, non-violent?

 - Protracted Proceedings Likely?

- **Is Conviction Likely?**

- **History and Characteristics of Defendant**
 - Employment history?

 - Character?

 - Ties to community/Length of Residence?

 - Financial resources?

 - Past conduct/Prior criminal record?

 - Prior court appearance record?

- **Danger to community (Can be economic)**

- **Danger to Proceedings (Risk of flight)?**

STANDARDS

- **Azerbaijan Constitution:**
 - **Article 46. Protection of Honor and Dignity.:**
 - I. Everybody shall have the right to protect his/her Honor and Dignity;
 - II. The State shall protect personal dignity. Nothing can justify humiliating personal dignity;
 - III. Nobody may be tortured or tormented, nor shall suffer from a treatment or punishment humiliating of human dignity. Nobody shall be experimented upon- medically, scientifically or any other way without his/her voluntary consent.
 - **Article 67. The rights of individuals detained, arrested, and accused of a crime :** Every person, detained, arrested, and accused of a crime should be immediately informed by competent state bodies about his/her rights, reasons for his/her arrest, and the institution of criminal proceeding against him/her.

- **Article 5 European Convention of Human Rights**
 - Right to liberty and security**
 - 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a the lawful detention of a person after conviction by a competent court;
 - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
 - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

 - 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

- **AZERBAIJANI CODE OF CRIMINAL PROCEDURE (“CCP”):**
 - **Priority?** *If there are rules in the international agreements to which Azerbaijan is signatory that are different from those in this Code, the rules of the international agreements shall be applied. 2.3*
 - **Article 12. Guarantee of the human and civil rights and liberties established by the Constitution:**
 - **12.1.** The judicial authorities shall observe the human and civil rights and liberties afforded by the Constitution to all participants in criminal proceedings.
 - **Article 164. Bail**
 - **Guarantee of presence at trial for non-serious public threat, minor offense, or negligent serious offense ;**
 - **Request of defence**
 - **Deposit of money or (at court discretion) property**
 - **“Detention”** means limiting someone's freedom for a short period of time in a place of temporary detention in accordance with this Code; 7.0.39
 - **A restrictive measure** is a coercive procedural measure intended to prevent unlawful behavior by the suspect or accused during criminal proceedings and to ensure the execution of the sentence; it shall be applied in the cases described in Article 155.1 of this Code. 154.1.

Why?

Article 155. Grounds for the application of restrictive measures

When the Accused has:

- hidden from the prosecuting authority; 155.1.1.
- obstructed the normal course of the investigation or court proceedings by illegally influencing parties to the criminal proceedings, hiding

material significant to the prosecution or engaging in falsification;
155.1.2

- committed a further criminal act or created a public threat; 155.1.3.
- failed to comply with a summons from the prosecuting authority, without good reason, or otherwise evaded criminal responsibility or punishment; 155.1.4.
- prevented execution of a court judgment. 155.1.5.

WHAT CHOICES?

- 154.2. Restrictive measures may be the following:
 - 154.2.1. arrest;
 - 154.2.2. house arrest;
 - 154.2.3. bail;
 - 154.2.4. restraining order;
 - 154.2.5. personal surety;
 - 154.2.6. surety offered by an organisation;
 - 154.2.7. police supervision;
 - 154.2.8. supervision;
 - 154.2.9. military observation;
 - 154.2.10. removal from office or position.

SUSPECTS RIGHTS

- To know the grounds for detention, to receive legal aid from the defense counsel from the outset of detention, and to receive written notification of his rights from the person who detained him or the preliminary investigator, investigator or prosecutor (90.7.2);
- To receive a copy of the decision on his detention or on the choice of restrictive measure (90.7.3);
- To receive the record of detention immediately after it is drawn up and to make observations, which must be appended to the record; (90.7.4)
- To appeal the decision directly to the court of appeal (452.1.1)452.1.2. through the court which gave the decision (452.1.2); through the head of the remand facility (for complaints only) (452.1.3). Article 452 CCP
- **To appeal directly to the European Court of Human Rights**

TRIAL OBJECTIONS

AC Art. 127 (VII); CCP 32

AZERBAIJAN CONSTITUTION

AZERBAIJAN C.Crim.Pro.

Rt. to Object

127

92.9.7; 92.9.
92.9.6; 92.9.23

Opening (CCP 85.6.10; 92.9.14; 92.9.22)

Argument

Art. 12, 46

13.1

- Inflammatory/Inadmissible Evidence

2.3, 310.2.9

Direct

Leading

28.4.1

Calls for Untrustworthy Evidence

Art. 63

28.4.1, 124.1 ff,
§125.2.9

No Personal Knowledge

127(II)

§126.2

Irrelevant

127(II)

CCP §126.2

- Waste of time
- Nothing to do with this case

Cross

Argumentative

Art. 13

2.4

Assumes Facts Not in Evidence

127

15.2.3

Ambiguous/Compound

127

15.2.3

Exceeds Scope of Direct

127

Redirect

Leading, Asked Already

Exceeds Scope of Cross

Closing (CCP 340.1)

Misconduct

Art. 12

CCP Art. 13

- Misquotes Evidence
- Inflammatory

46, 127(II)

2.4, 2.3

310.2.9

Judge Unfair

109.1.8

Art. 127

The judgment must be based on admissible evidence. Objections are the means evidentiary disputes are raised and resolved....Can be to:

- Attorney's questions;
- Witness' testimony;
- Introduction of and use of evidence;
- A lawyer's behavior;
- Conduct of judge.

REASONS FOR OBJECTING:

- Exclude prejudicial evidence;
- Make a record on appeal;
- Prevent unfair treatment;
- Call attention to unfair tactics;

DECISION TO OBJECT:

- Will the exclusion of evid. add to case?
- Even if sustained, will it be admitted anyway?
- Can it be accomplished by other means?

MAKING THE OBJECTION:

Stand, state the grounds, give precise basis. **For instance, "She is asking the witness to guess; calls for speculation." Another example is: "that ground has been covered before, your honor; cumulative."**

RESPONDING TO OBJECTIONS:

- Requesting argument..politely let judge know that argument is necessary;
- tell the judge exactly why admissible; Limited admissibility;
- Conditional offer.

Regardless of religion, language, race all the citizens of Azerbaijan have the same rights and these rights should be protected.

Heydar Aliyev

Rules of conduct

Article 310. Keeping order in court

310.1. At the hearing, before the judges enter the courtroom, the court supervisor shall announce, "The court convenes". Immediately after this, all those participating in the hearing shall stand and only after the judges have taken their places may they be seated.

310.2. All those participating in the court's examination of the case or present in the courtroom shall abide by the following rules to maintain order:

310.2.1. comply with all the instructions of the court president and the requests of the court supervisor based thereon;

310.2.2. remain silent and observe the rules of cleanliness during the court hearing;

310.2.3. remain seated and not walk around the courtroom;

310.2.4. use photography, film, audio, video, computer and other recording techniques only with the permission of the court president;

310.2.5. speak, make requests and raise objections only with the permission of the court president;

310.2.6. stand up when the court president so requests and sit down only with his permission;

310.2.7. address the court with the words "Ladies and Gentlemen" and the judge with the words: "Your Honour";

310.2.8. not interrupt those making speeches at the hearing, provide explanations or make comments;

310.2.9. refrain from insulting and improper statements and actions as well as from asking leading questions during the questioning of the accused, the victim, the witnesses or other parties to the proceedings.

310.3. Persons wishing to participate in a public hearing of the court shall be allowed to enter the courtroom before the hearing or during the intervals between sittings if there are seats free in the room. Persons under 16 who are neither parties nor witnesses shall not be allowed to enter the courtroom. In order to ensure security during the hearing, the identity papers and effects of those admitted to the courtroom may be checked on the instructions of the court president.

310.4. Keeping order in court shall be the responsibility of the court supervisor. The court supervisor shall ensure that the rules set out in Article 310.2.1-310.2.9 are derogated from only with the permission of the court president, and shall act to prevent possible breaches.

310.5. Contempt of court during the conduct of the hearing in the circumstances determined by the legislation of the Azerbaijan Republic shall constitute grounds for criminal responsibility.

310.6. The following steps may be taken by court decision against those who commit

serious breaches of order during court hearings, after prior warning, with the exception of public prosecutors and defence counsel:

310.6.1. a fine equivalent to 50 times the minimum wage;

310.6.2. detention for a period of 3 to 48 hours;

310.6.3. expulsion from the courtroom for the whole or part of the court's examination of the case.

310.7. A party to the proceedings who is permitted to return to the hearing by court decision shall have the right to become acquainted with the procedural measures that have taken place in his absence.

Code of Judicial Ethics of Azerbaijan Republic

Approved by the decision of the Azerbaijan Republic Presidential Judicial –Legal Council and the Plenum of Azerbaijan Republic Supreme Court on December 12, 2002.

Preamble

The performance of judicial tasks according to high status of judiciary and promotion of public confidence in independence of Courts creates important responsibilities for judges.

Maintaining the prestige of judicial office directly depends on judges' dignity, their personal qualifications, and the respect towards them in society, high professional competence, high personal standard of conduct and their ethics.

Judges must realize the high responsibility of their judicial duties, respect laws and human rights, follow the accepted by society general ethics norms and standards of conduct, protect the integrity and respect for judicial office.

In order to achieve these goals judges shall comply with the following rules:

I. General Provisions

Article 1. Serving his/her term of office, a judge should personally adhere to high standards of conduct in compliance with given before state, citizens and judiciary judge's oath both in his/her professional and personal conduct.

Article 2. A judge shall respect and comply with Constitution and laws of Azerbaijan Republic, and universally accepted rules, uphold the integrity and independence of judiciary, and uplift its prestige.

Article 3. A judge shall comply with rule of law, decide on the basis of facts, provide for ethical effect of judicial activities, and be fair and impartial.

Article 4. The judicial duties of a judge take precedence over all the judge's other activities.

Article 5. A judge shall act at any times in a manner that protects honor and high prestige of judicial office. A judge shall avoid all impropriety that can harm judge's high position, his/her honor and dignity.

II. Rules applicable to judicial duties.

Article 6. A judge shall be impartial. A judge shall not allow any person, including family, social or other relationships to influence a case before a Court.

Article 7. A judge shall perform judicial duties on the basis of principle of everyone's equal rights before the law and court, without bias or prejudice towards any party to the proceedings.

Article 8. A judge shall preserve his/her right judgment of the case merits and shall not be influenced by any executive or legislative structure, and individuals; abstain from making any public comments and critics on pending proceedings

Article 9. In order to diligently discharge the judge's duties, a judge shall raise his professional competence and constantly improve his legal knowledge.

Article 10. A judge shall maintain high standards towards himself (should be exacting towards himself), perform judicial duties with high responsibility, review cases and all materials on time. A judge's professional and personal conduct should be reserved, serious, polite and sincere and he /she shall require similar conduct of other court officials.

Article 11. A judge shall not disclose information acquired in a judicial capacity. A judge shall not, while a proceeding is pending or just started, make any public comment. He/she shall not express his/her opinion on any case on public or during meetings with journalists. A judge shall not question any enforced court decision or acts of other judges in private capacity.

Article 12. A judge shall not disclose information obtained during deliberations or closed Courts hearings.

Article 13. A judge shall refrain from establishing non-procedural relationships neither with process participants nor with other Court instances, if law does not provide it.

Article 14. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.

Article 15. A judge must be independent. Considering each case, a judge shall decide independently on the basis of his belief formed as a result of thorough and unbiased case consideration, irrespective of contradicting to legal views of other members of court panel.

Article 16. With parties consent, a judge shall let mass-media representatives to highlight the courts proceedings, if it does not interfere with courts procedure or will not be used as means to influence court.

Article 17. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or his family members. He/she shall act in a

manner that his family, social and other relationship will not demean the prestige of judicial office.

Article 18. A judge shall not accept a gift, award, favor or benefit in connection with the case under his/her consideration; shall refrain from receiving any services if they can affect case outcome.

III. The judge's extra-judicial activities.

Article 19. A judge's personal standard of conduct should not question his/her being just, unbiased and loyal.

Article 20. A judge shall not be appointed or chosen to any other position, engage himself/herself in any financial or business dealings, except for teaching and research.

Article 21. A judge may be involved in social activities that shall not demean the prestige of judicial office.

Article 22. A judge may participate in public discussions and establish relations with legislative, executive bodies and their officials while performing judge's duties, or regarding legal system, only if it shall not interfere with performance of his/her judicial duties and his/her impartiality will not be questioned.

Article 23. A judge shall not publicly express his/her opinion on current internal political issues, participate in political actions, support financially or by other means parties, engage in propaganda, except as permitted by law, should not act in a manner which could imply that he/she is under ideological or any other influence.

IV. A judge's responsibility for violation the Code's provisions.

Article 24. A judge, who violates the Code's provisions in his/her professional or private conduct, will be entitled to his/her privileges of office; however will bear responsibility under the law.

Article 25. Cases of violation of Code's provisions will be carefully investigated, and once judge's acts demeaning judicial office are proved, legal actions may be instituted against judge in accordance with laws.

Article 26. A judge, who with his/her improper behavior demeans prestige of judicial office, may be dismissed in accordance with law on "Courts and Judges".

CODE OF ETHICS
Of Employees Of The Prosecutor's Office Of The Republic Of
Azerbaijan

This Code shall define norms of conduct, ethics of the employees of the bodies of the Prosecutor's office, their duties on protection of human and citizen rights and freedoms as well as conduct which may be expected from the employees of the Prosecutor's office by the public.

Proper implementation of the duties by the bodies of the Prosecutor's office as provided by law shall depend directly on the Prosecutor's office employs' high moral and professional qualities, dignity, respect in the society, conduct in outside work life. Any employee of the Prosecutor's office should raise the influence of the represented body and increase citizens' trust to the defense bodies.

Any employee of the Prosecutor's office understanding how responsible and honorable position of an employee of the Prosecutor's office, significance of his or her role in administering justice, all the responsibility of his or her position must respect the laws, human and citizen rights and freedoms, must always adhere to the national and international standards which define these rights and freedoms, adhere to general morals and rules of conduct accepted in the society, must bear himself or herself with dignity of the employee of the Prosecutor's office.

In order to fulfill their duties duly, the employees of the Prosecutor's office must adhere to the following rules:

I. General requirements

1. Any employee of the Prosecutor's office must adhere to this Code and other normative legal acts which define rules of work conduct. The employees of the Prosecutor's office during the whole period of their work must be faithful to "the oath of the employee of the Prosecutor's office", must build their work and outside work conduct in accordance with that oath.

2. While fulfilling his or her work activities the employee of the Prosecutor's office must act in accordance with the Constitution and laws of the Republic of Azerbaijan as well as the standards of the professional responsibility, main rights and duties as defined by the International Association of Prosecutors for the prosecutors, respect the requirements

of the law and the ethic norms accepted in the society, be fair and impartial.

3. While fulfilling his or her work activities the employee of the Prosecutor's office must always raise influence of the bodies of the Prosecutor's office by showing high professionalism, human qualities and outside work conduct. The employee of the Prosecutor's office in all cases must act in such a way that other bodies of the legal defense as well as the public consider it as a model.

4. The employee of the Prosecutor's office must not take actions which may damage reputation of the employees of the Prosecutor's office, in any case he or she must protect dignity of the employee of the Prosecutor's office.

5. While fulfilling his or her professional activities the employee of the prosecutor's office must be absolutely independent, must maximum remove himself or herself from cases when personal interest may contradict the public interest, must bear full responsibility for solving issues related to the personal interests which contradict to the law.

6. The employee of the Prosecutor's office must not be a member of any political party or organization. Except in cases provided by the law, the employee of the Prosecutor's office must not act in favor of the interests of the natural persons and juridical persons, interests of the political party and public union, must not abuse his or her work duties.

II. Requirements related to the work conduct of the employee of the Prosecutor's office

7. In his or her work activity the employee of the Prosecutor's office adhering to the law must act only on a basis of facts, follow the principles of justice, legal equity of everybody before the law, adhere to and respect citizens' rights and freedoms, interests of the juridical persons. The employee of the Prosecutor's office must take into account that provision of the human and citizen rights and freedoms is the main aim of Azerbaijan state.

8. The employee of the Prosecutor's office must be objective, must ensure transparency in his or her work activity, must not allow any outside interference, must not influence or be influenced by any person. The employee of the Prosecutor's office must not expose privileges and authorities given to him or her by the law.

9. The employee of the Prosecutor's office must make his or her decision on any case by acknowledging the law superiority, by being independent based on the inner personal trust as a result of thorough, full and objective investigation of the case.

10. The employee of the Prosecutor's office must not spread any secrets which are known to him or her in connection with fulfillment of his or her duties and information which is intended for the official use, he or she must ensure confidentiality of the information which relates to the citizens' personal life and dignity.

11. The employee of the Prosecutor's office must not express his or her opinions on the cases which are under his or her investigation in the public speeches and the media if there is no made decision, must not give comments, must not take any actions which may form the advance public opinion on any concrete case.

12. The employee of the Prosecutor's office must not build any non-procedural relations, which are not provided by the law, with the process participants on the cases which are investigated by him or her. The Prosecutor's office must not demand any payment, award or privilege from the natural persons, offices, companies and organizations for implementation of the work duty, must refuse from the illegal profits. Apart from that, the employee of the Prosecutor's office must not give any promises for acceptable or non-acceptable results of the cases which are under his or her investigations.

13. The employee of the Prosecutor's office while making decisions and fulfilling work duties must be impartial, must not afford any preferential treatment to any person or group for their race, nationality, language, sex, social origin, property and work position, religion, faith, membership in social groups. To be objective while fulfilling his or her work duties, the employee of the Prosecutor's office in cases provided by the law must take necessary actions to remove himself or herself from the process.

14. The employee of the Prosecutor's office must be demanding to himself or herself, must fulfill his or her duties in a timely manner, honestly, must not allow cases of bureaucracy.

15. The employee of the Prosecutor's office must be critical to himself or herself, accept his or her mistakes and take actions to eliminate them, be able to apologize for unethical behavior. While implementing his or her official activities he or she must be polite, attentive, reserved and well-wishing to the other persons.

16. During the crime investigation the employee of the Prosecutor's office must not give the proceeding participants false information and during the fulfillment of the procedural actions must not allow violations of the ethic rules.

17. During the crime investigation, including cases of defense of the official prosecution, the employee of the Prosecutor's office must pay attention to his or her words, must make every effort to keep relations with the trial participants within the framework of the ethic rules.

18. The employee of the Prosecutor's office must constantly work on himself or herself in order to improve his or her general and legal knowledge, theoretical and professional levels, be well informed about the legislation, about all the areas of science and social life.

19. The employee of the Prosecutor's office must respect desire of the means of the mass media to highlight activities of the prosecutor's office, assist representatives of the mass media in receiving true and objective information in cases and manner provided by the law.

20. The employee of the prosecutor's office must not make any gesture or take any actions which may offend other persons' self-esteem and dignity.

21. The employee of the Prosecutor's office must always respect hierarchy in relation to direct and superior employees and must be attentive and caring. The employee of the prosecutor's office must always respect professional ethics in his or her relations with colleagues.

22. The employee of the Prosecutor's office must build his or her relations within the frames of the productive partnership with court and legal defense bodies as well as counsels for the defense, must provide thorough assistance to the colleagues in an order provided by the law.

23. The employee of the Prosecutor's office must not expose his or her superiority to the subordinated staff, the subordinated staff must not be discriminated on the basis of their religion, nationality, race, sex, public membership as well as for the hold position.

24. The employee of the Prosecutor's office must respect dress code.

25. The employee of the Prosecutor's office must use inventory and state property, technical equipment and other means given to his or her use economically and efficiently.

III. Requirements connected with outside work conduct

of the employee of the Prosecutor's office

26. The employee of the Prosecutor's office may not hold any elective or appointed jobs, may not be engaged in any entrepreneurial, commercial or any other paid activity, other than scientific, pedagogical and creative activity.

27. The employee of the Prosecutor's office may not be engaged in public activity which may harm his or her work activity and reputation of the Prosecutor's office.

28. The employee of the Prosecutor's office must not participate in political actions, must not provide material and other support to the political parties, must not be engaged in campaigns excluding the cases provided by the legislation, must avoid actions which may show him or her being influenced by this or other ideology.

29. Outside work conduct of the employee of the Prosecutor's office must not damage his or her professional authority.

30. The employee of the Prosecutor's office must not illegally influence citizens, offices, enterprises and organizations by showing his or her service clothes and service ID, must not abuse them, must restrict use of the service clothes in public places at work-free time.

IV. Protection of requirements of the Code and responsibility of the employee of the Prosecutor's office for violation of those requirements

31. Violation of the requirements of this Code must be valued as an action which is not appropriate for the employee of the Prosecutor's office and moral and disciplinary actions of reproof towards the person who broke the requirement must be taken.

32. The employee of the Prosecutor's office, his or her direct or higher superiors must define actions for protection of rules of the service conduct, must conduct constant analyses in this area. To this aim, the senior employees of the bodies of the prosecutor's office:

32.1. must define work load and powers and duties of the subordinated staff in accordance with their service qualities;

32.2. must not involve the subordinated staff in taking decisions or actions which contradict to the law, commonly accepted norms of ethics;

32.3. must avoid cases of election and appointment of the personnel on the grounds of the personal relations;

32.4. must exemplify model for adherence to the Code by his or her service conduct;

32.5. must define actions for prevention of violations of the rules of ethic conduct of the employees of the Prosecutor's office and take actions for prevention of these actions;

32.6. must apply disciplinary reproofs for violation of the rules of the service conduct or raise this issue before the respective persons;

32.7. take encouraging actions for the employees who performed the rules of the service conduct well or raise this issue before the respective persons.

33. When the employee of the Prosecutor's office violates the law during or outside fulfillment of his or her work activities, he or she bears responsibility in an order defined by the law. Apart from that, actions of the employee of the Prosecutor's office which violated the requirements of the Code may be investigated at the Supreme Personnel Review Board. The Supreme Personnel Review Board must judge the actions of the employee of the Prosecutor's office which violated the requirements of this Code and have power to address to the appropriate body for taking a decision about him or her. The Supreme Personnel Review Board may also demand the employee of the Prosecutor's office to apologize in the media and to individuals for his or her unethical behavior.

34. Information about cases of violation of the requirements of this Code shall be thoroughly investigated, and when the actions which damaged reputation of the employees of the Prosecutor's office are justified, the actions provided by the legislation are taken.

SALIENT LESSONS FROM TRIAL OBSERVATION/FUTURE MOTIONS

TRIAL PROCEDURE CHALLENGES:

- The Judges are unfamiliar with the order of proof (who goes first) and order of evidence presentation. We emphasized that their own Code and Constitution dictated the same order as that in the US and UK. (Art. 63 (Azerbaijani Constitution (“AC”) & Arts. 21 and 32 of Code of Criminal Procedure (“CCP”): presumption of innocence, burden of proof /order of proof).
- There is a remnant from the Soviet era called the “Protocol”. It is a police document prepared by the government and provided the judge before trial. It is a pre-trial memo on steroids. It lays out all the police evidence in written form. Unfortunately, as the judges get this before trial, it jeopardizes their impartiality. They often rely on it, rather than evidence adduced at trial. We need to emphasize that the judge is to decide, not merely approve the protocol and that its only utility is as an impeachment device, should one deviate from a prior protocol statement.
- Treatment of witnesses is different. All witnesses stand, rather than sit.
- Most troublesome is the fact all criminal defendants are encaged during trial. This plays mischief with the presumption of innocence.
- In this system, all witnesses other than the defendant are sworn. The defendant may not testify under oath.
- Despite Constitutional and Codal proscriptions, lawyers and judges freely inquire during trial about the exercise of the right to remain silent.
- The judges and lawyers feel free to draw conclusions from mere prior arrests and prior pleas of guilty, rarely examining why the plea occurred and untroubled by the fact it was just an arrest.
- In Closing Argument, the prosecutors also ask for the sentence at the same time.
- There is almost a ritualistic dedication to code language and ornate form in rendering a decision. One must await the outcome after enduring pages of tedious and formulaic recitations.
- While there are traces of an evidence code in the CCP, the Azerbaijanis need a formal evidence code. It simply is too hard to fish in the CCP to articulate basic evidentiary precepts accepted by all civilized nations.

TRIAL STYLE ALSO PRESENTS CHALLENGES:

- Participants are very loud, robust and overbearing in questioning.
- It is difficult to get them to try to change their tone.
- Participants always lead and control on direct; open ended on cross.
- There is no accreditation or introduction of the witness.
- They do not take the judge as clean slate. They assume judicial knowledge and don’t lay out the story in understandable fashion.
- Organizationally, they do not discriminate between the critical points they must cover.
- There is little emphasis/focus on important points. For instance, on cross they must learn to hit the high points that help your side and hurt the other.
- “What is the point of that cross examination?” is a frequent critique.
- If they object, it is always a tirade.
- **They argue, argue, argue over everything**