

# **Detective-Search Activity ACT of the Republic of Azerbaijan**

Be the it enacted, in order to regulate the legal relation in respect of the detective-search activity and to define the system of legal provisions for implementation of detective-search activity, as follows.

## **Chapter I. General Clauses**

### Section 1. Definition, Goals And Objectives Of The Detective-Search Activity

- I. Detective-search activity is the implementation of latent and overt measures set forth in this ACT by the appropriate public authority.
- II. Detective-search activity shall be implemented for the purpose of protection of life, health, rights and freedoms of human, interests of legal persons, state and military secrets, as well as the national security from criminal encroachments.
- III. The objectives of detective-search activity are as follows:
  - 1) Prevention of crimes committed and crimes pending preparation;
  - 2) Detection of committed crimes;
  - 3) Identification of persons, who prepared, committed or are pending commission of crimes;
  - 4) Search of persons concealing themselves from court, investigation and inquiry authority, and evading from execution of punishment, as well as missing persons;
  - 5) Identification of unknown human bodies.

### Section 2. Legislation on detective-search activity

- I. Legislation on detective-search activity shall comprise the Constitution of the Republic of Azerbaijan, this ACT, other legislation instruments of the Republic of Azerbaijan, as well as international treaties, to which the Republic of Azerbaijan is party to.
- II. The bodies implementing the detective-search activity (hereafter, referred to as the Agents of the Detective-Search Activity), within the scope of their competence, shall be entitled to issue statutory instruments in relation to the organization and tactics of the detective-search activity according to the legislation of the Republic of Azerbaijan.

### Section 3. Principles Of The Detective-Search Activity

- I. Detective-search activity shall be based on the principles of lawfulness, humanism, respect for human rights and freedoms, conspiracy and the concordance of latent and overt methods of work.
- II. Unless otherwise provided by the legislation of the Republic of Azerbaijan, the citizenship, nationality, sex, residence, social and labor status, official position, membership in civil associations, religion and political view shall not be a barrier for implementation of the detective-search activity.

### Section 4. Guarantees for human and civil rights and freedoms

- I. In connection with the implementation of detective-search activity it is prohibited to:
  - 1) Pursue goals or fulfill the responsibilities other than those envisaged in the Section 1;
  - 2) Infringe privacy of one's personal life, including dissemination information on confidential personal and family issues, as well as on one's honor and dignity without one's consent.
- II. It is prohibited to violate human and civic rights and freedoms envisaged in the Constitution of the Republic of Azerbaijan and interests of legal entities. The temporary restriction of human and civic rights and freedoms in the course of implementation of detective-search activity is allowed only in accordance with the provision of this ACT in case of prevention and disclosure of crimes, search of those secreting from court, investigation and investigating authorities, escaping sentencing and missing.
- III. It is prohibited for the Agents of the Detective-Search Activity to act in favor of any of the political parties or any public organization, as well as latent participation in the work of legislative or judicial authorities, as well as public unions and religious organizations registered in accordance with the provision of ACT for the purpose of influencing their operation.
- IV. Any person, whose rights and freedoms have been violated as a result of the actions of the Agents of the Detective-Search Activity, shall be entitled to complain to the head of the authority higher to the appropriate Agents of the Detective-Search Activity in hierarchy, prosecutor or court.
- V. For the purpose of making decision against the substance of the complaint the internal control or judicial

review shall be undertaken in accordance with the provision of the legislation of the Republic of Azerbaijan. In order to ensure the completeness and comprehensiveness of the decision, the Agents of the Detective-Search Activity, based on the decision of the court, shall be bound to make available to the complainant the content of the detective-registration work, except for state, military and professional secrets, as well as information on persons latently facilitating the conduction of detective-search activity.

#### Section 5. The Agents of the Detective-Search Activity

- I. The inquiry authorities as set forth in the criminal procedural legislation of the Republic of Azerbaijan implement the detective-search activity.
- II. The appropriate executive body of the Republic of Azerbaijan shall determine the inquiry agency to carry out the detective-search measures and the volume entrusted with it.
- III. Persons commissioned by the inquiry bodies shall be entitled to carry out their responsibilities only within the scope of authorities of these bodies.
- IV. Examination of mail correspondence, telegraph and other information; taping of telephone conversations by means of connecting to the transmitting equipment of private and legal persons, departments, entities and organizations providing communication infrastructure, delivering communication services regardless of the forms of ownership; and retrieval of information from technical channels and other technical means shall be implemented by the appropriate executive body of the Republic of Azerbaijan.

#### Section 6. Responsibilities of the Agents of the Detective-Search Activity

Agents of the Detective-Search Activity shall have the following responsibilities for the purpose of achieving the goals set forth in the Section 1 of this ACT:

- 1) to implement all the actions within the scope of own authorities to ensure the protection of human and civil rights and responsibilities, legitimate interests of private and legal persons, public and state security;
- 2) to execute decisions of judicial and investigation authorities pertaining to the implementation of the detective search measures or written instructions within the framework of the criminal case, as well as, to carry out decisions of the authorized Agents of the Detective-Search Activity;
- 3) to provide information obtained as a result of the detective-search activity, without disclosure of its source and modes of obtaining it, to the person conducting inquiry or investigation or to the court;
- 4) to respond to the requests by the foreign law-enforcement and appropriate international organizations within the framework of the international treaties, to which the Republic of Azerbaijan is party to;
- 5) to undertake all necessary measures in order to bring the information about the fact which is relevant to the territorial jurisdiction of another Agent of the Detective-Search Activity on the territory of the Republic of Azerbaijan and render the necessary assistance;
- 6) to undertake appropriate actions to ensure conspiracy in the course of implementation of detective-search activity;
- 7) to check the persons who have access to confidential information or matters requiring special permission due to the position that s/he occupies;
- 8) to protect own staff and their close relatives, persons facilitating the detective-search activity and their close relatives, as well as the participants of the criminal process and their close relatives and their property from illegal encroachments;
- 9) to ensure the confidentiality and anonymity of cooperation with any person;
- 10) to maintain the register of events, facts, objects and information sources.

#### Section 7. Rights Of The Agents Of The Detective-Search Activity

Agents of the Detective-Search Activity shall have the following rights in the course of implementation of direct responsibilities:

- 1) to carry out detective-search measures in latent and overt way, as set forth in the Section 10 of this ACT;
- 2) to cooperate with persons willing to facilitate the Agents Of The Detective-Search Activity, subject to the confidentiality, with or without consideration;
- 3) to develop and operate information system in support of the detective-search activity;
- 4) to use dwelling and non-dwelling premises and rooms, as well as, vehicles and other property of private and legal persons on the basis of written contract or oral agreement;
- 5) set up a fake department, enterprise or organization in the form of a legal persons for the purpose of maintaining conspiracy and to this end to use documents veiling the identity of commissioned by the Agents of the Detective-Search Activity, true ownership of departments, organizations, buildings and transport utilized, as well as, the identity of citizens cooperating with these bodies subject to maintaining their confidentiality.

#### Section 8. Scope Of Authorities Of The Agents Of The Detective-Search Activity

I. Agents of the Detective-Search Activity shall be prohibited, in the course of implementation of their responsibilities:

- 1) to allow actions putting at risk the lives, health, property and lawful interests of persons;
- 2) to provoke anybody to commit the breach of law;
- 3) to use violence, threats and black mail, as well as, any other method restricting the rights and freedoms of human and citizens and their lawful interests protected by law;
- 4) to carry out measures outside the scope of their responsibilities.

#### Section 9. Rendering Assistance To Agents Of Detective-Search Activity

I. The officials of the state and local self-government authorities of the Republic of Azerbaijan shall be bound render assistance to the Agents of Detective-Search Activity.

II. Any person on the territory of the Republic of Azerbaijan may render assistance to the Agents of the Detective-Search Activity in the implementation of its responsibilities. Nobody shall be forced to participate in the detective-search activity.

III. Failure to comply with the legal demands of the officers of the Agents of the Detective-Search Activity and well as hindering their work shall be subject to liability provided the legislation of the Republic of Azerbaijan.

## Chapter II. Implementation of detective-search activity

#### Section 10. Detective-search measures

I. Agents of the Detective-Search Activity shall be entitled to use the following detective-search measures in order provided by the present ACT:

- 1) questioning of people;
- 2) making inquiries;
- 3) tapping telephone conversations;
- 4) examination of postal, telegraphic and other correspondence;
- 5) retrieving of information from technical channels and other technical means;
- 6) checking the letters of convicts;
- 7) examination of transport vehicles;
- 8) entering and inspecting buildings, including dwelling premises, as well as other closed buildings, constructions sites and land plots;
- 9) monitoring buildings, including dwelling premises, as well as other closed buildings, constructions, land plots and transportation means;
- 10) shadowing people;
- 11) identification of persons;
- 12) controlled purchase of goods;
- 13) examination of objects and documents;
- 14) collection of samples for comparative analysis;
- 15) controlled delivery;
- 16) infiltration into criminal groups or marginal associations;
- 17) incorporation of a legal person;
- 18) conducting investigatory experiments, i.e. application of model simulating the criminal behavior.

II. The list of actions set forth in the part I of these ACT shall be subject to changes only by the present ACT.

III. Shall it be impossible to achieve the goals set in Section 1 of the present ACT; detective-search measures specified Para. 3-5, 8 and 10 of part I of this Section are to be exerted based on the decision of court (judge).

IV. Shall the grounds provided by the legislation of the Republic of Azerbaijan be present in the case, the Agents of the Detective-Search Activity are entitled, without due authorization of judge, as follows:

- 1) to tap telephone conversations; examine postal, telegraphic and other mail correspondence, retrieve information from technical channels and other technical means; as well as to shadow people for the purpose of preventing of grave crimes against individual or especially dangerous crime against the State;
- 2) to examine buildings, including dwelling premises, as well as, other closed buildings, constructions and land plots for the purpose of detention of those who prepare, commit and have committed a crime, escaped from detention facilities and conceals himself/herself, as well as, prevention of fire, explosions and encroachments against public order or posing potential risk of danger to public order.

V. In cases specified in the part III of this Section, the Agents of Detective-Search Activity shall submit, within 48 hours, their substantiated decisions in written to the court that has the supervisory authority and the prosecutor in charge of procedural management of the pre-trial investigation.

VI. For the purpose of prevention of use of violence, acquiring something through intimidation or any illegal

actions against someone, the Agents of the Detective-Search Activity shall be entitled, in case of necessity, to undertake immediate actions in order to tap the telephone conversations of those persons and other communications subject to the written request of that person.

VII. Detective-search measures indicated in Para 16 and 17 of Part I of this Section shall be used for the purpose of prevention and disclosure of grave crimes organized or committed by organized criminal groups and especially dangerous crimes against the State, as well as, identification of persons who organize, commit and have committed these crimes.

VIII. The present ACT bans implementation of the detective-search activity by unauthorized private and legal persons, as well as, use of special devices and other technical means for latent retrieval of information.

IX. The appropriate executive body of the Republic of Azerbaijan shall license the use, production, and sale, purchase, importing or exporting of the special equipment for implementing detective-search measure of latent retrieval of information by unauthorized private and legal persons.

X. The appropriate executive body of the Republic of Azerbaijan shall define types of equipment to be considered as equipment for latent retrieval of information.

#### Section 11. Reasons And Grounds For Implementing Detective-Search Measures

I. The Agents of the Detective-Search Activity shall have the reasons and grounds, as set forth in this Section, to conduct the detective-search activity.

II. The reasons for detective-search activity are as follows:

- 1) requests of private individuals;
- 2) requests of officials of enterprises, departments and organizations;
- 3) information, provided in mass media;
- 4) information obtained directly by the Agents of Detective-Search Activity;
- 5) written inquiries of other Agents of Detective-Search Activity;
- 6) written inquiries of supreme authorities of the Republic of Azerbaijan, as well as, bodies ensuring the security of special objects;
- 7) written instructions of persons executing inquiry or investigation;
- 8) official requests of foreign law-enforcement agencies or relevant international organizations.

III. The grounds for implementing detective-search measures are as follows:

- 1) decisions of court (judge);
- 2) decisions of investigation authorities;
- 3) decisions of the authorized Agents of Detective-Search Activity.

IV. The decisions of courts (judges), investigation authorities or authorized Agents of Detective-Search Activity shall be accepted only in following cases:

- 1) within the framework of existing of criminal case;
- 2) repealed by the ACT of the Republic of Azerbaijan #598-IIQD dated the 5th March 2004;
- 3) in case of obtaining reliable information, which is received from unbiased and known source, to the effect that a particular person is preparing, committing or have committed a crime even without the framework of the existing criminal case;
- 4) in case of event infringing the national security and its defense capacity or prevention of this event;
- 5) in case of a person concealing himself from court, investigation or inquiry, evading execution of punishment or missing person;
- 6) in case of identification of unknown human body.

#### Section 12. Decisions, Written Instructions And Inquiries Related To Implementation Of Detective-Search Measures

I. Only the person drawing his/her authorities from the legislation of the Republic of Azerbaijan shall be entitled to give decisions, written instructions or official enquiries in respect of implementation of the detective-search measures.

II. Decision, written instructions or official enquiries in respect of implementation of the detective-search activity shall contain justification for conducting of the required measures.

III. Decisions in respect of implementation of detective-search measures specified in Para 3-5, 8 and 10 of Part I of Section 10 shall certainly contain the following information:

- 1) name, surname, patronymic and position of an official suggesting undertaking the appropriate measure;
- 2) name, surname, patronymic of a person or description of a facility, with regards to which the appropriate actions are proposed to be undertaken;
- 3) facts justifying the application of means and methods of intrusive nature;
- 4) justification of non-possibility of obtaining the information through other methods;
- 5) the term of application of means and methods of intervention character;
- 6) possible outcomes of the proposed actions.

#### Section 13.

## Conditions for implementation of detective-search measures

- I. Detective-search measures in respect of confidentiality of information protected by legislation and transmitted by correspondence, telephone, post-telegraph and other means of communication and privacy of premises shall be allowed if there are sufficient grounds to believe that the measures carried out with a purpose of collecting information on the persons preparing for crime, attempting the commission of crime, committing crime, hiding themselves from court, investigation and inquiry bodies, evading punishment, as well as, of tracing stolen goods, of preventing concealment and destruction of evidence will produce information to serve as evidence in criminal proceedings and location of people at large.
- II. Persons commissioned by the agents of the Detective Search Activity to carry out detective-search measures in respect of tapping and recording of telephone and other communication, extracting information from channels of technical communication and other technical means, screening of correspondence and searching of premises, shall possess warrant authorizing the measures and the identification documents.
- III. The technical means, psychotropic, chemical and other substances capable of damaging human health and environment shall be banned from usage in the course of implementation of detective-search measures with the purpose of obtaining information about the person who is believed to have committed a crime or to be preparing a crime, as well as his/her connections.
- IV. In the course of implementation of the detective-search measures, persons commissioned by the Agents of the Detective Search Activity shall be bound to adhere to the principle of proportionality of these measures to the degree of the danger posed by the targeted criminal encroachments to the interests of the state and public in terms of potential damage to be caused.

## Section 14. Implementation of the Detective-Search Measures

- I. Detective-search measures shall be implemented under the supervision of the agents of the detective-search activity.
- II. In the course of implementation of the detective-search measures, persons commissioned by the Agents of the Detective Search Activity shall be subordinated directly and immediately to their superiors. In case if the superior give an implicitly illegal order or commission, the commissioned person shall be governed by law and inform about this the higher authority in the hierarchy of the Agent of the Detective-Search Activity. Shall a crime has been committed or is believed to be imminent in due course of implementation of the order or commission of the superior to the persons commissioned by the Agents of the Detective Search Activity, the higher authority in the hierarchy of the Agent of the Detective-Search Activity or the court may be filed with a complaint.
- III. Except for the persons explicitly authorized by ACT, no one shall be entitled to interfere with the legal actions of the Agents of the Detective-Search Activity and its officials.
- IV. Information systems operating, video and audio recording, photographing, as well as, utilizing of technical means not capable of damaging life and health of citizens and environment shall be allowed for usage in the course of implementation of the detective-search measures.
- V. If the implementation of detective-search measures is considered impossible on the objective grounds, it shall be terminated (in case of occurrence of an extraordinary event or due to hindrance caused by the force beyond control or occurrence of imminence danger).
- VI. Detective-search measures in progress shall be terminated in the following cases:
  1. achievement of the goals provided by Section 1 of this ACT;
  2. lack of constituents of crime (*mens rea* and *actus reus*) in the action of the targeted person.
- VII. The actions of necessary self-defense or last resort, in the course of implementation of commission, by a person who is commissioned by the Agents of the Detective Search Activity to infiltrate criminal groups or marginal associations shall not be subject to criminal prosecution in order provided by the legislation of the Republic of Azerbaijan.
- VIII. The organization and implementation of the detective-search activity which constitute one of types of state secrets shall be subject to the protection provided by the appropriate legislation.
- IX. In the course of implementation of the detective-search activity, all information pertaining to state, military or service secret; organization of detective-search activity; source, methods and modes of detective information; as well as, private lives of citizens shall be classified.
- X. Information about the persons to have secretly cooperated or to be in process of cooperation with the Agents of the Detective-Search Activity shall only be declassified subject to their written permission or if there is an explicit provision to this effect in the legislation.

## Section 15. Records pertaining to Detective-Search Activity

- I. Shall the detective-search activity be carried out, a detective-search registration case is instituted subject to the subsection III of Section 11 and Agent of the Detective-Search Activity shall maintain the record of these cases.

- II. Agent of the Detective-Search Activity shall institute only one detective-search registration case in respect of similar illegal actions of persons to conceal themselves from court, investigation and inquiry bodies; to evade from execution of punishment in their regard, to be suspected of committing a crime and to be missing.
- III. The results of the detective-search activity shall be recorded in a systematical way in the detective-search registration case.
- IV. Detective-search registration case shall be stored in the offices of the Agent of the Detective-Search Activity.
- V. Shall any consideration of justice goals not be present, the files pertaining to the record of detective-search measures in respect of a person, whose guilt has not been proved in order provided by legislation, are to be stored for one year and upon the expiration of this term be eliminated.

#### Section 16. Use of the Results of the Detective-Search Measures

- I. Materials obtained as a result of detective-search activity according to the present ACT and submitted and examined in conformity with the requirements of the Criminal Procedure Code of the Republic of Azerbaijan shall be admitted as evidence in criminal proceedings.
- II. Information obtained as a result of detective-search measures, which is irrelevant for the purposes of these measures, shall be banned from disclosure and usage against the interests of private and legal persons.
- III. Obtaining of information about a person by means of special equipment in an illegal manner and without due permission to use special means in the course of implementation of detective-search measure shall entitle this person to renounce his/her testimony and appeal to court. In these circumstances, the court shall review the lawfulness of the detective-search measure and decide whether the information in question has been obtained legally and whether it shall be considered invalid from legal point of view.
- IV. Information obtained with violation of the requirements of this ACT shall be destroyed immediately.
- V. Information obtained as a result of the detective-search activity, which affect life, dignity and honor of a person but does not constitute an illegal action shall not be kept and must be destroyed.
- VI. Obtained as a result of detective search activity, information on the undetected crime that is related to the safety of people and capable of hindering investigation shall be banned from disclosure.
- VII. The investigator, prosecutor and court in the criminal case shall be entitled to acquaint with information on the commission of any crime obtained as a result of detective-search activity, without disclosure of the source.

### **Chapter III. Final Provisions**

#### Section 17. Legal and social protection of persons cooperating with the Agents of Detective-Search Activity

- I. Persons cooperating with the Agents of Detective-Search Activity shall be protected by state.
- II. Voluntary participation of persons in detective-search measures shall be based on a contract.
- III. Persons cooperating with the Agents of Detective-Search Activity shall be entitled to receive a wage, bonuses and other maintenance.
- IV. In case if the life, health or property of a person or his relatives comes under danger due to participation of the latter in detective-search activity, the competent authorities shall take necessary measures to protect them and compensate sustained damage.
- V. If the person engages himself in cooperation with the Agents of the Detective-Search Activity as a main mode of professional activity, this term of involvement shall be counted as a work experience for the purposes of determining the pension according to the legislation of the Republic of Azerbaijan.
- VI. The family of a person who died or became disabled in the course of participation in the detective-search activity shall receive one thousand fold of his/her wage and one off compensation in the amount of five hundredfold of his wage. The family of these persons shall also be entitled to pension subject to the legislation of the Republic of Azerbaijan.
- VII. The term of performance of duties by the persons, cooperating with the Agents of Detective-Search Activity, in connection with infiltration into criminal groups and marginal associations shall be counted as threefold for the purposes of calculating their work experience and payment of their wages.
- VIII. If a member of the criminal group has rendered cooperation to the Agent of the Detective-Search Activity in the detection of a crime and has constituents of a crime present in his actions; under the condition that his/her actions have not caused grave damage and s/he has provided compensation for the damage caused, s/he shall not be prosecuted in accordance with the legislation of the Republic of Azerbaijan.

#### Section 18. Logistical and financial support for the Agents of the Detective-Search Activity

- I. Agents of the Detective-Search Activity shall be provided with sufficient financial and logistic support in order to carry out detective-search activity, operate, maintain and protect automated information systems according to the requirements of the present ACT.
- II. Financial and logistical support for the detective-search activity shall be funded from the assets of the State

Budget of the Republic of Azerbaijan, as well as other sources in cases provided by the legislation of the Republic of Azerbaijan. The appropriate executive body of the Republic of Azerbaijan shall formulate the rules and norms for spending of these assets.

III. The appropriate executive body of the Republic of Azerbaijan shall formulate the rules and norms for providing of logistical support for the Agents of the Detective-Search Activity.

IV. Chiefs of the Agents of the Detective-Search Activity shall supervise of spending of the financial assets allocated to these Agents.

#### Section 19. Compliance With Legislation In The Course Of Implementation Of The Detective-Search Activity

Chiefs of the Agents of the Detective-Search Activity shall supervise of compliance with legislation in the course of organizing and implementing of the Detective-Search Activity and shall be held personally for defaults.

##### Section 19-1. Judicial Supervision Of The Detective-Search Activity

Judicial supervision of the detective-search activity shall be carried out according to the Criminal Procedure Code of the Republic of Azerbaijan.

#### Section 20. Prosecutorial Supervision Of The Detective-Search Activity

I. Prosecutor-General of the Republic of Azerbaijan and the prosecutors commissioned by him/her shall carry out supervision of the compliance of the Agents of the Detective-Search Activity with the legislation.

II. Chiefs of the Agents of the Detective shall be bound to submit documents related to reasons and grounds for carrying detective-search measures subject to the inquiries of the prosecutors in case of the latter receives materials, information and complaints of the citizens in respect of the violation of legislation in the course of implementation of the detective-search measures, as well as examines Lawfulness of rules and orders related to the implementation of the detective-search measures.

III. Except for the cases of commission of crime, information on persons infiltrated into criminal groups and marginal associations, extra-personnel and secret employees shall be disclosed to the prosecutor with the written permission of these persons.

IV. Information on the organization, tactics, methods and means of the detective-search activity shall be subject of the prosecutorial supervision.

V. Prosecutor-General of the Republic of Azerbaijan and the prosecutors commissioned by him/her who supervise of the detective-search activity shall maintain confidentiality of information contained in the documents submitted to them.

#### Section 21. Liability for breaching legislation during implementation of detective-search activity

I. Organization and implementation of detective-search activity without due consideration to objectives, grounds and conditions provided by the present ACT, as well as, disclosure of information regarding this activity entrusted with them for official use shall be subject to criminal, administration and disciplinary liability subject to the legislation of the Republic of Azerbaijan.

II. Shall the human rights and freedoms, interests of legal persons breached or the detective-search activity be carried out in respect of person not connected with violation of ACT, the Agents of the Detective-Search Activity are bound to restore violated rights and compensate for material and psychological damage.

### **Miscellaneous provisions**

I. This ACT shall become effective as of the date of its publication.

II. Authorities of judges with regard to the detective-search activity as set forth in this ACT will become effective after adoption of new criminal-procedural code and appointment of judges subject the Court and Judges ACT.

III. Before the authorities of judges in connection with implementation of the detective-search measures become effective these authorities shall be carried out in accordance with the effective criminal-procedure legislation.

Heydar Aliyev  
President of the Republic of Azerbaijan

Baku city, the 28th October, 1999

№ 728-IQ

Text of this ACT contains changes introduced by the ACT of the Republic of Azerbaijan #324-IIQD dated 17th May, 2002, # 333-IIQD dated 24th May 2002 and N 598-IIQD dated 5th March 2004.