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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL LAW
OF THE REPUBLIC OF AZERBAÏJAN
ON REGULATION OF THE IMPLEMENTATION
OF HUMAN RIGHTS AND FREEDOMS**

Comments by:

**Mr Pieter VAN DIJK
(Member, The Netherlands)**

1. I understand the purpose of the draft Constitutional Law in this way, that it aims at giving certain guidelines for the implementation of especially the provisions of the European Convention on Human Rights in the Azerbaijan legal order, with an emphasis on the regulation of restrictions and limitations of the enjoyment of human rights and freedoms. In this way it would supplement the generally formulated human rights provisions in the Constitution and set a framework for future legislation.

In fact, however, under the title of regulating restrictions, the scope of certain rights and freedoms is also regulated: the right to liberty in proposed Article 4. In this way the draft presents a rather strange mixture. Also Article 6 of the draft, concerning local remedies, does not seem to fit well in the general framework.

Since the European Convention itself contains provisions concerning restrictions and limitations, and since the draft starts from the presumption of implementation, this would seem to indicate that, in the view of the drafters, the self-executing provisions of the Convention have no direct effect within the domestic legal order of Azerbaijan. As Professor Matscher indicates in his comments, the domestic status of the European Convention on Human Rights in Azerbaijan is not clear from the Constitution.

In any case, the intention of the drafters should be put more clearly in the preamble of the draft. Especially the meaning of the word "co-ordinate" in the present text is not very clear, since it would seem to indicate a mixture between direct effect and implementation.

2. In my view, a law on human rights should not put a provision concerning abuse of those rights at the beginning but rather at the end. This would also be more in conformity with the order and spirit of the European Convention, which the draft purports to implement.

3. If the setting of guidelines for the implementation of the European Convention is indeed the (main) purpose of the draft, the question may well be raised why the relevant text of the Convention is not reproduced more closely in the draft (and, indeed, in the Constitution). If the Convention has no direct effect in the Azerbaijan legal order, the differences between the guarantees laid down in the Convention and the, in some instances lesser, guarantees provided in the draft combined with the Constitution, make the implementation still incomplete. This would mean that the situation achieved does not enable the courts in Azerbaijan, including the Constitutional Court, to effectively control in all respects that the authorities live up to the obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, nor, in the case of a violation of any of those rights and freedoms, to provide an effective remedy in the sense of Article 13 of the Convention.

4. In this respect, the phrase at the end of proposed Article 1, paragraph 1.2. "and should follow the Constitution and laws of the Azerbaijan Republic" is rather disturbing. This would seem to imply that not only the Constitution, but even the ordinary legislation has priority over the provisions of the European Convention in the

case of incomplete or incorrect implementation in domestic law. A provision to that effect would seem not to fit well, if the draft aims at contributing to a full and correct implementation.

5. For a comparison between the text of the draft and that of the European Convention I refer to Professor Matscher's comments.