



Strasbourg, 30 October 2001

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Restricted
CDL (2001) 112 Rev

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPUBLIC OF AZERBAIJAN

**DRAFT CONSTITUTIONAL LAW
ON SAFEGUARDS FOR THE VOTE OF CONFIDENCE
TO THE CABINET OF MINISTERS
BY THE MILLI MELJIS (PARLIAMENT)**

Revised Comments by

**Mr Aivars ENDZINS
(member, Latvia)**

Opinion on the Draft Constitutional Law of the Republic of Azerbaijan "On Provision of Right on Giving a Vote of Confidence to the Cabinet of Ministers of the Azerbaijan Republic by Milli Mejlis of the Azerbaijan Republic"

Revised Comments by Mr Aivars Endziņš (Member, Latvia)

1. Article 147 of the Republic of Azerbaijan Constitution determines that the Constitution has the highest legal force and shall be the basis of the legal system of Azerbaijan.
2. In its turn Article 148 "Acts Constituting the Legislative System of the Azerbaijan Republic" establishes that the legislative system consists of the following normative-legal acts:
 - the Constitution;
 - acts accepted by the referendum;
 - laws;
 - orders etc.

Article 156, determining that Amendments to the Constitution of the Azerbaijan Republic are taken in the form of Constitutional laws in Milli Mejlis by a majority vote, essentially supplements the above Article. It is also determined that Constitutional laws are integral part of the Constitution. At the same time Item 5 of Article 156 establishes that Constitutional laws should not contradict the main text of the Constitution.

3. The Draft Law, as can be seen from the summary on it, is directed to creating a mechanism of realisation by Milli Mejlis of the possibility of taking the decision regarding a vote of confidence on the Cabinet of Ministers as envisaged by Article 95 (Item 14) of the Constitution as well as guaranteeing that the Parliament shall receive real information on the performance of the Cabinet of Ministers.
4. Item 5 of Article 95 of the Constitution establishes the right of Milli Mejlis to control the execution of the State budget. The Constitution of the Republic of Azerbaijan envisages no other kind of control. The more so, the fourth part of Article 93 determines that "Specific orders to the bodies of executive powers and law courts cannot be envisaged in laws and decrees of Milli Mejlis of the Azerbaijan Republic". Evidently this norm corresponds with Article 114 of the Constitution, determining that "the Cabinet of Ministers of the Azerbaijan Republic is the highest body of executive power of the President of the Azerbaijan Republic and is subordinate to the President of the Azerbaijan Republic and reports to him".
5. From the analyses of the Constitution one cannot precisely draw a conclusion on consequences of the Milli Mejlis vote of confidence on the Cabinet of Ministers. The vote could only serve as a recommendation to the State President, as in compliance with Article 109 (Item 6) just the President takes the decision about resignation of the Cabinet of Ministers. The President is also the person who appoints and dismisses members of the Cabinet of Ministers.

6. From the summary of the Draft Constitutional Law (unfortunately I did not have the opportunity of getting acquainted with the Law on Status of the Deputy of Milli Mejlis) it follows that up to now only some of the deputies have the right to file a request to the Cabinet of Ministers. At the same time the Draft Law does not determine what is the exact number of the majority vote, which is needed to take a decision on the issues envisaged in the Draft Law.

Conclusion

To my mind the Draft Constitutional Law to be commented upon does not comply with the basic viewpoints of the Constitution of the Republic of Azerbaijan on division of competence between Milli Mejlis and the executive power. This conclusion follows also from Article 158 of the Constitution, determining that "Neither the President of the Azerbaijan Republic nor the deputies of Milli Mejlis of the Azerbaijan Republic may propose amendments to the Constitution of the Azerbaijan Republic as per provisions contained respectively in Chapters VI and V of the present Constitution. From the Article follows that it would be only correct to start solving the problem with the help of Changes in the Constitution of the Azerbaijan Republic.

It should be simultaneously pointed out that the above conclusion follows also from the contradictions when compared with the basic text of the Constitution. Part 3 of Article 94 "General rules established by Milli Mejlis of the Azerbaijan Republic" determines that "the first Part of the present Article might be supplemented with the Constitutional law". Thus it is not clear, which of these Articles is the ruling one- either the specifically formulated Article 158 of the Constitution or the abstractly formulated third part of Article 94.