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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**REPUBLIC OF AZERBAÏJAN**

**CONSTITUTIONAL LAW**

**ON SAFEGUARDS FOR THE VOTE OF CONFIDENCE**

**TO THE CABINET OF MINISTERS**

**BY THE MILLI MELJIS (PARLIAMENT)**

**Comments by:**

**Mr James HAMILTON (member, Ireland)**

### **Comments on Draft Constitutional Law on Safeguards for the Vote of Confidence to the Cabinet Ministers by Milli Meljis (Parliament).**

1. The draft law raises three problems, (i) the form of the proposed amendment, (ii) how the proposal fits in to the overall framework of the system of government in Azerbaijan and (iii) questions relating to the content of the draft law.

#### The Method of Amendment

2. The Constitution envisages two different procedures whereby amendments can be made. According to Article 3 and Chapter XI (Articles 152-155) of the Constitution changes in the text of the Constitution may be made only by way of referendum. Chapter XII (Articles 156–158) provide a second procedure whereby amendments can be made in the form of Constitutional Laws which then become an integral part of the Constitution but may not contradict its main text. It seems clear from this that this procedure can be used only to adopt additional or supplementary material but cannot be used to make any change in the existing text or in the existing Constitutional structure.
3. Amendments to the Constitution by way of Constitutional Laws can be put forward either by the President or at least sixty-three Deputies of the Parliament. However, Article 158 provides that the President or the Deputies of the Parliament cannot submit proposals concerning provisions contained in Chapters VI and V of the Constitution. It is clear, however, following discussions with the authorities in Baku, that the translations into English of Article 158 of the Constitution do not make it clear that the President may not propose amendments only to Chapter VI (Executive Power) while the Milli Majlis may not initiate amendments only to Chapter V (Legislative Power). This is the significance of the word “respectively” in the Article. Since the proposal relates to chapter V it would appear to be within the President’s competence to propose it.

#### The Structure of Government

4. The Constitution provides for a Presidential system of Government with a very clear separation of powers between the Executive and the Legislature. Article 7.IV provides that the executive, legislative and judicial powers are independent within the framework of their authority. Article 93.IV provides that the Parliament cannot in its laws and decrees give specific orders to executive organs and courts. Article 95 (5), however, provides that the Parliament is responsible for approval of the State budget (on the recommendation of the President) and is responsible for control over its execution. There are no detailed provisions as to how this budgetary control is to be exercised. There are a number of provisions relating to the requirement that the Parliament consent to various appointments to senior executive positions. The Parliament must consent to the appointment by the President of the Prime Minister. However, if they refuse to do so on three occasions the President may appoint a Prime Minister without their consent in any case. The Parliament’s consent is also required to the removal of the Prime Minister (Article 109 (4) and 128 V.). Judges of the Constitutional Court, the Supreme Court and the Economic Court are appointed by the Parliament on the proposal of the President (Articles 130.II, 131.II and 132.II) The Parliament can remove the

President by impeachment but only on the recommendation of the Constitutional Court (Article 95 (12)). The Parliament can remove Judges from holding positions for various reasons on the proposal of the President (Article 95 (13)). Similarly the Parliament can appoint and remove members of the National Bank (Article 95 (15)) on the proposal of the President. The General Procurator is appointed and removed by the President with the consent of the Parliament (Article 133.III). In all of these cases it may be noted that the Parliament has no right itself to initiate anything and its powers extend no further than the giving or withholding of consent.

5. Article 114 expressly provides that the President forms the Cabinet of Ministers who are the supreme executive organ, subordinate and accountable to the President. Article 109 (5) provides that the President appoints and removes from their position members of the Cabinet of Ministers. There is no provision requiring the consent of Parliament either to the appointment or removal of the Cabinet and given that there are many provisions in the Constitution which expressly require the consent of Parliament for various appointments or removals no such consent can be implied.
6. It seems clear from the foregoing that any constitutional provision which was to provide for a vote of no confidence in a Cabinet Member or the Cabinet as a whole and which would require the Minister or Ministers to resign would amount to a clear change in the Constitutional structure and one which could therefore be implemented only through the Referendum procedure. It follows that any procedure providing for a vote of no confidence implemented by means of Constitutional Laws cannot be other than recommendatory in nature. The authorities in Baku have confirmed that this is the intention of the law. In my opinion the text of the constitutional law should make this clear.
7. There are no procedures in the Constitution to resolve any deadlock between the President and the Parliament. The Parliament is elected for a fixed term of five years and there are no procedures whereby it can be dissolved at an earlier date. Similarly, the President is elected for a fixed term and while he can be removed by a process of impeachment for misbehaviour he cannot be removed by the Parliament because the Parliament disapproves of his policy or lawful actions within his sphere of competence. Because the terms of the President and Parliament are not synchronised there must be scope in the future for President and Parliament to represent different political tendencies.
8. It follows from this that the scheme of the Constitution is to avoid any such conflicts between the decisions of the President and the Parliament by assigning to each their respective roles so that a deadlock in the political system should not occur.
9. I have some doubts about the wisdom of introducing a procedure for a vote of no confidence which is merely recommendatory in nature. While it may be desirable to increase the supervisory powers of Parliament over the executive, which are very weak under the existing structure, a procedure for a vote of confidence which is not binding and is merely recommendatory in nature runs the risk of causing destabilisation without in fact securing the means to resolve conflict between the executive and legislative branches. Effectively it would confer on the Parliament a limited power which could be exercised without

responsibility. If at some future date President and Parliament are from different political viewpoints this may present a problem.

The details of the proposal.

10. I agree with the comments of Mr Bartole and Mr Endzins concerning the absence of precise rules which should be followed in the event of a vote of no confidence, e.g., who may propose it, what the motion should contain, what majority is necessary to pass it, and so on. Even if these matters are set out in the rules of procedure of the Milli Majlis it would be desirable that matters of such importance be specified in a constitutional law.

James Hamilton  
28 November 2001