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(VENICE COMMISSION)

**DRAFT RULES OF PROCEDURE
OF THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF AZERBAIJAN**

**Comments by
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Introduction

The legal basis of the activity of each constitutional court is usually formed by three kinds of legal regulations having different positions in the hierarchy of norms of the domestic legal order of the state. They play different roles in the process of the complete and coherent legal regulation of the constitutional body. On the “top” of this triad is always the constitution laying down basic organisational structure of the constitutional court (plenum, chambers), the list of their competences, the access of persons to the constitutional court as well as the constitutional principles on which the activity of the constitutional court is to be based. Acts on constitutional courts (as a second level of norms) usually transform these constitutional principles on the practical degree of the everyday judicial activity of the specific constitutional body. These acts should however not be too detailed and should leave room for the next level, the *internal regulation* of the court (Rules of Procedure). Each constitutional court should therefore enjoy a certain autonomy with regard to its own procedure (having a real possibility to modify its details in the light of practical experience) through its internal rules of procedure and without the necessity of parliamentary intervention. It is a general rule that while the adoption of the constitution and acts on the constitutional court falls into the competence of the legislator, the rules of procedure are usually adopted by the relevant constitutional body. *The Azerbaijan legislator in principle respects* this generally recognised approach because in this case the triad of legal regulation of the activity of the constitutional court of Azerbaijan is represented by the Constitution of Azerbaijan, the Law on the Constitutional Court of Azerbaijan of 23 December 2003 and the Rules of Procedure of the Constitutional Court of Azerbaijan (so far in the form of a Draft).

Concrete Remarks on the Draft of the Rules of Procedure

The adoption of Rules of Procedures of the Constitutional Court of Azerbaijan are provided for in Article 2 of the Act on the Constitutional Court (hereinafter the Act) according to which: “The legal basis for the activity of the Constitutional Court shall be the Constitution of Azerbaijan Republic, the present law, other laws *and the Rules of Procedure of the Constitutional Court*”. The general purpose of the latter is identified by Article 8 of the Act. According to para. 1 the meetings of the judges of the Constitutional Court shall be entitled to decide issues of the *internal activity* of the Court and as one of these issues the legislator mentioned the Rules of Procedure organising the “activity of the Constitutional Court“ (Article 8.4.1 of the Act) and resolutions on these issues “shall be adopted at the meeting of judges by their majority” (Article 8.5). Apart from this *general purpose* of the Rules of Procedure the Act expressly *mentions* the Rules of Procedure in connection with a number of its articles. It may be noted Article 6 (Composition and Organisation of Constitutional Court) according to which “a Session of the Plenum...shall be held in accordance with the procedure determined by the present Law and the *Rules of Procedure of the Constitutional Court*”. (Article 6.4.) and according to Article 6.8 : “the Procedure for organisation of the Chambers calling and holding of sessions shall be determined by the *Rules of Procedure of the Constitutional Court*”. According to Article 36 of the Act (Study of petitions, applications or complaints): “The preliminary study of submitted complaints...shall be implemented by the Staff of the Constitutional Court via the procedure specified in the *Rules of Procedure of the Constitutional Court*” (Article para. 1) and finally Article 43 of the Act (Rights and Liabilities of Parties and Interested Subjects) states that: “The parties and interested subjects must observe the order adopted by the *Rules of Procedure of the Constitutional Court*”. These provisions of the Act are binding for the meeting of the judges of the Constitutional Court and should be properly respected in the current process of the drafting of the Rules of Procedure of the Constitutional Court of Azerbaijan.

1. A general overview of the draft of the Rules of Procedure confirms that it both specifies and regulates in a more detailed manner almost all institutions and procedures of the Constitutional Court of Azerbaijan and in such a sense respects in principle its purpose and goal as defined by the legislator in Article 8 of the Act.

2. The draft of the Rules of the Procedures observes as well the specific references of the legislator of Article 6.4 (Session of the Plenum) and Article 38 (Study of the petitions of the petitions, complaints and applications). As regards the Plenum, the detailed regulations of all items of this kind of activity of the court is contained in Articles 13-34 of the Draft and with respect to the preliminary study of the complaints by the staff of the Constitutional Court, a more detailed regulation of its activity is contained in Article 6 of the Draft (Article 6 para. IV and V). The draft of the Rules of Procedure however *lacks a detailed regulation concerning* the organisation and activity of the *Chambers of the Constitutional Court*. With respect to these constitutional bodies and this legislative reference it should be pointed out that the legislator (Article 6.8 of the Act) expressly presupposes that the procedure for the organisation of Chambers etc... “shall be determined by the Rules of Procedure”.

3. Taking into account the completeness of its content the draft Rules of Procedure cover not only the mutual relationships and the rights and obligations of the organs of the constitutional court but (to a certain extent) also the position, rights, obligations and responsibilities of “external” subjects namely the parties of the proceedings and other interested subjects (Article 41-45). The requirement of an early and proper notification (publication) of the Rules of Procedure arises urgently and immediately after their approval by the meeting of the judges. According to Article 8.5 of the Act the Rules of Procedure shall have the form of a *resolution of the meeting of judges* but neither the Act (Articles 62-69) nor the draft of the Rules of the Constitutional Court include the specific regulations concerning the publication of the resolutions adopted by the meeting(s) of the constitutional judges. It seems useful to clarify if Article 69 para 2 of the Act includes also the publication of the resolutions of the meeting of constitutional judges (namely publication of “other materials connected with the activity of Constitutional Court”).

4. It is worth noting that the draft Rules of Procedure provide their own mechanism for their amendment contained partly in Article 51 (Commission Established by the Constitutional Court) and in Article 56 (Amending the Rules of Procedure of the Constitutional Court). It seems however useful to note the relationship between these articles from various angles. The first question which should be answered concerns the “organisational” aspect of the procedure for amending the Rules of Procedure. Does the temporary or standing commission (to which reference is made in Article 51) form a necessary precondition for amending the Rules of Procedure of the Constitutional Court or not? Provided that such a commission has to be established, the starting point of each procedure for the amending of the Rules of Procedure would depend exclusively on the Chairman of the Court who is alone entitled to establish such an organ. Generally speaking there is however no reason to differentiate the procedure before the meeting of the constitutional judges on dependence of the concrete item of the agenda.

The next question which should be answered concerns the subjects entitled to give the proposal for amending the Rules of Procedure. Article 56 of the Draft restricts this right to the judges of the Constitutional Court. Provided that the Rules of Procedure regulate rights, obligations and responsibilities of other subjects (staff of the Court for example) it seems appropriate to give them also the right to propose amendments of the relevant part(s) of the Rules which govern their specific rights and obligations.