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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AZERBAIJAN

MEMORANDUM

PROGRAMME OF CO-OPERATION WITH AZERBAIJAN

**Approved by the Commission
at its 45th Plenary meeting
(Venice, 15-16 December 2000)**

At its 45th Plenary meeting the Venice Commission approved the programme of co-operation with Azerbaijan, which had been proposed by Messrs Khanlar Hajiyev, President of the Constitutional Court, Mr Ramiz Mehdiyev, Head of the Presidential Administration and Mr Safa Mirzoyev, Head of the Administration of Parliament.

The main lines of the programme follow the mandate given the Venice-Commission given by the Committee of Ministers, i.e. constitutional reform, electoral reform and the media (CM (2000) 170). Already before, the Venice Commission had started co-operation on the introduction of an access for individuals to the Constitutional Court in accordance with Opinion 222 (2000) of the Parliamentary Assembly.

Constitutional Reform

The major thrust of the constitutional reform is to reach equilibrium between the executive and the legislative branches reinforcing the latter. Stronger guarantees of the independence of the judiciary should complement the system of checks and balances. This includes a clear definition of the powers of the prosecutor general in line with European standards. The position of individuals *vis a vis* the state is to be strengthened by a clearer definition of constitutional clauses on restrictions to Human Rights and by the introduction of the institute of an ombudsperson equipped with constitutional guarantees for his/her independence.

Legislative reform in the media field (see below) is to be accompanied by the creation of an independent regulatory authority for the broadcasting sector. The independence of this body is to be enshrined in the Constitution as well.

Article 4 of the Law on the Constitutional Court provides for a system of referrals of requests by individuals for constitutional review of normative acts from the Supreme Court to the Constitutional Court. In practice, this provision has not proved to be as effective as had been hoped. As opposed to this indirect access to the Constitutional Court, direct access will require a regulation both on the constitutional level and in the Law on the Constitutional Court. In addition, the codes on civil and criminal procedure may need to be revised in order to give full effect to decisions of the Constitutional Courts.

Other issues of constitutional reform may be included in the programme of co-operation if a need to do were to be identified.

The draft elements of the constitutional reform are to be presented to the Venice Commission in July and will then be discussed within a joint working group between the authorities of Azerbaijan and the Venice Commission in July 2001 with a view to their adoption by Parliament in spring 2002 and possibly a referendum thereafter.

Several of the above points will require implementing laws. The Venice Commission will co-operate with the Directorate General of Legal Affairs and the Directorate General of Human Rights in these issues.

Electoral reform

At its 45th Plenary meeting the Venice Commission discussed the electoral legislation of Azerbaijan in the light of the recent presidential elections.

A major element in this respect is a reinforcement of the position of the Central Electoral Commission strengthening its neutrality and its capacity to deal effectively with electoral complaints both from a legal and material point of view. The electoral commissions should be enabled and obliged to deal with complaints directly rather than to refer them to the prosecutor or ordinary courts. Additional safeguards against electoral fraud need to be introduced.

Close co-operation with OSCE in this respect is paramount in order to be able to assist Azerbaijan effectively.

Media – freedom of information:

The existing Law on the Mass Media of 1999 is to be amended. In particular a provision allowing the closure of media entities if they have violated the law more than three times in one year needs to be revised. A future law on television and radio broadcasting should lead to the establishment of a public service broadcasting organisation. Other elements of the co-operation are assistance in the establishment of an independent regulatory authority for the broadcasting sector, the preparation of a law on freedom of information and a revision of the Law on State Secrets.

The co-operation is also to cover assistance in the definition of a proper balance between the journalist's rights to collect and disseminate information on the one hand, and the right to privacy, honour and dignity of individuals on the other hand.

In this area, the Venice Commission will co-operate with the Directorate General of Human Rights.

Other points of the programme of co-operation:

A law on minorities is to complement constitutional guarantees. In this field, the Venice Commission will co-operate with the Directorate General of Human Rights as well.

Upon proposal by the authorities of Azerbaijan made at the 45th Plenary meeting of the Venice Commission, the introduction of a law on data-protection was introduced into the present programme. This activity is to be dealt with in co-operation with the Directorate General of Legal Affairs.

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A timetable for the programme of co-operation presented by the authorities of Azerbaijan is annexed.

Annex**TIMETABLE****Time-table of the implementation of the commitments for the improvement of legislation of the Azerbaijan Republic on occasion of the accession to the Council of Europe**

	Deadline for the passage after the accession to the Council of Europe	Drafting	Presentation to the Venice Commission	Passage by the Milli Majlis (Parliament)
Adoption of the Constitutional Law	1 year, 6 months	01.06.2001	01.07.2001	Spring session, 2002
Law “On the Ombudsman”	6 months	01.03.2001	15.03.2001	31.05.2001
Law “On National Minorities”	3 years	December, 2002	January, 2003	Autumn session, 2003
Amendments to the electoral legislation	2 years	December, 2001	January, 2002	Autumn session, 2002
Amendments to the Law “On the Constitutional Court”	1 year, 6 months	01.06.2001	01.07.2001	Spring session, 2002
Amendments to the Law “On Mass Media”	1 year, 6 months	01.09.2001	01.10.2001	Spring session, 2002
Law “On Television and Radio Broadcasting”	1 year, 6 months	01.09.2001	01.10.2001	Spring session, 2002
Amendments to the Law “On Information Freedom and Immunity” and “On State Secret”	1 year, 6 months	01.10.2001	01.11.2001	Spring session, 2002

The time limits specified in the time-table are based on recommendations given by the Parliamentary Assembly of the Council of Europe (doc. Opinion of the Parliamentary Assembly N 222 (2000))