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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DRAFT CONSTITUTIONAL LAW
ON REGULATION OF THE EXERCISE
OF HUMAN RIGHTS AND FREEDOMS
IN THE REPUBLIC OF AZERBAIJAN**

The present Constitutional Law is adopted with a view of bringing the exercise of human right and freedoms in the Republic of Azerbaijan in conformity with the European Convention on Protection of Fundamental Human Rights and Freedoms.

Article 1. Basic conditions of the exercise of human rights and freedoms

1.1. No provision of the Constitution of the Republic of Azerbaijan and the present Constitutional Law should be interpreted or understood as the criteria establishing the legal basis for public institutions, organisations or individuals' activities or deeds directed on abolition of human and civil rights and freedoms or on their limitation in extent excessive than those stipulated in the Constitution of the Republic of Azerbaijan and the present Constitutional Law.

1.2. Everyone in exercise of his/her rights and freedoms shall not violate rights and freedoms of others.

1.2. No one should abuse of his/her rights and freedoms.

Article 2. Human rights and freedoms that might not be restricted

Rights and freedoms provided for in the Article 27 (save in death in the time of war), Para I of the Article 28, Para III of the Article 46, Article 63, and Article 71.8 might not be restricted.

Article 3. Requirements to the laws restricting human rights and freedoms

3.1. Human rights and freedoms, provided for in the Constitution of the Republic of Azerbaijan and in the international agreements, acceded by the Republic of Azerbaijan shall be subject for restriction only by the law.

3.2. The Law restricting human rights and freedoms shall directly quote the restricted right or freedom, as well as the relevant Article of the Constitution of the Republic of Azerbaijan.

3.3. Restrictions on human rights and freedoms should not alter the essence of these rights and freedoms.

3.4. Restrictions on human rights and freedoms imposed by law should be compatible to the aims of that law.

3.5. Beside on the grounds, stipulated in the Para II of the Article 71 of the Constitution of the Republic of Azerbaijan, human rights and freedoms may be subject to restrictions for security and protection of human rights and freedoms of other individuals.

3.6. Beside on other grounds, stipulated in the Constitution of the Republic of Azerbaijan, rights and freedoms, provided for in the Para III of the Article 28, Articles 32, 33, 47, 49, 50, 51 and 58 of the Constitution of the Republic of Azerbaijan may be subject to restrictions as are necessary in the interests of national security, for the protection of health or morals, for the protection of rights and freedoms of others, for the prevention of crime; rights and freedoms, provided for in the Articles 32, 33, 47, 49, 50 and 58 of the Constitution of the Republic of Azerbaijan – for the prevention of disorder or crime as well; rights and freedoms, provided for in the Para III of the Article 28, Articles 47, 48, 49, 50 and 58 of the Constitution of the Republic of Azerbaijan – in the interests of public safety as well; rights and freedoms,

provided for in the Para III of the Article 28, Articles 32, 33 and 48 of the Constitution of the Republic of Azerbaijan – for the protection of public order as well; rights and freedoms, provided for in the Articles 32 and 33 of the Constitution of the Republic of Azerbaijan – in the interests of economic well-being of the country; rights and freedoms, provided for in the Articles 47 and 50 of the Constitution of the Republic of Azerbaijan – in the interests of territorial integrity, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary as well; rights and freedoms, provided for in the Article 48 of the Constitution of the Republic of Azerbaijan – in the interests of public safety, for the protection of public order, for the protection of health or morals, for the protection of the rights and freedoms of others as well.

Article 4. Restrictions on arrest, detention and deprivation of liberty of the person

4.1. No one shall be arrested, detained or deprived of liberty save in the following cases, as well as in a manner distinct from the following procedure:

- 4.1.1. the lawful detention of a person after conviction by a competent court;
- 4.1.2. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- 4.1.3. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- 4.1.4. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- 4.1.5. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- 4.1.6. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

4.2. Everyone arrested or detained in accordance with the provisions of Article 4.1 of the this Law shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. This person shall be entitled to trial within a reasonable time or to release pending trial.

4.3. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

4.4. Release may be conditioned by guarantees to appear for trial.

4.5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

4.6. No one shall be arrested, detained or deprived of liberty for impairment of civil obligation.

Article 5. Right to file a complain to the Constitutional Court of the Republic of Azerbaijan of individuals claiming to be a victim of a violation of his/her human rights and freedoms by legislation, decisions of executive and judiciary, municipal acts

Everyone claiming to be the victim of a violation by legislation, decisions of executive and judiciary, municipal acts set forth in the items 1-6 and 8 of the Para III of the Article 130 of the Constitution of the Republic of Azerbaijan, of his/her human rights and freedoms may file a complain to the Constitutional Court of the Republic of Azerbaijan, in accordance with the procedure prescribed by law.

Article 6. Right of courts to appeal to the Constitutional Court

Any court may file to the Constitutional Court of the Republic of Azerbaijan a request on interpretation of the Constitution and the laws of the Republic of Azerbaijan as regards the matters, concerning the implementation of human rights and freedoms, in accordance with the procedure prescribed by the laws of the Republic of Azerbaijan.