Strasbourg, 8 June 2010

CDL-AD(2010)017
Or.fr.

Opinion No. 562 / 2009

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

OPINION

ON THE DRAFT LAW ON NORMATIVE LEGAL ACTS

OF AZERBAIJAN

adopted by the Venice Commission
at its 83rd Plenary Session
(Venice, 4 June 2010)

on the basis of comments by

Mr Sergio BARTOLE (Substitute Member, Italy)
Mr Luzius MADER (Expert, Switzerland)

I. Introduction

1. In a letter of 11 November 2009 Mr Ramiz Mehdiyev, Head of the Administration of the President, requested the Venice Commission's opinion on the draft law on normative legal acts.

2. Mr Sergio Bartole, substitute member representing Italy, and Prof. Luzius Mader from IDHEAP, the Swiss Graduate School of Public Administration based in Lausanne, Switzerland, as expert, were appointed as rapporteurs and submitted their respective comments in documents CDL(2010)010 and CDL(2010)011. The rapporteurs worked from an English-language version of the draft law on normative legal acts supplied by the Azerbaijani authorities (CDL(2010)009).

3. During the 82nd plenary session of the Venice Commission, Mr Bartole gave an oral presentation of his comments, and Mr Kamran Bayramov of the Administration of the President of Azerbaijan added a few remarks of his own.

4. The opinion which follows was compiled on the basis of the rapporteurs' comments; it was adopted by the Venice Commission at its 83rd Plenary session (Venice, 4 June 2010).

II. Preliminary remarks

5. The comments below are based solely on the English translations of the draft law and the Constitution of the Republic of Azerbaijan (English text as at August 2002).

6. It emerged from the discussion held at the 82nd plenary session that some of the comments and queries possibly arose from the translation of the draft law – notably one or two comments which pointed to differences (partly in the terminology used) between the Constitution and the draft law; these will be identified where appropriate in this Opinion. In this connection, the information that the draft law is a draft constitutional law and not an ordinary law has no bearing on the significance of the comments made hereinafter, except in so far as it may perhaps be thought that the draft could be used to test the constitutionality of laws as part of judicial reviews by the Constitutional Court.

7. The point should also be made that broader information about the country's institutions and the administrative, governmental and parliamentary practices of the Azerbaijani authorities, along perhaps with details of other relevant legislation, would have enabled the rapporteurs to perform a deeper and more detailed analysis of the draft law laid before them.

III. General comments

A. A law on normative legal acts – is it necessary and desirable?

8. The purpose of this draft law is to combine, in a single legal instrument, all the important rules for producing state norms. The draft deals inter alia with the preparation, drafting, adoption, publication and bringing into force of normative legal acts.

9. Whilst legally speaking this measure is not strictly necessary, it may nevertheless be seen as entirely desirable, since it is likely to improve the legal, material and formal quality of Azerbaijan's legislation. As the Venice Commission said earlier in a different context, 'the objective of a law on normative legal acts is thus to respect and ensure respect for the principles of the rule of law and security, and, in order for these principles to be implemented there must be proper normative legal acts in place'. [1] This being so, the Venice Commission can only welcome this draft law.

[1] Cf. CDL-AD(2009)053, paragraph 8.

10. Moreover, whilst it is true that adoption of a law on normative legal acts is not essential, since most European countries do not have one, it is worth bearing in mind that a measure of this kind appears to be consistent with the legislative culture or traditions of the country.

B – Structure and general content

11. The draft law comprises 17 chapters and covers the most important aspects of legislative activity: the rules on forms or types of normative legal acts (Chapter 3); principles of law (Chapter 1, Art. 8; Chapter 4) and drafting principles (Chapter 5) which must be respected; the structure of such acts (Chapter 5 and more specifically Chapter 6); legislative procedure (Chapter 7); expert legal scrutiny (Chapter 8) and linguistic scrutiny (Chapter 9) of draft normative legal acts; the adoption of normative legal acts (Chapter 11) and amendment of them (Chapter 12); official publication of normative legal acts (Chapters 14 and 16) and their implementation (Chapter 15).

12. In some respects, however, the order of the chapters is not ideal. Chapters 14 and 16 could be combined, for example. Generally speaking one might choose either a structure which follows the chronological order of legislative procedure or process (preparation of the draft, adoption, publication, etc), or one which distinguishes more clearly between material or legal aspects, aspects of form or legislative technique (legislative drafting aspects in the strict sense) and procedural or institutional aspects.

13. Overall, however, the draft law is well structured, making it very easy to read. The article headings are clear and clearly reflect the content, and the articles are subdivided in a very systematic way.

14. When it comes to the numbering, however, the manner in which the subdivisions are numbered is not necessarily conducive to easy reading. We have no quarrel with the principle of this numbering *per se*, but its specific application might perhaps be looked at again in the case of a few articles. It makes no sense, for example, to have a figure 1.0. under Article 1 or a figure 50.0. under Article 50.

15. Regarding the general content of the draft law, there are two chapters whose inclusion in the law appears questionable.

16. Chapter 2 on the 'collision of normative legal acts and gaps in legislation' deals with matters which, unless one sees the purpose of this draft law as being generally to regulate sources of law, relate more to the interpretation of law than to the making of it.

17. Chapter 10 on risks of corruption would, in some respects, seem inappropriate in a draft law on normative legal acts. Identified as a political priority for Azerbaijan by numerous international organisations[2], action against corruption is undeniably a prime consideration for any state governed by the rule of law. Consequently it merits the full support of the Venice Commission.

18. This draft focuses particular attention on ensuring that draft normative legal acts are consistent with the requirements of action against corruption. From the point of view of legislative drafting, however, the inclusion of a chapter like this in a law on normative legal acts may appear not only an atypical or exceptional solution, but also and at the very least an inadequate solution in regard to the objective pursued.

[2] Cf. *inter alia*, Resolution 1614 (2008)1 of the Parliamentary Assembly of the Council of Europe and Priority area 4 of the European Union/Azerbaïdjan action plan, adopted on 14 November 2006, http://ec.europa.eu/external_relations/azerbaijan/index_en.htm.

19. Thus the Venice Commission suggests that the Azerbaijani authorities might perhaps reconsider their approach to anti-corruption measures here and make sure that it does not replace or impede the implementation of the recommendations made by the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval)[3] with a view to countering corruption in their country.

20. The draft has one major shortcoming. It ought to list the central executive authorities which are or might potentially be empowered to adopt normative legal acts. The Constitution, admittedly, does not offer an answer to this question. But if we assume that the general purpose of this draft law is to implement the Constitution, it might, given the principle of legality, be useful and coherent to name the authorities which are or might potentially be empowered to adopt normative legal acts. This point is all the more delicate in that Article 20 of the draft says that normative legal acts are to be adopted by the central executive authorities on the basis of prior acts of the President of the Republic.

C- Scope

21. The law will apply to the conception and drafting, formalisation, adoption, publication, entry into force and classification of legislative acts, and also covers explanatory material on legislative acts (cf. preamble and Article 5). This scope is very broad and may prompt queries concerning the inclusion of rules on comments made about legislative acts. It is not very clear from this draft whether the comments in question are those made as part of the legal and linguistic scrutiny described in Chapters 8 and 9, or comments made by the Constitutional Court in the exercise of its powers as defined by the Constitution (cf. paragraph 111 of this Opinion on the lack of clarity concerning these comments).

22. Regarding the normative legal acts concerned by the draft law, the draft appears to have expanded the list of normative legal acts recognised by the Constitution. Articles 17, 18, 19, 20 and 21 of the draft refer to presidential decrees, which are not mentioned by the Constitution (Articles 113 and 148), and the draft thus seems to be widening the legislative powers of the President of the Republic.

23. The draft adds to the confusion in that Article 3.2.2 appears to exclude from its scope not only presidential decrees but also decrees of the government (Cabinet of Ministers) (Article 3.2.3).

24. Neither is it clear from the draft how the 'normative acts' of government mentioned in Article 148 of the Constitution match up with all the acts listed in Article 19 of the draft. It is thus suggested that the drafters provide more information which will allow the scope of this draft and consequently the various acts covered by it to be defined more clearly.

25. During the 82nd plenary session Mr Bayramov said that these queries about the scope of the draft law were prompted chiefly by a poor-quality translation of the text and that what were called 'decisions' in the draft should have been rendered as 'decrees'. That would have made the draft fully consistent with the terms of the Constitution, which made that distinction.

26. The draft needs, however, to state explicitly that the rules set out in the law apply to all normative legal acts, regardless of the state body from which they originate and regardless of which body took the legislative initiative.

27. It would likewise be helpful to state that the rules set out in this draft must be complied with not only by the authors of all legislative acts but also by all institutions required to adopt such

[3] Cf. GRECO's Joint First and Second Round Evaluation Report on Azerbaijan, Greco RC-I/II (2008) 4F; progress report of the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism – MONEYVAL, MONEYVAL(2009)38.

acts. Above all, it is obvious that Parliament too must obey the rules which it has had adopted. It is worth mentioning here that this draft, according to the discussion held at the Commission's 82nd plenary session, is a constitutional law and not an ordinary law.

28. Article 27 of the draft law implies that there are other types of rules on legislative drafting, but does not say what these are (and who needs to approve them – Parliament or the President). It would be better to be more precise here and to avoid, as far as possible, having rules on legislative drafting scattered under different headings.

29. Article 27.2 also says that rules for drafting normative legal texts (rules contained in the present draft law or elsewhere) cannot restrict the rights of bodies which have legislative powers. This reservation seems unnecessary and runs the risk of needlessly relativising the scope of the rules, especially in the case of a constitutional law.

30. The Venice Commission urges the drafters to ensure that the scope of this draft is consistent with the terms of the Constitution, to state explicitly in the draft that the rules laid down apply to all normative legal acts regardless of who has authored them or which institution is responsible for adopting them and, lastly, to be careful to avoid any confusion or lack of precision concerning the acts covered by this draft.

D- Normative content

31. The Venice Commission has already had occasion to make the point that 'In accordance with an acknowledged principle, laws should contain provisions of an exclusively statutory nature, i.e. which create rights or obligations, set up bodies and define their duties and responsibilities or lay down their procedures.'[4]

32. This draft contains non-normative provisions. Some of them are purely internal directives rather than true legal rules (Article 29, for example), whilst others are simply advisory or legislative recommendations (Articles 13 and 25), or explanatory (Article 40). Provisions of this kind could easily be included in internal directives or guides instead.

33. It emerges from the above that the drafters seem to have devised this draft law as an all-in-one instrument and guide for the drafting of normative legal texts.

34. As already stated by the Commission in a different context, 'there are arguments in favour of the practicability of this kind of approach'[5], especially as these elements introduced into the law in this way are closely connected with the essential normative content of the act.

35. The constitutional nature of the draft, if confirmed, nevertheless calls for a measure of caution since it would make the procedure for amending or modifying these elements more cumbersome.

E- Normative level of rules and normative density

36. The draft law contains rules of widely varying normative levels. Some of these rules could probably feature in a legislative text. But to the extent that the method used, namely the creation of a law on normative legal acts, has the specific purpose or function of bringing all the rules for production and presentation of legislative acts under one single act as far as possible, it makes sense to combine rules of different levels.

37. Even so, as stated above in connection with the draft's normative content, the constitutional nature of the draft, if confirmed, calls for a measure of caution here too.

[4] CDL-AD(2009)018, paragraph 48.
[5] CDL-AD(2009)053, paragraph 45.

38. The density of some provisions might be reduced somewhat, however. To give just one example, Article 1 contains definitions which do not appear to be essential.

F- Presentation of the text

39. The draft law as a whole, and its individual provisions, are generally speaking well structured and comprehensible.

40. Some provisions are too long, however. Mention may be made here of the golden rule for structuring and drafting legislative acts, namely that an article should not contain more than three paragraphs (or subparagraphs), a paragraph should not contain more than three sentences, and a sentence should not contain more than one idea[6].

IV- Specific comments

Chapter 1

41. Article 1 of the draft contains a long list of legal definitions, some of which seem to be superfluous or ambiguous. The definitions given for 'law', 'legislation', 'norm', 'legislative act' and 'normative legal act' do not express the apparently different meanings of these terms with enough clarity.

42. It is undeniably necessary, however, to make a clear distinction between legislative acts of a normative nature, that is to say legislative acts laying down rules of law (general and abstract), and non-normative legislative acts. It is equally important to name the different forms which normative legal acts in particular may take.

43. Moreover, some concepts or terms defined in Article 1 are not repeated in later provisions (example: 'legislation technique'. Article 50, paragraph 50.0.11. talks about 'norm-making technique'), but this is probably an inconsistency in the translation.

44. Article 5 prompts two comments: it is open to question why the content of the preamble needs to be repeated in Article 5.1., or at least the reason for doing so is not obvious. Also, it is very unlikely that the rules of legislative drafting set out in the law will be applicable to international agreements as stated in Article 5.2.2.

45. Article 8 lists the main principles to be respected in the drafting of legislative acts. The list covers many very different areas of law, although this is not clearly expressed, which may make it less easy to use in practice.

46. Article 9 provides (9.2.) for the eventuality of draft legislative acts being put to open discussion, i.e. external consultation. External consultation is an essential feature of legislative drafting and an important stage in the legislative procedure. It improves the material quality of law, enhances its legitimacy and makes it easier to enforce. It is part of widely acknowledged 'best practice' in this field.

47. The rules on external (public) consultation ought thus to be set out more explicitly in this draft. Public consultation is paramount in the exercise of political freedoms. On societal issues at least, it would also be a good idea and a welcome move if this were perhaps made compulsory. So the wording of Article 9.2., which says 'can' rather than 'must', might perhaps be reconsidered. The question of whether outside consultation is optional or mandatory and how it is organised in practice is a procedural matter which could be dealt with in Chapter 7, which covers legislative procedure.

[6] These rules draw on the drafting principles applied by Eugène Huber to the Swiss Civil Code.

Chapter 2

48. This chapter is concerned chiefly with the interpretation and application of law. That being so, it is outside the main scope of the law as defined in the preamble and Article 5.

49. It is true that the rules laid down do have material links with legislative drafting issues since they cover, amongst other things, the hierarchy of laws or legislative acts (Article 11) and indicate the legislative steps or methods that must be used to avoid or eliminate conflicts between legal acts (Article 13).

50. But it is unfortunate that the rules do not give enough detail on the drafting procedures for withdrawing or amending normative legal acts. It is thus questionable whether this chapter has any place here.

Chapter 3

51. This chapter lists the types and forms of normative legal acts. This is a very important aspect of legislative work which, in part at least, is also regulated in the Constitution of the Republic of Azerbaijan. As stated earlier in paragraphs 22-24, it is necessary to ensure that the rules laid down in the draft law are consistent in every particular with those of the Constitution (Article 148 of the Constitution, but also Article 113). There is uncertainty or ambiguity over the legislative powers of the President of the Republic. These ambiguities appear to be due to terminological inconsistencies in the translation.

52. Some articles in this chapter contain rules that are more relevant to Chapter 6 on the structure and mandatory content of legislative acts. This is particularly the case with Articles 17.3., 18.4. and 20.4. which stipulate that the legal base of every legislative act must be explicitly stated.

53. It is not clear why the same stipulation is not made in Article 19. Generally speaking it would be preferable to state just once, in the pertinent chapter, that the legal base of every legislative act must be explicitly mentioned.

Chapter 4

54. This chapter deals with the validity, applicability and ranking of international law in the domestic legal system of the Republic of Azerbaijan and certain aspects of the transposition of international law into national law. So it is a very important chapter. It prompts no substantive comments.

55. In terms of the logical sequence of the content this chapter is perhaps not optimally placed – between the rules on types and forms of normative legal acts and the rules on their structure. This might be reconsidered.

Chapter 5

56. This chapter, along with the next one (Chapters 5 and 6 of the draft), concerns aspects of legislative technique, and the two could be merged into one. An alternative solution would be to exclude the rules set out in this chapter from the text of the law since they are not, in essence, normative.

57. To categorise these aspects of legislative technique as non-normative is not to say that the rules are unimportant but rather that it is more appropriate to formulate them as sound advice or recommendations than as a law. It is of course important in the practice of law-making to follow such advice and ensure that it is followed, by the provision of additional legislative instruments (guide, handbook, check-list, etc) and of adequate training opportunities to persons responsible for legal drafting.

58. As it did previously in a different context[7], the Commission urges drafters to consider using other instruments, such as handbooks or guides, for provisions like these.

Chapter 6

59. This chapter deals with the structure of normative legal acts.

60. There is a problem with the numbering of the articles (Chapters 5 and 6 each have an Article 27).

61. According to Article 29.2., normative legal acts may have a preamble. It would be a good idea to be more specific about this formal aspect, saying whether it is mandatory or optional and defining the content of the preamble, etc. There is, for example, the question of whether a mention of the legal basis (cf. Articles 17.3., 18.4. and 20.4.) should feature in the preamble.

62. Article 31 deals with amendments to current legislation. This might perhaps be incorporated into Chapter 12 which deals specifically with that subject.

63. Article 35 of the draft law deals with an element of material importance to the authorities and persons to whom the rules are addressed.

64. Article 36 also deals with amendments to current legislation. The suggestion made for Article 31 applies equally here.

65. What matters most here is that there should be explicit rules on the relationship between a new legislative act or amending act and the pre-existing body of law. A kind of tacit repeal of one law by another, where the old and new laws are in conflict, should therefore not be allowed.

66. Whilst it is a generally recognised principle that new law takes precedence over any old law which conflicts with it, this is a rule applied in the context of interpreting or applying the law, not making it.

67. The present draft should thus be amended in such a way that tacit or implied repeal is explicitly precluded and that explicit repeal is the rule, which means that any provisions repealed must be explicitly identified.

Chapter 7

68. This chapter deals with the normative process.

69. It starts with Article 37, on the stability of the legal system. It restricts the time frame for amending a normative act to one year from its adoption. This time limit is surprising, especially as none is set by the Constitution.

70. Whilst this (desirable) legal stability is an essential factor in the quality of legislation, the legal implications of this principle, as it stands, are not very clear and are likely to conflict with another principle, which derives from the democratic principle and insists that legislation can be amended at any time (principle of the changeability of the law).

71. This chapter then deals with bodies which have the right of legislative initiative (Articles 38 and 39 in particular) and with legislative procedure. It focuses on the preparatory phase (subsequent phases are covered in Chapter 11 ff.) and it names some of the relevant provisions of the Constitution. Since these aspects are of prime importance, they could be dealt with earlier on in the draft law.

[7] CDL-AD(2009)053, paragraphs 43-46.

72. Regarding the preparatory phase, the sense of Article 39.2, which allows state bodies or public officials who do not have the right of legislative initiative to make suggestions for the adoption of normative legal acts, is unclear. It is hard to work out the legal or political significance of this provision, especially since it creates the possibility of an exemption from Article 48 of this same draft, which deals with conditions for the submission of drafts of normative legal acts. It is important to emphasise again here that public consultation is an important feature of the exercise of democratic and political freedoms. It is suggested that the drafters might reconsider this provision in order to establish greater legal clarity.

73. Generally speaking, the descriptions of the various stages of the legislative process, starting at Article 40, are cast in terms rather too general to cover all adoptions of normative legal acts at different levels of the state apparatus.

74. It will be noted, for example, that Article 40 mentions the main stages in the legislative procedure or process and is purely descriptive, so it does not need to feature in the text of the law. This content could be provided in a guide or practical handbook for legal drafters. The same goes for Article 45.

75. It would, however, be a good idea to be more specific about the internal procedures, powers and responsibilities of administrative entities involved in the drafting of legislation. It would be especially helpful to know the arrangements for inter-ministerial consultation and the names of the bodies which have a particular responsibility for the quality of legislation. This comment applies especially to the responsibilities described in Chapters 8 and 9.

76. Some provisions touch on aspects which might have a bearing on the role of the government (Cabinet of Ministers). The rules in Article 42, on the preparation of annual plans for draft normative legal acts, appear not to mention the government as an approving authority and name only Parliament and the President as bodies which must approve these acts. Although this solution accords with Article 96 of the Constitution, which gives no right of legislative initiative to the government, it fails to take account of Article 119 of the Constitution, which makes the government responsible for implementing national programmes and thus identifies the government as the institution with the necessary expertise for managing the affairs of state. The government's involvement is mentioned only implicitly by Article 45 or 46 of the draft law.

77. In Article 46 of the draft, which talks of the need to obtain the agreement of 'relevant public bodies', it is unclear from this wording whether this provision also applies to legislative initiatives introduced by the President of the Republic and members of parliament.

78. Here too it would be extremely odd for the government to be excluded when the agreement of relevant public bodies is required, though Article 46.4 appears to make reference to decisions of the government also requiring the agreement of 'state bodies'.

79. The Venice Commission thinks that the chapter on the normative process needs more detail on the internal procedures, powers and responsibilities of the administrative entities involved in the drafting of legislation and, in particular, greater clarity on the government's role in it. It suggests that the drafters revise this chapter accordingly.

Chapter 8

80. This chapter deals with the mandatory legal scrutiny of normative legal acts.

81. Article 50 lists at great length the common requirements for all normative legal acts and yet this is simply a summary of the legal and legislative requirements already stated elsewhere in the draft law (notably Article 8). If Chapter 8 is to be retained, it would be useful to make an explicit reference to Annex 1 of the draft law, which broadly covers the content of this chapter.

82. Also, because it is so general, it leaves a wide margin of discretion to the experts. Articles 50.0, 2, 3, 4, and 11 in particular would benefit from an economic and social reference enabling the proposed legislation to be assessed with greater precision.

83. The level of legal scrutiny could, moreover, be significantly improved if the conception stage of a legal act were distinguished from its drafting stage; for example, the phase in which an act is planned should be clearly separate from the phase in which it is drafted, so that the roles of the various experts to be consulted can be better identified.

84. The Commission thus suggests that the drafters reconsider this chapter with a view to greater precision on its content and the role of the experts involved: an opinion on the economic and social dimension of draft laws should be included, the expert opinion delivered at the conception stage and at the drafting stage should be more clearly delimited, and explicit reference should be made to Annex 1 of the draft. Without this, the value of this chapter remains questionable.

Chapter 9

85. This chapter deals with linguistic requirements.

86. Some of the linguistic requirements formulated in this chapter (notably Articles 53 and 54) do not really have any normative relevance. They are in part a repetition of content previously set out elsewhere in the text of the draft (Article 25). It would thus be better to put them in a guide or practical handbook, and this would also have the advantage that they could be modified and amended as and when experience and developments made it necessary, far more simply than if they were part of a law needing parliamentary approval, let alone a constitutional law if that is what this draft is.

87. To avoid repetition certain articles might be placed in Chapter 7, notably in Articles 51 and 60, which deal with procedural matters.

Chapter 10

88. This chapter deals in great detail with the corruption factors that must be borne in mind during the drafting of all normative acts, as part of action against corruption.

89. The provisions of this chapter are far more detailed than those of the other chapters and particular attention is focused on trying to avoid gaps, incompleteness or ambiguity in legal texts. As far as gaps in legislation are concerned, this chapter needs to be read in conjunction with Chapter 2 of the draft, which deals with legal deficiencies, and consistency in the planning would be desirable here.

90. The main objective of these provisions seems to be to introduce a principle of legality covering not only the creation, but also the application of legal norms. This would leave very little discretion for authorities and public servants, thus curtailing any opportunities for corruption.

91. As stated earlier in paragraphs 17-19, whilst the objective of action against corruption deserves unqualified support, that action must address the making of law as well as its application.

92. But the fact is that the provisions of this chapter, whilst they regulate the drafting of norms very rigorously, cannot cover all aspects of applying the law.

93. The Venice Commission is keen to point out that action against corruption should not be confined to normative work but should be pursued more widely in all fields.

94. A reading of this draft suggests that the provisions of Chapter 10 and the expert scrutiny required in it might be used to test the constitutionality of laws and other normative legal acts, which would make the draft law an extremely valuable technical aid. This view was upheld in the discussion which took place during the 82nd plenary session.

Chapter 11

95. This chapter concerns in particular the parliamentary phase of the legislative process.

96. In principle a law should not interfere in the organisation of a parliament's internal activities. Article 92 of the Azerbaijani Constitution explicitly says here that Parliament shall determine 'its working procedures, elect its speaker and his deputies, organise standing and other committees, and establish the Chamber of Accounts.'

97. Given that in the final analysis Parliament has to adopt this law which deals with the parliamentary phase of the legislative process and which Parliament can amend as it sees fit, it is important to emphasise that a clear distinction between in-house parliamentary rules and an ordinary law guarantees Parliament greater independence from the other state institutions involved in the work of law-making.

98. It should also be borne in mind that it is easier to amend procedural rules written at the lower level of parliamentary rules of procedure than rules enshrined in a law, let alone a constitutional law. Inclusion of a description of the parliamentary phase of the legislative process, as is the case here in this draft, might render that process inflexible and so prove counterproductive.

Chapter 12

99. This very brief chapter deals with changes to normative legal acts.

100. It should be read in conjunction with Chapter 2 on conflicts between normative legal acts and gaps in legislation. To echo the comment made on Chapter 2, here too the provisions lack clarity and give no clear description of the rules for repealing or amending normative legal acts.

101. Moreover, Article 75 is ambiguous since it appears to say that legislative acts or specific provisions of legislative acts can become invalid without being formally repealed. Identical provisions on the eventuality of implied or tacit repeal feature elsewhere in this same draft law, more particularly in Articles 31 and 36.

102. Apart from the fact that it would be a good idea to make reference to these earlier articles, or to group them in one and the same chapter (cf. earlier comments in paragraph 56), the draft should explicitly preclude the possibility of implied or tacit repeal and provide only for explicit repeal. Explicit repeal would require clear identification of the provisions or parts of provisions repealed by the new text.

103. In addition, the relationship between Article 75 and Article 86 on the loss of legal force of normative legal acts is not clear.

104. Nor is it clear how Article 37 on the stability of the legal system (cf. earlier comments in paragraphs 64-65) and this chapter hang together.

105. Lastly, it would a good idea, in the interests of a coherent legal system, to regulate procedure here more explicitly, and in particular the legislative requirements to be met in any amendments to the legislation.

106. The Commission thus suggests that the drafters reconsider the terms and conditions governing the repeal or loss of legal force of provisions or normative legal acts.

Chapter 14

107. Chapter 14 deals with the official and unofficial publication of normative legal acts.

108. The purpose of Article 81 of this draft, dealing exclusively with unofficial publications, is unclear and, moreover, potentially confusing. It would be clearer if this law dealt only with official publications which produce pertinent legal consequences instead of listing all the media through which normative legal acts may be published.

109. It is apparent from these provisions that access to all Azerbaijani legislative acts is not very easy, even if this might be in line with national practices in this field.

Chapter 15

110. This chapter addresses widely differing aspects: on the one hand legal aspects such as the conditions in which legislation may have retroactive force, geographical scope and cessation of the validity of legislative acts; on the other hand the implementation of legislation (with accompanying explanations or commentaries, practical measures designed to facilitate enforcement and compliance and assessment from the legal point of view and in terms of practical results).

111. Once again the objective here is certainly to uphold the principle of legality. The aim of Article 87.1 is very definitely to implement Article 130.iv of the Constitution which also deals with 'interpretations' handed down by the Constitutional Court of Azerbaijan. The ban on amendments to a normative act once it has been commented on (Article 87.3) seems too restrictive. After all, it may be a commentary which generates the need for an amendment. The distinction between 'explanation' and 'commentary' in Article 87.5 is not very clear.

112. Assessment from the legal point of view and in terms of practical results as mentioned in Articles 89 and 90 is an important point which merits closer attention.

113. The Commission has had occasion in a different context to point to the importance of the retrospective assessment of laws, describing this as 'an essential feature of any methodical approach to the drafting and implementation of law.' [8] The Commission thus commends the drafters for having made provision for the retrospective assessment of laws and suggests that they develop this important aspect of normative work further.

Chapter 16

114. This chapter covers collections and official classified sets of normative legal acts. The provisions on this (Articles 92 and 93) seem to be along the same lines as those on the publication and entry into force of normative legal acts. Without a knowledge of what the national practice is, it is difficult to understand and assess these provisions as measures ensuring that responsibility for publication does not rest with one authority alone.

[8] Cf. CDL-AD(2009)053, paragraphs 142-143

IV. Conclusions

115. The Venice Commission welcomes this initiative of a draft law on normative legal acts. It will certainly help to ensure that Azerbaijani law is of good feature – legally, substantively and formally.

116. The Venice Commission finds this draft law to be of good quality, relatively well structured and comprehensive, since it covers the most important aspects of legislative work.

117. With a view to improving the draft the Commission recommends, however, that some points be reconsidered in the light of the comments made in this Opinion, notably:

- the scope of this draft must be consistent with the terms of the Constitution and it must be explicitly stated in the draft that the rules laid down apply to all normative legal acts regardless of who has authored them or which institution is responsible for adopting them;
- the draft should list the central executive authorities which are or might potentially be empowered to adopt normative legal acts;
- the rules on public consultation ought to be set out more explicitly;
- the terms and conditions governing the repeal or loss of legal force of provisions or normative legal acts should be reconsidered; tacit or implied repeal should be explicitly precluded and explicit repeal must be the rule;
- the chapter on the normative process should be reconsidered, to clarify the internal procedures, powers and responsibilities of the administrative entities involved in the drafting of legislation and, in particular, the government's role in it;
- the chapter on legal scrutiny should be reconsidered, to provide more detail on the role of the experts involved; an opinion on the economic and social dimension of draft laws should be included and the expert opinion delivered at the conception stage and at the drafting stage should be more clearly delimited;
- the eventuality should be considered of moving to a guide or handbook those provisions of this draft which are not strictly normative and are more a matter of legislative technique;
- action against corruption should not be confined to normative work; attention must be given to pursuing this more widely in all fields;
- the provisions on the retrospective assessment of laws should be developed further;
- the order of the chapters should be reconsidered to ensure that the structure of the draft has overall coherence.

The Venice Commission remains at the disposal of the Azerbaijani authorities for any further assistance they may need.