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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

**ON AMENDMENTS AND CHANGES
TO THE ELECTION CODE
OF THE REPUBLIC OF AZERBAIJAN**

**SUBMITTED TO THE PARLIAMENT
IN MAY 2008**

Draft

**The Law of the Republic of Azerbaijan
on Amendments and Changes to the Election Code
of the Republic of Azerbaijan**

The Milli Majlis of the Republic of Azerbaijan decides:

- I. To make the following amendments and changes to the Election Code of the Republic of Azerbaijan (Collection of Legislation of the Republic of Azerbaijan, 2003, No 6, Article 274, No 12, I book, Article 680; 2004, No 6, Article 416, No 11, Article 891; 2005, No 2, Article 62, No 4, Article 278, No 7, Articles 576, 584, No 12, Article 1091):
 1. To re-phrase Article 8.2 as follows:
"Voting day is considered a non-working day within the territory where election (referendum) is held."
 2. To add Article 11¹ as follows:
"Article 11¹. Prevention of unlawful interference in the process of elections (referendum)
 - 11¹.1. Unlawful interference of legal entities, officials of state bodies or municipalities and other natural persons in the process of elections (referendum) is prohibited.
 - 11¹.2. Obstructing the implementation of citizens' election rights to participate in election (participation in the referendum), forcing a citizen to sign in support of a candidate or interfering with his/her voting, interfering in or influencing the work of election commissions, falsifying the voting documents (on participation in the referendum) or presenting false documents, deliberately calculating votes inaccurately, determining the voting results incorrectly or violating the secrecy of the vote, voting in place of other persons, or casting more than one ballot paper into the ballot box by one person shall result in liability as stipulated in the Criminal Code of the Republic of Azerbaijan".
 3. To add the following sentence to Article 13.3.4:
"Such liabilities could result from obligations regarding registration, taxation, not leaving the country for over a certain period of time, as well as other political or legal obligations resulting from permanent, steady and stable affiliation related to more than 5 years period of living abroad."
 4. To add the following sentences to Article 22.1:
"Term of office of commission members that was temporarily terminated due to kinship is restored after the official announcement of election results. Term of office of the election commission member appointed as a replacement is limited to the period during which the person who s/he is replacing cannot function."
 5. To consider Article 25.2.23 as Article 25.2.24.
 6. To add Article 25.2.23:
"implement accreditation of exit-poll organizations, determines rules for accreditation of these organizations."
 7. To add "in cases established by the Central Election Commission" after the expression "special regime" in Article 35.5. To add sentence of the following text after the 5th sentence: "A decision about military persons serving under the special regime

conditions shall be made by the Central Election Commission at least 5 days prior to the voting day.”

8. To add “and they shall be given appropriate badges indicated in Article 40.7 of this Code” after the expression “specified in Article 40.7 of this Code” to Article 36.6.
9. To remove the expression “envelopes for ballot papers and” from Article 42.2.3.
10. To remove the expression “envelopes for ballot papers” from Article 42.2.7.
11. To remove the expression “and envelopes for ballot papers” from Article 42.3.1.
12. To replace 46.9 with 46.10 in Article 45.3.
13. To remove the 7th sentence from Article 46.1 and the expression “(in this case, the court decision shall be attached to the voter list)” from the second sentence; to replace the expression “only upon the court decision” with the expression “by the Precinct Election Commission in accordance with the rule determined by the Central Election Commission”.
14. To amend Article 46.6 as follows:
46.6 Voters (military servants of military unit, military servants’ family members who reside within the territory of military unit, accused persons detained in investigative facilities, inmates in penitentiary establishments and other voters) lists for the precincts established within the territory of military units, investigative facilities and penitentiary establishments shall be specified by the Precinct Election Commissions on the basis of information on voters provided by the commanders of military units, investigative facilities and penitentiary establishments at least 25 days prior to the election day.
15. To add “and administration of relevant penitentiary establishment” after “administration of investigation isolation” in Article 46.9.
16. To add Article 47.51 with the following text:
47.51. Citizens arrested during the investigation and those detained by administrative order are included in separate voters’ list by the Precinct Election Commissions. Such information is submitted to the Precinct Election Commission at least 2 days prior to the voting day by relevant court that made decision on citizen’s arrest, or relevant executive authority body that made decision on citizen’s detainment by administrative order. That information must contain full data of identification document or its substitute.
17. To remove the third sentence of Article 48.1.
18. To replace “by a notary office” with “in an order established by the Civil Code of the Republic of Azerbaijan” in Article 54.5.4.
19. To replace “have the right to check the accuracy” with “check the accuracy” in Article 59.1
20. To amend Article 60.2.1 as follows:
“60.2.1. Violation of requirements of Article 57.1 of this Code during the collecting of signatures.”
21. To add the following to the second sentence of Article 60.5:
“on the condition that rationale for refusal of registration is related to the number of valid signatures.”

22. To replace “card” with “badge” in Article 72.2
23. To consider Article 73 as Article 73¹.
24. To add Article 73 as follows:
Article 73. Referendum Campaign Group’s Refusal of its Status

73.1. Authorized representatives for establishing a campaign group on referendum can withdraw the notification of establishment of a campaign group on referendum at any time. A relevant petition on this issue must be signed by the authorized representatives for establishing a campaign group on referendum. Such a petition shall not be withdrawn.

73.2. Authorized representatives of a registered campaign group on referendum can submit an application to the relevant election commission, at any time, to deregister the campaign group on referendum. Such an application must be signed by all authorized representatives of the campaign group on referendum. Upon the receipt of such an application, the relevant election commission must make a decision on deregistration of a campaign group on referendum within a one day period.
25. To replace “TV and radio companies” and “those TV and radio companies” with “Public TV and radio companies” in the first sentence; and to replace “or” with “and” in Article 77.1. To add the following sentence: “No election campaign is conducted by the TV and Radio companies that belong to the state”.
26. To add Article 81.11 as follows:
81.11. Paid air time for election campaigning on TV and radio shall be allocated in conformity with the legislation on advertisement.
27. To amend Article 87.7. as follows:
87.7. Except for rooms, display of pre-election materials on buildings, other places shall be prohibited.
28. To add the following expressions to Articles 100.2.2 and 100.2.7 “(except Elections to the Milli Majlis and to Municipalities)”
29. To remove Articles 100.2.4, 100.2.10, 100.2.11
30. To remove the expression “and envelopes for ballot papers” from Article 100.2.6
31. To remove “ in envelopes” from Article 100.2.12
32. To replace “ballot papers” with “protocols” in Article 100.8.
28. To add the following sentence before the first sentence of Article 101.1. “Voters can be issued de-registration cards for single mandate constituency during Referendum and Presidential Elections.”; to replace “60” with “55”
33. To add the following sentence to Article 101.2: “This regulation shall be applied within the territory of relevant election constituency during the elections to the Milli Majlis, within entire territory of the republic during Presidential elections and referendum, within the territory of relevant municipality during the elections to the municipalities.”
34. To add the following sentence to Article 101.2

“This regulation shall be applied within the territory of relevant election constituency during the elections to the Milli Majlis, within entire territory of the republic during Presidential elections and referendum, within the territory of relevant municipality during the elections to the municipalities.”

35. To amend Article 102 as follows:

Article 102. Marking voters' thumbs with invisible ink

102.1. The Precinct Election Commission implements marking a voter's thumb using harmless, invisible liquid while issuing a ballot paper on Election Day.

102.2. The left thumb of the voter shall be marked by spraying.

102.3. An Ultraviolet lamp is used to determine if the voter's thumb was previously marked.

36. To remove “envelope with” from Article 103.3.

37. To consider Article 104.6 as Article 104.7

38. To add Article 104.6 as follows:

104.6. One of the Precinct Election Commission members stays at the entrance of the election precinct and he/she checks citizens' voter cards, IDs or other identification documents, as well as part of the nail and skin of the voter's left thumb to see if it was previously marked with the liquid indicated in Article 102, and gives permission for entrance. If such a marking is found, the voter shall not be issued a ballot paper. Another member of the Precinct Election Commission checks the availability of the voter's name on the voters' list and issues a ballot paper for that voter. The voter shall be informed that s/he cannot be issued a ballot paper if s/he refuses to have his/her thumb marked. If the voter does not agree, s/he shall be asked to leave the election precinct. A note “refused to be marked” is recorded on the voters' list. If the voter agrees, his/her left thumb shall be marked.

39. To remove sentences 5 and 6 from Article 104.7

40. To remove the expression “in an envelope stamped by the seal of the Precinct Election Commission” from Article 104.10

41. To replace “2 days before” with “12 hours before” in first sentence of Article 105.2

42. To amend the fourth sentence of the Article 106.2 as follows: “When counting ballots from the mobile ballot box, if the total number of ballot papers is more than the number of requests (total number of voters who were issued ballot papers), then all votes in the mobile ballot box shall be considered to be invalid by decision of the Precinct Election Commission.” To remove sixth sentence from Article 106.2. To replace “envelopes” with “ballot papers.”

43. To remove Article 106.3

44. To remove “packaged and stamped envelopes” from Article 106.7

45. To remove “envelopes and” from Article 107.4

46. To remove “envelopes and” from Article 108.3

47. To amend Article 109.1 as follows:

109.1. Preliminary results of the elections (referendum) shall be published by the Central Election Commission as a schedule providing unified voting results of election constituencies, immediately after the Constituency Election Commission submits the protocols on voting results to the Central Election Commission, and such information can be placed on the website of the Central Election Commission.

48. To amend Article 109.3 as follows:

109.3. Preliminary results of elections (referendum) for a constituency should be submitted to the Central Election Commission and mass media immediately after the acceptance of protocols on voting results of election precincts by the Constituency Election Commissions and should be published in form of summarized schedule.

49. To amend Article 112.5 as follows:

112.5. Complaints submitted by citizens must contain the following:

112.5.1. The name of the commission for handling citizens' complaints to which the complaint is addressed;

112.5.2. Address for sending the applicant a notification about the time when the complaint will be considered;

112.5.3. Decision, action, or lack of action, which are the object of a complaint;

112.5.4. If it is a decision, it must be attached to the complaint; names of the election commission or state institution, which are the objects of the dispute must be recorded; and the official must be indicated;

112.5.5. If it is an action, the name (position) of the person who committed the unlawful action, the substance of the action, and the place and time the action was committed must be clearly indicated;

112.5.6. If it is a lack of action, the applicant must indicate the demand which was not considered and the name of the institution or person that did not consider the demand;

112.5.7. The basis for the complaint can be an assumption of a violation of the Election Code and other legislative acts;

112.5.8. Evidence for purported violation or explanation as to what constitutes a violation;

112.5.9. Demand of the applicant;

112.5.10. In the case the complaint is filed with the superior Commission about a decision of the lower Commission, the decision of the relevant election commission must be annexed to the complaint.

112.5.11. The applicant must sign the complaint. If the complaint is filed by political parties or a bloc of political parties running for elections, then the complaint must be signed by the authorized representative with his/her document of authorization attached.

50. To amend Article 112.9 as follows:

"112.9. The superior election commission shall have the right to cancel the decision of the lower election commission, to make a decision regarding the substance of the matter or to instruct to re-examine the issue."

51. To add Article 112¹ as follows:

Article 112¹. Investigation of Complaints on Violation of Citizens' Election Rights.

112¹.1. In order to investigate complaints on actions (lack of actions) and decisions that violate citizens' election rights relevant expert groups shall be created at the Central Election Commission composed of 9 members, and at the Constituency Election Commission composed of 3 members. Commissions'

lawyer members may be included in the composition of these groups. Rules for establishing expert groups shall be determined by the Central Election Commission.

- 112¹.2. Rules for handling citizens' complaints shall be established by the Central Election Commission.
- 112¹.3. The election commission must register received complaints, in numerical order with dates of receipt.
- 112¹.4. Once the complaint is registered the expert group will have the following responsibilities:
 - a. to issue an opinion on the complaint to the relevant election commission together with the investigation documents;
 - b. to require additional information about the complaint;
 - c. to apply to the relevant state body through the Central Election Commission for additional information;
 - d. to obtain additional evidence (video, written materials etc.) if necessary;
 - e. to take other actions determined by the Central Election Commission.
- 112¹.5. The expert groups within the Constituency Election Commission must follow the following rules when citizens submit complaints:
 - 112¹.5.1. Receive the written complaint and register it;
 - 112¹.5.2. If the complaint is submitted in person, the applicant must be given a receipt on the complaint;
 - 112¹.5.3. If the complaint is received in violation of the rules established by this Code, an opinion must be issued on sending the complaint back to the applicant;
 - 112¹.5.4. If the complaint is under the jurisdiction of the commission that received the complaint and of another body, the expert must propose that the Constituency Election Commission not consider the complaint on its substance and that it resolve the issues within the commission's responsibilities and send the other issues under another body's responsibilities to that other body for resolving.
 - 112¹.5.5. If the Constituency Election Commission receives a complaint from the election subjects containing criminal actions related to the elections, the group shall investigate the issue in conformity with Articles 112¹.4 and 112¹.11 of this Code and must issue an opinion to the Constituency Election Commission on taking actions about the issues within its responsibilities, on making a grounded decision on informing the Prosecutor's Office about the actions if it is concluded that actions considered by the Criminal Code took place. (A copy of the complaint shall be attached to the information provided.)
 - 112¹.5.6. If the expert has difficulties in establishing whether there are actions or probability of such actions considered by the Criminal Code, the Constituency Election Commission while investigating the complaint, along with recommendation to take actions within its responsibilities established by this Code, must state an opinion on sending the complaint to the Central Election Commission for it to make an opinion on this issue.

112¹.5.7. If the Constituency Election Commission receives a complaint from the election subjects containing criminal actions related to the elections, and if the expert concludes that actions considered by the Criminal Code took place, the expert shall issue an opinion on informing the relevant Prosecutor's office about those actions. A copy of the complaint shall be attached to the information provided.

112¹.6. The expert group within the Central Election Commission must follow the below mentioned rules along with Article 112¹.5 of this Code:

112¹.6.1. Make recommendations for a relevant decision by the Central Election Commission following the Articles 60.6, 68.5, 87.9, 88.7, 88.8, 113, 115 and 116 regarding the complaints about illegal actions of other bodies and officials that are not related to the actions (lack of actions) or decisions of the election commissions.

112¹.6.2. If the relevant expert group's official does not take measures that can satisfy the applicant, a complaint can be filed about an action (lack of action) against the official of the group in accordance with this Code.

112¹.6.3. If the written complaint is of a criminal nature but does not relate to elections, such a complaint must be sent to the Prosecutor's office by the Central Election Commission immediately.

112¹.6.4. While discussing the complaint received from the Constituency Election Commission, the expert shall give an opinion in order to establish whether the violation reported in the complaint is a criminal case established by the Criminal Code, and determine the probability of a criminal action.

112¹.6.5. If the expert determines that those are the cases mentioned in Article 112¹.6.4, s/he shall issue an opinion to send the complaint to the relevant prosecutor's office by the Central Election Commission.

112¹.6.6. If the cases mentioned in Article 112¹.6.4 or other violations are not determined in the complaint received, then an opinion shall be made on the case that it shall be archived.

112¹.6.7. If it is refused without any ground to investigate the complaints considered by Article 112.5, then the Central Election Commission shall take actions within its responsibilities on imposing the liability on the official (officials) of the Constituency Election Commission and its expert group in compliance with the rules established by the legislation.

112¹.7. Rules for conducting meetings related to investigation of complaints by the election commission shall be determined by the Central Election Commission. If the applicant expressed willingness to attend the meeting in his/her appeal, s/he must be personally informed, about the place and time of the meeting by telephone or mail, a day prior to the meeting.

112¹.8. The expert shall inform about the complaint at the meeting. If the applicant or his/her authorized representative is present at the meeting s/he can explain the complaint. A representative of the Constituency Election Commission whose decision is under discussion can be invited to the

meeting of the Central Election Commission and s/he has the right to justify the decision made.

- 112¹.9. The applicant has the right to present new evidence via documents or expert.
- 112¹.10. The expert that investigates the complaint must issue an opinion within the period established by Article 112.10. If additional investigation is needed, the relevant election commission can make a decision. Such a decision must be made within 3 days from the date of receipt of complaint, and immediately on Election Day.
- 112¹.11 Members of the expert groups that investigate the complaints can make the following opinions:
- 112¹.11.1. on cancellation the decision of a lower election commission;
- 112¹.11.2. on warning the election subject in conformity with Article 113.1 of the Election Code;
- 112¹.11.3. on refusal of registration of a candidate in cases established by Article 113.2 of the Election Code;
- 112¹.11.4. on appealing to the court for deregistration of a candidate in cases established by Article 113.2 of the Election Code.
- 112¹.11.5. on instructing to re-examine the issue raised by the applicant by the relevant election commission;
- 112¹.12 If the complaint is not within the responsibilities of the expert group a decision on sending the complaint to the relevant institution is made by relevant election commission;
- 112¹.13 An opinion is announced immediately after it is made by the expert, or published (posted on website) not later than 24 hours after it is made and is delivered or sent to the applicant.
- 112¹.14. Opinion of the member of expert group must be based on the following:
- 112¹.14.1. The complaint must be received within the rules and period established by the law, i.e. within 3 days after the action (lack of action) took place or interested party is informed.
- 112¹.14.2. Complaints must be submitted by the person (according to Article 112.1, voters; candidates; registered candidates; political parties; blocs of political parties; referendum campaign group; agents of registered candidates, political parties, blocs of political parties, referendum campaign group; observers as well as election commissions) who have such a right.
52. To replace, in Article 113.1, the expression “filing a complaint with a court on cancellation of registration” with “deregistration in the cases stipulated under Articles 73 and 73¹ of this Code.”
53. To amend Article 113.2 as follows:

113.2. Registration of a candidate, referendum campaign group shall be cancelled in the cases mentioned below in an order established by the legislation if there is a court verdict in force on the criminal case or there is a court decision on the administrative offence.

54. To remove Article 113.2.1.
55. To add Article 113¹.1. as follows:
“113¹.1. The election commission can refuse registration of a candidate, referendum campaign group if the information they submit according to this Code is not true or their invalidity is of great importance (except the cases mentioned in Article 60.3 of this Code.)”
56. To add the following sentence “Rules for conduct of such events shall be defined by the Central Election Commission” in Articles 127.2, 155.2, 189.2, 224.2.”
57. To replace 72.2 with 77.2 in Article 127.3.
58. To amend Article 128.2.1. as follows:
“special funds of the referendum campaign groups with condition not to exceed 5,000 manats;”
59. To amend Article 128.2.3. as follows:
“voluntary donations not exceeding 1,000 manats for citizens and 10,000 manats for legal entities.”
60. To remove “conventional financial unit which is in force on the day of official publication of decision on the determination of the referendum”; to replace “times” with “manats”, “25” with “50”, “250 thousand” with “one million”, “500 thousand” with “five million” in Article 128.3.
61. To remove “the conventional financial unit which is in force on the day of official publication of decision on the determination of the referendum” from Articles 130.1.1 – 130.1.3
62. To replace “55” with “25” in Articles 148.5, 182.3 and 216.5.
63. To replace “times” with “manats” throughout the text of Article 156; to remove “the conventional financial unit, which is determined for the day of official publication of the decision on determination of the elections” from Articles 156.1, 156.2.1, 156.2.2, 156.2.4; and to remove “the conventional financial unit, which is in force on the day of publication of the decision on determination of the elections” from Articles 156.4.1 and 156.4.3.
64. To replace “75” with “500” in Article 156.1, “10” with “500” in Article 156.2.1, “25” with “150” in Articles 156.2.2, “500” with “3000” and “10” with “50” in Article 156.2.4, “50” with “500” in Article 156.4.1, “150” with “3000”, and “25” with “50” in Article 156.4.3.
65. To replace “times” with “manats” throughout the text of Article 159; to remove “the conventional financial unit, which is in force on the day of publication of the decision on the determination of the elections” from Articles 159.1.1 – 159.1.3 and 159.2.1 – 159.2.3.
66. To add the Article 170.3 with the following text:

“170.3. If voting in a single mandate election constituency is considered due to the miscount of ballot papers, the Central Election Commission shall make a decision on recount of votes. In such a case, the recount shall be provided by the relevant constituency election commission in a manner determined by the Central Election Commission.”

67. To delete “one third of total volume of” in Article 189.2.
68. To replace “times” with “manats” throughout the text of Article 191; to remove “the conventional financial unit, which is in force on the day of publication of the decision on the determination of the elections” from Articles 191.1, 191.2.1 and 191.2.3.
69. To replace “1” with “10” in Article 191.1, “25” with “250” in Article 191.2.1, “1500” with “3000”, and “10” with “50” in Article 191.2.3.
70. To replace “times” with “manats” throughout the text of Article 192; to remove expressions “the conventional financial unit, which is in force for the date the decision on determination of the Election Day, is officially published” and “the conventional financial unit” from Article 192.1.1; to remove “the conventional financial unit which is in force for the date the decision on determination of the election day is officially published” from Articles 192.1.2 and 191.1.3.
71. To remove “in a scale of yeni manats” in parenthesis in Article 209.2.
72. To replace “times” with “manats” throughout the text of Article 225; to remove the expression “the conventional financial unit, which is in force on the day of official publication of the decision on determination of the election day” from Articles 225.1.1, 225.1.2, 225.1.4, 225.1.5, 225.2, 225.5.1, 225.5.3, 225.6.
73. To replace “times” with “manats” throughout the text of Article 228; to remove the expression “the conventional financial unit, which is in force on the day of official publication of the decision on determination of the election day” from Articles 228.1.1, 228.1.2, 228.1.3, 228.2.1, 228.2.2, 228.2.3.
74. To amend Article 240.2.1 with the following text:

240.2.1 if the number of election precincts where voting results are considered invalid during the elections on a municipality exceeds 2/5 of all precincts within the same municipality or when they are cancelled, under the condition that the number of voters in the election precincts exceeds ¼ of all voters registered in the municipality.
75. To replace “candidate to the post of a deputy of the Milli Majlis”, “candidate to the presidency” and “candidate to the post of a member of the municipality” who have to sign the signature sheets after signatures are collected in Appendix 1A, 2A and 3A to the Election Code with the expressions “authorized representatives of political parties, bloc of political parties” respectively.

II. This Law comes into force upon the date of publication.