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Opinion N° 172/2001

DRAFT LAW ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF AZERBAÏJAN

Interim opinion
adopted by the Venice Commission
at its 49th Plenary Session
(Venice, 14-15 December 2001)

on the basis of comments by:
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I. Introduction

Within the framework of the programme of co-operation of Azerbaijan with the Venice Commission (CDL (2001) 5), Mr. Khanlar Hajiev, President of the Constitutional Court of Azerbaijan, requested an opinion of the Commission on the draft law on the Constitutional Court (CDL (2001) 108) by letter of 7 September 2001. At its 48 Plenary Meeting on 18-19 October 2001, the Venice Commission invited Messrs Endzins, Hamilton, Nolte and Paczolay to act as rapporteurs on this draft. Their comments have become documents CDL (2001) 111, 122, 110 and 114 respectively. On the basis of these comments, a workshop and meetings on the draft law were held in the Constitutional Court and the offices of the Presidential Administration of Azerbaijan in Baku on 5-6 November 2001. For the Venice Commission, Messrs. Endzins, Hamilton and Paczolay participated at these meetings. The discussion focussed mainly on the procedures for individual access to the Constitutional Court as envisaged in Article 30 of the first draft and direct access for ordinary courts on all levels which the first draft did not yet provide for. On the basis of these discussions, the Constitutional Court prepared a revised draft (CDL (2001) 108rev), which was the subject of further discussions between Messrs. Aliev, Guliyev, Gvaladze, Hajiev and Mirzojev (hereinafter "the delegation") and a group of rapporteurs of the Venice Commission composed of Messrs. Bartole, Endzins, Hamilton and Matscher which took place in Strasbourg on 29-30 November 2001. The present interim opinion on the revised draft takes these discussions into account. At the appropriate places agreement between the Azerbaijan delegation and the rapporteurs will be mentioned. This interim opinion was adopted by the Venice Commission at its 49th Plenary Meeting on 14-15 December 2001. After the meeting, the Commision received a number of revised draft articles to be part of a new draft law which will be the subject of the final opinion of the Commission.

The Commission wishes to point out that the revised draft is substantially improved in comparison to the first draft and welcomes that it takes into account comparative international experiences. It does, however, still raise a few general and specific questions. The following interim opinion limits itself to the question of whether the provisions of the draft law are in conformity with the Constitution of Azerbaijan, and whether their adoption is advisable in the light of common European standards and practices. Given the detailed nature of the draft and the multitude of possible policy options this opinion has been limited to certain important and some less important issues.

1. Constitutional changes

This opinion does not address the issue whether it would be advisable to not only to amend the Constitution (as proposed with Article 6 of the Draft Constitutional Law on the Regulation of the Implementation of Human Rights and Freedoms (CDL (2001) 88)) but to change it either in order to introduce new procedures for the Constitutional Court which would require a constitutional amendment (which might be the case for a right of a parliamentary minority to initiate a review of norms) or to abolish an existing procedure (for example the initiative by the Constitutional Court in the procedure for the removal of the President of Azerbaijan according to Article 107 of the Constitution of Azerbaijan). Such changes have been recommended by the Venice Commission in its previous Opinion based on comments by Messrs. Özbudun, Russell and Lesage (CDL-INF (1996) 10). The Commission is of the opinion that both suggestions should be further pursued. The delegation pointed out that at this stage no changes in the Constitution (entailing a referendum) are being considered but that this might be possible at some point in the future.

2. Commitments entered upon accession to the Council of Europe

Opinion 222 (2000) of the Parliamentary Assembly (http://stars.coe.int/ta/ta00/eopi222.htm) states: "15. The Parliamentary Assembly notes that Azerbaijan shares fully its understanding and interpretation of the commitments entered into, as spelt out in paragraph 14 and intends: ... ii. to re-examine the conditions of access to the Constitutional Court and grant access also to the Government, the Prosecutor General, courts at all levels and - in specific cases - to individuals, at the latest within two years of its accession; ".

2.1 Individual access

As regards access by individuals, this commitment has been taken up in Article 6 of the Draft Constitutional Law on the Regulation of the Implementation of Human Rights and Freedoms in the Azerbaijan Republic (CDL (2001) 88) and Article 31 of the present, revised draft by the introduction of a constitutional complaint procedure which gives every person the right to lodge a complaint with the Constitutional Court (after the exhaustion of ordinary judicial remedies) alleging that his or her fundamental rights have been violated through the implementation of a general, normative legal act. The violation of human rights by an individual act which is not based on an allegedly unconstitutional normative act cannot give rise to a constitutional complaint. The ordinary courts are to deal with such cases.

Since the constitutional complaint procedure can be initiated by individuals it is possible that the Court will have to deal with a large number of such complaints. It might be advisable to introduce a special screening procedure to filter inadmissible or manifestly ill-founded complaints. Given that only normative legal acts can be the subject of an individual appeal, it may perhaps be advisable to wait with the introduction of such special screening procedures until a certain practical experience will have been acquired with the actual significance of this constitutional complaint procedure.

The general rules of procedure apply for the registration and the acceptance of the complaint. Similarly do apply the rules of the constitutional proceedings. This special procedure, however, would require more specific regulation especially as concerns the effects of the decision as to the unconstitutionality of the normative act on the individual act which resulted in the alleged violation of human rights (Article 6 of the Draft Constitutional Law on Human Rights). Is the individual decision annulled or only declared as being based on an unconstitutional general norm and returned for review to the authority which took the decision (in most cases the Supreme Court)? The delegation showed a preference for the second option. The solution adopted should be spelled out both in this draft law and in the administrative, civil and criminal procedure codes. The authority in question should be obliged to review the case on the basis of the annulment of the normative act on which it had based its first decision.

Moreover, it seems necessary to regulate whether and if so how the annulment of the normative act by the Constitutional Court would effect other, past decisions with force of *res iudicata* which are based on this act. The Constitutional Court might be given the possibility to decide on the effects (annulment *ex nunc, ex tunc*) in each case. In the case of annulment *ex tunc* the individual constitutional complaint results in a decision that has *erga omnes* effect because the legal norm on which the challenged judicial or administrative act was based is declared null and void as from its coming into force. Thus other individual acts based on the same norm would become invalid, too. Here, the principles of individual remedy on the one hand and legal security on the other should be balanced. At least sentences in criminals cases should be reopened by the ordinary courts following the annulment of the penal norm on which they were based. It seems necessary to expressly regulate these matters. The delegation agreed to address this issue in the final draft.

Obviously, the complainant should present in the appeal the previous instances of his case. The clause "explanations and documents required for clarification of the circumstances of the case" in Article 31 might , however, go too far in this respect. Such evidence could be gathered by the Constitutional Court. Also, the Constitutional Court should ascertain whether all other legal remedies have been exhausted.

2.2 Access for courts at all levels

During the discussion of the ways of how to provide access to the Constitutional Court for courts at all levels it became apparent that several options are being considered:

(a) a system of preliminary requests by ordinary courts to the Constitutional Court entailing a suspension of the proceedings before the ordinary court pending the decision by the Constitutional Court; on the basis of the decision of the Constitutional Court the ordinary court takes a final decision on the merits of the case (solution suggested by the Commission);
(b) a system whereby the ordinary courts are obliged to take a decision on the merits of the case in which they do not apply the general norm (law, decree) which they deem unconstitutional, followed by an obligatory referral of the question of the issue of unconstitutionality to the Constitutional Court (Article 30 of the revised draft);
(c) a general right for judges to apply to the Constitutional Court for the interpretation of the Constitution and laws in relation to human rights issues (Article 7 of the Draft Constitutional Law on the Regulation of the Implementation of Human Rights and Freedoms in the Azerbaijan Republic (CDL (2001) 88)).

Solution (c) is modelled upon the possibility which was open to judges in the Soviet Union to ask questions about the interpretation of laws to the Supreme Courts. In the way formulated in Article 7 of the Draft Constitutional Law on the Regulation of the Implementation of Human Rights and Freedoms in the Azerbaijan Republic, such questions would not have to relate to a concrete case before the judge asking the question. Even though this may seem obvious, it should be spelled out that following its publication such an interpretation has binding effect not only for the requesting judge but on all state bodies. The problem of this solution lies, however, in the fact that the Constitutional Court would be able to provide only an interpretation of the law but could not annul it. The Court may try to provide an interpretation which brings the law in line with the Constitution and thus exclude possible interpretations that are not in conformity with the Constitution. There could be cases, however, when a law is in such stark contradiction with the Constitution that the law could not be interpreted in conformity with it. Then the Constitutional Court could only declare such a law to be unconstitutional but it could not annul it because it is providing only an interpretation. According to the opinion of the delegation in such a case the law would formally remain in force but judges would not apply it following its established unconstitutionality. This however raises two problems: first the system of constitutional control would be unbalanced because the effect of a finding of unconstitutionality will depend on the type of application addressed to the Constitutional Court: in cases of an 'inquiry' (appeal) for the verification of constitutionality under Article 130.III.1 of the Constitution, unconstitutional laws will lose their legal force following the decision of the Constitutional Court whereas this would not be the case where the decision is made on the basis of a mere request for interpretation. Secondly, this may create a problem for the authority of the Constitutional Court. In cases of a conclusion of unconstitutionality in interpretation proceedings the Constitutional Court would request Parliament to revise its law. Parliament is however not obliged to do so and might chose not to take any action, which would undermine the role of the Constitutional Court as the authority to effectively control

the constitutionality of laws. The reply offered by the delegation was that such a law could be directly attacked by other state bodies or individuals (after exhaustion of other remedies) and would finally lose its force. This double procedure does however raise serious questions in relation to the principle of legal certainty.

Solution (b) is based on the assumption that all courts in Azerbaijan are capable of effectively controlling the constitutionality of laws (diffuse control system) and have the power not to apply a law they deem contrary to the Constitution). The Commission is of the opinion that such a system cannot merely be based on the principle of direct applicability of the Constitution (Article 147) but should result from a clear constitutional provision (such as, for example, Article 100 of the Greek Constitution: “Courts shall not apply laws that contradict the Constitution").

Moreover, solution (b) can create problems when the Constitutional Court in its decision comes the conclusion that the general norm is not unconstitutional. Then the decision taken by the ordinary court would have to be reviewed. The problem could be further complicated if in the meantime the decision by the ordinary court was appealed against and the instance of appeal would not come to the conclusion of unconstitutionality of the general norm and apply the norm to the case but now the Constitutional Court would find such an unconstitutionality and confirm the finding of unconstitutionality of the first instance court. The revised draft deals with this problem by providing for the suspension of the decision by the ordinary court pending the decision of the Constitutional Court. Both solutions (a) and (b) require specific regulation both in the law on the Constitutional Court but probably also in the codes of criminal and civil procedure. Model (a) works satisfactorily in many countries, model (b) would establish a new system which might prove difficult in practice.

The main argument advanced in support for the model (b) is that according to the Constitution of Azerbaijan all State organs including ordinary courts are to apply the Constitution directly and that ordinary courts should not be released from this obligation. It could be argued, however, that by referring cases to the Constitutional Court they are precisely doing that, i.e. directly applying the Constitution because they are obliged to take a decision that they have serious doubts about the constitutionality of the norm. Only direct application of the Constitution can result in a serious doubt about the unconstitutionality.

Another argument in favour of solution (a) is that in many countries practice has shown that ordinary courts which have to deal with an array of substantive and procedural provisions in their daily work are usually reluctant to assume the unconstitutionality of a law. Constitutional Courts which have been established precisely for that purpose are in a better position to accomplish this task. Forcing ordinary courts to take a definite position on the unconstitutionality rather than to let suffice a serious doubt might set the threshold too high and could result in a very low number of findings of unconstitutionality by ordinary courts.

2.3 Access for other public bodies

The other commitment which the Parliamentary Assembly has referred to in its above-mentioned decision, the conditions of access for the Government and the Public Prosecutor, has not explicitly been dealt with in the present draft. Such conditions appear already to be provided for in Article 130.III of the Constitution of Azerbaijan. They should, nevertheless, be referred to in the present draft law for the sake of providing a complete picture of all persons and bodies with access to the Constitutional Court.

3. Issues not covered

Although the draft law is very long and detailed, there are some important issues which are not covered. Not covered are, in particular:

a) The issue of the exclusion of a judge in a specific case for reasons of conflict of interests (close family relationship with a party to the procedure - parent, brother etc., prior involvement in the matter - possibly in a previous function, personal monetary conflict of interest); Rules on avoiding the number of judges sitting at the bench falling below the quorum following the exclusion of judges might be useful. (Note: after the adoption of this interim opinion, the Commission received an article which addresses this issue and which will *inter alia* be the subject of the final opinion).

b) Rules on interim measures (the Constitutional Court should be able to suspend individual acts by other state bodies which might cause irreparable damage – especially in the case of an individual complaint – like the extradition of a person or the destruction of a house built without a permit until the Constitutional Court takes the final decision on the validity of the normative act on which the individual act is based upon). The delegation agreed to add such provisions to the final draft;

c) Rules on costs;

d) Rules on how judgments are executed.

In addition, there are some issues which are regulated in the Constitution only, but which should also be integrated and specified in the draft law. Such issues are, for example:

a) The nomination and election procedure for becoming a judge (see Articles 95.I.10 and 109.9 of the Constitution)

b) The determination which judgments have effect only *inter partes* and which also have effect *erga omnes* (see Article 130.V and 130.VI of the Constitution)

Finally, there should be a clarification concerning the point whether a general (civil or criminal) procedure act is applicable in a supplementary way in the proceedings before the Constitutional Court.

4. Issues preferably to be covered in the Internal Regulations of the Constitutional Court

On the other hand, a number of provisions which are included in the draft law concern details which should better be regulated in the Internal Regulations of the Court, as it is the case in most other countries. This is true, in particular, of Articles 33, 34, 38, 42, 43, 44, 52, 56, 58, 64, 66, 67, 68, 89 and 101. It is certainly important that the procedure of the Court be regulated as clearly and as precisely as possible. It is also important, however, that the Court possesses a certain autonomy with regard to its own procedure. It is also important for the Constitutional Court to have the possibility to modify details in the light of practical experience without Parliament (Milli Meijlis) having to pass legislation on minor matters. The previous Opinion of the Venice Commission by Messrs. Özbudun, Russell and Lesage (CDL-INF (1996) 10) has also already pointed out that the draft law contained too many details.

This is by far more than a technical question, rather it is closely related to the independence of the Court. It is very dangerous, not only from a theoretical but also from a practical point of view, to authorize the legislature to decide on the peculiar procedural rules. The legislature has the right in a democracy to determine questions such the competences of the Constitutional Court, the composition of the courts, the recruitment of the judges, even the main procedural rules. But the

detailed regulation of the procedure should pertain to the Court itself. The practical difficulty of regulating the whole procedure by law is that even slight amendments to the procedural rules would have to be adopted by the legislature where any amendment could be subject of political debates and controversies. Therefore it would be more advisable to differentiate among the different levels of the regulation, and to authorize the Constitutional Court to decide on all those procedural rules that are not of an importance to be guaranteed by the legislature. The delegation agreed to address this issue in the final draft.

I. Comments on Specific Draft Articles

Article 4: The Constitutional Court shall protect the rights and freedoms not only of citizens, but also of any person (see Article 30). Legal persons should also benefit from the protection of rights and freedoms as appropriate. (note: after the adoption of this interim opinion, the Commission received a draft article which addresses this issue and which will *inter alia* be the subject of the final opinion).

Article 5: The constitutional court proceedings should also be based on the principle of ascertaining the truth as it has been stated in Article 23.2 of the draft.

Besides it seems difficult to speak about "parties" in the classical meaning of the term, especially about "the petitioner" and "the respondent" (see also Article 46). Not denying that equal rights of the participants in the case have to be ensured, the Court should have the possibility to freely assess the value of the contribution of a participant to the constitutional issue which is at stake.

Article 11: The reappointment of the judges might threaten their independence because they could be under pressure by those political forces that are involved in their reappointment. In accordance with the report of the Venice Commission on the Composition of Constitutional Courts (Science and Technique of Democracy, no. 20, p. 19) consideration could be given to the possibility of life or long term appointments for the judges instead of reappointments. At least appointments for life time should be accompanied by an age limit. Transitory provisions could, of course, provide for the possibility of reappointment of the current judges.

Article 14: The reference in Article 14 of the draft to Article 109.32 of the Constitution means that the President of the Azerbaijan Republic alone decides by executive order who of the judges shall be the Chairman and the Deputy Chairman of the Constitutional Court. This appears to be problematical for two reasons: First, since the President only nominates the judges but the Parliament (Milli Meijlis) appoints them (Article 95 (10) of the Constitution) it seems that the Constitution gives the Parliament more say about the status of the judges at the Constitutional Court. Second, if the positions of Chairman and the Deputy Chairman of the Constitutional Court could be determined by executive order the danger exists that the President might also assert the right to remove a judge from his position as Chairman or Deputy Chairman from this position whenever the Chairman does not perform his or her function to the pleasure of the President. It must at least be made clear that the President has no such power of removal. The previous Opinion by the Venice Commission by Messrs. Ozbudun, Russell and Lesage (CDL-INF (1996) 10) had pointed out that it would be preferable to leave the choice of the Chairman and the Deputy-Chairman to the judges themselves. Given that Article 109.32 of the Constitution is only a general default clause and does not oblige the legislator to attribute this task to the President, either the election of the Chairman and the Deputy-Chairman by the judges or their appointment by Milli Meijlis following nomination by the President seem to be better solutions. (Note: after the adoption of this interim opinion, the Commission received a draft article which addresses this issue and which will *inter alia* be the subject of the final opinion.)

The reference to Article 95.10.10 should be replced with a reference to Article 95.10.

Article 15: There is a cross-reference to article 9.2 of the present law. The draft does not contain such an article.

Article 16: It appears that the position of the Chairman of the Constitutional Court is too strong. In principle, the judges in one judicial body are equal and the Chairman is only the first among equals *(primus inter pares)*. This does not exclude certain prerogatives for the Chairman which are necessary for coordination of the work and representation. However, Article 16 of the draft speaks of another judge having "to execute instructions" of the Chairman. If the translation is correct, this does not appear to be an appropriate terminology. It is suggested that some of the functions of the Chairman which are provided in Articles 17 and 33 could be carried out by a small committee of perhaps three senior judges in order to reconcile the principles of effective administration of the court and the equality of judges. The delegation agreed to address this issue in the final draft.

Article 20: Following explanations by the delegation, it seems that Article 128.IV and V of the Constitution deal with the suspension of the powers of judges including judges of the Constitutional Court even though the English text of the Constitution speaks about ways to "stop" the authority of a judge and his "dismissal" when a judge has committed a crime. If this understanding is correct, the decision about such a suspension is to be taken by the Milli Majlis with a qualified majority of 83 votes based upon a proposal of the President and an opinion by the Supreme Court. For the sake of clarity the present draft should make reference to this Article of the Constitution and indicate that this procedure also applies to the judges of the Constitutional Court.

The previous Opinion of the Venice Commission CDL-INF (1996) 10 by Messrs. Özbudun, Russell and Lesage has also made the point that an arrest of a judge "should only occur in cases of serious *in flagrate delicto*". Moreover, the Opinion says, "in case of the arrest of a judge of the Constitutional Court, it is necessary to promptly inform not only the Prosecutor-General of the Republic of Azerbaijan, but also the President of the Constitutional court and, if necessary, the President of the Supreme Court". This statement is still valid today.

Article 20 of the draft on the other hand deals with the final termination of the powers of the judge of the Court. Therefore, the word "suspend" in the English version of the draft should be replaced with "terminate".

This Article attributes the competence to terminate the powers of a judge to the President of the Republic according to Article 109.32. It seems problematic to have the mere suspension of the powers of a judge being decided by Parliament with a qualified majority upon a proposal by the President (Article 128.IV and V of the Constitution) whereas the final termination of her or his powers depends on the President without the involvement of the Milli Mejlis.

Article 22: The rules on publicity go very far. Hearings should only be held in cases declared admissible and when necessary. Obliging the Court to hold oral proceedings in every case would most probably result in an overburdening of the Court especially when there is the possibility of a high number of individual complaints. Publicity can also be achieved by publishing decisions in the Court's digest, the official gazette and the media.

Perhaps the legislator should also think of the need to protect the Court from the public pressure which is connected with live TV coverage. On to this point see also the previous Opinion of the Venice Commision by Messrs. Özbudun, Russell and Lesage (CDL-INF (1996) 10, sub. 6).

Article 26: This regulation goes probably too far. See also If there is a possibility to get acquainted with the materials they should not be announced.

Article 28: The general formal requirements concerning petitions and complaints are too detailed and will probably be a source of technical mistakes. What is meant by "the other data of the complainant" (item 28.2)? It does not appear appropriate to ask the petitioner to provide the Court with the applicable legal provisions and their sources and details. The court knows the law (*iura novit curia*). The prohibition to demand an interpretation of several provisions of the constitution at once is unclear: Does it mean that those questions have to be put separately, or does it mean that the same complainant may only ask one question at a time?

Article 29: Only persons capable to contribute to the settling of the constitutional issue should have the right to be heard at the Constitutional Court which ought not to be burdened with issues of facts.

It should not be necessary to enclose officially published documents (like the text of laws) to the petition. References should be sufficient.

Article 32: The previous version of the draft contained a possibility to appeal to the Court against the non-admission of a complaint by the Secretariat. Even though the revised draft reduced the role of the Secretariat and obliges it to instruct the complainant, this provision should be included again because it may be difficult to distinguish between issues of pure form and substance. The delegation agreed to redraft this Article in the final version.

Article 37: The Court should have the possibility to continue the proceedings even after the withdrawal of an appeal if it is of the opinion that the case raises an issue of general interest. The delegation agreed to redraft this Article in the final version.

Article 39: This Article establishes two chambers within the Constitutional Court: one composed of four, the other composed of five judges. According to Articles 40 and 41 the division of competences between the Plenary and the chambers depends on the normative act complained about. Consequently, individual complaints would also be dealt with either by the Plenary or a chamber, according to the subject of review. This could result in a danger of overburdening the Plenary with individual complaints against the normative acts stipulated in Article 40 of the draft. If such a division of the workload is to be maintained the issue of special screening procedures for manifestly unfounded complaints should be considered (see also point 2.1 above).

On the other hand, explicit provisions for a distribution of tasks between the two chambers are missing. This might be covered by the powers of the Chairman of the Court to "distribute tasks among Judges of the Court" (Article 17). The Commission suggests, however, an explicit provision on this issue which relates to objective criteria. In addition, a system of regular rotation of the composition of the chambers might help avoiding the development of different attitudes of the chambers in their decisions. The delegation agreed to address this issue in the final draft.

Article 62: For the sake of proceedings within reasonable time, copies of submitted documents should rather be sent to the other participants of a case (parties in ordinary proceedings and interested subjects in special proceedings according to Articles 45-47) to enable them to reply in writing.

Chapter VIII: It is unusual that the Court should have the duty to consider a case within certain specified time-limits (Articles 70, 72, 74, 76, 78). Experience in other countries shows that the

workload cannot always be addressed chronologically and in a timely fashion. The Court may have so many cases to deal with at the same time that it is impossible to keep within the time limits. Perhaps it would be advisable to include a clause such as "shall, if possible, within 15 days consider ...". It is, however, possible to demand immediate action upon certain particularly important and urgent petitions, such as the verification of information concerning the complete inability of the President of the Azerbaijan Republic (Article 81).

Article 84: The Constitution (Article 86) enables (but does not compel) the Constitutional Court to consider all aspects of the disputes in election matters. According to the explanations provided by the delegation, the electoral legislation does not require the Constitutional Court to deal with matters regarding actual circumstances of holding elections and calculations of votes but leaves this task to the electoral commissions and to the ordinary courts. The Constitutional Court takes its decision on the basis of electoral reports without entering into questions of facts. If Azerbaijan opts to maintain such a division of jurisdiction between the Constitutional Court and the ordinary courts in order not to overload the Constitutional Court, this should be spelled out very clearly both in the present draft law and the electoral legislation. The present situation is unsatisfactory and leads to negative conflicts of jurisdiction (it could even lead to positive conflicts of jurisdiction). As a consequence, the Constitutional Court should be obliged to take its (final) decision on the formal aspects of the elections only after all factual disputes have been settled by the electoral commissions and ordinary courts. (Note: after the adoption of this interim opinion, the Commission received a draft article which addresses this issue and which will *inter alia* be the subject of the final opinion.)

Articles 88 and 96: The two articles repeat unnecessarily the same provision on the inadmissibility of the official interpretation of the resolutions of the Constitutional Court.

Article 89: Perhaps the rules of procedure should regulate the order of voting (age or seniority).

Article 92 : Reaching the judgment may take some time. It would not be appropriate that the participants in the case and the audience should sit in the Court hall to wait for the judgment to be announced. The Court, when leaving to reach a judgment, could inform about the time when the judgment is to be announced. This could be provided for in the rules of procedure of the Constitutional Court.

Article 93: It is an elementary rule that criminal provisions must be laid down and specified in a law (*nullum crimen sine lege*). While it is possible to authorize the executive to specify certain generally formulated criminal provisions, it is not possible to give such an authorization without any substantive guidelines, as it is the case in the present draft. Both resolutions and rulings could be covered by a detailed specific provision.

Article 94: (1) should read: "shall enter into force after their publication from the date specified in the resolutions themselves“.

Article 96: This present formulation can give rise to misunderstandings. It is suggested to read: "No person or body is competent to provide a binding interpretation of the resolutions of the Constitutional Court".