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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
(VENICE COMMISSION)

**REPUBLIC OF AZERBAIJAN**

**DRAFT CONSTITUTION LAW**  
**ON REGULATION OF THE EXERCISE**  
**OF HUMAN RIGHTS AND FREEDOMS**

**Comments by:**

**Mr Franz MATSCHER**  
**(Member, Austria)**

**Preliminary comments on the Draft Constitutional Law  
of the Republic of Azerbaijan on Regulation of the Exercise of Human  
Rights and Freedoms in the Republic of Azerbaijan**  
(F. Matscher)

Introductory remarks

Even without having any knowledge of the original language of the relevant text I have the impression that the translation headed " Draft Constitutional Law ..." is better than the other one and more in line with the terminology of the ECHR.

The same remark is true with regard to the French version of the text of the Constitution vis-à-vis the English version (in so far I have compared the two texts).

I do not know what will be the status and the rank of the ECHR within the frame of the legal order of the Republic. Art 7 para II and Art 148 para II of the Constitution give no precision.

Then, what will be precise aim of the Draft ? It seems to be a completion of the rules concerning the protection of Human Rights contained in the Constitution in order to put them into conformity with the requirements of the ECHR.

Special remarks

To a large extent the rights set forth in the draft follow the relative provisions of the ECHR. The same is true with regard to the relevant provisions of the Constitution, in particular of Second Section, Chapter III.

Nevertheless, there are some differences.

Art 1 takes over the idea of Art 17 ECHR

Art 2 is partly more restrictive than Art 15 para 2 ECHR (reference to Art 28 para III of the Constitution), partly more large (no reference to the right guaranteed by Art 4 ECHR, save the rather vague reference to Art 28 para I including the right guaranteed by Art 4 para I ECHR

Art 3

The precisions set forth are to be welcomed, even if their basic idea is already contained in the rules of the ECHR as interpreted by the Court

Art 4 corresponds to Art 5 para 1 ECHR + Art 1 of Prot n.4

In 3.1. it should be included (like as in Art 5 para 1 ECHR): "and in accordance with a procedure prescribed by law", even if that is stated in Art 28 para II of the Constitution.

Provisions corresponding to Art 5 para 3-5 ECHR are missing.

Art 67 of the Constitution corresponds to Art 5 para 2 ECHR.

Art 5 is a comprehensive rule of the allowed restrictions of fundamental rights, corresponding to the specific rules of the second para of Art 8-11 ECHR, using a more appropriate language than the last.

Art 6 together with Art 4 and Art 30 of the Draft of the Law on the Constitutional Court and Art 60 para II of the Constitution goes farther than Art 13 ECHR in so far as it provides for a constitutional appeal and that even against alleged violations of fundamental rights by legislative acts (contrary to the restrictive interpretation by the Strasbourg Court since James and others/GB, A/98-B § 85).

General remarks

The Constitution provides for a series of economic and social rights not guaranteed by the ECHR, but even in conjunction with the Draft, not all the fundamental rights guaranteed by the ECHR and its Prot are covered by the two mentioned instruments; in particular there is no provision corresponding to the important rules of Art 6 para 1 and para 3 ECHR (Art 60 para I of the Constitution is too vague), save Art 61 para III of the Constitution which takes up the idea of Art 6 para 3/c ECHR.

Art 63 of the Constitution corresponds to Art 6 para 2 ECHR.

Furthermore, it has to be mentioned that the death penalty - even if its application is limited (Art 27 para III of the Constitution) - has not been abolished (see Prot n.6).

A deeper analysis of the Draft in conjunction with the relevant provisions of the Constitution would be necessary in order to see to which extent the fundamental rights included into these two instruments correspond to them guaranteed by the ECHR and its Prot n.1, 4, 6 and 7.