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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPUBLIC OF AZERBAÏJAN

**DRAFT CONSTITUTIONAL LAW
ON SAFEGUARDS FOR THE VOTE OF CONFIDENCE
TO THE CABINET OF MINISTERS
BY THE MILLI MELJIS (PARLIAMENT)**

Comments by

**Mr Aivars ENDZINS
(member, Latvia)**

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1. Article 147 of the Republic of Azerbaijan Constitution determines that the Constitution has the highest legal force and shall be the basis of the legal system of Azerbaijan.
2. In its turn Article 148 "Acts Constituting the Legislative System of the Azerbaijan Republic" establishes that the legislative system consists of the following normative-legal acts:
 - the Constitution;
 - acts accepted by the referendum;
 - laws;
 - orders etc.

From the two above Articles it is not quite clear what is the place of the Constitutional laws in the system of Azerbaijan normative acts. To my mind Constitutional Laws cannot be on the same level as the Constitution, because the Constitution of Azerbaijan was adopted by a referendum and it may also be amended only by a referendum. Articles 93 and 94 of the Constitution do not envisage it precisely. Thus Article 93 "Acts of Milli Mejlis of the Azerbaijan Republic" just envisages that the Parliament adopts Constitutional Laws regarding the issues of its competence in an order specified in the Constitution. In its turn from the second part of Article 94 it follows that by the majority vote (83 votes out of 125) the laws on elections of the President of the Azerbaijan Republic, elections to Milli Mejlis of the Azerbaijan Republic as well as the status of deputies of Milli Mejlis of the Republic and the Law on Referendum may be passed. The third part of the above Article abstractly establishes that "the first part of the present Article might be supplemented with the Constitutional Law".

3. The Draft Law, as can be seen from the summary on it, is directed to creating a mechanism of realisation by Milli Mejlis of the possibility of taking the decision regarding a vote of confidence on the Cabinet of Ministers as envisaged by Article 95 (Item 14) of the Constitution as well as guaranteeing that the Parliament shall receive real information on the performance of the Cabinet of Ministers.
4. Item 5 of Article 95 of the Constitution establishes the right of Milli Mejlis to control the execution of the State budget. The Constitution of the Republic of Azerbaijan envisages no other kind of control. The more so, the fourth part of Article 93 determines that "Specific orders to the bodies of executive powers and law courts cannot be envisaged in laws and decrees of Milli Mejlis of the Azerbaijan Republic". Evidently this norm corresponds with Article 114 of the Constitution, determining that "the Cabinet of Ministers of the Azerbaijan Republic is the highest body of executive power of the President of the Azerbaijan Republic and is subordinate to the President of the Azerbaijan Republic and reports to him".
5. From the analyses of the Constitution one cannot precisely draw a conclusion on consequences of the Milli Mejlis vote of confidence on the Cabinet of Ministers. The vote could only serve as a recommendation to the State President, as in compliance with Article 109 (Item 6) just the President takes the decision about

resignation of the Cabinet of Ministers. The President is also the person who appoints and dismisses members of the Cabinet of Ministers.

6. From the summary of the Draft Constitutional Law (unfortunately I did not have the opportunity of getting acquainted with the Law on Status of the Deputy of Milli Mejlis) it follows that up to now only some of the deputies have the right to file a request to the Cabinet of Ministers. At the same time the Draft Law does not determine what is the exact number of the majority vote, which is needed to take a decision on the issues envisaged in the Draft Law.

Conclusion

To my mind the Draft Constitutional Law to be commented upon does not comply with the basic viewpoints of the Constitution of the Republic of Azerbaijan on division of competence between Milli Mejlis and the executive power. It would be only correct to start solving the problem with the help of Constitutional Amendments.