COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 10 October 2002

Restricted
CDL (2002) 136
Engl. only

Opinion no. 214/2002_aze

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS ON THE DRAFT ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN

by

Mr Georg NOLTE (Substitute member, Germany)

I. General Comments

1. This opinion is based on
- the Constitution of Azerbaijan
- the Azerbaijan Draft Election Code (Unofficial translation by IFES 2002)
- the Comments adopted by the Venice Commission on the Law on Parliamentary Elections of the Republic of Azerbaijan (CDL-INF (2000) 17 of 15 November 2000) (herinafter: previous comment of the Venice Commission)
- the Guidelines on Elections, adopted by the Venice Commission on 6 July 2002 (CDL-AD (2002) 13) (hereinafter: Guidelines on Elections)

2. The present Draft Election Code provides a useful basis. A number of suggestions which were made in the previous comment of the Venice Commission have been integrated. The draft does, however, still contain a number of problematical provisions and rules (see below II.).

3. This opinion generally agrees with the comments by Mr. Polizzi, except where there are express statements to the contrary. In a number of cases the comments by Mr. Polizzi are expressly referred to, mostly in order to stress the importance of the point made by him.

4. The Draft Code is very detailed and complicated. There is a high risk for inexperienced candidates or political parties to violate certain technical norms of the Code. This creates the danger that persons or groups are either discouraged from presenting their candidacy or that they are submitted to unexpected and harsh sanctions. Since electoral law concerns a very important human right (the right to be elected) it is particularly important that the sanctions for violations of norms must be proportionate. Thus, for example, it would be disproportionate if the registration of a candidate or a political party would be withdrawn if the candidate or the party has merely „insulted“ another candidate or party (but see Article 89.5 of the Draft Election Code). The proper sanction for such an insult would be a (civil or possibly even a criminal) court proceeding, not a cancellation of the registration. In a democratic society, it is the responsibility of the voters to punish candidates who use unfair means during the election campaign and the responsibility of the attacked candidate to respond.

5. As Mr. Polizzi has pointed out in his comment, there are a number of repetitions. It is suggested that the authors of the draft make an effort to delete superfluous repetitions. Sometimes, however, repetitions are useful since they confirm whether a particular norm is applicable in a specific context or they remind the inexperienced reader (including non-lawyers who work with the text) that certain general norms are applicable in a specific context. It is for the Azerbaijan authorities to decide how to draft the law so that it is as clear as possible for those who must implement it.

II. Comments relating to specific articles

Preamble: According to the Guidelines on Elections by the Venice Commission the five principles underlying Europe's electoral heritage are *universal, equal, free, secret and direct suffrage*. It is therefore advised to also include the principles of free and secret elections in the preamble. („general, equal, free, secret and direct suffrage“). The same should be included in **Article 2.1.**

Article 1: „Pre-election campaign“: It is suggested to delete the words „or not to participate in the election“. This possibility is linked to the vote "against all (single lists of) candidates". The previous comment of the Venice Commission has already pointed to the fact that such an option „is completely out of the ordinary in established democracies“ and that „it may lead to challenges of the legitimacy of the elections and may thereby undermine the democratically elected regime“. See also Comment to **Articles 5.1. and 10.2.**

Article 1: „Ensuring suffage“: It is advised to delete the definition since it is unclear and plays no further role in the Draft Code.

Article 3: It is advised to include the words „or any other status“ in between „“public unions“ and „Azerbaijan Republic's citizens“. This would take account of Article 14 of the European Convention of Human Rights.

Articles 5.1. and 10.2.: It is advised to delete the words „or against all candidates (list of candidates“. The previous comment of the Venice Commission has already pointed to the fact that such an option „is completely out of the ordinary in established democracies“ and that „it may lead to challenges of the legitimacy of the elections and may thereby undermine the democratically elected regime“. This comment also applies to **Articles 165.3., 166.3., and 203.2.**

Article 9: The drafting technique seems appropriate since the Code provides for various exceptions for the exercise of the active suffrage and it does not seem possible to state (or make reference to) all exceptions in this general rule (contra: comment by Mr. Polizzi). But see comment to **Article 44.2**.

Article 11: It is advised to include the words „Notwithstanding the rights to freedom of expression and of association“ “ before „State secures free conducting ..“ The rights to freedom of expression and of association according to Articles 10 and 11 of the European Convention of Human Rights do not only belong to citizens but to all persons within the jurisdiction of a member state. This means that non-citizens (stateless persons and foreigners), although they do not have the right to vote, do have the right to freely express their opinion and to associate during election campaigns.

Article 12: The words „having universal suffrage“ should be deleted since they add nothing but could give rise to misunderstandings. It should be made clear that the active suffrage extends to the right to vote in all elections.

Article 13: There should indeed be a general principle on passive suffrage (see comment by Mr. Polizzi), but there must not be a double reference to the Constitution and the Code.

Article 14: The previous comments by the Venice Commission and now the comment by Mr. Polizzi on the difference between ineligibility and incompatiblity are pertinent.

Article 14.3.1.: The previous comment of the Venice Commission is still pertinent: The provision of Article 85 of the Constitution compelling persons with dual citizenship to give up their foreign citizenship if they are elected is linked, according to the authorities of Azerbaijan, to the transitional period following the dissolution of the USSR. However, at least in the long run, such a provision could conflict with international standards, and in

particular with Article 17 of the European Convention on Nationality, which provides that "nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.

Article 14.3.6.: For the sake of the principle of proportionality, there should be a time limit for possible candidates whose sentence was served more than 15 years ago.

Article 15.2. and 15.3: The provision violates Articles 10 and 11 of the European Convention of Human Rights as far as it applies to foreigners and stateless persons. The rights to freedom of expression and of association according to Articles 10 and 11 of the European Convention of Human Rights do not only belong to citizens but to all persons within the jurisdiction of a member state. This means that non-citizens (stateless persons and foreigners), although they do not have the right to vote, do have the right to freely express their opinion and to associate during election campaigns. This has already been remarked by the previous comment of the Venice Commission: „This rule should contain a clause that the prohibitions apply notwithstanding the freedom of expression and freedom of information. Such a clause would, in particular, be important for those foreigners who reside in Azerbaijan and who wish to participate in political debates and election campaigns“ (No. 8).

Article 16.3.: The provision properly and expressly rules out intervention by state organs (contra comment by Mr. Polizzi). However, it is advised to add the words „according to legislation“ at the end of the provision in order to make it clear that the imprecise wording of Article 16.3. cannot for itself be the basis for the sanctioning of an individual.

Article 16.6.13.: This provision violates the principle of the rule of law. Since all decisions of election commissions are subject to court review, they must be given a reason since otherwise meaningful court review cannot be undertaken.

Article 21.1.: There seems to be no convincing reason why a judge should not be a member of an election commission. In fact, No. II.3.a.dd.i. of the Guidelines on Elections by the Venice Commission demands that a central election commission should include „at least one member of the judiciary“.

Article 21.3.: According to No. II.3.a.ff of the Guidelines on Elections by the Venice Commission „the bodies appointing members of electoral commissions must not be free to dismiss them at will“. This rule should be spelt out explicitly.

Articles 24.1. and 24.2.: This solution of the problem of impartiality of the members of election commissions is not convincing. It is hard to see how a member of an election commission can be at the same time not be a member of a political party and to represent a political party. In real life such a rule will lead to the result that certain persons who are connected with a political party will renounce their membership in order to be eligible for membership in an election commission. It is therefore recommended that election commissions be in part composed with members of different (and opposing) political parties (two-thirds) and in part of neutral members (one-third) whose appointment depends on the agreement of the main opposing political parties. The role of such neutral members could, in part, be played by judges. The pertinent comments by Mr. Polizzi are convincing.

Article 24.3.: It is unclear which state organ appoints which members of the election commissions. This point must be clarified.

Articles 26.1., 26.2., 26.3. and 26.4.: In order to avoid misunderstandings it is suggested that these four provisions begin with the words „Notwithstanding its tasks under Article 25, the Central Election Commission ...". Otherwise it could be argued that Article 26 limits the powers of the CEC under Article 25.

Article 27.2.: This may be a problem of translation: The word order in the English translation permits the interpretation that the consent of the prosecutor is only needed for the imposition of criminal liability, whereas this should clearly be true for administrative penalties as well. It is therefore suggested to put the words „or administrative penalties" before „without consent of a general prosecutor".

Article 28.1.: The hierarchy within the CEC is not very clearly regulated. It should be made clear that the Chairman is not the chief with powers of decisionmaking, but only the „first among equals" (primus inter pares). Thus, the CEC as a body can override decisions of its chairman. It would be preferable if the CEC would be expressly given the power to establish some rules of procedure for its work. This comment also applies to **Article 90.5.**

Article 28.5.: It is a general principle of the rule of law that decisions of a state body, if they are addressed to persons outside the state adminstration, enter into force upon their publication (if they have an addressee who is outside the state administration), and not upon their adoption.

Article 29.2.: See comment by Mr. Polizzi.

Article 29.5.: The Guidelines on Elections by the Venice Commission provide in No. I. 2. b) vii.: „When constituency boundaries are redefined – which they must be in a single-member system – it must be done: impartially; .. taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties". The Election Code should therefore provide for a Committee which plays this role in the process of redrawing of the boundaries of election districts.

Article 31: The comments relating to Article 24.1 and 24.2. apply here as well.

Article 34.4.: The conditions under which extraordinary voting stations can be created are rather wide. They should be restricted to such situations in which a substantial number of voters is unable to go to the regular voting station.

Article 34.5.: According to No. I.3. b.xi. of the Guidelines on Elections of the Venice Commission „Military personnel should vote at their place of residence whenever possible. Otherwise it is advisable that they be registered to vote at the polling station nearest to their duty station". This rule should be spelled out explicitly.

Article 35: The comments relating to Article 24.1 and 24.2. apply here as well.

Article 35.6.: It goes too far to expect of captains of ships to be able to function as an election commission. The danger of incompetence, fraud and abuse is much too high. It is

therefore advised to exclude the possibility of voting on ships and rather provide for an alternative (land-based) mode of voting for passengers and crew. The same applies, for example, to **Article 100.8.** and **Article 102.3.**

Article 35.10: It is not clear why Article 35.2. should not be applied to Precinct Election Commissions accrding to Article 35.10.

Articles 39-42: According to No. II.3.b.aa. of the Guidelines on Elections of the Venice Commission „both national and international observers should be given the widest possible opportunity to participate in an election observation exercise." This general principle should be fully implemented. In particular, according to the same Guidelines „observation must not be confined to election day itself, but must include the registration period of candidates and, if necessary, of electors. It must make it possible to determine whether irregularities occurred before, during, and after the elections".

Article 39: This article should be deleted because it is impracticable and can lead to abuse on the part of the authorities. To give an example: Typically, an election is observed by members of different political parties. When an observer who is a member of a political party observes that a vote for his party was not counted he will protest. If, however, he observes that a vote for an opposing party is not counted he may not protest. Has he violated Article 39? Surely not, since it is up to the observers of the other party to observe whether their party was treated appropriately. Therefore, observation may be partisan, as long as observation by opponents is ensured. In addition, it is too difficult to determine what are „all circumstances and facts regarding the activities to be observed". Election observers are not judges but they contribute to the truth by adding their particular point of view. The state should subject every election observer to risk prosecution or other sanctions by requiring that election observers act like judges.

Article 40.3.: This provision is not specific to observers rights and duties and should therefore be put at its proper place somewhere else in the Code.

Article 42.9.: The international observers must also have the right to meet with voters.

Article 43: The provision should expressly state that voters lists are permanent (see No. I. 1. b. i of the Guidelines on Elections of the Venice Commission).

Article 43.5.: Voters lists for the precincts where voters are temporarily located must not only be approved on the basis on information provided by heads of the offices where voters are located. A sick person who is unable to move must nevertheless have the possibility to register as a voter independently of the director of the hospital in which he lies. In addition, relatives must be able to provide information in addition to the heads of the institutions.

Article 44.2.: The definition of residence can give rise to misunderstandings. According to No. I. 1. a. aa. ii. of the Guidelines on Elections by the Venice Commission „residence means habitual residence". It would be preferable to take a period of three to six months before the start of the election campaign to determine the place of residence (habitual residence).

Article 45.1.: The voters list should be available to the public earlier than 35 days before the elections (see No. I. 2. b. iii of the Guidelines on Elections of the Venice Commission) in

order to have sufficient time for possible procedures concerning corrections (additions and deletions).

Article 45.2.: The rule according to which voters lists can be corrected on election day is in contradiction with Article 43.1. In this respect the Guidelines on Elections by the Venice Commission provide in No. I. 2. b) iv.: „There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of the voter who was not registered; the registration should not take place at the polling station on election day".

Article 45.3.: There should not be a choice of filing a complaint either before the PEC or a court. The Guidelines on Elections by the Venice Commission provide in No. II. 3. c. cc.: „The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body."

Article 48.1.: Since the principles are not binding but voluntary (see Article 48.2.) it is suggested to exchange the word „must" for „should".

Article 48.1.4.: It should not be a duty for a party to „create" all necessary conditions for other political parties, but rather „not to obstruct" the exercise of the rights of other parties.

Article 53.3.: It is, in principle, legitimate to require transparency with respect to criminal records. There is, on the other hand a human right not to be forced to publish one's criminal record if the conviction has taken place a long time ago. It is therefore advised to insert a time limitation of 15 years for the requirement to insert a criminal conviction into an application.

A second point with respect to this article concerns criminal actions which have been committed abroad: Here Article 53.3. does not speak of sentence, but of criminal action. It should be made clear that candidates must only submit actual court convictions in a foreign country. Otherwise the human right of presumption of innocence would be violated. The same issue arises in several other provisions of the Code, such as **Articles 54.8., 56.3., 57.5., 164.4., 201.3. and 231.1.**

Article 57.12: It is unclear why the number of voters signatures ... should not exceed 15% of the required number defined in the Code.

Article 59: See the pertinent comment by Mr. Polizzi and his reference to the previous comment of the Venice Commission.

Article 59.14: The previous comment of the Venice Commission contained the following remark: „The invalidity of 15 % of signatures can result from the action of political opponents who introduce invalid signatures in order to eliminate a candidate or a list. That is why all signatures should be checked or a minimum number of valid signatures be determined in order to know how many valid signatures have been collected. Article 43.14 should therefore be deleted and replaced by a rule which proceeds from the basis of valid signatures". This remark applies even more for the present draft article. This is confirmed by No. I.1.c. iv. of the Guidelines on Elections of the Venice Commission according to which „The checking process must in prinpicle cover all signatures; however, once it has been

established beyond doubt, that the requisite number of signatures has been collected, the remaining signatures need not be checked“.

Article 59.2.: According to No. I.1.c. v. of the Guidelines on Elections of the Venice Commission „the validation of signatures must be completed by the start of the election campaign“. If Article 59.2. is read together with **Articles 60.1.** and **Article 76.3.** this requirement does not seems to be satisfied at least for the election campaign by individual candidates.

Article 60.2.: The possible reasons for the refusal of a list of candidates are far to wide. It must not be forgotten that the right to be elected is one of the most important human rights, as protected by the European Convention of Human Rights. Thus, if formalities are not complied with, there must be a possibility for candidates or political parties to correct inaccuracies. In addition, not any „violation of the rules of collecting signatures“ should lead to a refusal of registration. It must be borne in mind that the principle of proportionality applies. Therefore if one helper of a party has (on his own initiative) violated a norm concerning the collection of signatures this may, depending on the circumstances, lead to non-recognition of certain signature lists, but not necessarily a refusal of registration. It is advised to include a provision that refusal of registration is subject to the principle of proportionality.

The comment of Mr. Polizzi correctly recalls the previous comment of the Venice Commission which continues to apply here: „the list of cases of refusal must be considered as exhaustive. The rejection of a candidate or a list of candidates should take place only in rare cases, in conformity with the principle of proportionality. In particular, in the case mentioned in Article 44.1, only serious violations should lead to such a sanction (that is, in the cases in which there is clear evidence to indicate that an insufficient number of signatures would probably have been reached if these rules had been respected). In the case of Article 44.4.2 and 44.4.4, a time limit should be given in order to correct the erroneous data. It is necessary to bear in mind that it is much more serious, from the point of view of democracy, to prevent someone from standing as a candidate, than to allow someone who has violated some technical provisions of the law to stand as a candidate. In the latter case, the last word will belong to the voters. The second part of Article 44.4.3 should be dropped (cf. comments on Article 43.14-15). Concerning Article 44.4.5, only serious violations should lead to such a sanction; in the other cases, *restitutio in integrum* should be ordered, and non-registration could be a sanction of the violation of such a rule. In Article 44.4.6 again, minor violations should not be taken into account.“

Article 60.2.4.: Comment on Article 59.14 applies to this Article too.

Article 60.2.7.: „Other reasons established by this Code“ is too imprecise. It should read: „Other reasons for refusal of registration as established by this Code“.

Article 60.5.: There must be a mistake in the translation. Article 53 is mentioned twice.

Article 64: There is no reason why citizens of Azerbaijan which have dual citizenship should not be able to establish a campaign group on referendum. The provision of Article 85 of the Azerbaijan Constitution compelling persons with dual citizenship to give up their foreign citizenship if they are elected is not applicable here. In any case, the previous comment of the Venice Commission applies here even more: „such a provision could conflict with

international standards, and in particular with Article 17 of the European Convention on Nationality, which provides that "nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party".

Article 69.2.: The comment with respect of Article 60.2. applies here as well.

Article 74.3.: While the first reason for withdrawing candidacy is acceptable. The second („illness that seriously affects his/her health“) is much too vague and does not mention the body which determines whether this is the case. This body would also have to be a court. This comment also affects **Article 108.4**. and **Article 146.9**.

In addition, there is no convincing reason why a list of candidates should be withdrawn if the first three candidates on the list are considered dead (or 25% of them). The public will know of the deaths of candidates and will be able to form their opinion whether the list is still a good choice for them.

Article 75.1.: It is advised to put the words „Notwithstanding the right of freedom of expression“ before „the following have the right to conduct ...“. Otherwise the norm could be read as a limitation of this right which is surely not the intention of the drafters.

Article 76.1.: The word „or“ should be replaced by the word „and“. This would better express the intention of the drafters and be a precise rule.

Article 77.1.: The last two requirements are not acceptable. The „method of collecting information“ is not something which can be described shortly and precisely and the „statistic figures of future results“ is a term which only seems clear but which is not a closer inspection (does it mean that the mass media concerned must publish all statistics it has gathered?)

Articles 80 and 81: It is not clear whether the term „the TV-radio companies and periodicals“ means all such mass media (state-owned and private) or just the state-owned media.

Article 82.2.: There is no conceivable reason why „referendum campaign groups members of which are more than 25 thousand cannot use this airtime“.

Articles 88 and 89 in general: As it is stated in the comment by Mr. Polizzi the following previous comments of the Venice Commission still apply to the present draft:

> - Freedom of expression and in particular freedom of the press (Article 10 of the European Convention on Human Rights (ECHR), Article 47 of the Constitution of Azerbaijan) are of the utmost importance during an election campaign. Chapter VIII must be interpreted in conformity with these freedoms, and restrictions to these freedoms must be prescribed by law, be motivated by the public interest and respect the principle of proportionality.
>
> - In particular, the provisions of Articles 56 and 57 **(now draft Articles 88 and 89)** must be interpreted in conformity with freedom of expression. Following provisions have to be mentioned:

- Article 56.1 **(now Article 88.1.)** : The expression "rules defined by the legislation" is very general and should preferably be replaced by "the law on the mass media and the criminal code". For the time being, it is understood that the expression used refers only to these laws, which are not the object of the present opinion.

- Article 56.3-5 **(now Article 88.3.-5.):** It is hardly conceivable that such provisions, which restrict freedom of expression, can ever be "necessary in a democratic society" in order to preserve one of the public interests mentioned in Article 10.2 ECHR. It is legitimate, however, that the name of a person or organisation that is responsible for the publication be indicated in the material. See also comments on Article 56.9.

- Article 56.**9 (now Article 88.9.):** This provision relates to “false” material. A reference to criminal law and tort law would be suitable. According to international standards, prior prohibition is in conformity with freedom of expression only in exceptional cases. In any case, a prior prohibition must be decided by a court. Electoral propaganda by its very essence lacks objectivity. That is why only the courts should be able to prohibit such material, and only when a criminal offence or a tort is about to be committed. In general, the limits placed on political speech should be less strict than for ordinary speech.

- Article 57.1 **(now Article 89.1.):** Here again, prohibition should not go further than what is forbidden by ordinary criminal legislation and tort law. Incitement to violate the territorial integrity of the country should ... be understood as referring to violent action or to similarly aggressive methods which pose comparably grave dangers and contradict the law. In general, the specific nature of political speech during an election campaign has to be taken into account and the authorities have to be rather tolerant, in particular the general prosecutor when applying Article 46.5.

- Article 57.**3 (now Article 89.3.):** Like all provisions on limitations to fundamental freedoms, this provision has to be interpreted restrictively; that means that the only advertisements subject to this provision are advertisements that let a link with a candidate or a party appear clearly.

- Article 57.4 **(now Article 89.4.):** The provision should be reformulated, or, at least, interpreted so that it is made clear, first, that the primary obligation of TV companies is to create conditions for candidates to defend their dignity and honor and second, that only when clear violations of penal law or tort law occur and no conditions to defend the honor and dignity exist do sanctions apply. In any case, this provision must not be misused and must not go further than what is forbidden by ordinary penal legislation or tort law. If equal conditions are provided for the lists/the candidates according to law, they will have the possibility of defending their prestige, dignity and honour and of disproving misinformation. Electoral propaganda will very often impugn at least the prestige of the opponents. Prior prohibition is in general contrary to international standards (cf. comments on Article 56.9).

- Article 57.5 **(now Article 89.5.):** The cancellation of the registration of a candidate or a political party is a very severe sanction and sufficient grounds to provide for it are not given. Criminal sanctions for violation of the law should be sufficient. The courts should take these principles into account when applying the law.

Article 88.4.: This provision would seem to violate Article 10 of the European Convention of Human Rights. It is a basic element of the freedom of expression that there is no (prior) censorship, no prior restraint, no duty to deliver publications to authorities prior to publication. Although the provision does not seem to condition publication upon submission the campaign material to the election commission, such a duty would seem to violate the principle of proportionality since such a restriction is not necessary in a democratic society. It is virtually certain that opposing parties will bring illegal materials to the attention of the authorities.

Article 89.1.: It is advised to include the words „Subject to the freedom of expression" before „It is prohibited to abuse the mass media during the conduct of the pre-election campaign". This is important since the terms „citizens honor and dignity" are imprecise and can equally be abused. It is unclear what is meant by „other campaign forms that are prohibited by law". These should either be spelled out expressly or this part of the sentence should be deleted.

Article 89.4.: The formulation „distribution and broadcast of information which impugns the prestige, dignity, and honor of the candidate" is problematical for two reasons: First, the provision must be limited to false information. The distribution of true information, even if it impugns the honor of a candidate, is in principle guaranteed by Article 10 of the European Convention of Human Rights. Second: the term „prestige" is a very broad and imprecise term and should be deleted. It is unknown as a possible limitation of the freedom of expression.

Article 89.5.: This rule certainly goes too far and violates the principle of proportionality. It is unknown in other European election laws. It would permit the cancelling of the registration of a candidate upon mere insults („of citizens honor and dignity") or the violation of „other rules". The rule would be acceptable, however, if it would be limited incitements to capture the government by force, or to change the constitution by force, or to incite racial and religious hatred. In any case, there must be a warning before action such as a cancelling of the registration can take place. The same applies for **Article 108.1.**

Article 89.7.: It should be made clear that only courts possess the power „to stop illegal pre-election campaigning".

Article 90.5.: See comment for Article 28.1.

Article 95.3.: To require three different financial reports seems to be excessive. This is true given the fact that banks are required under **Article 96.2.** to report regularly about the movements on the special accounts.

Article 97.3.: It does not seem to be fair to burden the employer of a member of an election commission with the payment of his or her salary insofar as the member does not continue to work for the employer during the relevant time. After all, according to Article 90.1 the financing of the conduct of the elections is to be done by the state budget.

Article 98.3.: The comment to Article 97.3. applies to this provision as well.

Article 100.3.: It should be made clear that the ballot paper is the same (uniform) in the whole constituency.

Article 102.7.: According to No. I.4.b. of the Guidelines on Elections of the Venice Commission „Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited“. For this reason, the third sentence of Article 102.7. raises serious problems. It is hard to imagine cases in which it should be impossible for a voter to mark his or her vote alone and in secrecy (except perhaps for blind people). Should there be a problem with analphabetism this could be solved by marking symbols on the ballot paper.

Article 102.13: It must be made clear that a voter may only correct his or her error before the ballot paper has been put into the voting box.

Article 103: This provision contains very broad possibilities to use mobile ballot boxes. According to No. I.3.b. vi. of the Guidelines on Elections by the Venice Commission „Mobile ballot boxes should only be allowed under strict conditions, avoiding all risks of fraud“. It is advised that the drafters reconsider all possibilities to restrict the use of mobile ballot boxes.

Article 107 in general: The previous comment of the Venice Commission should be taken into account: „At any rate, in order to make the reading of the law easier, it would be preferable to mention all the appeals available, judicial and non-judicial, in a special section of the electoral law“. In addition, No. II.3.c. of the Guidelines of the Venice Commission on elections should be fully taken into account. In particular, there should be short time-limits for lodging and deciding appeals (three to five days for each at first instance) and an explicit provision according to which „the applicant's right to a hearing involving both parties must be protected“.

Artice 107.1.: A basic rule of the rule of law requires that time limits for complaints can only begin to run from the time when the person concerned had an opportunity to take notice of the decision. Therefore, the following phrase should be added at the end of the provision: The time limit of 7 days begins to run with the publication of the decision or from the time when the persons concerned could take notice of it“.

Article 107.2.: It is to be welcomed that the draft does not anymore provide for a choice of complaining to an election commission or a court. The system, as it is laid down in Article 107.2., however, still has a certain weakness. Since there are three levels of election commissions (Precinct, Constituency, Central), a voter would have to complain to three different election commissions before he or she can go to a court. It would seem advisable (also in order to alleviate the workload of the CEC) to permit appeal to a court after the Precinct and the Constituency Election Commissions have had their say.

Article 107.4.: This rule does not make it clear whether the court can be addressed at any time or whether (and which) complaints must be addressed to an election commission first. It is very important to clarify this point. The Guidelines on Elections by the Venice Commission provide in No. II. 3. c.: cc. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.

Article 108.1.: See comment on **Article 89.5.** and **Article 60.2.**

Article 108.2.2.: This provision must take into account that the freedom of expression guarantees political advertisement before the actual election campaign begins. It is therefore advised to include the words „Notwithstanding the right to freedom of expression“ at the beginning of the provision.

Articles 108.2.5., Articles 108.2.6., Articles 108.2.7. and Articles 108.2.8.: 0.05% is much too low to satisfy the principle of proportionality. A lesser sanction than a refusal to register should be found (e.g. public condemnation, payment of a fine).

Article 108.2.9.: These grounds for refusal to register are far too broad. For example, they could be understood as making it impossible for the owner of a company to register as a candidate. Instead, it should be ensured that rich or influential people do not abuse their powers and possibilities. They should not be excluded, however, because they occupy influential positions in their professional life. This would be a violation of their human right to be elected.

Article 108.3.: It must be made clear that the principle of proportionality applies in all situations covered by this provision. The cancelling of a registration is a taking away of the right to be elected. This may only be done under compelling circumstances. Such circumstances are not present in the cases of **Article 108.3.3.**, and **Articles 108.3.9.-12.**

Article 108.3.2.: The translation of this provision seems to be incomplete. In any case, it must be ensured that soldiers have an opportunity to develop their own judgments and to take notice of the election campaign.

Article 108.5.: This provision is far too general and open to all sorts of possibilities of abuse and should therefore be deleted. The term „abuse“ is unclear. It does not satisfy the requirement of Article 10 of the European Convention of Human Rights.

Article 109.1.: Here again, the principle of proportionality must apply. Small or technical violations of certain rules do not justify a cancellation of elections.

Article 110.1.1.: It must read „other illegal methods“.

Article 116.2.: It must read „conduct of referendum“, not „conduct of elections“.

Articles 125 and 127: It is not clear what is the relation between the rule that successful referendum do not return funds received from election comissions (**Article 125**) and the rule that unused money must be transferred to the state budget (**Article 127**). The principle of equality requires that unused funds be returned to the state budget (if they originate from there) no matter whether the campaign group was successful or not.

Article 134.2.2.: It is not clear what situations are covered by this provision.. It should be formulated in a more precise way. This comment applies also to **Article 137.1.1.**

Article 147.2: According to No. I.1.c. ii. of the Guidelines on Elections by the Venice Commission „the law should not require the collection of signatures of more than 1% of the voters in the constitutency concerned. There are close to 8 Million inhabitants in Azerbaijan. Divided into 100 electoral constituencies this would mean that there are 80.000 inhabitants in

every constituency. Among those 80.000 inhabitants are perhaps 60.000 voters. 1% of those voters would be 600. Therefore, the required number of signatures should not exceed 600.

Article 158: The provision does not envisage the possibility that large donations be split into smaller pieces in order to circumvent a publication duty. Perhaps a provision should be included according to which this provision may not be circumvented by splitting a donation. This comment also applies to **Article 225.1.**

Article 171.3.: It is suggested to add the sentence: „The Constitutional Court may extend the deadline for another 10 days if the checking is so complex that it requires more time".

Article 194.5.: The candidate cannot be personally held responsible for violations by other persons which are not his fault. He may be held responsible, however, for violating his duties of supervision.

Articles 213 and 215.1: The concept of residence should be clarified. Living permanently in a municipality and living mostly in a municipality does not seem to be a satisfactory distinction. It should be decisive where the person has the center of his life („habitual residence"), irrespective whether he or she is not living uninterruptedly in a municipality. In addition, it is important to determine for how long a person must have lived in a municipality in order to consider him/her to be living there permanently. It is suggested that the time be between 3 and 6 months before the electoral period starts. See also comment to **Article 44.2.**

Article 220.2.: It must be ensured that candidates can challenge their application for withdrawal if they assert that they were coerced to withdraw.