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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE DRAFT AMENDMENTS
TO THE LAW ON THE CONSTITUTIONAL COURT,
THE CIVIL PROCEDURAL CODE
AND THE CRIMINAL PROCEDURAL CODE
OF AZERBAIJAN**

by

Mr Péter PACZOLAY (Member, Hungary)

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I. 2. The proposed new provision on the selection of judges is superfluous and thus would be better to delete it. Article 126 of the constitution, and Art. 11.1 of the CC law specifies the requirements for the nomination of a judge. If the constitution requires 5-years working experience than that is the rule. The nominating President of the Republic, and the electing Parliament can decide on the preferences even without a provision in the law.

I. 3. To set up a maximum age limit is common in European countries, and is acceptable. However, the adoption of the amendment would change the status of those judges who are already in office, and their 15-years term would expire after reaching the age of 70.

As regards new Article 14.2, in my interpretation judges would remain in office after the 15-years term or the 70 years age until a new judge is elected to replace them. This provision is in accordance with the Venice Commission opinion on the uninterrupted functioning of the constitutional court (in the case of the Constitutional Court of Ukraine).

I. 6. Although Article 130.9 of the Constitution of Azerbaijan Republic and the present Article 66.1. of the CC law are explicit on the binding character of Constitutional Court decisions (“the resolutions of Constitutional Court shall have binding force throughout the territory of Azerbaijan Republic”), I understand the reasons why the amendment tries to be more detailed and specified. Unfortunately, state organs are often ready to ignore the constitutional provision on the binding force of Constitutional Court decisions. The same reason justifies adding a sentence prohibiting the repeated adoption of unconstitutional provisions. If necessary because of deficiencies in complying with Constitutional Court decisions, it is proper to foster the execution of Constitutional Court decisions by more detailed provisions.

As regards the proposal for a new **Article 66-1**, these provisions repeats and rephrases other provisions of the constitution and the CC law on the execution of Constitutional Court decisions. The proposed **Article 68-3** is not clear. Constitutional Court decision form part of the valid legal system, and are obligatory for everyone (as specified in Article 130.9 of the Constitution and Article 66.1. of the CC law). It is unusual to establish a new constitutional procedure for the explanation of the decisions of the Constitutional Court. The reasoning of the Constitutional Court decision has to explain the ruling, and not another additional decision. Sometimes it turns out that the Constitutional Court decision was not able to solve the constitutional problem, or even created a new one; under these circumstances a new decision in a new procedure has to be delivered but not as the explanation of the former ruling.

I. 8. The calculation of the “costs of the functioning” of a judge is modelled on the heads of central executive bodies. The latter notion is vague, thus this rule serves only as the base for an estimated sum of money. It could be made more clear by giving the same status to the constitutional judge as a cabinet member, or prime minister, etc.

I. 10. It cannot be identified what is exactly the 2/3 of a term – 10 years in all cases?

II - III. Amendments to the Civil Procedural Code and to the Criminal Procedural Code serve similarly to guarantee respect for Constitutional Court decisions, and foster their execution in appellate and review procedures.