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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

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1. Article 11.2

“High morals and big authority within legal community” is too vague and broad to be incorporated as one of legal qualifications for candidates to the post of judge of Constitutional Court. It is not a necessary phrase since the appointing authority still can discretionally determine the degree of morality and authority required from each candidate without the phrase in the Article.

2. Article 14 & 73.8

With respect to the proposed added condition of "if he/she worked not less than 2/3 of his/her term of office" to Article 73.8's allowance of monthly cash benefits for retired judges, there should be further clarification on how this new addition would merge with the Article 14 proposal for both the 15 year office term and the 70 year old retirement age.

For example, a judge, who is appointed at the age of 61, could be entitled to receive 80% of allowance when he retires at the age of 67 since he served 2/3 of his term in office (until 70 year-old). However, if Article 73.8 concerns only the 15 years of the office term, then the judge is not entitled to receive 80% of allowance since he did not serve 10 years (2/3 of 15 years). Therefore, there should be further clarification on the matters between Article 14 and Article 73.8.

3. Article 14.2

Article 14.2 is somewhat problematic because of the wording of certain phrases. Regarding the statement "The judges shall hold office until replaced," the time and conditions concerning the replacement of judges had be better clarified. Regarding "They shall, however, continue to deal with those cases," there is no definite time frame as to how long they should continue to deal with the cases. Therefore, this indefinite and ambiguous time period could cause unnecessary confusion when the law is administered and should be modified. As for "which they have already under consideration," it might serve the purpose of the law to emphasize the conditions to which a case would be deemed "under consideration."

4. Article 66.1

It seems unnecessary to incorporate “all individuals and legal entities” within the scope of binding force of the resolutions. The term “individual” is not clear as to whether its intended meaning is limited to those to whom public authority has been delegated or more comprehensively, it encompasses all the individuals regardless of their public or private status. Furthermore, the addition of the said phrase seems unnecessary since Article 130.9 of the Constitution of the Azerbaijan Republic already specifies that the decisions of Constitutional Court are obligatory all over the territory of the Azerbaijan Republic and Article 66.3 of the Law of Azerbaijan Republic on the Constitutional Court states that laws and other acts or their specific provisions and intergovernmental agreements of Azerbaijan Republic contrary to the decisions of the Constitutional Court cease to be valid thereby losing their legal force.

5. Article 70.4

In order to guarantee Constitutional Court’s independence from other branches of the government, it is important for the Court to have available a way to protect its financial

independence. Thus, it seems necessary for the Law of Azerbaijan Republic on Constitutional Court to incorporate an article which enables the Constitutional Court to directly submit opinions concerning its budget appropriation. It is also important to have a clear provision which guarantees its financial independence. The laws of Korea assure financial independence of the Constitutional Court. For example,

- 1) The Korean Constitutional Act Article 11: Expenses
The expenses of the Constitutional Court shall be appropriated independently in the budget of the state
- 2) The National Finance Act, Article 40: Budget of independent governmental institutions(i.e. The National Assembly, The Supreme Court, The Constitutional Court, The National Election Commission)

A. 40.1

When making a budget of an independent institution, opinions of the head of the independent institution concerned shall be respected and if the requested amount of the annual expenditure budget of an independent institution needs to be adjusted, coordination with the head of the institution shall be made in advance

B. 40.2

Despite the coordination pursuant to Article 40.1 if the requested amount of the annual expenditure budget of an independent institution is to be reduced, opinions of the head of the independent institution concerned shall be sought by a meeting of the State Council. If the requested amount of the annual expenditure budget of an independent institution is reduced, opinions of the head of the independent institution on scale of and reasons for the reduction shall be submitted to the National Assembly.