



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 4 October 2007

CDL(2007)092*
Or. Engl.

Opinion No. 442 / 2007

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT AMENDMENTS TO THE
LAW ON THE
CONSTITUTIONAL COURT
OF AZERBAIJAN,**

**EXTRACTS OF THE LAW ON THE CONSTITUTIONAL COURT,
THE CIVIL PROCEDURAL CODE AND
THE CRIMINAL PROCEDURE CODE OF AZERBAIJAN**

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I. The proposed modifications and additions to the Law of Azerbaijan Republic on Constitutional Court:

1. To add to Article 8.4.5 the following wording:

8.4.5. decide other matters falling within the competence of Constitutional Court but not requiring to carry out the constitutional proceedings.

2. To add to Article 11.2 the below mentioned sentence and thus to consider Article 11.2 as Article 11.3:

11.2. At the selection of candidates to the post of judge of Constitutional Court the preference shall be given to the persons, which have more than 10 years of experience in the field of law-making, law-enforcement or juridical science and enjoying the high morals and big authority within legal community.

3. Article 14:

3.1. Article 14 shall be added with below mentioned sentence:

The terms of office of judges shall expire when they reach the age of 70.

3.2. To add article 14.2 containing the following sentence and thus to consider Article 14.2 as Article 14.3:

14.2. The judges shall hold office until replaced. They shall, however, continue to deal with those cases, which they have already under consideration.

4. To give Article 29.2 the following new wording:

29.2. Participants to cases considered by Constitutional Court who do not speak the language of the proceedings shall be provided with the right to get acquainted completely with the materials of case, to participate at the sessions of Constitutional Court with interpreter and to make statements in their native language.

5. To add to Article 36.1 the words "34.7 and 35" after the word "for in Article 34.6"

6. Article 66:

6.1. To add to Article 66.1 the following wording after "through out the territory":

" for the legislative, executive and judicial power bodies, municipalities, official authorities, all individuals and legal entities."

6.2. To add the third sentence to the Article 66.2 in the following wording:

66.2. It shall be inadmissible to adopt repeatedly, contrary to the legal positions of Constitutional Court, in any form the acts, which had been canceled as contradicting to Constitution or other acts.

7. To introduce Article 75.0.8 with below-mentioned wording and consider Article 75.0.8 and 75.0.9 as article 75.0.9 and 75.0.10 respectively:

75.0.8. to get acquainted with and summarize the activity of state bodies connected with execution of the decisions of Constitutional Court.

8. To amend Article 70.4 with below-mentioned wording:

70.4. The calculation of financial means to be allocated for the material and technical maintenance of the Judges of Constitutional Court shall be carried out via the norms prescribed for the heads of central executive bodies.

9. To add the word "tax free" after the word "cash benefits" in Articles 73.6 and 73.8.

10. To add the words “if he/she worked not less than 2/3 of his/her term of office” to Article 73.8 and delete the words “within two years” and “until he/she gets employed”.

11. To add Article 73.9 and 73.10 with below mentioned wording:

73.9. In case of death of the Judge of Constitutional Court during his/her term of office his/her family members – widow (widower), mother (father), the unemployed children under his/her patronage, who have not yet reached the age of 22, shall be paid the monthly pension at the rate of 80% of monthly wages of this judge.

73.10. In case of death of retired Judge of Constitutional Court his/her family members – widow (widower), mother (father), the unemployed children under his/her patronage, who have not yet reached the age of 22, shall be paid the monthly pension or other cash benefits of this judge.

II. To introduce the following additions and modifications into the Civil Procedural Code of Azerbaijan Republic:

1. To introduce Article 13.8 with below mentioned wording:

13.8. The legal positions reflected in the decisions of Constitutional Court concerning application of the Constitution or other normative-legal acts are obligatory for all courts.

2. To introduce Article 418.4.9 with below mentioned wording:

418.4.9. where resolution or ruling has been issued contrary to the requirements specified in the Articles 13 and 82 of this Code.

3. To introduce Article 424.2.2 with below-mentioned wording and to consider Articles 424.2.2 – 424.2.4 as Articles 424.2.3 – 424.2.5 respectively:

424.2.2. where the decision of court of cassation instance has been issued contrary to the requirements specified in the Articles 13 and 82 of this Code.

III. To introduce the following additions and modifications into the Criminal Procedural Code of Azerbaijan Republic:

1. To substitute the wording “on participants in criminal proceedings” for the wording “on courts and participants in criminal proceedings” in Article 10.3.

2. To introduce Article 416.0.22 with the following wording:

416.0.22 if the court convicted the accused without taking into account the legal positions of Constitutional Court directed at the restoration of human rights and freedoms.

3. To introduce the number “416.0.22” before the word “of this Code” to Article 421.1.1

Equally, to introduce the following additions into the Law on Constitutional Court:

Article 68-1. Combination of cases in one set of proceedings.

Every examined case shall be subject to special session of Constitutional Court. Constitutional Court may combine inquiry, request or complaint relating to the same object if it is necessary.

Article 68-2. Correction of errors committed in decisions and rulings.

After announcing its decision the Constitutional Court may correct the errors committed at names, indications, open publication as well as technical errors. There shall be adopted the ruling in this case.

Article 68-3. Explanation of decisions.

Decisions of Constitutional Court may be explained only by Constitutional Court on the basis of request of a subject entitled to submit inquiry, request or complaint or other subjects against whom this decision is directed.

The case concerning explanation of decision shall be examined in the session of the Plenum of Constitutional Court with the participation of state body or person submitting a request. The bodies and persons being the interested parties of the case are also invited to the session.

There shall be adopted a ruling on explanation of decision and the text of this ruling shall be published along with this decision.

Article 66-1.

66-1.1. If any act completely or partly is recognized as contradicting to Constitution by the decision of Constitutional Court and there is a need for elimination of shortcomings in the legal regulations following the decision of Constitutional Court or Constitutional Court gave the recommendations in its decision, the competent body or state authority shall, taking into account the legal positions of Constitutional Court on this matter, take measures to adopt a new act or to introduce necessary additions or modifications into the act in force.

Constitution of Azerbaijan Republic shall be applied directly until the new legal regulations are adopted.

66-1.2. The recognition of act examined by Constitutional Court or its some provisions as contradicting to Constitution of Azerbaijan Republic shall constitute the basis to cancel via the specified procedure the acts or its some provisions, which are based on the norms recognized as contradicting to Constitution.

EXTRACTS FROM THE ORIGINAL LAWS

EXTRACTS FROM THE LAW OF AZERBAIJAN REPUBLIC ON THE CONSTITUTIONAL COURT

Chapter II - GROUNDS FOR ORGANIZATION AND ACTIVITY OF CONSTITUTIONAL COURT

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Article 8. Meetings of Judges of Constitutional Court

8.1. There are meetings of judges of Constitutional Court held in order to decide issues on internal activity of Constitutional Court and other issues, except for the ones examined at the sessions of Constitutional Court.

8.2. Meetings of judges of Constitutional Court shall be convened by Chairman of Constitutional Court. They can be convened upon request of any judge of Constitutional Court as well.

8.3. Meetings of judges of Constitutional Court shall be authorized if not less than 6 judges are present thereat.

8.4. The following matters shall be decided at the meetings of judges of Constitutional Court:

8.4.1. to adopt the Rules of Procedure in order to organize activity of Constitutional Court;

8.4.2. to confirm the specimen of the official emblem of Constitutional Court, seal, robe, breastplate and identification document;

8.4.3. to make proposals concerning draft of the state budget for the maintenance of the activity of Constitutional Court;

8.4.4. to make proposals concerning consideration of a matter on premature termination of powers of judge of Constitutional Court in cases provided for by Article 23 of the present law;

8.4.5. to decide other organizational matters;

8.5. Resolutions on matters provided for in Article 8.4 of the present law shall be adopted at the meetings of judges by their majority.

Chapter III - STATUS OF JUDGES OF CONSTITUTIONAL COURT

Article 11. Requirements to be Met by Candidates for the Post of Judge of Constitutional Court

11.1. According to Article 126.1 of the Constitution of Azerbaijan Republic citizen of Azerbaijan Republic not younger than 30, having voting right, higher juridical education and at least 5-year working experience in the sphere of law can be judge of Constitutional Court.

11.2. According to Article 126.2 of the Constitution of Azerbaijan Republic judges may not occupy any other posts, irrespective of the procedure – elections or appointment, may not be involved in business, commercial and other payable activity, except scientific, pedagogical and creative activity, may not be involved in political activity and join political parties, may not get remuneration other than their wages and money for scientific, pedagogical and creative activity.

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Article 14. Terms of Office of Judges of Constitutional Court

- 14.1. Judges of Constitutional Court shall be appointed for the term of 15 years.
14.2. The re-appointment of judge of Constitutional Court shall be inadmissible

Chapter IV - PRINCIPLES OF PROCEEDINGS AT CONSTITUTIONAL COURT

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Article 29. Language of Constitutional Proceedings

Proceedings at Constitutional Court shall be conducted in official language of Azerbaijan Republic.

Participants to cases considered by Constitutional Court who do not speak the language of proceedings shall be provided with the translation of all materials of the case into language they speak and ensured with the opportunity to speak at the proceedings in their native language.

Chapter V - COMMENCEMENT OF PROCEEDINGS AT CONSTITUTIONAL COURT

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Article 36. Study of petitions, applications or complaints

36.1. The preliminary study of submitted complaints as to their conformity with requirements provided for in Article 34.6 of the Law shall be implemented by the Staff of the Constitutional Court via the procedure specified in the Rules of Procedure of Constitutional Court.

36.2. In connection with petitions and applications submitted to Constitutional Court as well as in accordance with Article 36.1 one or several Reporter Judges shall be appointed for preparation of session on preliminary study of complaints.

36.3. Reporter Judge shall carry out the following measures:

36.3.1. collect the documents and materials which are necessary for examination of a matter by Constitutional Court;

36.3.2. require the state and self-government bodies' documents, materials and cases which relevant to the matter;

36.3.3. submit the petition or complaint to parties, or other type of document to the interested subjects and get their written opinion on the matter concerned;

36.3.4. organize the summon of witnesses, experts or other persons for session;

36.3.5. realize other necessary measures for examination of matter;

36.3.6. prepare the report on the matter concerned;

36.4. In connection with the case to be examined by Constitutional Court the Reporter Judge can give a task to the Staff of Constitutional Court.

36.5. In connection with preparation of session the Reporter Judge shall carry out all measures on behalf of Constitutional Court.

Chapter VIII - ACTS OF CONSTITUTIONAL COURT

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Article 66. Legal Force of Resolutions of Constitutional Court

66.1. According to Article 130.9 of the Constitution of Azerbaijan Republic, the resolutions of Constitutional Court shall have binding force through out the territory of Azerbaijan Republic.

66.2. Resolutions of Constitutional Court shall be binding after their adoption. Officials who do not comply with resolutions of Constitutional Court shall bear the responsibility according to procedure specified by the legislation of Azerbaijan Republic.

66.3. According to Article 130.10 of the Constitution of Azerbaijan Republic, laws and other legal acts or their specific provisions and intergovernmental agreements of Azerbaijan Republic shall lose their legal force and the interstate agreements of Azerbaijan Republic shall not enter into force in terms specified in the resolution of Constitutional Court

66.4. Court acts recognized as not conforming to the Constitution and laws of Azerbaijan Republic shall not be executed as well as relevant judicial cases shall be re-examined in accordance with procedure specified by procedural legislation of Azerbaijan Republic

66.5. If provision of the Constitution of Azerbaijan Republic which had been guided by at adoption of resolution by Constitutional Court is changed as a result of referendum then this resolution of Constitutional Court shall partially or completely lose its legal force.

Chapter IX - ORGANIZATION AND MAINTENANCE OF THE ACTIVITY

OF CONSTITUTIONAL COURT

Article 70. Financing of Activity of Constitutional Court

70.1. Activities of Constitutional Court shall be financed from the State budget of Azerbaijan Republic. The means allocated annually for the activities of Constitutional Court shall not be reduced as compared to those ones allocated for the previous fiscal year.

70.2. The annual means allocated for the activities of Constitutional Court shall provide for the means to cover the expenses directed at ensuring the normal activities of Constitutional Court.

70.3. Proposals of Constitutional Court regarding the volume of expenses for maintenance of Constitutional Court for the next year shall be submitted to the relevant body of Executive with the view to be included into the draft of the State budget.

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Article 73. Other Guarantees for the Judges of Constitutional Court

73.1. Judge of Constitutional Court shall be free from the military call-up and musters.

73.2. Health and life of Judge of Constitutional Court shall be insured at the expense of the State budget on sum equal to his/her 5 years wages.

73.3. The detriment caused to the Judge of Constitutional Court or members of his/her family in connection with Judge's activity, as a result of destruction or damage of his/her property shall be indemnified to the Judge or members of his/her family in full. This detriment shall be indemnified for the expenses of State budget of Azerbaijan Republic via the procedure specified by the legislation of Azerbaijan Republic with further deduction of means from guilty persons.

73.4. When necessary the security for judges of Constitutional Court shall be provided via the same procedure of legislation of Azerbaijan Republic as for other judges.

73.5. Judge of Constitutional Court who has no dwelling in Baku city shall be provided with an apartment.

73.6. Judges of Constitutional Court shall be paid cash benefits at the rate of two-months wages for the medical treatment via procedure provided for by the relevant body of the Executive.

73.7. The retired judge of Constitutional Court who reached the pension age shall be paid the monthly pension at the rate of 80 % of monthly wages of the functioning judge of Constitutional

Court. And any increasing of [functioning judge's] wages shall also cover the wages of retired judge.

73.8. The retired judge of Constitutional Court who had not reached the pension age shall be paid monthly cash benefits from the state budget within two years at the rate of 80 % of monthly wages of the functioning judge of Constitutional Court until he/she gets employed.

EXTRACTS FROM THE CIVIL PROCEDURAL CODE OF THE REPUBLIC OF AZERBAIJAN

SECTION I GENERAL PROVISIONS

CHAPTER 1. Principal rules

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Article 13. Normative legal acts applied by court in the course of resolution of civil cases

13.1 Court shall resolve dispute in accordance with the Constitution of the Azerbaijan Republic, legal acts adopted through referendum, laws, decrees of the President of the Azerbaijan Republic, resolutions of the Cabinet of Ministers of the Azerbaijan Republic, normative legal acts of bodies of central executive authorities, as well as international treaties of the Azerbaijan Republic.

13.2 In the event of conflict between normative legal acts, court shall apply normative legal act of higher legal force.

13.3 In the event of conflict between normative legal acts comprising legislative system of the Azerbaijan Republic (except for the Constitution of the Azerbaijan Republic and acts adopted through referendum) and international treaties of the Azerbaijan Republic, provisions of international treaties shall prevail.

13.4 In the event of absence of any norm of law regulating disputed legal relationships, court shall apply norms of law regulating analogous relationships.

13.5 In the event such rules are also absent, court shall base its decision upon idea and general principles of legal rules of the Azerbaijan Republic.

13.6. A court may apply to the Constitutional Court of Azerbaijan Republic with regard to interpretation of the Constitution and laws of Azerbaijan Republic with regard to implementation of human rights and freedoms on cases being in the process in its office. (8)

13.7. The interpretation of the Constitution and laws of Azerbaijan Republic is mandatory for a court only in cases, where this interpretation has been included in the decision of the Constitutional Court of Azerbaijan Republic. (8)

CHAPTER 43. Proceeding in court of cassation instance

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Article 418. Grounds for repeal of resolution or ruling of court of appellate instance

418.1 Violation or incorrect application of material and procedural norms of law shall be a ground for repeal of resolution or ruling of court of appellate instance.

418.2 Material norms of law shall be deemed to be violated in circumstances specified in Article 386 of this Code.

418.3 Violation or incorrect application of procedural norms of law shall be a ground for repeal of resolution or ruling only where the said violation has resulted or can result in issuance of incorrect resolution.

418.4 Resolution or ruling of court of appellate instance shall, irrespective of complaint's arguments, be repealed in the following circumstances:

418.4.1 where case has been heard by court with its illegal composition;

418.4.2 where resolution or ruling has not been signed by any of judge or en signed by judges not indicated in resolution;

418.4.3 where ruling has been issued by judges not members of court reviewing case;

418.4.4 where there is no protocol of court session or where protocol has not been signed by persons specified in Article 272.8 of this Code;

418.4.5 where case has been hear by court in absence of any persons participating in case not being duly notified by court of place and time of court session;

418.4.6 where court has issued resolution or ruling relating to rights and obligations of parties not involved in case proceeding resulting in violation of their rights;

418.4.7 where resolution or ruling issued by court does not contain reference to law or other normative legal act applied by court;

418.4.8 where rules concerning language of proceeding have been violated in course of case review.

418.5 Presence of circumstance stipulated in Articles 418.4.1-418.4.3 and 418.4.6 of this Code shall be treated as gross violation by court of appellate instance of procedural norms.

CHAPTER 44. Additional cassation proceeding

Article 424. Grounds for review of case by the Plenum of Supreme Court of the Azerbaijan Republic

424.1 The Plenum shall hear cases relating exceptionally to legal matters.

424.2 The followings shall be grounds for repeal of cassation decisions:

424.2.1 where decision of court of cassation instance has been issued on the basis of legal norm found by the Constitutional Court of the Azerbaijan Republic to be non-conforming with the Constitution of the Azerbaijan Republic;

424.2.2 where court of cassation instance has resolved matters relating to rights and obligations of persons not involved in case and resulting in violation of their rights;

424.2.3 where there do not exist grounds of motives referred to in decision of court of cassation instance;

424.2.4 where resolution part of decision of court of cassation instance contradicts its descriptive part and part relating to grounds for issuance of such decision.

EXTRACTS FROM THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF AZERBAIJAN

Article 10 Legislation

10.1. Courts and participants in criminal proceedings shall conform to the Constitution of the Azerbaijan Republic, this Code, other laws of the Azerbaijan Republic as well as provisions of the international agreements to which Azerbaijan is a signatory.

10.2. No one may be incriminated or charged with a view to prosecution as a suspect or accused person, detained, arrested, searched, taken by force or subjected to other coercive procedural measures, nor convicted, punished or subjected to other limitations of rights and liberties other than on the basis of the rules and principles established by the laws of the Azerbaijan Republic which are in force and published.

10.3. The interpretation of the Constitution of the Azerbaijan Republic and other laws shall be binding on participants in criminal proceedings if that interpretation is made by decision of the Constitutional Court of the Azerbaijan Republic.

10.4. Observations on court practice by the Plenum of the Supreme Court of the Azerbaijan Republic shall constitute recommendations to the judicial authorities.

10.5. Procedures and decisions shall not be valid in the event of a breach of the rules laid down in this article.

Article 416 Grounds for the Supreme Court to set aside or amend a court judgment or decision

416.0. The Supreme Court shall have the right to set aside or amend the judgment or decision of the court of first instance or appeal in the following cases:

416.0.1. if the court refused, without any grounds, to examine evidence submitted by a party to the criminal proceedings which could be of importance for the full, thorough and objective examination of the charge;

416.0.2. if the court did not examine the evidence in accordance with Articles 143-146 of this Code;

416.0.3. if the court judgment as to the guilt of the convicted person or the innocence of the acquitted person is based on inadmissible evidence;

416.0.4. if the court did not fulfill the requirements of Article 391.6 of this Code;

416.0.5 if the court did not express its opinion on one of the acts with which the accused was charged;

416.0.6. if the court convicted the accused although the ingredients of a criminal offence were lacking;

416.0.7. if the court erroneously convicted the accused of an act with which he had not been charged, except in cases where the acts of the accused are reclassified under a more lenient provision of the law;

416.0.8. if the court erroneously convicted the accused of an act not provided for in criminal law;

416.0.9. if the court convicted the accused and imposed a penalty not provided for in criminal law or a penalty reduced in accordance with the jury's verdict, but to inadmissible limits;

416.0.10. if the court convicted the accused of an act of which he was previously convicted by a final court judgment;

- 416.0.11. if the court convicted the accused in spite of the existence of circumstances precluding a criminal prosecution;
- 416.0.12. if the court convicted the accused and either imposed a penalty abolished by a new criminal law or failed to apply an amnesty;
- 416.0.13. if the court erroneously acquitted the accused on the grounds that the act he had committed was not provided for in criminal law;
- 416.0.14. if the court erroneously discontinued the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution, regardless of the fact that under the terms of a new criminal law or an amnesty there were grounds for revoking the final court judgment on the case, the circumstances precluding prosecution or the imposition of a penalty;
- 416.0.15. if the court made an error in classifying the act committed;
- 416.0.16. if the court, in adopting a judgment or decision on the case, exercised the powers of another authority or exceeded its own powers;
- 416.0.17. if the court seriously violated the requirements of Articles 107-118, 308 and 309 of this Code concerning objections and members of the court;
- 416.0.18. if the court examined the criminal case, the file on simplified pre-trial proceedings or the complaint with a view to a private prosecution without the participation of the public prosecutor, the victim bringing a private prosecution, the accused, his defense counsel or the interpreter, although their participation was obligatory under the provisions of this Code;
- 416.0.19. if the court did not order a forensic psychiatry report on the accused to determine the circumstances provided for in Article 140.0.2 of this Code;
- 416.0.20. if the court gave the decisions provided for in Article 391.3.2.-391.3.5, 391.3.7-391.3.9. and 391.6 of this Code without grounds for doing so;
- 416.0.21. if the court sentenced the accused without taking account of aggravating or mitigating circumstances.

Article 421
Additional submissions, appeals
and complaints to the Supreme Court

- 421.1. Additional submissions, appeals and complaints may be filed with the Supreme Court in the following cases:
 - 421.1.1. if the Supreme Court, in examining the complaint or appeal, violated one or more requirements of Articles 418.2.2., 418.2.3., 418.2.5, 418.2.7., 418.3., 418.4, 419.2., 419.5., 419.6., 419.8 - 419.11 and 419.13 of this Code;
 - 421.1.2. if the Supreme Court's decision does not state the reasons;
 - 421.1.3. if the concluding part of the Supreme Court's decision is inconsistent with its statement of the facts and reasons.
- 421.2. *Deleted*
- 421.3. Additional submissions, appeals and complaints appeal shall be made before the plenary Supreme Court of the Azerbaijan Republic.
