Strasbourg/Warsaw, 20 December 2002

CDL-AD (2002) 35
Or. Engl.

Opinion no. 214/2002

JOINT ASSESSMENT OF

THE REVISED DRAFT ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN OF 28 NOVEMBER 2002

BY

THE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS (ODIHR) OF THE OSCE

AND

THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION, COUNCIL OF EUROPE)
Endorsed by the Venice Commission at its 53rd plenary session (Venice, 13-14 December 2002)

on the basis of comments by

Mr Georg NOLTE (Venice Commission, Substitute member, Germany)
Mr Eugenio POLIZZI (Venice Commission, expert, Italy)
Mr Rumen MALEEV (OSCE/ODIHR, Election expert)

Introduction

At its 45th Plenary meeting (Venice, 15-16 December 2000), the Venice Commission approved the programme of co-operation with Azerbaijan which had been proposed by Messrs Khanlar Hajiyev, President of the Constitutional Court, Mr Ramiz Mehdiyev, Head of the Presidential Administration and Mr Safa Mirzoyev, Head of the Administration of Parliament (CDL (2001) 5).

The main lines of the programme followed the mandate given to the Venice Commission by the Committee of Ministers (CM (2000) 170).

In conformity with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been engaged in Azerbaijan since 1998 through the implementation of technical assistance projects mainly aiming at improving the election legislation in co-operation with the authorities and civil society of Azerbaijan.

Following the 2000 parliamentary elections, the Venice Commission and the OSCE/ODIHR started to discuss the electoral legislation of Azerbaijan in light of the presidential elections taking place at that time. Subsequently, an official demand by the Office of the President of the Republic of Azerbaijan for an expertise of the draft Election Code, in June 2002, allowed the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), to submit a preliminary assessment on the working draft Election Code, in September 2002 (CDL (2002) 131). This preliminary assessment (CDL (2002) 131) has been endorsed by the Venice Commission at its 52nd plenary session (18-19 October 2002).

Following a visit to Azerbaijan where discussions took place on the draft code, the ODIHR and the Venice Commission received a revised draft election code on 28 November 2002 (CDL (2002) 147). In advance of the first round table on the draft Code, both institutions offer this second preliminary assessment.

The OSCE/ODIHR and the Venice Commission wish to thank the International Foundation for Election Systems (IFES) sharing the English translation of the draft election code without which this assessment would not have been possible.

This draft Election Code governs the conduct of referendums and parliamentary, presidential and municipal elections in one document, with the rules divided between General and Special Sections. These concern: referendums, elections of deputies to the Milli Majlis of the Azerbaijan Republic, elections to the President of the Republic, and municipal elections.

This opinion is based on:
- *the Constitution of the Republic of Azerbaijan;*
- *the Law on Parliamentary Elections of the Republic of Azerbaijan (CDL (2000) 65);*
- *the Comments adopted by the Venice Commission on the Law on Parliamentary Elections of the Republic of Azerbaijan (CDL-INF (2000) 17);*

- *the Code of good practice in electoral matters, adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002) (CDL-AD (2002) 23);*
- *OSCE/ODIHR Preliminary Comments on the Draft Parliamentary Election Law of the Republic of Azerbaijan, 30 May 2000;*
- *OSCE/ODIHR Final Comments on the Law on Parliamentary Elections of the Republic of Azerbaijan, 16 Aug. 2000;*
- *OSCE/ODIHR Final Report Republic of Azerbaijan, Parliamentary Elections, 5 November & 7 January, 15 January 2001;*
- *the working Draft Election code (Unofficial translation of IFES 2002, June 2002);*
- *the comments of Mr. Georg Nolte (substitute member for the Venice Commission, Germany), including document CDL (2002) 136;*
- *the comments of Mr. Eugenio Polizzi (Expert for the Venice Commission, Italy), including document CDL (2002) 135;*
- *the comments of Mr. Rumen Maleev, OSCE/ODIHR election Expert, Bulgaria;*
- *the Preliminary Assessment of the draft Election Code of the Republic of Azerbaijan, 27 September 2002, based on comments by Mr Georg Nolte (Substitute member of the Venice Commission, Germany), Mr Eugenio Polizzi (Venice Commission, expert, Italy) and Mr Rumen Maleev (OSCE/ODIHR, election expert) (CDL (2002) 131);*
- *the revised draft Election Code of the Republic of Azerbaijan sent by the authorities on 28 November 2002 (CDL (2002) 147).*

The Venice Commission and ODIHR were informed that the revised draft Election Code received on 28 November 2002 has been further amended. However, the comments offered in this report refer to the version officially sent to ODIHR and the Venice Commission at the date here before.

General comments

Introduction

1. This Draft Election Code (hereafter: the Code) governs the conduct of referendums and parliamentary, presidential and municipal elections in one document, with the rules divided between General and Special Sections. These concern: referendums, elections of deputies to the Milli Majlis of the Azerbaijan Republic, elections to the President of the Republic, and municipal elections. The General Section is apparently divided into four sections: but there is no Section Three. The adoption of a single Code governing national elections and referendums is welcomed. This codification should ensure greater consistency in the rules governing referendums and all forms of elections.

2. A great number of recommendations previously made by the Venice Commission and the OSCE/ODIHR is now reflected in the revised draft Code.

3. Efforts have been deployed to simplify the Code and to shorten it by removing repetitions. However, the Code remains voluminous, repetitious and complicated. Several provisions contain only minimal differences between the different types of elections. For instance, this is the case for Articles 127.1-6, 155.1-6, 189.1-6 and Articles 224.1-6; Articles 160.1-4, Articles 193.1-4 and 229.1-4; Articles 162.1-6, 195.1-6 and 231.1-6; Articles 164, 197 and 233. These articles should be harmonised and moved to the General Section of the Code. The multiple repetitions, often with only slight differences in wording, run against transparency and the right of citizens to have a clear knowledge of the law. When the same principle regulates the different kinds of elections, it should be stated in the general section and the repetitions in the sections dealing with different forms of elections should be avoided.

4. The length and level of complexity of the Code create the risk for inexperienced candidates or political parties to violate certain technical norms of the Code. In addition, election contestants may be either discouraged from presenting their candidacy or may be submitted to unexpected and harsh sanctions.

Principle of proportionality

5. Sanctions for violations of norms must be proportionate. Several provisions establish too severe sanctions. For instance in Article 88.7, a cancellation of registration is disproportionate and a financial sanction or a court proceeding would be a more proper sanction. In the end, the electorate should be the last judge on whether a candidate deserves to be elected. See also Article 114.1.

Election commissions

6. The existing rules on the formation of electoral commissions have been reintroduced in the Code as well as the principle according to which the parliamentary majority and minority agree on two candidates nominated by the "independent deputies". These rules should also apply to Precinct election commissions. What constitutes the parliamentary majority and minority remains to be clarified. The representation of the judiciary in election commissions is a welcome innovation as

well as the fact that the Chairman of the Central Election Commission will be elected amongst its members. It is, however, recommended that the Chairman, Deputy Chairman and the Secretary to be elected by secret vote (Article 24.4).

7. Election Commissions should not fall under the influence of a single political interest in order to be perceived as impartial and trustworthy by a broad political spectrum.

8. The election commissions have a lot of powers and too many duties (registration of candidates, selection of complaints, electoral process, etc.). The members may not have enough time to appropriately fulfil all these duties.

9. The training of members of polling stations is crucial. Members of different levels of election commissions must be recruited on a basis of experience. The Code could envisage more guarantees to ensure adequate training to commissioners. The quality of the electoral process mainly rests on the level of professionalism of the commissions.

10. The Precinct election commissions should be formed earlier than stipulated in the Code (ex. Article 36.1 for the Precinct election commissions, formed at least 40 days prior to the voting day).

Transparency

11. Provisions on transparency have been strengthened, particularly regarding the issuance of protocols to interested parties and the mandatory display of election protocols at all election commissions' levels.

12. The General Section of the Code provides that protocols of election results are issued to all interested parties at all level of commissions. However, Constituency election commissions must be required to issue certified copies of protocols with a full breakdown of results for each precinct within the constituency. In turn, the Central Election Commission must be obliged to publish election results from all Precinct election commissions and aggregated results from all constituencies. This provision would greatly increase the transparency of the tabulation process. Without such an obligation, the distribution of Precinct election commissions' protocols are virtually worthless, as they cannot be cross-referenced with the Constituency election commissions' results.

13. Article 42.1.8 provides for a fee to be charged by electoral commissions for the issuance of certified copies of protocols. The justification for this innovation is far from clear. The issuing and use of protocols to check the accuracy of the results is a vital part of the process of ensuring transparency and the Code should ensure that the process is not obstructed. The cost to an electoral commission of producing a verified protocol is minimal, given that observers, etc., can compile their own protocols on blank forms which the electoral commission merely needs to check, sign and stamp. In those circumstances, the cost in time and effort of processing the fee payments is unlikely to justify the revenues thereby raised.

Suffrage and voter lists

14. The draft Code makes important and valuable provisions for the annual preparation of voter lists. If properly implemented, this should help to ensure that voter lists are accurate for elections and referendums and that any errors or omissions have been corrected in good time. However, it is recommended that the Code sets out explicit obligations for the Precinct election commission in verifying the accuracy of the information provided by the local authorities. The Code should specify deadlines by which (i) the relevant information must be provided by the relevant authorities to the Precinct Election Commission, (ii) the Precinct Election Commission must deliver the second copy of the updated list to the Constituency Election Commission, and (iii) the Constituency Election Commission must send the aggregated information to the Central Election Commission (Article 45).

Registration of candidates / Signatures

15. The number of required signatures for the parliamentary elections has been reduced compared to existing legislation. However, the rules on the number of signatures required in order to register presidential candidate (45,000) or referendum campaign groups (60,000) remain too stringent. The numbers required should be further reduced and the geographical restrictions on where signatures must be collected should be eased. Moreover, voters should be permitted to sign signature lists for more than one candidate in all elections.

16. Some innovations are welcome on the verification of signatures, such as the presence of observers, the distribution of protocol on results of checking signature sheets to candidates. However, it should be made clearer that all signatures are checked and that a candidate is registered as long as he collected the required number of valid signatures (see comment on Article 60.2.3).

17. It must not be forgotten that the right to stand for election is one of the most important human rights, as protected by the European Convention of Human Rights. Therefore, it is imperative, where possible, that candidates and parties are given an opportunity to correct any errors or defects which have led to their registration being refused. In such cases the party or candidate should be invited to resubmit the application within a reasonably short period. For instance, minor mistakes in petition sheets could be rectified within a certain period of time.

18. Relevant election commissions should have the obligation to publish the list of registered candidates.

Cancellation of candidates

19. It is essential that cancellation of a candidate's or party's registration, or refusal to register, is a sanction of last resort. The Code should provide a range of sanctions to avoid disproportionate responses to relatively minor violations.

The media

20. The draft Code imposes important requirements on the mass media to provide equal opportunities for all election participants and prohibits the State media from engaging in partisan reporting.

Observers

21. a) Provisions on observers have been amended but need further improvements. The rules on who may act as an observer and the registration process have been clarified. However, the registration process is cumbersome and the deadlines are extremely strict. The Code now foresees the right of non-governmental organizations to accredit observers (Article 40.5). However, public associations, including those receiving foreign funding, should be permitted to observe the election process. This clause should be added to the Code.

b) The Code seems to establish diverse rules for different types of observers. Domestic and international observers should enjoy the same rights and duties.

c) Observers should have the right to observe the entire electoral process, including printing and distribution of ballot papers.

Election Day

22. a) The safeguards related to the use of the mobile ballot have been reinforced and should therefore limit possible abuse and fraud.

b) The use of transparent ballot boxes is a welcome innovation though ODIHR and the Venice Commission were informed that this provision had been regrettably removed from subsequent drafts.

c) The inking of finger of voters who voted is a welcome novelty (Article 104.6). It will contribute to appropriately and efficiently limit the possibility of double voting.

d) The use of numbered ballot papers is envisaged, which should contribute towards the security of the ballot. The use of envelopes will promote the same objective.

e) The prohibition of any other persons than voters, commission members, accredited observers and the police (if called upon by the Chairman) at polling stations on election day is a clear improvement and will avoid undue interference in election day proceedings.

Claims

23. There is generally an improvement in comparison with our previous recommendations, but there is also a necessity of simplification, of clarification. Rules on complaints in Chapter 16 (Articles 112 and following) are confused and unclear. The previous draft complaints system has been amended with the insertion of paragraphs 112.2 and 112.3 which, however, are not consistent with the old, unchanged rules especially Article 112.4. The relationship between the judiciary and the election commissions is not clear. Which is the "*relevant court*" according to Article 112.3 should be clarified, possibly with reference to civil procedure code. During our visit the delegation had been informed that a reference to the Civil procedure Code (Chapter 25 on protection of electoral rights) would be made, but it has not happened. Moreover, Article 112.11 has quite different deadlines from those of Article 291 of Civil procedure Code. Article 114 is extremely dangerous and leaves

to the Judiciary a power to invalidate elections or cancel voting results without proper safeguards.

Comments by article

1. Preamble

Not all five principles underlying Europe's electoral heritage contained in the Venice Commission Guidelines on Elections are explicitly reflected in the Code. The principles of free elections should be included in the preamble. The term "*general suffrage*" should be replaced by "*universal suffrage*".
The word "opinion poll" in the preamble is confusing and only referendum should be used. An opinion poll and a referendum are two very different consultations.
The **referendum** is an official procedure allowing the people to give its opinion on a question, and has to respect a series of rules including the principles of the European electoral heritage, whereas an **opinion poll** is just a way to get informed about the opinion of the public at a certain time.
Moreover, the result of the referendum is binding according to the draft (see **Article 140**), at least if it is positive. It should be made clear whether it is also binding when it is negative.

General Section

Section One. Main definitions

2. Article 1.1.13

The term "*Pre-election campaign*" should be replaced by the term "*election campaign*". Therefore, the drafters should delete the expression "*Pre-election campaign*" from the Code. At the same time, we suggest to replace "*election campaign*" by "*election activities*" (essentially in four instances where the Code uses the locution: **Articles 82, 83, 87 and 192**[1]), to avoid the risk of confusion between the terms. Indeed, it is strange to speak about a campaign after election day.

3. Article 9

Article 46.2 and **Article 9** are saying something different, because **Article 46.2** states that voters can be included in the voters lists when "*residing in precinct territory at least 6 months out of 12 months prior to announcement of elections*". That is quite different from the "*place of permanent residence*", which should be retained.
This comment applies also to **Article 146.1**.

4. Article 11

a) The words "*Notwithstanding the rights to freedom of expression and of association*" before "*State secures free conducting…*" should be included. The rights to freedom of expression and 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.

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[1] Instances where the Code uses the expression "*election campaign*": Articles 40, 42, 48, 55, 57, 72, 78, 79, **82, 83, 87**, 91, 94, 108, 110, 155, 157, 161, **192**, 194, 198, 222 and 224.

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*".

5. Article 12

It is advisable to modify the article as regards citizens being 18 on the actual day of the election with the additional precision: "*day of election included*".

6. Article 13

The norm should be clarified. A general principle on passive suffrage should be introduced: who can be a candidate in the different types of elections and who can be an initiator for referenda?
Such rules are found in the Code under **Articles 144 and 179**.

7. Article 14

Article 14 of the Code does not make a clear distinction between the cases of ineligibility and incompatibility. The norm of Article 14 should separated paragraphs 1 to 5 regarding cases of incompatibility and paragraphs 6 to 8 related to cases of ineligibility. **Ineligibility** indicates the impossibility of standing for election. **Incompatibility** means that after the election, the new persons elected as deputies (or to another mandate) have to choose between his/her mandate and other functions; in the private or public field, which could prevent the person elected from freely and independently carrying out his/her functions.

8. Article 14.3.1

With regards to Article 17 of the European Convention on Nationality, persons with dual citizenship do not have to choose citizenship of the State in order to exercise their political rights, notably to exert a mandate, and they have the same rights and duties as other nationals[2]. The Venice Commission and the OSCE/ODIHR were informed during their last visit in Baku that this obligation is contained in the Constitution.
Same comment for **Article 212**.

9. Article 14.3.6

The provision is too harsh and should consider two forms of proportionality, in the term and in the degree of the infraction. Firstly, the provision does not make distinctions between trivial offences and serious crimes. Moreover, the Code should articulate more clear provisions between paragraphs 6 and 7. Secondly, for the sake of the principle of proportionality, a time limit should be established for possible candidates whose sentence was served more than 15 years ago.

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[2] A previous comment of the Venice Commission applies about **Article 64** 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*".

Section Two. General provisions

10. Article 17.3

a) The confirmation of the principle of independence of election (referendum) commissions from the State, municipal institutions, as well as from political parties and non-governmental organisations is recommended. The wording is not accurate because the commissions are State institutions and it would be important to rule out any interference by the executive authorities in addition to private entities like political parties (especially if commissions are multipartite) or non governmental organisations.
b) The provision clearly rules out interference by State organs. However, adding the words "*according to legislation*" at the end of the provision (after criminal liabilities) is recommended in order to clarify imprecise wording of Article 17.3.

11. Article 17.4

a) The provision should also add State organs, together with municipalities and private parties that are bound by election commissions' acts and decisions as should public order forces within the boundaries of their authority.
b) We recommend to replace "*shall be obligatory for municipalities functioning within the relevant territory…*" by "*shall be obligatory for all territorial entities…*" (not only for the municipalities and their relevant territories).

12. Article 17.5

The Code should provide guarantees for protection of data on voters[3].
See also **Articles 25.2.19, 31.1.14, 45.10, 94.2 and 94.4, and 115.**

13. Article 17.6

a) The article establishes a range of requirements which electoral commissions should follow. The actual meaning of some of these requirements, such as **Articles 17.6.9 and 17.6.11**, is far from clear.
b) This article should also clearly stipulate that decisions of superior commissions are binding on inferior commissions.

14. Article 17.7

Establishing a number of requirements and then stating that some of them are optional, is not acceptable. This provision should be revised. See also **Article 49**.

15. Article 19

The possibility of having substitute members of the election commissions, who were nominated and elected in the same conditions than the title members might be envisaged.

16. Article 19.12

The article requires that minutes are taken at all meetings of electoral commissions. In accordance with administrative good practice, this article should include a

[3] See Point no. 4 of the previous comments of the Venice Commission (document: CDL-INF (2000) 17).

requirement that the minutes are circulated in advance of the following meeting and are approved as the first item on the agenda of that meeting.

17. Article 20.1

The requirement in Article 20.1 for weekly publications to give a page of free space to electoral commissions should be limited to publicly owned publications referred to in **Article 77.1**. About this subject, see comments on **Articles 77 and 78**.

18. Article 21

The fourth paragraph should add that only representatives from political parties or referendum campaign groups which have merged can be recalled.

19. Article 22.1

a) The provision that *political parties and blocks of political parties nominated a candidate, referendum campaign groups* cannot be members of election commission is likely to be a mistake, maybe of translation.
b) It would be better to include also one member of the judiciary in the Constituency election commissions, or a member who would have jurisdiction over several Constituency election commissions. Same comment for **Article 36.2**.

20. Article 22.2

The provision that "*an election commission member can be member of only one election commission, indistinctly with a decisive or a consultative voting right*" could be written in simple terms. We suggest: "*A member of an election commission can be member of only one commission, indistinctly of his/her status (i.e. with a decisive or a consultative voting right).*"

21. Article 22.3

This rule should be spelt out explicitly: "*the bodies appointing members of electoral commissions must not be free to dismiss them at will*".[4]

22. Article 22.4.2

This paragraph seems to be made redundant by paragraph 1 of the article.

23. Article 22.4.3

The Venice Commission and the ODIHR were informed that the term "*close relative*" is defined in the Family Code. A clear reference to it should be made in this article.

24. Article 22.7

Reference to relevant legislation, such as the Criminal Code, should be clearly made in case of violations of the provisions of this Code. Moreover, it is suggested that procedure should only be conducted by a senior procurator, possibly the Procurator-General. If it follows from the article that this rule also applies to members with consultative voting rights, the Code should make this clear.

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[4] See no. II. 3.1. f. of the Guidelines on Elections by the Venice Commission.

25. Article 22.12

This paragraph could be shortened. It could be stipulated that a member of an election commission with consulting voting right can only participate in actions regarding the relevant commissions (related to referendum, presidential elections, elections to the Milli Majlis, municipality elections).

26. Article 24.1

a) It is recommended to indicate clearly that the composition of the Central Election Commission shall consist permanently of 18 permanent members, and shall increase up to 21 members for the elections period (because of the three judges who are involved only for this period).
b) This article that assigns a role for "*independent lawyers*" in the Central Election Commission should exclude lawyers engaged in State service.

27. Article 24.3

There is a contradiction between **Article 24.1** stipulating that "*1/3 of members of the Central Election Commission shall represent the political party nominating them"*, and Article 24.3 that states that "*Member of the Central Election Commission cannot represent any political party"*. This should be corrected.

28. Article 24.4

The Chairman, deputy Chairman and the Secretary should represent the three different political groups present in the Central Election Commission, if these three groups have presented candidates to such functions.

29. Articles 25 and 26

The provisions should refer to **Article 28.5** regarding the question of internal rules of procedure. Indeed it is recommended to distinguish between the Central Election Commission's powers and duties. The accreditation of observers should be part of the Central Election Commission's functions.

30. Article 25.2.17

The relationship between the unified registration system and the voters lists is not regulated.
See **Article 43.1**.

31. Article 26.1 to 26.4

In order to avoid misunderstandings there is a proposal 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 Central Election Commission under **Article 25**.

32. Article 26.2

The Central Election Commission should publish the lists of all registered candidates by constituencies, the day after the end of the registration process (Milli Majlis, Municipal elections).

33. Article 27.2

This may be a problem of translation: the order in the English translation allows for 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*".

34. Article 28

Regarding the rules of decisions and vote in the Central Election Commission, the Chairman of the Central Election Commission should not be a member or represent a particular political party in the Milli Majlis.

35. Article 28.5

Internal rules of procedures should be published in the mass media, in relation to **Articles 25 and 26**.

36. Article 29.1

Our previous recommendation has been implemented. Nevertheless, it is advisable to include a short provision which should indicate that the **Article 29.5** explains the duty of a specific boundary commission, i.e. the task of drawing the limits of the electoral districts.

37. Article 29.3

Although some criteria of distribution have been openly stated as requested by the Venice Commission and ODIHR, the equality and proportionality of distribution is not however enshrined in the law, as was also suggested.

38. Article 29.5

The Code should detail the composition of the boundary commission[5].
See also the comment about **Article 29.1**.

39. Article 30

The words "*can be agreed*" should be changed to "*must*" otherwise the provision on the "supra-majority" become virtually worthless.

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[5] Guidelines on elections (I. 2.2. vii.) advise:
When constituency boundaries are redefined – which they must be in a single-member system – it must be done:

- *impartially;*
- *without detriment to national minorities;*
- *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 and, if necessary, representatives of national minorities.*

40. Article 32

a) The article, which lists the "*Activity directions*" of electoral commissions, fails to refer to the important task of considering election disputes and appeals. That duty is only referred to in relation to the Precinct election commissions (**Article 36.1.9**).
b) This article should include the obligation to publish lists of the registered candidates the day after the end of the registration process (Milli Majlis, Municipal elections) in their respective constituency, as well as the preliminary results (by polling stations) after each election.

41. Article 35.3.1

The maximum number of voters in a precinct should be reduced from 2,000 to 1,500 voters.

42. Article 35.7

The advisable time, and not only the deadline, should be indicated (3-5 days prior to the meeting).

43. Article 36.2

The reference of an article cited in the article is missing.
See comment **Article 22.1, b)**.

44. Article 36.3

It is advised that the two additional members should be agreed with the majority and minority quotas in the relevant Constituency Election Commission. Otherwise the political balance in Precinct Election Commission would be broken. Officials from executive authorities should be excluded from obtaining membership in precinct commissions.

45. Article 36.5

This article is redundant with Article 40.12 and should be removed.

46. Article 36.6

Article 36.6 should have no exception: all Precinct election commissions' members should be appointed by the relevant Constituency Election Commission, even for the Precinct election commissions created within the places where voters are temporarily located and within military units, or for election precincts with number of voters not more than 100 and not less than 50. It is recommended to replace "*composition of the precinct election commission* ***can*** *be approved by the constituency election commission*" by "*...* ***shall*** *be approved ...*", or to find a similar meaning.

47. Article 37.1.8

How shall the specifically authorized member of the precinct election commission be chosen? This could be done by election or by lottery. However, the Chairman or the secretary of the commission must be responsible for determining the election results.

48. Article 40 and 42

The whole article is still confusing and redundant. See also the **Article 42.1** about the common status[6].

a) Provisions on observers have been amended but need further improvements. The rules on who may act as an observer and the registration process have been clarified. However, the registration process is cumbersome and the deadlines are strict. The Code now foresees the right of non-governmental organizations to accredit observers (**Article 40.5**). However, public associations, including those receiving foreign funding, should be permitted to observe the election process. A clause to that effect should be added to the Code.

b) The Code seems to establish diverse rules for different types of observers. Domestic and international observers should enjoy the same rights and duties.

c) All observers, including international observers, should have the right to observe the entire electoral process from the beginning of the commissions' work until the certification of the final election results. Observers, including international observers, must have permission to attend meetings of the election commissions and to observe the printing and distribution of ballot papers. Observers should not be limited to the observation of the work of the Precinct election commissions (See **Article 40.11).**

d) All observers' rights should be enumerated in a single article.

e) **Article 40.12**: This provision is redundant with **Article 36.5**.

f) The list in **Article 40.13** should make specific reference to places of detention.

g) **Article 40.15**: Observers should not be assigned to one specific polling station but they should be able to move freely from one polling station to the other.

49. Article 41

a) The article sets out a number of "principles" of observation. The purpose of enumerating such principles in the Code is far from clear. It should be deleted because it is impracticable and can lead to abuse on the part of the authorities. Observation may be partisan, as long as observation by opponents is ensured. The state should not subject every election observer to risk prosecution or other sanctions by requiring that election observers act like judges. In addition, notion~~s~~ like *open* is too vague.

b) In summary, Article 41 is some kind of code of conduct for observers. For this reason, these principles should be reproduced at the back of the accreditation card – in accordance with our recommendations – but not necessarily in the Code.

50. Article 42.1

Observers may also write observations during the whole election process (under the terms of **Article 40**), in the commission's protocols or attached to it, or to the protocols on voting results and the election returns. Such observations could be an additional evidence in case of complaints in the litigious constituency or voting station.

51. Article 42.1.8

a) We suggest to write Article 42.1.8 as follows: "*to make or obtain 1 copy and then photocopy and obtain other copies of protocols on voting results and election*

[6] See no. II. 3. 3.2. a. of the Guidelines on Elections of the Venice Commission.

(referendum) returns, documents and attached documents prepared by [precinct and constituency] election commissions."

b) The article provides for a fee to be charged by electoral commissions for the issuance of certified copies of protocols. The justification for this innovation is far from clear. The issuing and use of protocols to check the accuracy of the results is a vital part of the process of ensuring transparency and the Code should ensure that the process is not obstructed. The cost to an electoral commission of producing a verified protocol is minimal, given that observers etc. can compile their own protocols on blank forms which the electoral commission merely needs to check, sign and stamp. In those circumstances, the cost in time and effort of processing the fee payments is unlikely to justify the revenues thereby raised.

52. Article 42.1.10

The possibility to observe the transfer of election documents to Constituency Election Commissions and the Central Election Commission is commendable.

53. Article 42.3

Article 42.3 is redundant.

54. Articles 45.1 and 45.10

a) Guidelines on Elections by the Venice Commission (I. 1. 1.2.) advise that electoral registers must be permanent[7], and there must be regular updates, at least once a year. Such rules seem to have been implemented. Because of the importance of voters' registration in the electoral exercise, it is recommended that the procedures and steps of formation of the unified registration system be clearly stated, giving each party, and citizens in general, the right of control of the lists in a permanent way, not depending only on the forthcoming election exercise, according to the suggestion of the quoted guidelines. For instance, the registration list could be consultable at the Central Election Commission or at lower level any time throughout the year (the Central Election Commission being a permanent body), by each citizen.

See Article 25.2.17.

b) Article 45.1 provides that additions and amendments to voter lists cannot be made on polling day. This provision and **Article 101.8** require amendment to reflect the use of supplementary voter lists, used by voters who have been issued with a deregistration card to vote away from home. It is also unclear how this rule fits in with **Article 48.2**, which allows for the correction of mistakes in voter lists on election day.

c) Article 45.1: it is suggested that "*until voting day*" be replaced by "*including voting day*".

d) Deadlines specified in Articles 45.1 and 45.11 for the preparation of voter lists are inconsistent and should be amended.

55. Article 45.6

Voters lists for the precincts where voters are temporarily located must not be approved solely 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 of registering as a voter independent of the director of the hospital in which

[7] This was also recommended by ODIHR.

he is. Furthermore, relatives must be able to provide additional information to the heads of the institutions.

56. Article 46.2

See the comments in the **Article 9, *b)* and *d)***.

57. Article 46.10

It is recommended to specify the sort(s) of administrative liability(ies) as a sanction in this provision. Then, the possible sanctions should be spelled out in the Code or a reference to the relevant legislation should be made.

58. Article 46.11

Voters should be notified about their exclusion from the voters list, by letter, for instance.

59. Article 49

a) The article lists 22 principles that should be followed by political parties and blocs. The second paragraph draws the list of principles that are legally irrelevant. However, most of the principles are provided for in other parts of the Code, and find there a proper sanction. Most of the same "*voluntary*" principles are listed under **Article 62** as *Activity principles of Campaign Groups on Referendum* and again under **Article 71** as *Participation Principles of Registered Candidate in Elections*. It is a clear case of repetitions that should be avoided.
b) Moreover, part of requirements are optional, which is not acceptable. See also **Article 17.7**.

60. Article 49.1

a) Since the principles are not binding but voluntary (see **Article 49.2**), it would be better to exchange the word "*must*" for "*should*".
b) Citizens may lawfully choose not to participate in elections. Political parties should therefore not be inhibited from encouraging citizens to exercising their lawful right not to vote (**Article 49.1.20**). This provision should be read like **Article 71.1.19**.

61. Article 53.1

It would be a good idea to indicate in these articles the number of signatures required to support candidates.
See Article 56.

62. 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. A time limitation of 15 years should be stipulated for the requirement to declare a criminal conviction in an application.
The same issue arises in several other provisions of the Code, such as **Articles 56.3, 57.5, 165.3 and 201.3.**

63. Article 53.4

This article relates to the right to indicate his/her party affiliation in the nomination documents. Such a provision could confuse the voters; and could lead to a situation where several candidates from the same party run in a particular constituency.

64. Article 54.3

The article provides details of minutes of meetings by political parties where decisions on nomination of candidates have been taken. Such details appear to be an internal affair of the political party and the interest of the election commissions in them is debatable.

65. Article 56

See the comment on **Article 53.1**.

66. Article 56.3

See the comment on **Article 53.3**.

67. Article 57.1

It provides that the use of improper pressure or incentives to persuade voters to sign a voter list "*can*" be the basis for invalidating the signatures and/or a refusal to register or cancellation of the registration of a candidate or candidate list. This harsh sanction should only be imposed as a result of serious and repetitive actions of such kind. The Code must be quite clear as to whether the court does, in fact, have a discretion to apply these sanctions and, if so, how that discretion should be exercised.

68. Article 57.4

a) Except in municipal elections, voters may only sign in support of one candidate or list of candidates. It is difficult to see why voters should be prohibited from signing more than one form in any event, particularly when it is extremely difficult to verify whether voters have in fact signed in another list. The rule should be removed.
b) In theory, such a provision is justified, but, in practice, its implementation is difficult to control and there is a risk of a voter being object of pressure in order to sign for a candidate, and then prevented to sign for another one.

69. Article 57.5

See comments on **Article 53.3**.

70. Article 57.9

The last sentence is difficult to understand, possibly due to a problem of translation.

71. Article 58.3

The Code (as a duty of the election commissions) should also ask the candidate about his/her finances (income, properties owned, inheritance, etc.) at the beginning and at the end of his/her mandate, in order to compare and analyse them. Regarding these

observations, the election commission could penalise the candidate if the finances' evolution seems disproportionate (between before and after the mandate).

72. Article 58.6

It is unclear why the number of voters signatures should not exceed 15% of the required number defined in the Code. This provision should be deleted.
Same comment for **Article 65**.

73. Article 60.2

It is advised to add that refusal of registration is subject to the principle of proportionality[8]. This has been a problem in the past and this article opens the door to abuse to get rid of unwanted candidates.
See Articles 68, 68.2, 88.7 and 108.1.

74. Article 60.2.2

Technical mistakes should not be a reason for a refusal of registration. This is a drastic sanction ignoring the principle of proportionality. Election contestants should have the chance to correct them.

75. Article 60.2.3

It is strongly recommended to delete the provision: *or if more than 10% of checked signatures of voters are invalid*. The number of valid signatures should be determinative. Otherwise there would be possibilities for abuse by political opponents. In summary, the only reasonable basis on which a signature list can be rejected should be that it does not contain the number of valid signatures required by law.
The same comment applies also for **Article 68.2.3**. See also **Article 216**.

76. Article 60.2.4

The article is very vague (what kind of information?).

77. Article 60.2.5

Mistakes can be unintentional.

78. Article 62

See comments on **Article 49**.

79. Article 65

Same comment as **Article 58.6**

80. Article 68

See comment on **Article 60.2**.

[8] See previous comments of the Venice Commission (CDL-INF (2000) 17).

81. Article 68.2

The comment for **Article 60.2** applies here as well.

82. Article 68.2.3

See **Article 60.2.3** for the same comment.

83. Article 69.3

a) It suggests that candidates can retain their job in State positions, in apparent contradiction with the previous paragraph (**69.2**) that requires them to be released from their employment. This could be a translation mistake. **Paragraph 69.5** is clear on the prohibition of campaigning by these candidates. Apparently, therefore, there could be candidates who work in State positions that can retain their job as long as they do not campaign. But such campaign limitation for registered candidates who are civil servants does not apply to free air time on TV.
b) Another important point: The new text refers to those civil servants appointed directly by the President of the Azerbaijan Republic or Milli Majlis of the Azerbaijan Republic, who are excluded from the obligation of release. Such exception seems not to be rational, and therefore is not acceptable.

84. Article 71

See comments on **Article 49**.

85. Article 73.2

The possibility for candidates to withdraw three days before election day is not suitable and could lead to pressure. At least, it must be ensured that candidates can challenge their application for withdrawal if they assert that they were coerced to withdraw. See **Articles 93.1.2, 202.5 and 221.1.**

86. Article 73.3

The reason for withdrawing candidacy: "*illness that seriously affects his/her health…*" does not mention the body which determines whether this is the case. This body would also have to be a court, or maybe a medical commission. In the last discussion in Baku, we were told this is defined in the Labour Code. If it is the case, a reference should be made to the relevant legislation.
This comment also affects **Article 146.9.**

Chapter Thirteen

About Election Campaigns: The rules about election campaigns (often called pre-election campaigns) are very similar, if not identical, to those stipulated in the Law on Elections to Milli Majlis. The OSCE/ODIHR and Venice Commission's 2000 comments largely still apply to the draft Code.

87. Article 74.1

The words "*Notwithstanding the right of freedom of expression*" should be put 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.

88. Article 75

An election contestant should enjoy the right of reply if s/he has been defamed.

89. Article 75.1

Election campaigning is not allowed between election day and the day before election. The word "*or*" should be replaced by the word "*and*". This would better express the intention of the drafters and be a precise rule.

90. Articles 77 and 78

Private media do not have to publish pre-election campaign material, but they must respect equality when information about candidates is displayed.
See comments on **Article 20.1**.

91. Articles 80 and 81

Though private TV and radio companies can provide paid airtime for registered candidates, they have to respect the principle of relative equality with the others. A medium cannot provide airtime to a candidate and then not speak at all about the other candidates during sections of "global" information (notably with **Article 81.4**).

92. Article 81.2

It is maybe a problem of translation but there is no conceivable reason why "*referendum campaign groups members of which are more than 20 thousand cannot use this airtime*".

93. Article 81.7.4

The provisions in the article on the allocation of paid air-time and the reference to a leading journalist are not clear.

94. Articles 84.3 and 84.4

A minimum access of all candidates to periodicals should be provided for[9].

95. Article 86.6

The possibility for observers to attend pre-election meetings in military units is welcome but should be moved to the General Section where observers' rights are listed.

[9] See no. I. 2.3. a. i. of the Guidelines on Election of the Venice Commission.

96. Article 86.7

The security and public order forces must not block or disturb the meetings. They should be present near the entrances but not inside.

97. Articles 87 and 88 in general

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 also 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.

98. Article 87.6

The information could be displayed on notice boards.
See solution for **Article 60.2, *a)***.

99. Articles 88.1, 88.2 and 88.3

a) Here again, prohibition should not go further than what is forbidden by ordinary criminal legislation and tort law. The incitement to change the constitutional basis of government may be forbidden, according to international standards, only when it is proposed to introduce such a change by force. Proposing changes in the constitution is part of normal political debate. Incitement to violate the territorial integrity of the country should also 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.
b) The drafter partially implemented our previous recommendation by introducing the notion of "*force*" in the call to change the constitutional system. It is an improvement, but not sufficient to protect the basic freedoms of speech during an election campaign.
c) The words "*Subject to the freedom of expression*" should be included somewhere in Article 88.1. This is important since the terms "*citizens' honour and dignity*" are imprecise and can equally be abused.

100. Article 88.6

The formulation "*distribution and broadcast of information which impugns the prestige, dignity, and honour of the candidate*" is problematical for the following reason: 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. Honour and Dignity should be sufficient to protect legitimate *reputational* interests.

101. Article 88.7

a) The reference to **Articles 87.2 and 87.3** in Article 88.7 of the Code is irrelevant. It must be a mistake.
b) 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.
c) 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 honour 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. And parties/candidates should have the time to rectify these minor errors.
The same applies for **Article 108.1**.

102. Article 89.3

Provisions about election funds, which are not transferred in time or fully, should be removed from the Code.

103. Article 90.2

The words “*assistance in kind*” are unclear and should be deleted.
The provisions in **Article 90.2.12** appear to be duplicated in **Articles 93.1 and 93.2**.

104. Article 93.4

The right to return unspent funds is perfectly understandable; an obligation to do so is a completely different matter. Implementation of the proposed rules will be very complicated and enormously cumbersome. Candidates and parties will have to calculate the amounts to be returned as a proportion of the unspent funds. They will then have to go the considerable effort of tracing the original donors and returning the funds. Even for those who made donations through a bank transfer this will be laborious, and for other donors much more work will be required. Moreover, depending on how much money is left unspent, and given the cost of making bank transfers to return funds, the sums involved may well be tiny or in any event disproportionate to the cost and effort of returning them. It would be far more expedient if unspent funds were either transferred to party funds (in the case of donations to political parties) or directly to the State.
Such remarks are also valid for referendums (**Article 124.2 to 124.4**) and Presidential election (**Article 157.4**). See **Article 226.**

105. Article 94.3

To require three different financial reports seems excessive. This is true given the fact that banks are required under **Article 95.2.** to report regularly about the movements on the special accounts.

106. Article 96.3

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. See **Article 98.3**.

Section Four. Holding of Elections (referenda)

107. Article 97.3

The comment for **Article 96.3** applies to this provision as well.

108. Article 99.2

The requirement that ballot papers are numbered is a welcome enhancement of ballot security, as is the proposed use of voting envelopes (**Article 104.10**). The number should be put so that it does not appear on the ballot paper that is cast in the box.
The Special Section of the draft Code fails to make the necessary references to the use of voting envelopes (**Articles 167, 200 and 236**).

109. Article 99.3

The authorities may wish to envisage to submit the possibility of ballot papers with pictures and/or logos (emblems of candidates or parties), for illiterate persons. It would also be very desirable for result protocols to be uniquely and sequentially numbered.

110. Article 101, 101.2 & 101.4

The voter should not have the possibility of voting in another election precinct than his territory of residence. So, he/she must be registered on the voters list on the day of the election. There is a too important risk of fraud, dual vote or several registrations. If this recommendation is not retained, it would probably be wise to leave a gap of one or two days between the period in which the Constituency and the Precinct Election Commission can issue deregistration cards. This would leave time for the extracts from voter lists where the issuance of such cards has been recorded to be sent from the Constituency Election Commission to the precincts.

111. Article 104

A clear procedure should be included for electors presenting voter card on voting day in order to vote in a precinct, where they are not included in the Voter list. The voting cards could be attached to the precinct protocol.

112. Article 104.6

The inking of finger of voters who voted is a welcome novelty that will contribute to appropriately and efficiently limit the possibility of double voting.

113. Article 104.8

It is recommended that ballot papers are not signed at all. The danger is that a signature may be written in such a way as to identify the ballot paper and compromise the secrecy of the ballot.

114. Article 104.13

An observation must be made on the final polling station's protocol, explaining the circumstances and the number of votes spoiled.

115. Article 104.14

a) Law enforcement agents should enter polling stations only to *restore*, not preserve, order, and must leave again immediately once order has been restored.
b) It is a drastic decision to annul the vote in a given precinct where the vote has been disrupted for two hours. This clause may open door to abuse: voting could be disrupted on purpose in order to invalidate the results not favourable to a candidate or party. This provision should be amended.

116. Article 105

This provision for using mobile ballot boxes[10] has been revised to limit to possibility of abuse. The safeguards (written request in advance and cancellation of the mobile voting if the number of ballot exceeds the number of request…) are appropriate to limit fraud. "*And other reasons specified as good ones by the Central Election Commission*" is however far too vague.

117. Article 105.3

The number of used and returned ballot papers from voters requesting a mobile ballot box recorded in a separate document must be attached to the final polling station's protocol.

118. Articles 106 to 109

Articles 107, 108 and 109 are new articles.
Article 106.5: "*All precinct election commission members and observers…*" should be advised of the results of voting by the delivering of a copy of the protocol immediately after its signature and before delivery to the superior commission.

119. Article 106.3

It is advisable to add a precise list of cases of invalid ballot papers.

120. Article 106.4

This article must be clarified. If there are two or more ballot papers in the same envelope, the commission must count one ballot if they are all identical. If there are differences, of any sort, or if ballot papers are blank, they must be all invalidated.

121. Article 106.7

It is recommended that voter lists together with voting cards be delivered to Constituency Election Commissions together with the other election material. In addition, the election material should be delivered to the constituency commission by the Chairperson and other polling station members representing different political interest.

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[10] According to Point no. I. 3.2. 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*".

122. Article 107

The Article should establish a procedure for receipt of polling station protocols and other election material. The Constituency commissions should first check whether all documents are delivered, second introduce all data from the protocol in a summarization table (see comments on **Article 203**) and/or in a computer (when available); third, check whether there are discrepancies in the results; and fourth issue a receipt signed by the Chairman of the constituency commission, certifying that the polling station members have handed over the necessary documents. This will improve the tabulation process and limit mistakes.

123. Article 109

This article should provide more details on what results will be published by the Central Election Commission. As mentioned before, the Central Election Commission should publish detailed results by constituencies and by polling stations within a time-limit of 5 days. The details results could be publish in the media and/or on the Central Election Commission website.

124. Article 110.9

It is recommended to add this provision at the end of this paragraph: "*The State guarantees security and non-dissemination of information on voters.*"

125. Article 112.1

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*".

126. Article 112.8

This Article needs clarification. Under this article, a person candidate who has been elected cannot refuse to testify as a witness in administrative, civil or criminal investigations regarding complaints about violations of citizens' rights. This rule, however, requires modification: the rule against self-incrimination requires that such evidence cannot be admissible against the candidate in subsequent proceedings against him. Unless this is made clear, the rule as presently formulated may well violate the candidate's right to a fair trial under the European Convention on Human Rights.

127. Article 113.1

See comments on **Articles 88.7 and 60.2**.

128. Article 113.2

The article lists a number of cases when the election commission can refuse to register a candidate, in cases of specific violations of rules of conduct provided by the Code. Violations are rather specific, and their number has to be considered *exhaustive*. It would be better, however, to specify the obligation of refusal, rather than the power to

do it, and to limit such an obligation only to serious offences, after a first public warning. Depending on the degree of the violations a fine could be considered.

129. Article 113.2.2

This provision must take into account that the freedom of expression guarantees political advertisement before the actual election campaign begins. Therefore the words "*Notwithstanding the right to freedom of expression*" should be included at the beginning of the provision.

130. Articles 113.2.5 and 113.2.6

0.1% 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).

131. Article 113.2.7

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. 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 stand for election.

132. Article 114.1

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

133. Article 115

The terms "*impugning the honour and dignity of a candidate*" could lead to abuse. The definition of criminal offences should take place in criminal legislation. The following language should be added to Draft **Article 115.1.6**: "*Notwithstanding the right of freedom of expression*" at the beginning of the draft article and "*according to the existing general legislation on defamation*" at the end of the draft article.

Special Section

Section Five. Referendum

134. Article 118

The Constitutional Court is the most appropriate institution to decide whether a proposal being put to a referendum would give rise to breach of human rights under Azerbaijan's Constitution or would violate Azerbaijan's human rights obligations under international agreements, including the European Convention.

135. Article 122

a) The draft Code should clarify the role of Milli Majlis and the President in the decision on how a referendum should be conducted. Both constitutional provisions (**Articles 95 and 109**) quoted by Article 122 of the Code provide that Milli Majlis and

the President "*appoint*" a referendum. There has to be a difference or a distinction in their respective roles, which is a constitutional matter.
b) It is also unclear as to when the proper authority will allow the registration of a referendum issue: something similar to the ruling from the Constitutional Court as per **Article 113** on changes to the Constitution. No mention of the matter is made in **Chapter 11** of the Code, under "*registration of referendum campaign group*". It also appears unreasonable that a decision be left to the Milli Majlis or the President, because it would happen after the collection of signatures. If it is meant that Central Election Commission has such a preliminary power, then a specific provision should be entered in the Code.

136. Article 127

The provision providing the possibility for referendum campaigning groups to independently decide on the form of use of TV and radio airtime and space in periodicals was removed and should be reintroduced.
Articles 127.1-6, 155.1-6, 189.1-6 and 224.1-6 have the same content and should be transferred in a properly formulated common text to the General Section.

137. Article 128.3

The limit of election funds for referendum campaigning group with 40,000 members or more was reduced to 100 000 times the minimum salary instead of 250 000 previously while the limit for referendum campaign groups with 20,000 members or more is fixed at 150,000. This is inconsistent and the provision should be amended.

138. Article 131

The Article was simplified compared to the previous draft by removing the texts related to unsuccessful referendum campaigning groups. The obligation for returning unused election funds to donors in proportional manner for both not registered and registered referendum campaigning groups remains, contrary to the OSCE/ODIHR and Venice Commission's recommendation. It should be noted that in many other occasions the advice was accepted.

139. Article 132

This article provides for the transfer of unspent funds to the budget 60 days after the voting day as recommended by ODIHR and the Venice Commission.
See **Article 229**.

140. Chapter Nineteen

Many of the repetitions existing in the previous draft are now avoided.

141. Article 135

The deadline for announcement of the "final outcomes" is increased from 10 to 15 days after a referendum. It still does not presuppose that all possible complaints have been finally determined as previously recommended.

142. Article 138

The turnout requirement has been completely eliminated. It raises concerns especially as regards constitutional amendments that require approval by referendum.

143. Article 139

According to this article, the Referendum results is declared invalid if violations of the law caused the invalidation of the results in more than 50 constituencies or in more than 2/5 of the polling stations, compared to more than ¼ of polling stations in more than ¼ of the constituencies in the previous draft. It is difficult to consider the results of a referendum acceptable if the election results were cancelled in 40% of the constituencies or precincts due to violations, even more so when no turnout requirement is envisaged. Same comment for **Article 240.2.1**.

144. Article 139.1.1

It is not clear what situations are covered by this provision that should be formulated in a more precise manner.

145. Former Article 141.2

The possibility for each citizen to appeal to the Court of Appeal and request the invalidation of the referendum within 10 days after the announcement of the results is now removed. It should be reintroduced.

146. Article 144

See the comment about **Article 13**.

147. Article 145

This article is wrongly referred twice in **Article 149** devoted to postponement of elections. It is unclear whether the intention of the author was to refer to **Articles 144** or **146**.

148. Article 146

This article was simplified and considerably shortened. The necessity of this provision is doubtful if all commissions are permanent bodies. (See also **Article 214.6**).

149. Article 146.1

See comments on **Article 9**, *b)*.
It appears that the drafter considers that the clarification given to the expression "residing mostly" in **Article 46.2** is clarifying this matter. See **Articles 212, 214.1**.

150. Article 147.1

The number of signatures necessary for the registration of candidates in single-mandate constituencies is reduced to 450. This is a welcome development.

151. Article 147.4

This article is redundant with **Articles 56.5, 181.4 and 215.6**.

152. Article 149

The reference to Article 145 is wrong and must be corrected.

153. Chapter Twenty three – Articles 153 and 154

It would be preferable not to allow any withdrawal of candidates, in order to avoid pressures. If withdrawal is admitted, it seems difficult to envisage a correction of the names of candidates on all ballot papers. It will depend on the term between the new information and the election day. It could be possible to inform the voters in the polling station, (by a poster) on a notice board for example.
See **Article 166.3**.

154. Article 155

a) The reference in **Article 155.6** should read **155.2** instead of **152.2**.
b) Political parties that have registered candidates in more than 60 single-mandate constituencies enjoy more possibilities to campaign, which seems reasonable (e.g. **Articles 155.2, 155.4-5**). On the other hand for financial matter, a distinction is made for parties who registered candidates in more than 50 single-mandate constituencies (e.g. **Articles 156.3, 157.2**). A similar criteria should be adopted for both election campaign and finance purposes.

155. Article 157.4

See comment on **Article 93.4**.

156. Article 159

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.

157. Article 160

There is a inconsistency between **Articles 160.1** and **160.4**: the first article provides for an obligatory return of unexpended funds to donors ("*must*") by candidates who have not been registered, while the second gives the choice ("*can*") to the registered deputies, who did not collect 10% of the votes to return money. See comment former [165] Preliminary Assessment. **Article 160.1-4** is repeated almost literally in **Article 193.1-4** (without the inconsistency mentioned above – in both places the candidate can return money to donors) and **Article 229.1-4**. They should be harmonised, merged and moved to the General Section.

158. Article 161

a) It should be "*more than 50*" (the beginning of line 6).
b) Candidates who have received at least 10% of votes do not have to reimburse funds received by the Constituency Election Commissions and do not have to pay the costs related to "free" TV and Radio airtime and space in periodical. This is too high and

should be reduced to 3%, as it was previously. Alternatively, partial reimbursement could be envisaged for unsuccessful candidates.
Same comment applies for **Article 194** and **Article 230**.

159. Article 162

In Article 162.4, "*with a registered list of candidates*" should be changed to "*with registered candidates in more than 60 single-mandate constituencies*".
Many repetitions are noted in **Articles 162.1-6, 195.1-6, 231.1-6**. Three paragraphs could be reformulated, *uniformised* and transferred to the General Section.

160. Article 164

Articles 164, 197 and 233 are quite similar and should be transferred to the General Section.

161. Chapter Thirty

See **Chapter Fifteen** (**Section Four**); the text is often repetitive.

162. Article 165.3

See the comments on **Articles 53.3 and 198.3**. The same applies for **Articles 198.3** and **234.3**.

163. Article 166.3

See the remark **Articles 153 and 154**. Same comment applies for **Articles 199.5** and **235.5**.

164. Articles 167.3, 204.2 and 234.3

Neither the General Section nor in the Special Section mention the case of an empty envelope.
Same comment for **Article 234.3**.

165. Article 169.2

The article should provide for a deadline of 48 hours after election day for the preparation of the Constituency Election Commissions' protocols and for their **delivery** with other materials to the Central Election Commission. The same should apply to **Articles 202.1 and 238.2**.

166. Article 170.2

The Code should not indicate a time-limit for the submission of the results to the Constitutional Court, except at the end of all complaints (from candidates, former candidates or voters).

167. Article 172.2

ODIHR and the Venice Commission suggest the following addition: *"... a deputy, from another constituency, cannot ..."*. The same remark applies to **Article 176.5**.

168. Article 173.2

In the case of incompatibility, the Constitutional Court should be the only body that could remove a deputy, and not the relevant election commission.

169. Article 174

a) The article was shortened and provides only for publication of final detailed results with information on the elected deputies and the data from Constituency election commissions' protocols. The publication of the results from individual precincts is an exceedingly valuable rule that was regrettably removed from the revised draft. This provision should be reintroduced.
b) In addition, it is difficult to see any reasons for such a long period for any publication of results. The publication of detailed results should be expeditious so that complaints can be lodged in case of discrepancies in protocols. It should extend to all national elections, including presidential elections. Transparency would be further enhanced if the Central Election Commission published the full results of national elections, including precinct elections, in a single source. This could be done relatively cheaply on a government website.

170. Article 175

The references are understood to **Article 89.1.1-6** and not **89.2** of the Constitution.

171. Article 178.1

This article is unclear and this may be due to a problem of translation.

172. Article 181.1

a) The number of signatures necessary for the registration of a candidate is reduced from 50,000 to 45,000 in the existing legislation. However, it was increased compared to the very first draft received by the ODIHR and the Venice Commission. The number of signatures should be reduced to 40,000 which will be in line with the number of signatures collected by referendum campaigning groups.
b) Additionally, a minimum of 50 signatures compared to 500 in the working draft have to be collected in no less than 60 constituencies.

173. Article 182

The candidate must have the possibility appealing this decision to the Court of Appeals or the Constitutional Court.

174. Article 183

In the case of postponement of Presidential elections, who will carry on the Presidency in the interim?

175. Article 183.1

"*Elections for the relevant constituency*" should read *"elections for the President"*.

176. Article 184.2

A reimbursement with documents should be envisaged in order to prove expenses. The same remark applies to **Article 218.2**.

177. Articles 190.3 and 190.4

These articles should mention that the person who has the mandate is liable in case of violations.

178. Article 193

The reference to **Article 190.1** should be **Article 193.1**.

179. Article 194

See comment on **Article 161**.

180. Article 198.3

See comment on **Article 165.3**.

181. Article 199.4

The reference to the ballot paper "Against all candidates" should be deleted.

182. Article 199.5

On the withdrawal of candidates, see comment on **Articles 166.3 and 73.2**.

183. Article 202.1

See remark about **Article 169.2**.

184. Article 202

It seems that there is no provision providing for the invalidation of the results by Constituency Election Commissions or the Central Election Commission in a given constituency. Such a possibility (similar to that for polling station results provided by **Article 106.10**) is neither provided in the General Section. Consequently, it is unclear how the results in a constituency can be invalidated though such a situation is provided for in **Article 204.1.1**.

185. Article 203

a) The existing legislation for the Elections to Milli Majlis (**Articles 73.9, 73.12**) provides that:
- A summarization table for the results in the nation-wide constituency (containing the results in all 100 constituencies) should be prepared and must be attached to the Central Election Commission's Protocol;
- Verified copies of the protocols and the summarization table be submitted to all Central Elections Commission's members and observers.

b) Such provisions enhance the transparency of the tabulation process at the Central Election Commission level for elections in nation-wide constituency. Unfortunately,

Article 203 does not include such provisions. This is a step back compared to existing legislation.
c) It is highly recommended to include such provisions for all elections in nation-wide constituency (presidential elections and referendums) in the Special Section. Similar obligations should be introduced in the General Section for all kind of elections at the first level of the tabulation process (i.e., Constituency election commissions). The State Automated Information System could be easily used for this purpose.
See comment **Article 107**.

186. Article 203.1

Following the 24 August 2002 referendum, the time-limit for submission of the results of Presidential elections to the Constitutional Court is increased to 14 days. However, this change does not mean that all complaints and appeals have been finally determined.

187. Article 206

Such an important decision should be a decision from the Constitutional Court.

188. Article 208.2

This provision on the publication of detailed results of all constituencies and precincts should be extended to all elections and be moved to the General Section. 5 days for both polling stations and constituency protocols should suffice.

Section Eight

189. Article 210.1

"Nationwide constituency" should be changed to *"multi-mandate constituency"*.

190. Article 210.2

The number of municipal members should be more important considering the number of people in each constituency.

191. Article 211.2

This provision should be clarified unless it is a translation problem.

192. Article 212

See comment on **Article 14.3.1**.
Moreover, if the Code permits immigrants to vote, it is strongly recommended to permit the vote of citizens with dual citizenship.

193. Articles 212, 214.1

See the comment in the **Article 146.1**.

194. Article 215.6

This article is redundant. See remark **Article 147.4**.

195. Article 216

Reference is made to Article 60 (General Section), where "*other reasons established by this Code*" is omitted, following the recommendation **[119].** On the other hand in **Article 60.2.3** the 10% limit for invalidated signatures is still present, otherwise removed in other places in the revised draft Code.

196. Article 217

The Article provides for the postponement of the municipal election if none or only one candidate was registered or remained on the ballot. It should be changed to provide for postponement in the case of the number of registered candidates is less than the number of municipal councillors provided in **Article 215** (or less than 2/3 of this number in view of **Article 244**).

197. Articles 221.1

On the withdrawal of candidates, see comment on **Article 73.2**.

198. Article 223

This article is confusing unless it is a problem of translation.

199. Article 224

See remark **Article 127**.

200. Article 225.2.3

The date for transferring the money allocated by Constituency election commissions to candidates is very late – only 25 days before the elections. The money should be transferred immediately after the end of the candidate registration.

201. Article 225.5-7

The creation of unified election fund is provide for political parties or blocks if they have registered candidates in more than half of all municipalities. However, the limit of 200 times the minimum salary is unrealistically low.

202. Article 229

The obligation to return the unspent money to donors remains in **Article 229.1** for candidates, who were not registered, while for registered candidates **Article 229.4** provides for voluntary return. This is not consistent with **Article 132**.

203. Article 230

See comment on **Article 161**.

204. Article 231

See comments on **Article 162**.

205. Article 234.3

See comment on **Articles 167.3** and **165.3**.

206. Article 235.5

See comment on **Article 166.3**.

207. Article 238.1

The word "*precinct*" should be removed. It may be a translation problem.

208. Article 238.2

It is advisable to shorten the time-limit about the determination of results. Multi-mandate districts elected by plurality votes can cause electoral confusion and encourage many abuses. They can also produce very disproportional results.

209. Article 240.2.1

See comment on **Article 139**.

210. Article 240.2.2

Second item: in what cases may a court cancel the election?