



Strasbourg, 19 September 2016

CDL-REF(2016)054

Opinion No. 864/2016

Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

AZERBAIJAN

**MODIFICATIONS
TO THE CONSTITUTION**

**SUBMITTED
TO THE REFERENDUM
OF
26 SEPTEMBER 2016**

Unofficial translation

**MODIFICATIONS
TO THE CONSTITUTION OF AZERBAIJAN
PROPOSED
FOR THE REFERENDUM OF 26 SEPTEMBER 2016 ¹**

1. Article 9. The Armed Forces

I. The Republic of Azerbaijan establishes its Armed Forces and other military troops to ensure its security and protection. **The Armed Forces consist of Azerbaijani Army and other armed units.**

II. The Republic of Azerbaijan rejects war as a means of encroaching on the independence of other States and of settling international conflicts.

III. The President of the Republic of Azerbaijan is the Commander in Chief of the Armed Forces.

2. Article 24 Main Principles Concerning Human Rights and Civil Liberties

I. Human dignity is protected and respected.

II. Every citizen from birth enjoys inviolable, undeniable and inalienable rights and freedoms.

III. Rights and freedoms also include commitments to society and other individuals. **Abuse of rights is not allowed.**

3. Article 25: Right to Equality

I. Everyone is equal before the law and the court.

II. Men and women have equal rights and freedoms. • Equality regardless of gender

III. Everyone has equal rights and freedoms irrespective of race, **nationality ethnicity**, religion, sex, origin, property status, social position, convictions, political party, trade union organization and social unity affiliation. Limitations or recognition of rights and freedoms because of race, **nationality ethnicity**, social status, language, origin, convictions and religion are prohibited

IV. No one may be harmed, granted advantages or privileges, or deprived from granting advantages and privileges on the basis of the grounds laid down in Part III of this Article.

¹ All proposed modifications are highlighted in the text

V. Everyone shall be guaranteed equal rights in any proceeding before state authorities and bearers of public authority that decide on his or her rights and duties.

VI. People with physical and mental defects are entitled to all rights and carry all duties confirmed by this Constitution, except the rights and duties impeded by their limited abilities.

4. Article 29: Right to Property

I. Everyone has the right to own property.

II. Neither kind of property has priority. Ownership right including right for private owners is protected by law.

III. Everyone might possess movable and real property. Right of ownership envisages the right of owner to possess, use and dispose of the property himself/herself or jointly with others.

IV. Nobody shall be deprived of his/her property without decision of law court. Total confiscation of the property is not permitted. Alienation of the property for state is permitted only after preliminary fair reimbursement of its cost.

V. Private property causes social responsibility

VI. The property rights over land plots might be limited by law to ensure social justice and effective use of land plots.

VII. The state guarantees succession rights

5. Article 32. Right for personal immunity

I. Everyone has the right for personal immunity.

II. Everyone has the right to keep secret private or family life. It is prohibited to interfere with private and family life, except in cases established by law. Everyone has the right to be protected from unlawful interference in his or her private and family life.

III. It is not allowed to obtain, keep, use and disseminate information about a person's private life without his or her consent. No one may be subjected to being followed, videotaped or photographed, tape recorded or subjected to other similar actions without his or her consent save activities in cases prescribed by law.

IV. The state guarantees everyone the right for confidentiality with respect to correspondence, telephone communications, post, telegraph messages and information sent by other communication means. This right might be restricted, as

specified by legislation, to prevent crime or to find out true facts when investigating criminal case.

V. Everyone may become familiar with the materials collected in regards to him or her save in cases prescribed by law. Everyone has a right to demand correction or elimination of the information collected in regards to him or her, which does not correspond to the truth, is incomplete or collected through violation of the provisions of law.

VI. It is prohibited to enter information resources carried on the paper or in electronic form in order to obtain information on third party, except in the cases provided by law.

VII. Information technologies cannot be used for disclosing information about private life, including faith, religion and ethnic identity except in the cases when the concerned person has openly expressed his consent or when the statistic data of anonymous nature are being processed without discrimination and other cases provided by law.

VIII. Scope of the personal information, as well as the conditions of their processing, gathering, passing, use and protection is defined by law.

6. Article 36: Right for strikes

I. Everyone has the right to be on strike, both individually and together with others.

II. Right for strike for those working based on labor agreements might be restricted only in cases envisaged by the law. Soldiers and civilians employed in the Army ~~and other military formations~~ of the Azerbaijan Republic have no right to go on strike.

III. Individual and collective labor disputes are settled in line with legislation.

IV. Lockout is prohibited except in the cases provided by law.

7. Article 47. Freedom of thought and speech

I. Everyone may enjoy freedom of thought and speech.

II. Nobody should be forced to promulgate his/her thoughts and convictions or to renounce his/her thoughts and convictions.

III. Propaganda provoking racial, national, religious and social discord and animosity ~~or hostility based on any other criteria~~ is prohibited.

8. Article 49. Freedom of meetings

I. Everyone has the right for meetings.

II. Everyone has the right, having notified respective governmental bodies in advance, **and with a condition of not disrupting public order and public morale** peacefully and without arms, meet with other people, organize meetings, demonstrations, processions, place pickets.

9. Article 53. Guarantee of right for citizenship

I. ~~In no circumstances a~~ A citizen of the Azerbaijan Republic may **not** be deprived of citizenship of the Azerbaijan Republic **except when losing the citizenship in the cases provided by law.**

II. In no circumstances a citizen of the Azerbaijan Republic may be expelled from the Azerbaijan Republic or extradited to foreign state.

III. The Azerbaijan Republic ensures legal protection and patronizes citizens of the Azerbaijan Republic temporarily or permanently living outside the Republic.

10. Article 56. Electoral right

I. Citizens of the Azerbaijan Republic have the right to elect and be elected to state bodies and also to take part in referendum.

II. Those recognized incapable by law court have no right to take part in elections and in referendum.

III. ~~Participation in elections~~ **Passive participation in elections** of military personnel, judges, state employees, religious officials, persons imprisoned by decision of law court, other persons specified in the present Constitution and laws might be restricted by law.

11. Article 57. Right to appeal

I. Citizens of the Azerbaijan Republic have the right to appeal personally and also to submit individual and collective written applications to state bodies. **Military personnel can only use this right individually.** Each application should be responded to in an established order and term.

II. Citizens of the Azerbaijan Republic have the right to criticize activity or work of state bodies, their officials, political parties, trade unions, other public organizations and also activity or work of individuals. Prosecution for criticism is prohibited. Insult or libel shall not be regarded as criticism.

12. Article 58. Right for joining

I. Everyone is free to join other people.

II. Everyone has the right to establish any union, including political party, trade union and other public organization or enter existing organizations. Unrestricted activity of all unions is ensured.

IV. Nobody may be forced to join any union or remain its member.

IV. ~~Activity of u~~ Unions intended for forcible overthrow of legal state power on the whole territory of the Azerbaijan Republic or on a part thereof, ~~carrying other intentions considered as a crime by law or using criminal means~~ ~~is~~ are prohibited. Activity of unions which violates the Constitution and laws might be stopped by decision of law court.

13. Article 59. Right for business activity

I. Everyone may, using his/her possibilities, abilities and property, ~~according to existing legislation,~~ individually or together with other citizens, carry out business activity or other kinds of economic activity not prohibited by the law.

II. ~~The State regulates entrepreneurship only to ensure state interests and protection of the people's life and health.~~

14. Article 60. Guarantee of rights and liberties by law court and administrative means

~~I. Legal protection of rights and liberties of every citizen is ensured.~~

~~II. Everyone may appeal to law court regarding decisions and activity (or inactivity) of state bodies, political parties, trade unions, other public organizations and officials.~~

I. Protection of everyone's right and liberties in the court and by administrative means is guaranteed.

II. Everyone has a right that his/her case being considered with impartiality and within the reasonable time limits in the court trial and in administrative proceedings.

III. Everyone has a right to be heard in the court and administrative proceeding.

IV. Everyone can complain to the court and initiate administrative complaint regarding actions or inactions of the state bodies, political parties, legal entities, municipalities and officials.

15. Article 68. Protection from arbitrariness and the right to conscientious treatment

I. Everyone has a right to the conscientious treatment excluding arbitrariness by the state bodies.

II. Rights of the person suffered from crime and also from usurpation of power are protected by law. Suffered person has the right to take part in administration of justice and demand for compensation of losses.

III. Everyone has the right for compensation by the state of losses borne as a result of illegal actions or non-action of state bodies or their officials

IV. The state along with its officials carries civil liability for the damage to human rights and liberties and violation of the state guarantee of the human rights and liberties as a result of the illegal actions or inaction of the state officials.

16. Article 71. Protection of rights and liberties of a human being and citizen

I. To observe and to protect rights and liberties of a human being and citizen specified in the Constitution-is responsibility of bodies of legislative, executive and legal power.

II. No one may restrict implementation of rights and liberties of a human being and citizen. Everyone's rights and freedoms are limited by the grounds provided for in this Constitution and laws, as well as by the rights and freedoms of others **Restriction of human rights and liberties must be proportional to the state's expected result.**

III. Rights and liberties of a human being and citizen may be partially and temporarily restricted on announcement of war, martial law and state of emergency, and also mobilization, taking into consideration international obligations of the Azerbaijan Republic. Population of the Republic shall be notified in advance about restrictions as regards their rights and liberties.

IV. Nobody, in no circumstances may be forced to promulgate his/her religious and other beliefs, thoughts and to be persecuted for such.

V. None of the provisions of Constitution may be interpreted as regulation directed to prohibition of rights and liberties of a human being and citizen.

VI. Rights and liberties of a human being and citizen act on the territory of the Azerbaijan Republic by themselves.

VII. Any arguments related to violation of rights and liberties of a human being and citizen are settled in law courts.

VIII. No one will be responsible for acts which were not considered criminal at the moment of their implementation. If after the crime new law was introduced envisaging no responsibility or mitigation of responsibility, said new law shall apply.

IX. Everyone may conduct actions not prohibited by law and no one may be forced to conduct actions not envisaged by law.

X. The state institutions may function only on the basis of this Constitution, in the manner and within the boundaries prescribed by law.

17. Article 85. Requirements to candidates to the posts of deputies of Milli Majlis of the Azerbaijan Republic

I. Every citizen of the Azerbaijan Republic ~~not younger than 25~~ possessing right to participate in elections may be elected the deputy of Milli Majlis of the Azerbaijan Republic in an established order.

II. Persons having double citizenship, those having obligations to other states, those working in the bodies of executive or judicial power, persons involved in other payable activity except scientific, pedagogical and creative activity, religious men, persons whose incapacity has been confirmed by law court, those condemned for grave crime, serving a sentence due to verdict of law court may not be elected the deputies of Milli Majlis of the Azerbaijan Republic.

18. Article 89. Deprivation of deputies of Milli Majlis of the Azerbaijan Republic of their mandates and loss of powers by the deputy of Milli Majlis of the Azerbaijan Republic

I. The deputy of Milli Majlis of the Azerbaijan Republic loses his/her mandate in the following cases:

1. whenever during the elections there was falsification in calculation of votes;
2. on giving up the citizenship of the Azerbaijan Republic or accepting other citizenship;
3. on commitment of crime and whenever there is valid verdict of law court;
4. on taking position in state bodies, post in religious organizations, involvement in business, commercial or other paid activity (except scientific, pedagogical and creative activity);

5. on a voluntary basis;

6. on violation of provisions of the Part III of the Article 93 of this Constitution;

7. on blunt violation of the code of ethical conduct of the parliament members provided by law.

Decision about deprivation of the deputy of Milli Majlis of the Azerbaijan Republic of his mandate is taken as specified in legislation.

II. Whenever deputies of Milli Majlis of the Azerbaijan Republic are not able to fulfil their obligations and in other cases specified by law their authority is considered terminated. Procedure of taking respective decision is determined by the law.

19. NEW Article 98¹. The dissolution of the Milli Majlis of the Republic of Azerbaijan

If the same convocation of Milli Majlis of the Azerbaijan Republic for one year twice makes a vote of no confidence to the Cabinet of Ministers of the Azerbaijan Republic or twice does not approve after the submission by the President of the Azerbaijan Republic the candidates for the Constitutional Court of the Azerbaijan Republic, Supreme Court of the Azerbaijan Republic and the Board of the Central Bank of the Azerbaijan Republic in a number of members necessary for the activities of these bodies in a period provided by the law, besides, when it is unable to implement its duties provided in the articles 94 and 95, parts II, III, IV and V of the Article 96 and the Article 97 of the Constitution for unavoidable reasons, President of the Azerbaijan Republic dissolves Milli Mejlis of the Azerbaijan Republic.

20. Article 100. Requirements to candidates to the post of the President of the Azerbaijan Republic

Citizen of the Azerbaijan Republic ~~not younger than 35~~, permanently living on the territory of the Azerbaijan Republic longer than 10 years, possessing voting right, without previous conviction, having no liabilities in other states, with university degree, not having double citizenship may be elected the President of the Azerbaijan Republic.

21. Article 101. Procedure of elections of the President of the Azerbaijan Republic

I. The President of the Azerbaijan Republic is elected for a ~~5~~ 7-year term by way of general, direct and equal elections, with free, personal and secret ballot. ~~The President of the Azerbaijan Republic can declare extraordinary elections of the President of the Azerbaijan Republic.~~

II. The President of the Azerbaijan Republic is elected by the majority of more than the half of votes.

III. If required majority has not achieved in the first round of voting, then second round will be held on second Sunday after the first round. Only two candidates who gained more votes than others in the first round, or two candidates following closely the first ones, should they recall their candidatures, will take part in the second round of elections.

IV. The candidate having collected majority of votes in the second round of elections is considered elected the President of the Azerbaijan Republic.

V. In case the conduct of the Presidential Election of the Republic of Azerbaijan is not held due to military operations under a state of war, the term of office of the President of the Republic of Azerbaijan shall be extended until the end of military operations. The decision on this matter shall be adopted by the Constitutional Court of the Republic of Azerbaijan on the basis of the application of the state body organizing elections (referendum).

VI. Procedure of implementation of the present Article is specified in legislation.

22. NEW Article 103¹. Vice-presidents of the Republic of Azerbaijan

I. The President of Azerbaijan Republic appoints and dismisses first Vice-president and Vice presidents of Azerbaijan Republic.

II. Azerbaijani citizens having right to attend in elections, possessing higher education, having no commitment in front of other states can be appointed to the post of Vice-president.

23. Article 105. Implementation of powers of the President of the Azerbaijan Republic on his resignation

I. Whenever the President of the Azerbaijan Republic resigns from his post ahead of time, extraordinary elections of the President of the Azerbaijan Republic are held ~~within three months~~ within 60 days. In such case, until new President of the Azerbaijan Republic is elected, the ~~Prime Minister~~ First Vice-president of Azerbaijan Republic will carry out powers of the President of the Azerbaijan Republic.

II. If during said term the ~~Prime Minister~~ First Vice-President of Azerbaijan Republic carrying out powers of the President of the Azerbaijan Republic resigns, becomes incapable of carrying out his powers due to illness, ~~Chairman of Milli Majlis of Azerbaijan Republic~~ will the vice-presidents gain status of the First Vice-President in

an order, defined by the President and carry out powers of the President of the Azerbaijan Republic.

~~III. If Chairman of Milli Majlis of Azerbaijan Republic is unable to fulfil powers of the President of the Azerbaijan Republic due to reasons given in paragraph II of the Present Article, Milli Majlis of the Azerbaijan Republic takes decree about delegation of powers of the President of the Azerbaijan Republic to other official.~~

III. If the First Vice President of Azerbaijan Republic is unable to fulfil powers of the President of the Azerbaijan Republic due to reasons given in paragraph II of the Present Article the Prime Minister of the Republic of Azerbaijan executes the office of the President of the Republic of Azerbaijan.

IV. If the Prime Minister of Azerbaijan Republic is unable to fulfil powers of the President of the Azerbaijan Republic due to reasons given in paragraph II of the Present Article the chairman of the Milli Majlis of Republic of Azerbaijan executes the power of the President of the Republic of Azerbaijan. If Chairman of Milli Majlis of Azerbaijan Republic is unable to fulfil powers of the President of the Azerbaijan Republic due to reasons given in paragraph II of the Present Article, Milli Majlis of the Azerbaijan Republic takes decree about delegation of powers of the President of the Azerbaijan Republic to other official.

24. NEW Article 106¹. Immunity of the vice-presidents of Azerbaijan Republic

I. During the term of the office the vice president of the Republic of Azerbaijan is granted personal immunity.

II. Vice president of the Republic of Azerbaijan cannot be detained except for in flagrante delicto / being caught in the act of crime, cannot be prosecuted, cannot be judicially levied on administrative penalties, cannot be searched and cannot be personally inspected.

III Vice president of the Republic of Azerbaijan can be detained if caught in the act of crime. In this case detaining body must promptly inform the Prosecutor General of the Republic of Azerbaijan on the detention.

IV. Immunity of the vice president of the Republic of Azerbaijan can only be ceased by the President of Azerbaijan upon the request of the Prosecutor General of Azerbaijan.

25. NEW Article 108¹. Funding of the First vice president of the Republic of Azerbaijan

The First vice president of the Republic of Azerbaijan and his/her family are publicly funded. Security of the First vice president of the Republic of Azerbaijan and his/her family is protected by special guard services.

26. NEW Article 110¹. Granting the right to sign international inter-state and inter-governmental treaties

The president of Azerbaijan Republic may grant the right to sign international inter-state and inter-governmental treaties to the vice-president, members of the Cabinet of Ministers of Azerbaijan Republic, and other persons, defined by the President of Azerbaijan Republic.

27. Article 121. Requirements to candidates to the posts of members of Cabinet of Ministers of the Azerbaijan Republic

~~I. Prime-minister of the Azerbaijan Republic shall be a citizen of the Azerbaijan Republic not younger than 30, having voting right, with university degree, having no liabilities in other states.~~

~~II. Deputy Prime-minister of the Azerbaijan Republic, minister, head of other central body of executive power shall be a citizen of the Azerbaijan Republic not younger than 25, having voting right, with university degree, having no liabilities in other states.~~

Prime-minister, deputy Prime-minister of the Azerbaijan Republic, minister, head of other central body of executive power shall be a citizen of the Azerbaijan Republic having voting right, with university degree, having no liabilities in other states.

28. Article 126. Requirements to candidates to judge posts

I. Judges shall be citizens of the Azerbaijan Republic, ~~not younger than 30~~, having voting right, higher juridical education and at least 5-year working experience in the sphere of law.

II. 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

29. NEW Article 146¹. Responsibility of municipalities

The municipalities along with their officials carry civil liability for the damage to human rights and liberties and violation of the state guarantee of the human rights and liberties as a result of the illegal actions or inaction of the municipality officials.