

HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA HELSINKI FOUNDATION for HUMAN RIGHTS

RADA FUNDACJI

Halina Bortnowska-Dąbrowska Marek Antoni Nowicki
Jerzy Cierniewski Teresa Romer
Janusz Grzelak Mirosław Wyrzykowski
Michał Nawrocki

ZARZĄD FUNDACJI

Prezes: Danuta Przywara
Wiceprezes: Maciej Nowicki
Sekretarz: Piotr Kładoczny
Skarbnik: Lenur Kerymov
Członek Zarządu: Domlnka Bychawska-Siniarska

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Warsaw, 1 September 2016

Thorbjørn Jagland
Secretary General of the Council of Europe
Avenue de l'Europe
F-67075 Strasbourg CEDEX, France

Dear Secretary General,

The Helsinki Foundation for Human Rights (hereinafter: HFHR) would like to draw the attention of the Secretary General to the disturbing constitutional amendments proposed in the draft Referendum Act On Amendments to the Constitution of the Republic of Azerbaijan. The referendum on the changes has been announced to take place on 26 September 2016.

The HFHR has been cooperating with non-governmental organisations from Azerbaijan for several years. We have observed as along these years repressions against human rights defenders have increased. It is our strong belief that the proposed constitutional amendments pose a further threat to fundamental rights and violate the rule of law. For this reason, we hereby wish to ask the Secretary General to consider issuing a request for an opinion of the Venice Commission regarding the planned constitutional reform in Azerbaijan. The Venice Commission through its mandate is particularly bound to assess constitutional reforms in Council of Europe countries.

We would like to raise a number of provisional concerns regarding the conformity of the proposed constitutional amendments with the Council of Europe standards.

The proposed act reinforces the already very strong position of the President of the Republic of Azerbaijan. Under the amended article 101 part I, the president can declare extraordinary presidential elections at any time. In most European constitutional orders such a power is granted to the parliament or the parliamentary spokesperson. Handing this prerogative to the president might pose a threat to the principle of checks and balances between different state organs.

In this context, the proposed extension of the presidential mandate from five to seven years may also raise concerns (amended article 101 part 1). Regular and reasonably frequent elections constitute a crucial element of the effective democratic power control. Constitutionalists argue that the give-and-take of the democratic process is the best source of effective democratic power control. A term of seven years, combined with the possibility of

lifelong re-election might exclude the presidential office from submission to the genuine electoral contest and therefore, from social control.


The planned constitutional reform introduces a number of amendments in the field of fundamental rights. The proposed, new article 24 introduces a restrictive general clause, enabling the limitation of citizens' freedoms in cases where rights are abused. Such general limitation, without any reference to proportionality or conditions of rights derogations raises constitutional concerns.


Moreover, the proposed act introduces also several other new limitations to fundamental rights which lack proper guarantees of proportionality. For instance, after the planned reform assemblies would be allowed, only if they do not "disrupt public order and public moral"—with no references to the acceptable scope of restrictions or any envisaged means of balancing of conflicting values (article 49 part II). New clause introduced in relation to property rights raises similar concerns, as it states that "property rights might be limited by law to ensure social justice and effective use of land". Even though these values might constitute a legitimate aim, such a use of vague notions with no proportionality safeguards gives wide margin for the government to pursue unjust evictions. The draft changes also do not mention fair and proportional compensation — a prerequisite of any eviction according to international law and European Court of Human Rights standards¹ — which should be provided to expropriated citizens (article 49, part VI).

The proposed amendments allow for deprivation of citizenship, what might raise doubts about conformity of the act with 1961 United Nations' Convention on the Reduction of Statelessness. There is a danger that such provision might be used as form of sanction against journalists or human rights defenders – as it is claimed in the case of *Emin Huseynov v. Azerbaijan*, which is now pending before the European Court of Human Rights.²

We would like to kindly ask the Secretary General to take into consideration all of the arguments presented above and to request an opinion of the Venice Commission on constitutional amendment in Azerbaijan.

On behalf of the Helsinki Foundation for Human Rights,

Respectfully,

Danuta Przywara
President of the Board



¹ Judgment of 21 February 1986 in the case *James and others v. United Kingdom*, Application no. 8793/79.

² <https://www.opensocietyfoundations.org/press-releases/azerbaijan-challenged-over-deprivation-citizenship>