**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

 **DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

# *On Article 103 of the Land Code of the Republic of Azerbaijan*

**27 July, 2000 Baku city**

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Hajiyev (Chairman), Judges: F.Babayev, B.Garibov (Reporter Judge), R.Gvaladze, E.Mamedov, S.Salmanova, A. Sultanov,

joined in the proceedings by: the Court Clerk I.Ismayilov;

the legal representative of the body that submitted a petition: B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

 the legal representative of the respondent: I.Babayev, Senior Advisor of Department for Legislation in the Field of State Construction of the Milli Majlis of the Republic of Azerbaijan;

in accordance with Article 130.3.9 of the Constitution of the Republic of Azerbaijan, has examined in open judicial session the case submitted by petition of the Supreme Court of the Republic of Azerbaijan of July 27, 2000, N 5-1/2000, concerning the conformity of Article 103.2 of the Land Code of the Republic of Azerbaijan with the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge B.Garibov, the statements of B.Asadov, the legal representative of the body that submitted a petition, Judge of the Supreme Court of the Republic of Azerbaijan and I.Babayev, respondent, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In accordance with Article 103.1 of the Land Code of the Republic of Azerbaijan, the land disputes shall be resolved by relevant bodies of Executive, municipalities and courts within the limits of their powers. Para II of the same Article specifies that in case of disagreement of parties with the decision adopted by relevant body of Executive or municipality the disputes shall be examined in relevant court via procedure provided by the legislation.

In its petition the Supreme Court of the Republic of Azerbaijan asks for verification of con­formity of Article 103.2 of the Land Code of the Republic of Azerbaijan with Article 60.1.71, 60.2 and 60.7, Article 147.1, Article 149.3 of the Constitution of the Republic of Azerbaijan.

In connection with a petition the official texts of Articles 69, 70, 73, 75, 103 of the Land Code of the Republic of Azerbaijan, Article 7 of the Law of the Republic of Azerbaijan «On Normative Legal Acts», Article 296 of the Civil Procedure Code of the Republic of Azerbaijan of December 28, 1999 certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

Among bodies which are entailed with a power to resolve the land disputes, Article 103.1 of the Land Code of the Republic of Azerbaijan specifies the relevant bodies of Executive, municipalities and courts, and part II defines that in case of disagreement of parties with the decision adopted by relevant body of Executive, municipality the disputes shall be examined by courts.

The analysis of Articles 54, 69, 70, 73, 75 of the Land Code of the Republic of Azerbaijan shows that the disputes on granting the land areas, their withdrawal, on restriction of the rights to use and rent the property which is situated on land area, their termination, including other disputes arising from civil and legal relationships shall be resolved via judicial procedure.

The property disputes based on administrative or another imperious submission of one party to other party shall be resolved via the procedure established by legislation. In this regard, Article 103.1 of the Land Code of the Republic of Azerbaijan specifies the relevant bodies of Executive and municipalities among bodies that are entailed with a power to resolve the land disputes. But as regards the application of person in connection with the land disputes (i.e. to relevant body of Executive, municipalities or directly to court) that depends on his/her will.

The linking of examination of the land disputes in courts with the decision of relevant body of Executive or municipality should be regarded as restriction of the person’s right to direct application to court. Such restriction impedes the complete exercising of the rights stipulated in Article 60.1, Article 71.2 and 71.7 of the Constitution of the Republic of Azerbaijan.

The recognition of provisions of Article 103.2 and 103.5 of the Land Code of the Republic of Azerbaijan as a condition for application of the physical and legal persons first of all to the relevant bodies of Executive and municipalities contradicts to requirements of Article 147.2 and Article 149.3 of the Constitution of the Republic of Azerbaijan.

Besides this, according to Article 296.2 of the Civil Procedure Code of the Republic of Azerbaijan, on disputes connected with decisions and actions (inactivity) of the relevant bodies of Executive, bodies of local self-government, other bodies and organisations as well as their officials, the primary application to the supreme bodies and officials is not an obligatory condition for granting the application to court, its admission by court and examination by merits.

According to Article 7 of the Law of the Republic of Azerbaijan «On Normative Legal Acts» in case of non-conformity between normative legal acts and the normative legal act which entered into force later by time shall prevail. The Civil Procedure Code of the Republic of Azerbaijan entered into force after the Land Code of the Republic of Azerbaijan.

The Constitutional Court of the Republic of Azerbaijan taking into account the above-stated, considers that the person has the right to direct application to court as to protection of the rights connected with land disputes. Presence of the right to apply to court does not exclude the right of person to apply to the relevant bodies of Executive and municipalities which are entailed with a power to resolve the land disputes.

Being guided by Article 130.3.1, 130.4, 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 83 and 85 of the Law of the Republic of Azerbaijan «On Constitutional Court» the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. From the point of view of provisions of Article 60.1, Article 71.2 and 71.7, Article 147.1, Article 149.3, the provision stipulated in Article 103.2 of the Land Code of the Republic of Azerbaijan does not exclude the right of person to direct application to court to obtain the decision on land disputes.

2. The person who considers that there took place an infringement of his/her rights connected with the land disputes can apply depending on his/her will to the relevant bodies of Executive, municipalities or directly to court.

3. The decision comes into force from the date of its publication.

4. The decision is subject to publication in “Azerbaijan” newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

5. The decision is final and cannot be cancelled, changed or interpreted by any body or official.