**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

# *On Introduction of Modifications into the Constitution of the Republic of Azerbaijan*

## 21 June, 2002 Baku city

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

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

the legal representatives of the subjects interested in special constitutional proceedings: Shahin Aliyev, Chief of the Department of the Legislative and Legal expertise of the Presidential Administration of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined via special constitutional proceedings in open court session the constitutional case connected with the petition of the President of the Republic of Azerbaijan of June 14, 2002, N 1/287 to get the opinion in accordance with Article 153 of the Constitution of the Republic of Azerbaijan on the draft Referendum Act of the Republic of Azerbaijan “On Introduction of Modifications into the Constitution of the Republic of Azerbaijan”.

Having heard the reports of Judge E. Mamedov and Judge R.Gvaladze, the report of the lawful representative of the subject interested in special constitutional proceedings: Sh. Aliyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In accordance with Article 153 of the Constitution of the Republic of Azerbaijan the President of the Republic of Azerbaijan submitted to the Constitutional Court of the Republic of Azerbaijan draft Referendum Act of the Republic of Azerbaijan “On Introduction of Modifications into the Constitution of the Republic of Azerbaijan” to get the Court’s opinion on this document.

The President of the Republic of Azerbaijan considers as expedient the introduction to the Constitution of the Republic of Azerbaijan of the following modifications:

**I.** **Article 3.** To add para III in the following wording:

*“III. The referendum can not be held with respect to the following issues:*

1. *Taxation and state budget*
2. *Amnesty and pardon*
3. *”Election, appointment or approval of the officials, whose election, appointment or approval has been accordingly referred to the competences of the legislative and (or) executive bodies”.*

**II. Article 27.4.** To remove the phrase *“to carry out orders given by authorized persons during martial law or state of emergency”;*

**III. Article 71.3.** To remove the word *“only”;*

**IV. Article 76.2.** To replace phrase *“alternative military service”* with

 *“alternative service”;*

**V. Article 83.** To replace phrase *“and proportional voting systems”* with

 *“voting systems”*;

**VI. Article 88.**

**a)** To replace phrase *“two regular sessions”* with *“two spring and autumn*

 *sessions”* in the first sentence of para 1;

**b)** To remove the second, third and forth sentences;

**c)** To replace the phrase *“before 1 February”* with *“before 10 October or*

 *10 March”* in the sixth sentence;

**VII. Article 89.** To remove item 6 in para 1;

**VIII. Article 95.**

**a)** To introduce items 6 and 19 of para 1 in the following wording:

“*6) Election of Ombudsman of the Republic of Azerbaijan upon recommendation of the President of the Republic of Azerbaijan;*

*19) Amnesty;”*

**b)** To introduce para III in the following wording:

*“III. Resolutions shall be also adopted with respect to other issues which, according to the present Constitution, fall within the competence of Milli Majlis of the Republic of Azerbaijan, the issues connected with the organization of the activity of Milli Majlis of the Republic of Azerbaijan as well as the issues where the opinions of Milli Majlis of the Republic of Azerbaijan are required”*

**IX. Article 96.**

**a)** To add *“The Prosecutor’s Office of the Republic of Azerbaijan”* after the words *“Supreme Court”* in para I and V;

**b)** To add *“The Prosecutor’s Office of the Republic of Azerbaijan”* after the words “the Supreme Court” in para II and IV;

**X. Article 101.**

**a)** To replace the phrase *“by the majority of two thirds of votes”* with *“by the majority of more than the half of votes”* in para II

**b)** To remove the word *“simple”* in para IV

**XI. Article 102.** To replacenumber *“7”* with *“14”*

**XII.** **Article 105.**

1. To replace the phrase *“The Chairman of Milli Majlis of the Republic of Azerbaijan”* with *“The Prime-Minister of the Republic of Azerbaijan”* in para I;
2. To replace the words *“Chairman of Milli Majlis of the Republic of Azerbaijan resigns”* with *“Prime-Minister of the Republic of Azerbaijan resigns”* in para II;
3. To replace the words *“Shall be carried out by the Prime-Minister of the Republic of Azerbaijan”* with *“Shall be carried out by the Chairman of Milli Majlis of the Republic of Azerbaijan”* in para II;
4. To replace the phrase *“the Prime-Minister of the Republic of Azerbaijan”* with *“the Chairman of Milli Majlis of the Republic of Azerbaijan”* in para III*;*

**XIII. Article 109.** Item 14 shall be introduced in the following wording:

“14. Shall recommend to the Milli Majlis of the Republic of Azerbaijan as regards the election of the Ombudsman of the Republic of Azerbaijan”;

**XIV. Articles 95, 109, 125.**

To replace the words *“Economic Court”* with *“the Courts of Appeal”*;

**XV. Article 125.**

To replace phrase *“In all legal proceedings, except constitutional proceedings”* with *“In the criminal legal proceedings”* in para IV.

**XVI. Article 130.**

**a)** To remove item 7 of para III and accordingly items 8 and 9 shall be considered as items 7 and 8;

**b)** Paras V, VI and VII accordingly shall be considered as paras VIII, IX and X;

**c)** To add para V, VI and VII in the following wording:

*“V. Everyone claiming to be the victim of a violation of his/her rights and freedoms by the decisions of legislative, executive and judiciary, municipal acts set forth in the items 1-7 of the Para III of this Article may appeal, in accordance with the procedure provided for by law, to the Constitutional Court of the Republic of Azerbaijan with the view of the restoration of violated human rights and freedoms.”*

*“VI. In accordance with the procedure provided for by the laws of the Republic of Azerbaijan the courts may file the Constitutional Court of the Republic of Azerbaijan a request on interpretation of the Constitution and the laws of the Republic of Azerbaijan as regards the matters concerning the implementation of human rights and freedoms.”*

“VII. Ombudsman of the Republic of Azerbaijan in accordance with the procedure provided for by the laws of the Republic of Azerbaijan for solving the matters indicated in items 1-7, para III of the given Article shall apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person had been violated by legislative acts in force, normative acts of executive power, municipalities as well as the court decisions."

**XVII. Article 131.1**:

To replace phrase “*it, in accordance with the procedure provided for by the laws of the Republic of Azerbaijan, shall exercise control over activity of general and specialized law courts*” with “*it, via the cassation procedure, shall administer the justice”.*

**XVIII. Article 132** shall be given in the following wording:

# “Article 132. Courts of Appeal of the Republic of Azerbaijan

*I. The Courts of Appeal of the Republic of Azerbaijan shall be the higher courts considering the issues falling within their competencies according to the legislation.*

*II. Judges of the Courts of Appeal of the Republic of Azerbaijan shall be appointed by the Milli Majlis of the Republic of Azerbaijan upon the recommendation of the President of the Republic of Azerbaijan.”*

**XIX. Article 133.1.** To add *“and in cases”* after the word *“procedure”* and remove the words *“accurate and uniform”.*

**XX. Article 132**. There shall be added para VI in the following wording:

*“VI. The Constitution of Nakhchivan Autonomy Republic shall be submitted to the Milli Majlis of the Republic of Azerbaijan by the President of the Republic of Azerbaijan and shall by approved by the Constitutional Law”.*

**XXI. Article 142.3** shall be given in the following wording:

*“III. The foundations of the status of municipalities shall be determined by given Constitution. The regulations of elections to the municipalities shall be determined by law”.*

**XXII. Article 149.3.** To replace the word *“executive”* with the words *“legislative, executive”.*

**XXIII. Article 155.** To add the *“or abolition of”* after the word *“changes”*; to replace the phrase *“of provisions envisaged in Chapter III of the present Constitution”* with *“or abolition of human and citizen’s rights and freedoms envisaged in Chapter III of the present Constitution or to higher degree than it is specified in international treaties Azerbaijan Republic is a party too”.*

**XXIV. Article 158** shall be given in the following wording:

## “Article 158. Limitation on initiative on introduction of additions to the Constitution of the Republic of Azerbaijan

## There cannot be proposed the introduction of additions to the Constitution of the Republic of Azerbaijan with respect to provisions envisaged in Chapter I of the present Constitution.”

### In connection with petition of the President of the Republic of Azerbaijan the Constitutional Court notes as follows:

### According to Article 3.I of the Constitution of the Republic of Azerbaijan people of Azerbaijan may solve any questions involving their rights and interests by way of referendum.

### Adoption of the Constitution of the Azerbaijan Republic and introduction of modifications thereto may be resolved only by way of referendum (Article 3.II.I).

### Modifications to the text of the Constitution of the Azerbaijan Republic can be adopted only by way of referendum (Article 152 of the Constitution).

### Referendum is the supreme and direct demonstration of democracy and people’s will. According to Article 2.I of the Constitution sovereign right of the Azerbaijanian people is the right of free and independent determination of their destiny and establishment of their own form of governance.

#### In this connection it is necessary to note that the words “form of governance” usually imply the structure, organization and interaction of supreme state authorities (this, first of all it concerns, relates to the Head of the State, Parliament and Government) as well as the participation of people in the election of these authorities.

#### In accordance with Article 153 of the Constitution of the Republic of Azerbaijan the President of the Republic of Azerbaijan has the right to submit proposals as to the modifications to the text of Constitution of the Azerbaijan Republic.

#### The President of the Republic of Azerbaijan using his constitutional right applied to the Constitutional Court with above-mentioned proposal.

The changes proposed in the draft Referendum Act of the Republic of Azerbaijan submitted to the Constitutional Court of the Republic of Azerbaijan from the legal point of view are aimed at perfection of a number of constitutional provisions and more effective legal ensuring the rights and freedoms of every individual.

#### Article 155 of Constitution of the Republic of Azerbaijan provides for the cases of limitation of initiative to introduce the changes into the Constitution of the Republic of Azerbaijan (introduction of changes into Articles 1, 2, 6, 7, 8 and 21 as well as the limitation of provisions provided by Chapter III of present Constitution).

#### The Constitutional Court of the Republic of Azerbaijan considers that the proposals indicated in draft Referendum Act of the Republic of Azerbaijan “On introductions of modifications into the Constitution of the Republic of Azerbaijan” submitted by the President of the Republic of Azerbaijan corresponds to the general principles of the Constitution of the Republic of Azerbaijan regarding the people’s power and the foundations of state as well as the provisions of Article 155 of the Constitution of the Republic of Azerbaijan.

Being guided by Article 130.5 of the Constitution of the Republic of Azerbaijan, Articles 74 - 76, 78 – 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. In connection with the draft Referendum Act of the Republic of Azerbaijan “On introduction of modifications into the Constitution of the Republic of Azerbaijan” submitted by the President of the Republic of Azerbaijan there shall be given the following opinion:

“The proposals the President of the Republic of Azerbaijan as to introduction of modifications into the text of the Constitution of the Republic of Azerbaijan corresponds to the general principles of the Constitution of the Republic of Azerbaijan regarding the people’s power and the foundations of state as well as the provisions of Article 155 of the Constitution of the Republic of Azerbaijan”

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

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

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