**ON BEHALF OF AZERBAIJAN REPUBLIC**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF AZERBAIJAN REPUBLIC**

On Interpretation of the Provision “having no obligations before other states” of Article 100 of the Constitution of Azerbaijan Republic

1 August, 2003                                                                              Baku city

The Constitutional Court of Azerbaijan Republic, composed of Chairman F. Abdullayev, Judges F.Babayev, B.Garibov (Reporter Judge), R.Qvaladze, E. Mamedov, I. Najafov, S. Salmanova and A. Sultanov;

joined in the proceedings by the Court Clerk V. Zeynalov;

the legal representatives of the subject interested in constitutional proceedings: E. Nuriyev, Deputy Prosecutor General of Azerbaijan Republic, A. Jafarov Head of the Legal Department of Prosecutor General’s Office;

Expert: R. Ismayilov, Chief Lecturer of the Constitutional Law Board of the Law Faculty of Baku State University, Candidate of Legal Sciences;

Specialist: L. Huseynov, Head of Department of Legislation on State Structuring, Doctor of Legal Sciences;

In accordance with Article 130.4 of the Constitution of Azerbaijan Republic has examined in open judicial session the constitutional case on petition of the Prosecutor General’s Office of Azerbaijan Republic of 15 July 2003 N 11/65-2298 concerning interpretation of the provision “having no obligations before other states” of Article 100 of the Constitution of Azerbaijan Republic.

Having heard the Judge B. Garibov’s report, speech of a legal representative of the interested subject E. Nuriyev, opinion of expert R. Ismayilov and taking into account the information reference of L. Huseynov and having examined the materials of the constitutional case, the Constitutional Court of Azerbaijan Republic

**D E T E R M I N E D  A S  F O L L O W S:**

In its petition, the Prosecutor General’s Office of Azerbaijan Republic asked to interpret the paragraph “having no obligations before other states” of Article 100 of the Constitution of Azerbaijan Republic.

In connection with petition the Constitutional Court of Azerbaijan Republic noted that constitutional electoral right is one of the main characteristics of democratic state.

The right of the citizen of Azerbaijan Republic to vote and to be elected to state bodies and municipalities as well as participation in referendums is one of the main elements of his/her constitutional status. Realization of electoral right adopted as the main institution of democracy steps forth as a main factor in formation of state bodies. The right of citizens to participate in governing of the state and the electoral right is reflected in the Constitution of Azerbaijan Republic (Articles 55 and 56 of the Constitution).

Along with active electoral right (to elect), which constitutes the contents of electoral right, the realization of passive electoral (to be elected) right is restricted by certain conditions.

Thus, persons whose incapacity was certified by the court decision have no right to take part either in elections or in referendum. The electoral right of servicemen, judges, state officials, religious figures, individuals sentenced by court for imprisonment and others envisaged in Constitution and law can be restricted (Article 56 of the Constitution).

Along with the fact that electoral right is recognized by a number of international legal acts (Article 21 of the Universal Declaration on Human Rights, Article 25 of the International Covenant on Civil and Political Rights, Protocol 1 of European Convention on Protection of Human Rights and Freedoms, etc.), the institutions on international human rights protection do not exclude a possibility of restriction of the same right via the procedure specified in legislation.

The electoral law is restricted by a number of general and additional requirements. As a rule, the passive electoral right is accompanied by stricter requirements. These conditions create difficulties for certain individuals to nominee their candidacy.

In connection with realization of the right to be elected, Article 100 of the Constitution of Azerbaijan Republic determines the requirements for candidates to the post of the President of Azerbaijan Republic. According to this Article, citizen of Azerbaijan Republic by age not younger than 35, permanently living on the territory of Azerbaijan Republic longer than 10 years, enjoying the suffrage, without previous conviction, having no obligations before other states, with university degree, not having double citizenship may be elected the President of Azerbaijan Republic.

These requirements of the Constitution are, first of all, aimed at ensuring of election of the decent and suitable individual to the post of President.

Legal analysis of some issues is necessary for clarification of legal meaning of one of the requirements for candidates to the post of the President of Azerbaijan Republic, i.e. “having no obligations before other states”.

Obligation means the necessity to carry out something, and from the point of view of the peculiarities of the created legal relationships it is the tie-up and dependency of one on another.

It should be noted that a requirement of Article 100 of the Constitution of Azerbaijan Republic, implies only obligation before other state and not any other obligation. From the point of view of classification of the law system, as a rule such requirement excluding obligations connected with private (civil) law relationships relates to the obligations proceeding from common (public) law relationships.

Obligations of an individual before other state may arise from different reasons, including refugee status, asylum, permission for residence, and etc. However, the relationships between individual and state, status of individual and obligations proceeding from this status depend on domestic legislation of that state.

The formation of obligations of a citizen before other state is closely connected with existence of created legal factors on the basis of legislation of the same state. Legal norms, first of all, are directed at regulation of the relationships with citizens within a state. Rights and duties of foreigners are connected with their domestic legal status and the stay regime in this state (temporarily stay regime, temporarily residence regime, or permanent residence regime) and constitute the correct proportion with relevant regime.

Depending on the stay regime in a country, the foreigner may have different obligations before the state where he/she lives. The foreigner who resides temporarily or permanently in a country must bear various kinds of obligations such as: registration, not to leave place of residence, not to leave a territory of state for a period exceeding the specified terms, pay taxes in provided cases, to get registered for military service upon completing definite age, or other obligations in accordance with legislation of this state.

Like in legislation of a number of other states, Article 77.1 of the Tax Code of Azerbaijan Republic considers a taxpayer’s duty to pay taxes in accordance with the procedures and in the cases stipulated in this Code is deemed a tax obligation thereof.

In connection with this issue, in its decision the European Court of Human Rights of July 12, 2001 (Ferrazzi vs Italy) noted that “Pecuniary interests are clearly at stake in tax proceedings … In particular, according to the traditional case-law of the Convention institutions, there may exist ‘pecuniary’ obligations vis-à-vis the State … (which) are to be considered as belonging exclusively to the realm of” state authorities. It further stated “Bearing in mind that the Convention and its Protocols must be interpreted as a whole, the Court also observes that Article 1 of Protocol No. 1, which concerns the protection of property, reserves the right of States to enact such laws as they deem necessary for the purpose of securing the payment of taxes…”. Finally the Court states “It considers that tax disputes fall outside the scope of civil rights and obligations, despite the pecuniary effects which they necessarily produce for the taxpayer.” Thus, the European Court accepted that by its contents the obligation to pay taxes proceeds from civil law relationships.

Realization of the norms envisaged in some international legal acts caused the emergence of obligations before other state.

For example, Articles 6 and 8 of the Vienna Convention on Diplomatic Relations states that two or more states may accredit the same person as head of mission to another state, as well as a citizen of the hosting state originating from other state may be appointed as diplomatic representative of this state. From this point of view, the implementation of the above-mentioned rights brings to emergence of political and legal obligations before other state.

Article 22 of the Vienna Convention on Consular Relations provides that along with citizen of a sending state appointed to the post of consul a citizen of receiving state can also be appointed as consul of a state. Naturally, in case of being appointed as an honorable consul, political and legal obligations of this citizen before other state are indisputable.

It should be noted that the text of international legal acts can contain the provisions relating to obligations. In Article 2 of the Geneva Convention On Status of Refugees envisaged that each refugee takes obligations before the state of residence, such as subordination to laws and decrees as well as actions directed to protection of public order.

The proper formation of the institutions of supreme state bodies, including institution of president, reflects the legal idea of representation of people. The person who represents the people as President should be the citizen who is able to realize the hopes of citizens for the future, put into life the nation’s will of independence, freedom, to protect state independence, sovereignty, territorial integrity. In this connection, it is not only necessary that this individual must be a citizen of the state concerned, in addition he/she must be closely connected with the nation by durable and stable ties and relationships. From this point it is incompatible with above duties, if an individual nominating his/her candidacy to the post of President has obligations before other state proceeding from domestic public and international law, and has the tie-ups or dependence on this state.

Each of the above-mentioned obligations must not be considered as a ground for putting obstacles to realization of electoral right. While determining any obligation before other state the character of obligation, the period of relationships, the extent of tie-up and dependence on other state, as well as the strength and stability of these relationships should be taken into account.

When ascertaining the obligations connected with the fact of living abroad, from the point of view of analysis the provision of the Constitution there should be taken into account such obligations, which could put obstacles for citizen to fulfill functions and responsibilities of the head of a state freely in the future or have made him/her to take actions for the will of other state. If the above-mentioned will not be taken into account these factors may cause the situation when the elected President will undergo the influence of political and economic interests of foreign state.

The competent state bodies should carefully assess each concrete case of obligations before other state taking into account the peculiarities of each case.

Besides, the Constitutional Court especially stresses that according to the Constitution, the existence of obligations before other states, which limiting the right to be elected to the post of President bears exclusive character and it cannot put obstacle for enjoying other constitutional rights by citizens living abroad or on the territory of Azerbaijan Republic.

Constitutional Court of Azerbaijan Republic considers that legal meaning of Article 100 of the Constitution of the Republic of Azerbaijan “having no obligations before other state” implies the existence of obligation proceeding from relationships causing the tie-up and dependency of a citizen on foreign states.

In each concrete case, these obligations proceed from the obligation of registration, taxation, not leave the territory of a state for a certain period etc. and other obligations including the political legal one, which cause the existence of continuous, safe and stable relationships connected with long-term residence in foreign country.

Taking into account the above-stated and being guided by Article 130.4 and 130.6 of the Constitution of Azerbaijan Republic, Articles 66, 75, 76, 78, 80, 81, 83 and 85 of the Law of Azerbaijan Republic “On Constitutional Court”, the Constitutional Court of Azerbaijan Republic

**D E C I D E D:**

1. Legal meaning of Article 100 of the Constitution of Azerbaijan Republic “having no obligations before other state” implies the existence of obligation proceeding from relationships causing the tie-up and dependency of a citizen on foreign states.

These obligations proceed from the obligation of registration, taxation, not leave the territory of a state for a certain period etc. and other obligations including the political legal one, which cause the existence of continuous, safe and stable relationships connected with long-term residence in foreign country.

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

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

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

**Chairman                                                                     Farhad Abdullayev**