**ON BEHALF OF AZERBAIJAN REPUBLIC**

**DECISION**

**CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

On Interpretation of Provision “if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” of Article 179.1 of the Electoral Code of Azerbaijan Republic”

15 August, 2003                                                                            Baku city

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

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

the legal representatives of the subject interested in constitutional proceedings: E. Nuriyev, Deputy Prosecutor General of Azerbaijan Republic, A. Jafarov Head of Legal Department of Prosecutor General’s Office, K. Shafiyev, Deputy Head of Department of Legislation on State Structure,

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’s Office of Azerbaijan Republic of 20 July, 2003 No 01/460 concerning interpretation of provision “if this takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” of Article 179.1 of the Electoral Code of Azerbaijan Republic.

Having heard the report of Judge R. Gvaladze, speech of a legal representative of the interested subjects E. Nuriyev and K. Shafiyev and having examined 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:**

With view to eliminate uncertainty concerning implementation of the provision of Article 179.1 of the Electoral Code “if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” in its petition the Prosecutor’s Office of Azerbaijan Republic asked to interpret the same provision.

 Official text of Article 179.1 of the Electoral Code of Azerbaijan Republic certified by Administration of Milli Majlis of Azerbaijan Republic is enclosed to case materials.

In connection with petition the Constitutional Court notes that the meaning of this interpreted provision of Article 179.1 of Electoral Code can be determined with taking into consideration of the place and role of the President in system of state authority and his constitutional status.

The President of Azerbaijan Republic is elected for a 5-year term by way of general, direct and equal elections, with free, personal and secret ballot (Article 101.1 of the Constitution).

According to Constitution the President of Azerbaijan Republic represents Azerbaijan state both within the country and in its relations with foreign countries, embodies unity of Azerbaijan people and provides continuity of Azerbaijan statehood. He/she is a guarantor for independence and territorial integrity of Azerbaijan state, observance of international agreements wherein Azerbaijan Republic is one of the parties and guarantor for independence of judiciary (Article 8 of the Constitution). Thus, taking into account the significance of the President institution the President was invested with broad powers (Article 109 of the Constitution).

The legal mechanisms provided for immunity of President as a head of the state, his/her permanent activity and continuous realization of own competences constitutes the basis of guarantee of President’s activity.

According to Constitution the sole source of state power in Azerbaijan Republic are the people of Azerbaijan (Article 1.1 of the Constitution). No part of people of Azerbaijan, no social group or organization, no individual may usurp the competences of President granted to him/her by people as a result of free elections (Article 6.1 of the Constitution).

That is exactly why the resignation of the President of Azerbaijan Republic from the post ahead of time is possible only in cases and via the procedure provided for in Constitution.

According to Article 104.1 of the Constitution the President of Azerbaijan Republic is considered having left his/her position ahead of time on resignation, complete inability to fulfill his/her powers due to illness, dismissal from his post in cases and in an order envisaged in the present Constitution.

Article 105.1 of the Constitution stipulates that whenever the President of Azerbaijan Republic resigns from his post ahead of time, extraordinary elections of the President of Azerbaijan Republic are held within three months.

According to the requirements of these constitutional provisions in Article 179.1 of the Electoral Code of Azerbaijan Republic it is noted that the extraordinary Presidential Elections shall be held if the term of office of the President finishes before the period provided for in Constitution in the circumstances specified in Article 104 of Constitution.

At the same time in the same provision it is noted: “…if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held”. When analyzing the last provision some aspects of Article 105.1 of Constitution should be clarified.

Implementation of Article 105.1 of the Constitution is implicitly. Therefore even during the regular elections whenever the President of Azerbaijan Republic resigns from his post ahead of time extraordinary Presidential Elections shall be held.

Article 8.1 of the Electoral Code provides that elections (referendum) are announced no later than 120 days before voting day.

From the point of abovementioned requirements of the norms of the Constitution and Electoral Code provision of Article 179.1 “if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” can be implemented only in case when more than 3 months are left till the day of regular elections. In this case the day of elections fixed before should be changed and requirement of Article 105.1 of Constitution on holding of elections within three months must be observed.

The purpose of Article 105.1 of Constitution is that within short period of time and not exceeding 3 months the election of the new head of state and to ensure the implementation of the competences provided by Constitution for him/her as for the head of state. When less than 3 (three) months are left the suspension of elections and fixing of new extraordinary elections do not meet the purposes of Article 105.1 of Constitution.

Besides this, the mentioned provision of Constitution touches not only extraordinary Presidential elections but also holding of these elections. Therefore, during regular elections when less than 3 months are left till the day of elections then there should not be arranged any new extraordinary elections but held the same elections.

When less than 3 months are left till the day of regular elections and whenever the President of Azerbaijan Republic resigns from his/her post ahead of time there is no necessity for suspension of Presidential Elections. It is connected with the fact that the fixed regular Presidential Elections coincide with purposes of extraordinary Presidential Elections. On the other hand, in the mentioned case the suspension of regular elections can cause the wasting of additional time, means, efforts and occurrence of other obstacles.

Therefore when less than 3 months are left till the day of regular elections and whenever during this period the President of Azerbaijan Republic resigns from his/her post ahead of time, in order to respect the requirements of Article 105 by changing the status of elections there should be determined the extraordinary elections and the period of three (3) months left before the day of elections should be considered as the extraordinary elections. In this case all decisions adopted by the Central Electoral Commission in connection of realization of electoral actions before must keep their legal force.

Taking into consideration of aforementioned the Constitutional Court considers that according to requirements of Article 105.1 of Constitution the provision of Article 179.1 of Electoral Code “if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” must be applied only in cases, when less than 3 (three) months are left till the day of Presidential Elections.

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:**

According to requirements of Article 105.1 of the Constitution of Azerbaijan Republic the provision of Article 179.1 of Electoral Code of Azerbaijan Republic “if this case takes place after fixing the date of regular Presidential Elections then they shall be suspended and extraordinary Presidential Elections shall be held” must be applied only in cases, when less than 3 (three) months are left till the day of Presidential Elections of Azerbaijan Republic.

2. When less than 3 months are left till the day of regular elections and whenever during this period the President of Azerbaijan Republic resigns from his/her post ahead of time, in order to respect the requirements of Article 105 by changing the status of elections there should be determined the extraordinary elections and the period of three (3) months left before the day of elections should be considered as the extraordinary elections. In this case all decisions adopted by the Central Electoral Commission in connection of realization of electoral actions before must keep their legal force.

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 Azerbaijan Republic”.

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

**Chairman                                                                     Farhad Abdullayev**