SOME JUDGMENTS ON THE INVIOLABILITY AND PROTECTION OF THE RIGHT TO PROPERTY IN THE REPUBLIC OF AZERBAIJAN

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The article considers some issues of one of the main constitutional rights - the right to property. The author mainly focused on the essence of the provision on the inviolability of property. In addition, the article presents some judgments related to guarantees and protection of the right to property. The author attempted to interpret the constitutional, sectoral national norms considered by him, as well as international legal norms.

Keywords: Constitution, European Court, right to property, human rights, case law, legislation, interpretation, legal position, inviolability, protection.

Property is an important economic and legal value that forms the economic basis of any society, and property rights are an important guarantee of an individual's enjoyment of their rights and freedoms. Article 13 of the Constitution of the Republic of Azerbaijan dated November 12, 1995 (hereinafter referred to as the Constitution) proclaims the inviolability of property in the Republic of Azerbaijan and its protection by the State [4]. The inviolability of property is expressed in the fact that the right of ownership, as a rule, is inalienable, and the deprivation of this right is allowed only in exceptional cases with strict observance of the procedures established by law.

Ownership can exist in the form of state, private and municipal ownership. Article 4 of the Constitutional Law of the Republic of Azerbaijan dated May 25, 1991 "On the Fundamentals of economic Independence of the Republic of Azerbaijan" is devoted to the state property of the Republic of Azerbaijan [5].

In accordance with the provisions of this article, the subject of State property rights in the territory of the Republic of Azerbaijan is the Republic of Azerbaijan itself as a sovereign State. The state property of the Republic of Azerbaijan includes enterprises of all branches of the national economy located on its territory, energy, transport and communications networks (systems) (with the exception of fixed assets and facilities that ensure the functioning of transport and communications as a single whole and are jointly owned by the subjects of the Union agreement), state housing stock, property of state institutions, cultural values and historical monuments and infrastructure facilities.

According to article 33 of the Law of the Republic of Azerbaijan "On the Status of Municipalities" dated July 2, 1999, municipal property includes local budget funds generated from local taxes and fees, extra-budgetary funds of the municipality, municipal property, as well as municipal lands, municipal enterprises and organizations, municipal housing stock and non-residential buildings, roads that do not state-owned or privately owned municipal institutions of education, healthcare, culture and sports, as well as other movable and immovable property [13].

Ownership of property belonging to municipal property is exercised by municipalities, and in cases stipulated by the laws of the Republic of Azerbaijan, directly by the population. Municipal property may be used only for the performance of municipal duties stipulated by the Constitution and the Law on the Status

of Municipalities. The State protects municipal property and creates conditions for its increase through the provision of subsidies, loans and grants.

According to article 54 of the Law "On the Status of Municipalities", the State transfers to the ownership of municipalities the land plots and objects of state ownership necessary for solving issues of local importance.

Article 3 of the Law of the Republic of Azerbaijan "On the Transfer of Property to Municipal Ownership" dated December 7, 1999 states that the sources of municipal property formation are: state property transferred to the ownership of municipalities in accordance with legislation; property acquired and created as a result of the activities of municipalities; property provided to municipalities in the form of voluntary financial assistance from parties to individuals and legal entities, international organizations and foundations; property bequeathed to municipalities, as well as property received in other cases provided for by law [8].

The State exercises administrative control over the legality of the exercise of ownership of property owned by the municipality. Thus, according to Article 6.1.3 of the Law of the Republic of Azerbaijan "On Administrative Supervision of the Activities of Municipalities" dated May 13, 2003, copies of acts adopted by municipalities on the exercise of ownership of property owned by the municipality must be sent to the body exercising administrative control no later than 5 working days from the date of adoption of these acts [9].

According to the first sentence of part II of article 29 of the Constitution, no type of property prevails over others.

According to part II of article 41 of the Constitution, the State takes the necessary measures to develop all forms of healthcare operating on the basis of various forms of ownership. As can be seen, the state allows the activities of healthcare institutions under various forms of ownership. This means that not only state-owned medical institutions are allowed to operate in our country, but also municipal and privately owned medical institutions. Moreover, along with the authorization of such activities, the State also undertakes to take the necessary measures to develop this area.

Although there are currently no municipal medical institutions in Azerbaijan, the activities of private medical institutions have expanded significantly. The State has also taken certain steps in the field of legal regulation of this area. Thus, on December 30, 1999, the Law of the Republic of Azerbaijan "On Private medical activity" was adopted. According to the provisions of this Law, a private medical institution is a medical institution whose property is based on private ownership or is used on the basis of a lease agreement [12].

Part I of article 15 of the Constitution states that in the Republic of Azerbaijan, the development of a social economy based on various types of property serves to improve the welfare of the people. Economic development is an economic process characterized by regular changes in the economy and productive forces, education, science, and culture, as well as improvements in people's living standards, both in terms of quality and structure. According to the constitutional norm under consideration, this process is based on various forms of ownership.

The basic principles of economic independence, enshrined in article 2 of the Constitutional Law of May 25, 1991, are equality and legal protection of all forms of ownership, freedom of entrepreneurial activity, market relations of supply and demand, and the principle of state regulation of the economy.

In the direction of developing this principle, on December 15, 1992, the Law of the Republic of Azerbaijan "About business activity" was adopted, which was aimed at implementing the principle of equality of all forms of ownership, creating conditions for the widespread manifestation of economic initiative and entrepreneurship based on independent choice of fields of activity and economic decision-making [10].

Property may not be used contrary to the rights and freedoms of man and citizen, the interests of society and the State, and the dignity of the individual. Human and civil rights and freedoms are understood as the fundamental human and civil rights and freedoms enshrined in chapter III of the Constitution, as well as other "derived" rights arising from these rights and regulated by sectoral laws. The interests

of society and the state are understood as a set of processes and their results, which represent what is desired from the point of view of regulating public relations, ensuring social justice, and observing the rules of living together.

According to part I of article 29 of the Constitution, everyone has the right to own property. Attributing ownership to "everyone" means that it belongs to both citizens and foreign nationals, as well as stateless persons. At the same time, it should be borne in mind that the legislation of the Republic of Azerbaijan provides for certain restrictions on the ownership of land. Thus, in accordance with the provisions of article 48 of the Land Code, only citizens and legal entities of the Republic of Azerbaijan can acquire land plots on the rights of ownership, use and lease [7].

As mentioned earlier, no type of property is preferred in the Republic of Azerbaijan. Property rights, including private property rights, are protected by law. According to Sh.M. Aliyev's comment, two meanings follow from this. Firstly, the right of private property as one of the types of human and civil rights and freedoms can be incorporated into the legal system only by law. Any other act adopted by another body has no such legal force. Secondly, private property rights are protected by law [2].

In order for any right, including property rights, to be real, the State must provide mechanisms for its protection and protection. The law enforcement mechanism should prevent its violation and restriction under the threat of various legal sanctions, work before this right is violated or restricted, and generally have a preventive effect on violations of the law. Human rights protection mechanisms should provide the necessary legal means and opportunities to restore rights that have already been violated or unlawfully restricted.

According to the first sentence of part III of article 29 of the Constitution, everyone can own movable and immovable property. However, this rule does not mean that everyone can own all types of movable and immovable property. When interpreting this provision, it is also necessary to refer to the institutions of property in civil circulation, restrictions on its civil circulation and withdrawal from civil circulation. Civil turnover refers to the process of transferring property (property rights) from one entity to another on the basis of transactions, legal facts or other legitimate grounds.

Determining the range of property whose civil turnover is restricted or withdrawn from circulation by the state requires the use of special regulatory methods in various fields of activity (establishment of prohibitions, special conditions, requirements, certain restrictions). This is related to ensuring public order, law and order, state and economic security, protection of life and health of the population, and other similar aspects.

Property with limited civil turnover is understood as property that can only be owned by certain entities on the basis of a special permit. The list of types of property with such a legal regime is determined by the Law of the Republic of Azerbaijan "On the list of items that are not allowed to be included in civil circulation (excluded from civil circulation)" dated December 23, 2003.

And property withdrawn from civil circulation is understood to mean property that is not allowed to be acquired, sold, received and alienated by individuals and legal entities. The range of such property is regulated by the Law of the Republic of Azerbaijan "On the list of items that are not allowed to be included in civil circulation (excluded from civil circulation)" dated December 23, 2003 [11]. The right of ownership includes the right of the owner, alone or jointly with others, to own, use and dispose of property.

The right of ownership is the state recognized right of a subject to own, use and dispose of his property (thing) at his discretion. The right of ownership consists of three elements: the right of ownership, the right of use and the right of disposal. The right of ownership is a legally secured opportunity to actually own property. The right of use is a legally secured opportunity to extract from property (things) its beneficial natural properties, as well as benefit from it. Such benefits can be expressed in the form of income, growth, productivity, derived forms and other types.

No one can be deprived of their property without a court decision. According to article 203 of the Civil Code, with the exception of the following measures carried out on the grounds

provided for by law, the forced seizure of property from the owner is not allowed [3]:

- foreclosure on property for obligations (in accordance with Article 205.1 of the Civil Code, is carried out on the basis of the Law of the Republic of Azerbaijan "On Encumbrance of Movable Property" or by court decision);

- alienation of property that cannot legally belong to this person (in accordance with Article 206.2 of the Civil Code, it is carried out on the basis of a court decision issued at the request of a government agency: the property is subject to compulsory sale with the transfer of proceeds to the former owner or transferred to state ownership with the payment of its value to the former owner);

- alienation of immovable property in connection with the seizure of a land plot (according to Article 207.1 of the Civil Code, in cases where the seizure of a land plot for state needs is impossible without the termination of ownership of buildings, structures or other immovable property located on it, the state may purchase such property by foreclosure);

- purchase of cultural property held without proper maintenance (according to Article 208.1 of the Civil Code, such valuables can be seized from the owner by way of redemption by the state on the basis of a court decision);

- requisition (according to Article 209.1 of the Civil Code, property may be seized from the owner by way of requisition by decision of the relevant state authorities);

- confiscation (in accordance with article 212 of the Civil Code, is carried out by court order in cases provided for by the Criminal Code and the Code of Administrative Offences).

As can be seen, not all cases of forced seizure of property from the owner in the Civil Code are related to a court decision. A striking example of this is the institution of requisition, since, according to the Civil Code, it can be carried out on the basis of a decision of the relevant state bodies. The institution of requisition is regulated by article 209 of the Civil Code. This provision of the law is ambiguously accepted in the legal literature. Some argue that this provision contradicts the principle enshrined in article 29 of the Constitution, according to which "no one can be deprived of his property without a court decision".

According to the second part of paragraph IV of article 29 of the Constitution, complete confiscation of property is not allowed. The current legislation of the Republic of Azerbaijan provides for two types of confiscation: confiscation of an object that was an instrument of committing an administrative offense or a direct object of an administrative offense as a type of administrative punishment and special confiscation as a measure of a criminal nature.

According to the provisions of article 26 of the Code of the Republic of Azerbaijan "About Administrative Offences", confiscation of a thing privately owned by a person who committed an administrative offense, which was an instrument of committing an administrative offense or a direct object of an administrative offense, consists in the forced and gratuitous transfer of this thing to the State in cases provided for in the Special Part of the Code of the Republic of Azerbaijan "About Administrative Offences. The confiscation of an object that was the instrument of an administrative offense or the direct object of an administrative offense is carried out only by a judge [14].

According to the provisions of articles 99-1 and 99-2 of the Criminal Code, the measure of criminal legal impact in the form of special confiscation is the compulsory and gratuitous seizure in favor of the State by a court decision that has entered into force of the following property [6]:

- tools and means used by a person in the commission of a crime (with the exception of tools and means that must be returned to their rightful owner);

- property obtained by criminal means, as well as income received from this property (with the exception of property and income subject to return to the rightful owner);

- other property or its corresponding part, into which property obtained by criminal means has been completely or partially transformed by concluding civil law transactions or by other means;

- property provided for or used to finance terrorism, armed formations or groups not provided for by law, organized groups or criminal communities (criminal organizations).

If the above-mentioned property cannot be seized in favor of the State due to its use, alien-

ation or for other reasons, then other property belonging to the person who committed the crime, in the amount of the value of this property, will be seized with a court decision as part of a special seizure. Cases where special seizure of property cannot be carried out for other reasons include situations such as destruction of property, its unsuitability for use, and other similar circumstances.

According to the third sentence of the fourth part of article 29 of the Constitution, the alienation of property for state needs can be allowed only if its value is paid fairly in advance. As a result of the popular vote (referendum) held on March 18, 2009, the words "or public needs" were deleted from part IV of Article 29 of the Constitution after the words "state needs".

The concept of "State needs" is not explained in both the Constitution and the legislative acts of the Republic of Azerbaijan. Such a situation may lead to an extended interpretation of this concept in the process of applying the law, which in turn may lead to a violation of citizens' property rights. In order to eliminate such threats to property rights, it is necessary to adopt a special law that clearly defines the limits of restrictions on property rights in the interests of the State.

It should be noted that on April 20, 2010, the Law of the Republic of Azerbaijan "On the seizure of land for State needs" was adopted. This Law regulates the procedure for the seizure of land for state needs in the Republic of Azerbaijan, the procedure for calculating and paying compensation, as well as other relations arising between the parties in this area. However, there is no industry legislation regulating the procedures for the acquisition of other movable and immovable property for government needs.

The Constitution itself states that the only condition for the seizure of property for state needs is payment of its value. This condition itself has two criteria: the cost must be paid in advance; the cost must be fair.

According to part V of article 29 of the Constitution, private property generates social obligations. It should be noted that as a result of the popular vote (referendum) held on September 26, 2016, part V of Article 29 of the Constitution was renamed Part VII, and new parts V and VI were added to the article. The imposition of social obligations on private property follows from its social function. According to this function, the owner must use the property belonging to him in such a way that this use serves the common good of society.

According to part VI of article 29 of the Constitution, in order to ensure social justice and effective use of land, ownership of land may be restricted by law.

According to Article 169.2 of the Civil Code, if drilling wells, laying drainage, gas and other pipes, as well as above-ground and underground electric lines are completely impossible without using the owner's land or are possible only with excessively high costs, then subject to full preliminary compensation for the damage caused, the owner is obliged to allow the specified work.

According to part VII of article 29 of the Constitution, the State guarantees the right of inheritance.

In recent years, the Constitutional Court of the Republic of Azerbaijan has taken a number of legal positions of fundamental importance in connection with the inviolability and protection of property rights [1].

Of particular note are the resolutions of the Plenum of the Constitutional Court, which reflect these legal positions:

- dated June 3, 2013 "On the interpretation of Articles 373.2 and 384.0.4 of the Civil Code of the Republic of Azerbaijan";
- dated May 27, 2021 "On verification of compliance with the Constitution and laws of the Republic of Azerbaijan of the decision of the Civil Board of the Supreme Court of the Republic of Azerbaijan dated July 1, 2020 on the complaint of A. Dashdemirov";
- dated July 23, 2021 "On the interpretation of Article 37.3 of the Family Code of the Republic of Azerbaijan in terms of Articles 32 and 36 of this Code";
- dated September 17, 2021 "On verification of compliance with the Constitution and laws of the Republic of Azerbaijan of the decision of the Civil Board of the Supreme Court of the Republic of Azerbaijan dated November 18, 2020 on the complaint of H. Mirzaliyev";

• dated July 1, 2022 “On the interpretation of Article 312.4 of the Civil Code of the Republic of Azerbaijan and Articles 30.1 and 31.1 of the Law of the Republic of Azerbaijan “On Mortgage”;

• dated September 16, 2022 “On verification of compliance of Article 29.4 of the Law of the Republic of Azerbaijan “On Public Procurement” with Parts I and II of Article 29 of the Constitution of the Republic of Azerbaijan on the complaint of Palladium Defense and Security Solutions LLC”.

We consider it possible to summarize the legal positions reflected in these resolutions as follows. Thus, according to the explanations contained in the relevant resolutions of the Constitutional Court, property rights are divided into two main types - property rights (ownership) and limited property rights (easement, usufruct, inheritance of the right to build, pledge and mortgage). These rights have the following feature: non-use of these property rights does not entail their loss, and the possibility of making claims against all persons is not limited by any period.

Property law as an objective right is a set of legal norms governing relations arising in connection with the realization of the possibility of satisfying the interests of a person through direct influence on his property. As a subjective right, property law is a right that determines the direct authority of a person over a thing belonging to him, and depending on the scope of the powers granted, it is classified as property law and limited property rights.

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