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Institute for Democratic Initiatives

THE PROBLEMS OF REAL ESTATE REGISTRATION IN AZERBAIJAN

RESEARCH PAPER



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I.SUMMARY

In Azerbaijan, property rights are guaranteed not only at the constitutional level, but also by the norms of international law. However, there are serious problems in the country in the field of property rights.

These problems represented not only by the expropriation of property rights for state and public needs, but also by the loss of those or other factors, as well as the achievement of these rights, their acquisition and implementation.

A large part of the population cannot effectively possess the property and enjoy their property rights. This applies to both documented and non-documented property. The property rights of persons registered in the state register of real estate are guaranteed by domestic law to some degree, but those whose property is not documented are completely deprived of such security.

Real estate registries are currently under the registration of rights over real estate, as well as territorial offices of the State Real Estate Register Service and ASAN service centres. According to official figures, in 2017, 161500 real estate objects were registered by these authorities

1. Legislative shortcomings: The essence of the problems in the registry is that some legislative contradictions lead to the fact that the definition of "property right" in the Civil Code is inaccurate and inapplicable. This, in turn, leads to the non-recognition of the property owned by individuals and legal entities which was acquired legally but was not registered in the State Register. At the same time, this situation leads to uncertainty at the "length of the acquisition" concept established by the Article 179 of the Civil Code. Thus, on the one hand, it is established that the acquisition of the right to property starts at the date of the legal acquisition of the property, on the other hand, the property right occurs when the real estate is registered in the state register of the real estate. Also, according to the decision of the Constitutional Court of 28 January 2002, the first rights to the acquisition can be created from 2030. On the other hand, according to Article 180 § 2 of the Civil Code, it was determined that the person making the arbitrary construction do not acquire the right to property in any case.
2. The problem of arbitrary (illegal) construction: The construction and land plots, which are not registered in the register of real estate, are considered to be arbitrary construction and arbitrarily taken land segments, and according to unofficial information, there are about 500,000 such types of buildings in Azerbaijan. The reasons for the occurrence of spontaneous construction in Azerbaijan can be grouped as follows:
 - historical, political, social and economic conditions leading to urbanization;
 - lack of planning;
 - contradictory and complicated legislation;
 - extreme bureaucracy in the field of land acquisition and construction permits resulting in corruption;
 - lack of mechanisms to access housing, poverty and marginalization;
 - failure by state bodies and local self-governing bodies to follow urban planning rules;

- unlawful issuance and holding illegal construction of lands, in contrary to their intended purpose (for example, agricultural lands used as a residential area);
- mass influx of IDPs (Karabakh war, deportation from Armenia);
- political conjugation and so on.

The failure to solve this problem has led to the following consequences:

- In any case, the courts do not recognize property rights over of the unauthorized buildings in the country. Although international law and the European Court of Human Rights recognize certain rights to such buildings under certain conditions;
- More than 2 million people in the country, with more than 500,000 unlicensed homes, are not officially registered on their actual place of residence and their registered official addresses are formal;
- Citizens who cannot be registered in their actual place of residence experience problems with legal addresses in their relations with governing bodies. At the same time this situation creates certain problems in the country's internal migration;
- As these persons are not included in voter lists of their place of residence at elections of all stations, they are usually unable to participate in elections and create problems for voter lists;
- About 500,000 buildings in the country and land plots under those buildings are not involved in property and land tax and large amounts of tax money does not flow to the budget (let's note that in some cases municipalities illegally collect such taxes and it is not known where the money proceeds). In addition, payments for actual purchase and rent of such buildings and lands are also exempt from the budget;
- Social infrastructure and communications projects are not implemented or poorly implemented in the areas where these buildings are located;
- Most of these areas do not have kindergartens, schools, cultural facilities and leisure centres.

It should be noted that, even though many initiatives have been made by the state authorities so far, they have failed and this problem still retains its relevance and seriousness in our country.

1. Absence of a single database;
2. Inclusion in the Register until the relevant State Commission recognized the property;
3. Failure to identify protected zones of loaded land plots where pipelines are passing;
4. Unclear boundaries of land plots;
5. Failure to provide owners with registry and cadastral information on immovable property;
6. Approval by the notary offices of real estate on sale and other operations;
7. Bureaucratic barriers, red tape and corruption;
8. The only way to resolve all problems with the registry is through the courts;
9. People's unawareness.

II. INTRODUCTION

According to the Constitution of the Republic of Azerbaijan

Everyone has the right to own property. Neither kind of property has priority. Ownership right including right for private owners is protected by law. Public, municipal and private property is equally protected by the state.

According to the paragraph 3 of the article 29

Everyone might possess movable and immovable property. Right of ownership envisages the right of owner to possess, use and dispose of the property himself/herself or jointly with others.

According to the paragraph 4 of the article 29 of the Constitution

Nobody shall be deprived of his/her property without decision of law court. Total confiscation of the property is not permitted. Alienation of the property for state or public needs is permitted only after preliminary fair reimbursement of its cost.

Protection of property is stipulated in the Article 1 of the Protocol 1 of the European Convention on Human Rights which was ratified by the Azerbaijan Republic.

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Apparently, the property rights in Azerbaijan were secured not only at the constitutional level, but also by the norms of international law. Nevertheless, there are serious problems in the country in property rights protection. These problems emerge in the form of loss of property rights because of expropriation of the property by state for public needs, but also because of other factors, such as accessibility of these rights, their acquisition and realisation.

Analysis of the current situation shows that a large part of the population is unable to possess and use the immovable property securely. This applies both to documented and undocumented property. The property rights of persons registered in the state register of real estate are guaranteed by domestic law, but those whose property is not documented are completely deprived of such security.

According to unofficial data, Baku, its settlements and villages have about 500,000 unlicensed houses and land plots, and their number is constantly increasing day by day. Taking into consideration that in average 3-4 people live in each apartment, this means that there are 1.5-2 million people living there¹.

¹ Meydan TV, "Houses left aside of Presidential Decree" – <http://bit.ly/2oQvMC0>;
Cəbhə.info, "500 000 undocumented houses: Bribery does not allow registration" - <http://bit.ly/2tqmFOb>

People living there for years, even though they pay utility bills and other public taxes, are still unable to obtain any ownership certificates for their homes and are not recognized by the state as proprietors. The existence of this situation leads to some negative consequences for people living there. First, living in a house without documents proving ownership creates psychological distress for people. They always live in fear, that the field contractor can put their apartment under bulldozer at any time. Another problem is that unlicensed property does not allow families to exercise any rights over property (for example, to pledge their property to get a loan from banks or sell property to improve living conditions). Especially in recent years, sale of houses that have not had documents makes their selling impossible.

The submitted report analysed the issues of property rights of immovable property in the country. The document outlines the existing problems in the State Real Estate Registry Service (hereinafter - SRERS), collisions in the existing legislation, difficulties in its implementation as well as recommendations for the elimination of these cases.

Methodology

The methodology of the work was identified before the report was drawn up. The methodology of the study will be divided into two stages - the study and the preparation of the final report. Since the research phase is intended to provide information to be used, this phase was divided into three parts: defining the framework of the problem, monitoring the legislation, and addressing information inquiries to the relevant bodies.

At the first stage, research was conducted to determine the problem of real estate documentation and registration in the country. The studies were conducted in three stages:

- At the initial stage, there were facts clarified through the media monitoring. As a result, the initial conclusion was that the problem is nationwide.
- On the second stage 5 districts located in different administrative regions of the country were selected. Meetings were held with residents who have problems in those regions and cities identified by the random selection. They were asked to fill in a questionnaire, which was prepared based on pre-defined criteria.
- At the last stage meetings were held with the human rights defenders who had been working on the documentation and registration of real estate in those regions and cities. During the meetings, questionnaires were used to interview experts, lawyers and human rights activists in this area.

Following the determination of the nationwide nature of the problem, monitoring of the legislation and court decisions has begun. First, the monitoring framework had been defined, and then the list of normative acts and courts to be monitored has been specified. The legislation and court decisions were monitored and relevant information was collected in accordance with the identified criteria

The inquiries were sent to the relevant executive and judicial authorities for obtaining statistical and general information on the questions raised after the first two stages. Some of the pre-defined state bodies and courts – such as the Baku Administrative Economic Court No 1, the Sumgait Administrative Economic Court, the State Real Estate Register Service did

not respond to the inquiries on merits of the questions², others – such as Head of the Executive Office, Binagadi District Executive Office, Sumgait city Executive Office did not respond to the information inquiries at all.

The final report was prepared after fulfilling all stages of this research and collection of all the necessary information.

III. CURRENT SITUATION

The concept of registration of property rights over real estate

It is necessary to clarify the concept of real estate before moving into real property rights registration. Thus, pursuant to Article 134 of the Civil Code of the Republic of Azerbaijan (hereinafter - the Civil Code), tangible property may be movable or immovable. Immovable tangible property are land plots, subsoil plots, isolated water objects, and any other thing securely attached to the land, i.e., objects which cannot be moved without disproportionate damage to their function, including forests, long-standing plantations, buildings and structures.

The practice of applying civil legislation and other laws applicable to the real estate shows that some of the objects mentioned in Article 135.4 of the Civil Code (such as forests, long-standing plantations and isolated water objects) are not in line with the definition of the immovable property. Because the objects that are immovable are not the forests, long-standing plantations and isolated water objects themselves, but rather the lands that are covered by them. At the same time, this list is very narrow, not exhaustive and could be supplemented by other objects.

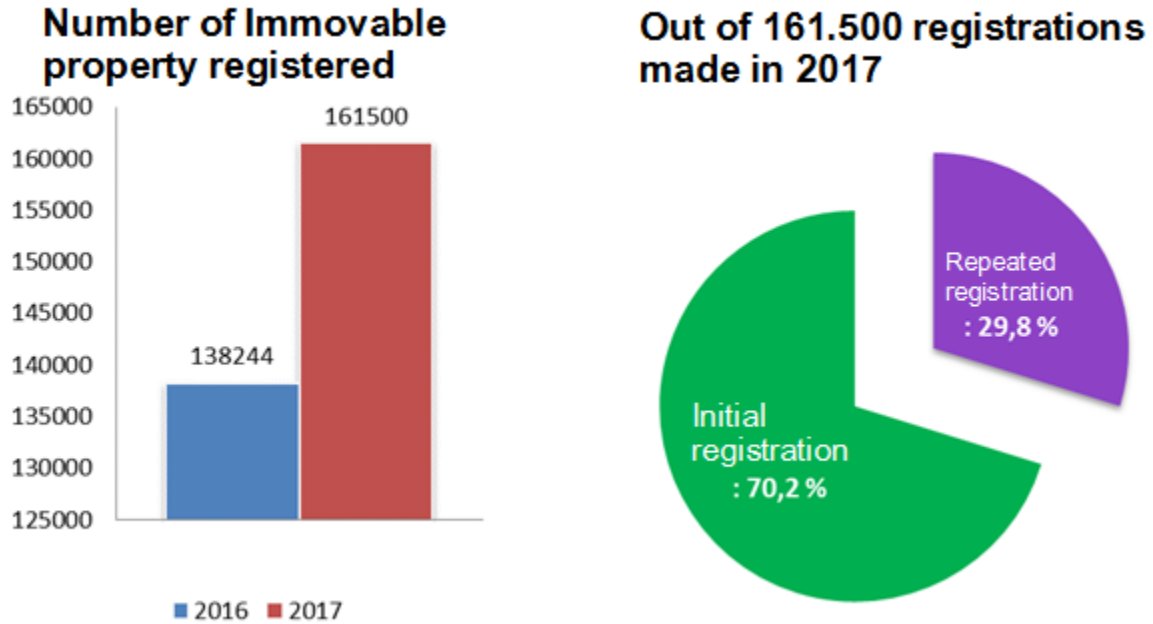
According to Article 178.2 of the Civil Code, Ownership rights to newly created immovable property shall arise from the moment of registration of such property in the state register of immovable property. Article 179.4 of the same Code states that the right of ownership of the real estate to the property arises from the moment when this right has been registered in the state register of real estate. This kind of clarification of the provisions of the Civil Code in practice leads to numerous problems and serious violations of property rights. Thus, unregistered property of individuals and legal entities owned and legally acquired, but not registered in the State Register is considered illegitimate in an artificial manner. From the meaning of these articles, if there is no document from the State Real Estate Registry, there is no right of ownership on the property and it is not legal.

Accordingly, we can say that individual houses built and commissioned in the manner specified in the legislation, as well as registered in the State Register of Real Estate, are legitimate individual houses and have legal nature as objects of civil circulation. Individual houses that are not built and commissioned in accordance with these rules are arbitrary i.e. arbitrary construction.

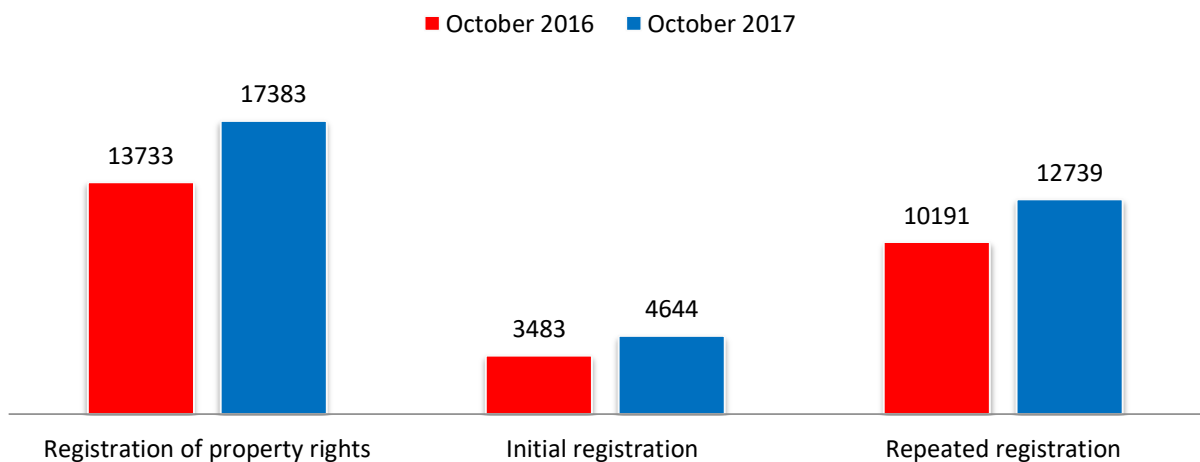
² Answer letters to the information inquiries - <http://docdro.id/8PB8AnE>

Statistics

In the "Real Estate" analytical bulletin # 83, periodically published by the State Committee on Property Issues, some figures on the registration of real estate for 2017 have been disclosed. The results of 2017 in the bulletin have been compared to 2016. The following charts contain some of the statistical figures:³



Registration of property rights on real estate



³ "Immovable property" №83, 2017 - http://www.stateproperty.gov.az/images/Sehifeler_N83.pdf

The body responsible for the state registration of rights to immovable property

Registration of rights over immovable property is carried out by territorial offices of the State Real Estate Register Service. Since January 1, 2013, the issuance of extracts (except for the initial registration) on the state registration of the property rights on the residential houses and the issuance of certificates on the restriction on the rights to immovable property (encumbrance) are carried out by ASAN service centres.

Real estate transactions at ASAN service centres

One of the services provided by “ASAN service” centres is registration of real estate transactions. The service centres are operated through corners of the State Committee on Property Issues.

There are only three types of real estate transactions available in the ASAN service centres⁴:

- Issuance of extracts and technical passports on initial and repeated state registration of property rights on apartments;
- Providing references from the State Register on the description of real estate, state registration rights and state limitation (encumbrance) of those rights;
- Issuance of extracts, technical passports on state re-registration of property rights on individual residential houses.

The following two essential documents should be submitted for issuance of extracts and technical passports on the obtaining of initial and repeated state registration of property rights on apartments:

- The court decision, which entered into force;
- The decision of the general meeting of the members of the housing construction cooperative (hereinafter HCC) on granting the living space in the building of the mentioned cooperative.

If information on the commissioning of the building by the HCCs is registered in the electronic data base of the State Committee on Property Issues, the initial registration of the apartments is carried out within the framework of a simple procedure based on the application submitted by a member of the housing construction cooperative.

In contrast to flats, individual housing can only be being re-registered at the "ASAN service" centres. Therefore, individuals who want to register for individual houses cannot benefit from the services provided by this agency. This can be considered one of the most difficult and delaying elements of the process of the registration of non-registered property.

⁴ <http://www.asan.gov.az/az/category/asan-xidmetler/dasinmaz-emlakla-bagli-emeliyyatlarin-qeydiyyati>

Documents required for registration of rights to immovable property

For registration of rights to immovable property it is required to apply to the registry with an application and attach the following documents to the application, to fulfil one of the eight bases of registration established by the legislation⁵:

1. Application form

2. One of the ground for emergence of the property right

- Acts local executive power authority, acts of local municipalities
- Final protocol on auction results
- Contracts, certificates, housing certificates
- Court decisions that have come into legal force
- Acts confirming the rights, certificates, registration certificates
- Decision of the General Meeting of the HCC members etc..
- Lease agreements, orders, permission
- Orders for garden areas
- Documents determined by the President

3. Land plot plan and size

4. Technical passport and plan-line of buildings, installations, buildings and other real estate (their constituent parts) located on the plot

5. Receipt on payment of state tax

Acquisition Through Length of Use

One of the crucial provisions for acquiring ownership rights is related to the acquisition term. First, the striking contradiction is that on the one hand, it is stated that the acquisition of the right to property is determined by the acquisition date⁶, on the other hand, the law stipulates that the property right emerges when the property is registered in the state register of real estate⁷. The most important reason for this is the inaccurate definition of the right to property in accordance with the current civil legislation. The notion of the “registration” is an integral part of the definition of the of property rights, and as a result, the law is self-contradictory.

⁵ “Law of the Republic of Azerbaijan "On State Real Estate Real Estate", Articles 8 and 10.

⁶ Articles 178.5, 178.6-c1 of the Civil Code

⁷ Article 179.4 of the Civil Code

The second issue is related to the amendment of the Civil Code in 2003 and 2005 and the toughening of the acquisition length articles. The Code stipulates the period of ten years for the property acquired before 2003 and 15 years for the property acquired before 2005. Now, these provisions are removed from the legislation.

At present, there are two provisions related to the acquisition that are in force. First, where an owner has unknowingly been registered without justification in the state register of immovable property as the owner of a land plot continuously for ten years without any objection being made, such person shall be considered the owner of land plot. (Civil Code article 178.5). The second and most interesting application of the period of acquisition is stipulated by Article 178.6 of the Civil Code. It states that where a person has possessed property not registered in the state register of immovable property and such possession was continuous for thirty years without any objection being made, such person may demand registration as the owner. On the same principle, such right shall belong to the possessor of property whose owner is not recorded in the state register or who died 30 years previously or was declared missing without trace at the time of acquisition of property. However, in the absence of claims during the official notice period or on refusal to register, registration may subsequently be made only as the consequence of a court order.

According to the decision of the Constitutional Court of the Republic of Azerbaijan dated January 28, 2002, the legal force of Article 179 of the Civil Code determining the length of acquisition of the right of ownership of immovable property should be applied to the legal relations established after 1 September 2000⁸. Hence, according to this article, the first rights can arise in 2030. On the other hand, according to Article 180 § 2 of the Civil Code, it was determined that the person making the arbitrary construction do not acquire the right of ownership.

Definition of "arbitrary construction"

Buildings and land plots which cannot be subject to registration of property rights are unauthorised land-related constructions and arbitrary land seizures, and as their number increases, they become a public problem. In general, this problem is typical not only for Azerbaijan, but also for many countries of the world. According to UN Habitat's 2004 report, more than 900 million poor urban residents live in informal settlements, and most of the time property rights are unsecured. According to this report, if no action is taken, the number of such buildings will reach 1.4 billion by 2020 and 2 billion by 2030.⁹

According to unofficial reports in the press, there are more than 500,000 unlicensed buildings in Azerbaijan, about 50,000 undocumented private houses, including more than 30,000 unlicensed flats, and most of them are built in Baku area.¹⁰ More than 2 million residents live in these houses. According to experts, about 4-5 thousand illegal houses were built in 2015, 2016 and 2017 for each year. Even several years ago, Baku City Executive Authority announced that more than 700,000 unlicensed houses which can be subject to documentation in capital and suburban areas¹¹.

⁸ <http://www.constcourt.gov.az/decisions/52>

⁹ <https://unhabitat.org/un-habitat-self-assessment-report-2004/>

¹⁰ <http://modern.az/az/news/70648#gsc.tab=0>

¹¹ <http://bit.ly/2FWIc3g>

Problems caused by arbitrary buildings

At present, the issue of arbitrary (illegal) buildings, including undocumented buildings, has become the most pressing socio-economic issue in the country. The failure to address this problem has led to the following problems:

- More than 2 million people in nearly 500,000 unlicensed houses in the country are not officially registered on their actual place of residence and their registered official addresses are formal;
- Citizens who cannot be registered in their actual residence experience problems with legal addresses in their relationship with government bodies. At the same time, this situation creates certain problems in the country's internal migration;
- Since these individuals are not included in voter lists at their actual place of residence at elections of all stages, they are usually unable to participate in the elections and create problems for preparation of the voter lists;
- More than 500,000 buildings in the country and land plots under those buildings are not involved in property and land tax, and large amounts of money which should be paid to the state budget just do not reach it (let's note that in some cases municipalities illegally collect such taxes and it is not known where this money goes). In addition, taxes and fees for purchase and rent of such buildings and lands are also exempt from the budget;
- Social infrastructure and communications projects are either not implemented or poorly implemented in the areas where these buildings are located;
- Most kindergartens, schools, cultural institutions and leisure centres do not operate in most of these areas.

Reasons for the occurrence of arbitrary construction

The reasons for the occurrence of arbitrary construction in Azerbaijan can be grouped as follows:

- Historical, political, social and economic conditions leading to urbanization;
- Absence of proper planning;
- Existence of legislation which is contradictory and complicated;
- Excessive bureaucracy, corruption in the field of land acquisition and construction permits;
- Lack of accessible mechanisms for housing, poverty and marginalization;
- Inability of state bodies and local self-governing bodies to comply with town-planning rules;

- Illegal allocation and illegal construction on the lands which initial purpose was other than a residential (for example, the intended purpose of land was agricultural, but it is allocated and used as a residential area);
- Mass flow of internally displaced persons (Karabakh war, deportation from Armenia);
- Political conjugation etc.

This process was started by municipalities in 1999 with the transfer of authorities on allocation of lands for the individual living to local self-governing bodies. Because of converting land ownership to municipalities, the lands which were under their control rapidly became a construction sites and this has led to large-scale construction activities as well as increased illegal construction in a few years. In this connection, the provisions on the illegal land acquisition and arbitrary constructions and its consequences have been added to the Civil Code as well as the Urban Planning and Construction Code adopted in 1999. Since 2007, parallel to the termination of the authority of municipalities towards the allocation of land plots, more strict rules have been set out, Article 180 § 4 has been added to the Civil Code, and the second sentence have been removed from the article 111.3 of the Code of Urban Planning and Construction. After this the situation in this area became even more aggravated.

In the present period, especially in developing countries, there is a new kind of urbanization. Poor people in rural areas are moving to cities to get new jobs to get rid of poverty. These migrants are mostly poor and have no access to adequate housing. This is the reason why they forced to live in slums or houses that are not documented. The housing crisis in Azerbaijan in the 2000s and the increase of population in Baku's settlements resulted in the occupation of large-scale land plots.

At present, most of the buildings in Baku are owned by individual houses (according to some information the numbers are as high as 90%), and the remainder belongs to commercial and other facilities. Most of the arbitrary constructions are in Binagadi district and Absheron district of Baku.

The biggest concern is related to residential houses and other buildings constructed on land plots used for highways, high voltage power lines, transport infrastructure facilities, water protection zones and industry objects used for the development of oil and gas fields.

Some of the arbitrary constructions have municipal decision on building, municipalities' documents on purchase and sale, project and cartographic documents and registration documents. In some cases, constructions are partially documented, and in some cases, there is a discrepancy between the construction and the information in the documentation. Most documents do not correspond to the legislative norms and the actual construction. Some of the arbitrary houses do not even have addresses. In this regard, various government agencies are raising claims in the courts requesting demolition of these houses and other buildings. As a result, it leads to many conflicts, including gross violations of property, housing and other related rights of many families.

While examining such cases, the Court lacks human rights approach to property rights and generally refers to the concept of property rights derived from civil law and, in many cases,

the decisions courts hold, violate property rights of the applicants. Most of the trials are related to residential houses and other buildings constructed on land plots used for highways, high voltage power lines, transport infrastructure facilities, water protection zones and industry objects used by the owners for the development of oil and gas fields.

During the 2016-2017 review of many court decisions showed that the courts were not in compliance with the practice of the European Court of Human Rights, they did not establish whether there was an interference with the property and housing rights, was this interference in public interest, fair, and proportionate and whether principle of legal certainty was applied.

The judiciary or the executive power while deciding on the demolition of the arbitrary constructions do not investigate the aspects of public needs, the interests of the society and the common interests. During the mass demolition of buildings, it is not analysed how the demolition will benefit public interests, it is not discussed or investigated whether it is possible to re-plan construction of infrastructure objects (for example pipelines, power lines, transport infrastructure), the courts do not consider the extent to which the demolition will contribute to public interest in accordance with the interests of those living in the area. Generally, the decision to demolish dwellings are held without consideration that the disputed houses might be the only place for living, the period of the residency in that house, the official or informal fees paid to the state authorities related to that house, the legal expectations, situation of IDPs and other vulnerable groups of population and their respective rights.

Other negative consequence of the interference with property rights by courts are related to the lack of fair balance. When making decisions on the demolition of buildings, not only fair compensation is not paid to persons, but also costs related to litigation and demolition are put on the house owners. Apart from the non-recognition of ownership rights of persons, registered in the apartment, their housing rights are subject to intervention. However, according to the principle of fair balance, individuals should not be subjected to excessive burdens for sake of public interest, so that the burden should be properly and fairly compensated for the preservation of such balance.

One of the major causes of serious concern is the lack of legal certainty:

- The concept of property stipulated by the legislation violates the property rights and preconditions its application in a narrow scope; as a result, different decisions are made on the analogical situations. For example, there were two cases where the construction of two buildings was implemented on the protective strip of a dangerous object, in the first case the property right of a person was recognized (because the person had a state registration of property rights) and the claim for the demolition was denied, and in the other case, this right was not recognized (because there was a document provided by municipality but there was not any document from the state registry) and the claim for demolition was accepted.

- The legislation does not provide reasonable acquisition lengths, such periods and legal expectations are not assessed or considered by the judiciary and executive authorities;

- Issues such as prior acquisition of the land are not investigated in the cases of arbitrary construction and the time limits are not examined.

- When the cases are examined by the courts, they are referring to the opinion of the construction and technical expert's conclusions, especially when investigating the location and demolition of the building. However, when making such conclusions, (let's say that the area is considered to be the territory of any oil company) experts do not conduct any site review, they mainly refer to the information on papers, and information provided by state authorities. For example, if site is the territory of any oil company, the experts conclude that the disputed building is constructed on the protective strip but no measurements are taken. Therefore, as seen in the court rulings, in some cases the opinion that the building is located on the protective strip is expressed in general terms and no figures are displayed. These expert's opinions which are contrary to the requirements of the civil procedure legislation, are regarded as absolute proofs, are neither disputed nor questioned.
- One of the factors that contributes to this is the contradictions in the legislation. It is not clear how should one categorize lands which are not put to a certain category: whether they are owned by the state¹² or the municipality¹³. This kind of contradiction is one of the factors that make it difficult to solve the problems associated with "the affiliation of the land to the balance of a certain organ" mentioned above. The municipality considers that if it is not owned by the state or physical persons, it is owned by the municipality, and the state considers that the lands which are not owned by municipalities and physical and legal entities are the property of the state.
- There is no single criterion for the decision on the demolition or keeping the building, all the decisions are carried out in a selective way. Even though there are other buildings, schools, public catering facilities in the same area, there are legitimate interests of the entrepreneurs, noting that other objects are not demolished from the area, none of these arguments are accepted as a valid argument for the decision making of the courts.
- Demolitions are carried out by unauthorized persons with or without court decisions. However, it must be carried out only by the court decision and only by the executive power authorities.

The steps taken by state bodies in the field of registration of unregistered houses

To document unregistered houses, President Ilham Aliyev gave instructions to the Baku City Executive Authority during the meeting devoted to the socio-economic development of the capital and suburban settlements of our country in March 2011. According to the instructions, the relevant government agencies should specify the list of unregistered buildings in the capital and prepare a program for their documentation. Although more than 6 years have passed since then, there is no information about the progress of this process¹⁴. Unfortunately,

¹² Land and other natural resources which are not in the ownership of natural persons, legal entities or societies shall be in the ownership of the state.(Civil Code article 155.2).

¹³ All lands are municipal lands, except for the lands kept in the procedure established by the legislation in state-owned property and transferred to private property within the corresponding administrative territory.

(Law of the Republic of Azerbaijan "On Municipal Lands Management", 2.1).

¹⁴ <http://istipress.com/sosial/10-04-2017/prezidentin-bu-problemin-helli-ile-bagli-gosterisi-icra-olunmur-video>

neither the State Committee on Property Issues nor the Baku City Executive Authority made any public statement on this. However, on March 9, 2011, at the meeting on the socio-economic development of the capital's settlements, the President of the Republic of Azerbaijan Ilham Aliyev made his position clear on this issue:

*"There is a problem of registering houses in Baku, but we have to make sure that we can avoid unpleasant situations while the problem is solved. Those houses must be registered. However, it is not a secret that unreasonable demands can be introduced during registration, bribery, illegitimate interests. It is also a reality. So, I have ordered Hajibala Abutalibov to create a transparent mechanism for solving this problem so that we can eliminate corruption and bribery there. Or a good initiative can still bring us problems only because of the greed of some people"*¹⁵

On 27 June 2012, the President further intervened in this issue and ordered "establishment of the commission to regulate problems of residential houses and other buildings constructed on land plots used for highways, high voltage power lines, transport infrastructure facilities, water protection zones and industry objects used for the development of oil and gas fields." A commission consisting of high-ranking officials has been set up to regulate issues related to residential houses and other buildings constructed on land plots used for highways, high voltage power lines, transport infrastructure facilities, water protection zones and industry objects used for the development of oil and gas fields.

Furthermore, the Head of the Supreme Court and the Prosecutor General were advised to take part in the Commission's activity. The Commission was instructed to examine the issues related to the construction of residential buildings and other buildings in the land areas indicated in Part 1 of the Decree and submit within three months their proposals based on the results of economic, social and legal aspects assessment to the President of the country. It should be noted that, according to the information provided by the press, the draft Law on the legalization of rights on residential buildings and land plots that are not documented in accordance with the legislation of the Republic of Azerbaijan has been prepared and submitted to the Milli Majlis.

According to this draft law, arbitrary residential buildings which are not constructed on trunk pipelines, power lines with voltage more than 1000 volts, metro, railway facilities, technical facilities of water supply and sewerage systems, oil pipelines, roads and water protection strips houses, sliding areas, protected land, as well as houses built on forest and water reserve and on the territory that is used for production and transportation of oil and gas, should be provided with registration of property rights.

According to the draft law project, the legalization of property rights on dwelling houses or land plots will be carried out by new commissions. It should be noted that even if such a draft law was submitted to the Parliament, it is a pity that it is not being discussed yet.

Decrees of the President of the Republic of Azerbaijan dated January 13, 2015 and October 15, 2015

By the Decree of the President of the Republic of Azerbaijan dated January 13, 2015 the list of documents confirming the emergence and acquisition of rights to immovable property

¹⁵ <http://modern.az/az/news/144171#gsc.tab=0>

before the adoption of the Law of the Republic of Azerbaijan "On the State Register of Real Estate" was created and came into force.

According to the legislation of Azerbaijani SSR and this list, the competent authorities on the territory of the Republic of Azerbaijan identified 14 types of documents confirming the acquisition of rights to residential and garden houses, as well as land plots allocated for the construction of such houses.

These documents include the land records issued by economic divisions of the soviet local committees of executive committees, the state act on the right of use of land granted by the soviet executive committees of the towns and districts of the people's deputies, agreements concluded after August 26, 1948, approved by the notary on the allocation of land plots for the construction of residential houses with the right of private ownership, Decree of the City and District People's Deputies on the allocation of land from November 9, 1991 to December 19, 1995, extracts from books pertaining to the residential houses built in the villages (including settlements), changing their status, as well as renamed to the towns or villages granted to the area by January 1, 2001, and so on.

At the same time, according to the Presidential Decree of October 30, 2015, the list was supplemented with the decision of the general meeting of the members of the collective farm, or the order of the head of sovkhos (or a state-established entity which was established after reorganization of this sovkhos, such as a subsidiary subordinate to the agricultural enterprise) allowing building of residential houses or country houses.

It should be noted that prior to these decrees, registration of property rights on real estate submitting these documents, was impossible. According to the information provided by RESRS in 2016, over 30,000 real estate objects were documented and their owners were provided with property rights submitting these documents. We addressed an inquiry to the RESRS in 2017 but no information was provided by them in relation to our survey.

International Legislation

Azerbaijan ratified the UN Convention on Economic, Social and Cultural Rights on August 13, 1992. The country also has international obligations prohibiting forced evictions and forced demolition under the jurisdiction of the European Court as a party to the Convention on the Protection of Human Rights and Fundamental Freedoms since 15 April 2002. According to Article 46 of the Convention, the decisions of the European Court are binding on those States which have ratified this Convention.

In the case of *Tre Traktörer Aktiebolag against Sweden*, the European Court underlined that the applicants' right to use the land and having legitimate expectations to benefit from it in the future would also constitute the right to property, which would fall within the scope of Article 1 of the Protocol 1 of the European Convention of Human Rights (right to property)

¹⁶

¹⁶ <http://hudoc.echr.coe.int/eng?i=001-57586>

At the same time, some of the decisions of the European Court have widely interpreted the notion of home. In the case of *Moreno Gomez's against Spain* "home" was defined as an area where physically identifiable family and its personal life is located¹⁷.

Determining the place of residence (housing) at the time of the alleged violation of right to home is not decisive by the Court's case law (*Gillou v. The United Kingdom*¹⁸ and *Buckley v. The United Kingdom*¹⁹).

Illegally occupied housing is also considered as home. The concept of housing is not limited to the traditional concept of lodging such as (*Loizidu v. Turkey*²⁰), apartments or lands (*Buckley v. The United Kingdom*).

In the case of *Konnor v. The United Kingdom*²¹ (2004), the Court ruled that, during the forced relocation of Roma people, there had been a violation of right to home Article 8 of the Convention, even if applicants did not have any contract or proprietary rights.

It is also apparent from the other cases of the European Court of Human Rights that, if for many years state deliberately ignores illegal (arbitrary) buildings and does not take any action on them, the European Court states, that this inaction creates grounds for emergence of property rights of applicants, and these expectations fall under the scope of "possession" within the meaning of the Convention. (*Öner Yıldız v. Turkey*)²²

Current problems in the State Real Estate Register Service

As a result of the research, the following problems were revealed in the State Real Estate Register Service:

1. *Length and time spent on the registration of rights and the application process.* Even though the Law of the Republic of Azerbaijan "On the State Registry of Real Estate" was amended on 29.04.2016 and the state registration period was shortened from 20 days to 10 days, it is still very lengthy. So, the shortest period for the registration of rights is 3 days or more. The period for receiving of document on the real estate from the registry is 15 days. However, in countries with advanced experiences, this registration ends within a few hours.
2. *Absence of a single database.* Because of the absence of a single database of agencies involved in the registration of rights and real estate transactions results in artificial extension of the procedure, as well as the creation of extra formal and informal costs. Notarial authorities do not have a single database of RESRS. For example, a certificate from the RESRS should be submitted for notarial certification of transactions related to purchase and sale of property or exercise of other rights over it. It is not possible to confirm notarized transactions without submitting such form. Purchase of such a form takes a long time and this service is payable. However, the existence of a single real estate database eliminates the need for such type of inquiries.

¹⁷ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-67478"\]}](https://hudoc.echr.coe.int/eng#{)

¹⁸ <http://hudoc.echr.coe.int/eng?i=001-57492>

¹⁹ <http://hudoc.echr.coe.int/eng?i=001-58076>

²⁰ <http://hudoc.echr.coe.int/eng?i=001-58007>

²¹ <http://hudoc.echr.coe.int/eng?i=001-61333>

²² <http://hudoc.echr.coe.int/eng?i=001-67614>

3. *Problems with the recognition of rights for the factual property.* Since sometimes the rights over actual property are not recognized, the houses are being left outside of the economic turnover. This results in tax evasion and exercising property rights in non-legal dimension (see above-mentioned arbitrary buildings).
4. *Non-inclusion of a house into the register until the relevant state commission issues an admission.* There are thousands of multi-storied residential buildings built in Baku and different cities and towns of the country. Despite the fact that people are living in these buildings for many years, they are not registered and live without any documents confirming their ownership, and no registration is made in the State Register on these apartments. The reason is that the buildings were not accepted by the state commission and no operational records were compiled. Despite that people have bought these apartments for the full price. For this reason, exercise of rights over such apartments is carried out by means of law avoidance.
5. *Failure to identify protected zones of loaded land plots with transitory pipelines.* This creates serious problems with the registration of property located in those areas.
6. *Lack of clear boundaries of land plots.* Since land reform has been completed in a relatively short period of time - within two years, the differences between the actual land plots distributed and the plan reproduced in the state act on land plots, rises serious problems in their registration.
7. *Failure to provide owners with registry and cadastral information on immovable property.* The real estate registry information, as well as cadastral information about the land is not accessible to the property owner. In the experience of advanced countries, everyone has access to the registry data on real estate through the Internet, as well as access to cadastral information relating to land ownership.
8. *Approval by the notary offices of real estate on sale and other operations.* Although tariffs for paid services rendered for purchase and sale of real estate and other transactions where notary offices are involved are classified, this procedure is not clearly specified and varies from one office to the other.
9. *Bureaucratic barriers and "red tape".* Deception, artificial prolongation of time, unreasonable refusals in the registration of property rights are issues of mass character. No serious informing and awareness-raising activities are carried out by the registry and an artificial information limitation atmosphere is created in the mentioned institution. Corruption risks are very high in the process of exercising rights over real estate and there are many complaints related to this sphere.
10. *Courts as an only way to resolve issues related to State Registry.* Courts are loaded with complaints on state registration of real estate. This is also an indication of failure of the administrative authorities. However, the lack of uniform judicial practice and the fact that the courts sometimes make different decisions on analogical cases increase the chaos in this area.
11. *People's lack of awareness.* It is important to increase public awareness to solve the problem. At present, people are facing difficulties in realizing their rights because of the lack of public awareness.

CONCLUSIONS

As a result of our research, we observed that the problem was not only present in Baku and the surrounding areas, it is nationwide. At the same time, there were identified facts that the problem exists on all types of real estate - individual houses and country houses, multi-storied buildings, land plots, non-residential premises and others.

During the monitoring of legislative acts regulating the registration of real estate, the research discovered some contradictions and gaps in the existing legislation.

The main reason of those contradictions, is the existing definition of the "property right". Thus, during the detailed analysis of the Civil Code of the Republic of Azerbaijan, contradictions between the norms related to acquisition of property rights have been established. These contradictions are one of the main reasons for the problem in practice.

The second reason for the problems that arise in practice is the fact that property that cannot be registered is considered "arbitrary construction". Increasing number of arbitrary buildings leads to violation of urban planning rules and weakening of control of state bodies. This situation can be very serious if not prevented.

The most effective step in accelerating the registration of the unregistered houses was the adoption of the decrees of the President of the Republic of Azerbaijan dated 13 January 2015 and 15 October 2015. Thus, these decrees define a list of relevant documents for obtaining property rights on real estate acquired and emerged before the Law of the Republic of Azerbaijan "On State Register of Real Estate" comes into force. As a result of the adoption of these decrees, about 30,000 real estate objects were registered in the country.

As a result of our research, along with collisions in law, we have identified some practical obstacles. Availability of bureaucratic barriers, lack of "one window" system, lack of effective electronic services, etc. some examples of such practical obstacles can be illustrated.

RECOMENDATION

1. In March 2011, the President of the Republic of Azerbaijan Ilham Aliyev at the meeting on the socio-economic development of the suburban settlements held in the Baku City Executive Authority stated that the registration of unlicensed houses should be made more effective and this process should be completed as soon as possible. In this regard, the relevant public authorities should inform the public about the work was done and to be done in the future;
2. Legal basis should be formed by making necessary amendments and additions to the existing legislation including the Civil Code of the Republic of Azerbaijan and the Law "On the State Registry of Real Estate" and other relevant legislative acts regarding the registration of property rights on arbitrary or undocumented for any other reasons individual houses for a certain period;
3. Problems related to the registration of property rights over the residential houses, which were granted to citizens during the Soviet period, are subject to the latest

amendments to the Civil Code and the Law of the Republic of Azerbaijan "On the State Registry of Real Estate", approved by the Decree of the President of the Republic of Azerbaijan dated 13 January 2015 and the list of documents confirming the acquisition of rights on emerging real estate objects ". We believe that this practice can be applied to the solution of the problem of documentation of existing unlicensed houses;

4. The legal disputes related to the arbitrary (undocumented) buildings should be resolved as far as possible in accordance with Article 178.6 of the Civil Code and the relevant decisions of the European Court of Human Rights;
5. The court practice on arbitrary (undocumented) constructions should be summarized and publicly disclosed. General Recommendations of the Supreme Court should be prepared for the Consideration of these cases by the local courts deciding on the property rights of land and other real estate objects;
6. The rules for land allocation and issuance of permission and informing procedures on buildings, should be simplified and possible circumstances for corruption should be eliminated. Also, legislation should be changed to expand the scope of lands where construction is possible. The Code of Administrative Offenses must contain administrative penalties and high fines for unlawful rejection and evasion of construction requests for which informing and permission procedures are applied. At the same time, the administrative responsibility for the illegal actions of officials regarding the illegal actions during construction of private houses and garden houses for which the information disclosure is applied, during the state control over their construction and the exploitation of the building.
7. Additionally, it should be noted that unauthorized buildings, which were initially illegally given by municipalities to individuals and where construction was carried out on the land plots belonging to oil and gas fields, are demolished without a court order. This leads to conflicts between the owners of these buildings and the relevant authorities, and the owners of the demolished buildings are not provided with any compensation. Municipalities who sell these land plots officially or unofficially to those persons are left out of responsibility. We believe that in all cases, arbitrary (undocumented) construction should be demolished on the basis of a court decision in accordance with Article 180.4 of the Civil Code and appropriate amendments and additions should be made to the legislation on compensating the owner of the demolished building.
8. Classification of the ways to resolve problems of the listed arbitrary (undocumented) constructions must be prepared and complex measures should be taken accordingly. Thus, some of these buildings should be formalized through property amnesty, some of them through provision of residential spaces in other places, part of them should be formalized by court rulings and property rights over them should be registered in the state registry of the real estate;
9. A single real estate database should be established and accessible to all individuals and entities involved in the exercise of rights over the immovable property. This will lead to both time and money savings;
10. Before the initiation of the Real Estate Registration Process, the inventory of immovable property which has been in actual possession for many years acquired or constructed by any decision of the various authorities should be inverted and they

shall be included in civil circulation. For this purpose, it is necessary to adopt normative legal acts and to carry out long-term inventory.

11. Protection zones must be clearly identified and installed. In this regard, contracts for servitude must be concluded and included in the register.
12. Proprietors of land plots should be asked to specify the boundaries of land. The differences between official boundaries and factual boundaries should be eliminated in the delineation of boundaries, taking into account the agreements between the owners. All work should be done at the expense of public funds and no payments from owners should be required.
13. Access to registry data related to real estate and to the land cadastral data should also be provided. All information on the registration of rights to immovable property prior to the establishment of the State Real Estate Register Service (2006) must be collected and included in the uniform register.
14. State Real Estate Register Service should increase transparency in its operations and a written reference should be provided explaining the reasons for the refusal of registration.
15. In the fight against corruption, the control of the real estate registration should be further strengthened, the causes of these cases should be investigated and relevant measures should be taken to prevent them. Broadcasting programs should be developed on television and radio channels with regular public involvement, involving the representatives of the State Real Estate Registry and Civil Society Organizations. The surveys should be conducted on a regular basis (at least once a year) regarding the performance of the State Real Estate Registry, with expert opinions, representatives of the media and civil society institutions involved.

APPENDIXES

Appendix 1 - Questionnaire for Individuals with problems:

Questionnaire for Individuals with problems:	
Name, surname and patronymic of the interviewee	
The actual residence address of the interviewee	
The address where the interviewee is registered	
<p>1. Since when do you own the property (land, buildings, etc.)? If there is no explicit date number of years and months should be indicated</p>	
<p>2. How did you owned the property?</p>	
<p>3. Property (land, buildings, etc.), Body allocated it (municipality or the executive authority)</p>	
<p>4. Which authorities visited the construction site of the building?</p>	
<p>5. Which authorities intervened in the construction and acted?</p>	
<p>6. Which authorities agreed on construction of the building? Note: If you have any document confirming this, take a copy of it.(Clear photo)</p>	
<p>7. Do you pay utility bills in this house?</p>	

Note: Take a copy of the receipts confirming the payment of utility costs, if any. (Clear photo)	
8. Do you pay taxes arising from this property	
Note: Take a copy of the receipts confirming the payment of taxes, if any. (Clear photo)	
9. Have you applied for documentation of property (to which institution)?	
10. Have you applied for documentation of property (which institution)?	
11. Is there any property in the same situation located in that area?	
12. Is there any property in the same situation which was documented?	
13. Have you applied to the Court for property registration?	
14. The contents of the court's judgment.	
Note: Take a copy of the resolution, if any. (Clear photo)	

Appendix 2 - Survey of Lawyers and Human Rights Defenders:

Appendix 2 - Survey of Lawyers and Human Rights Defenders:	
Name, surname and patronymic of the interviewee.	
Contact information of interviewee	
The address of the interviewee.	
15. How often and in which form you experienced court	

disputes regarding the documentation of houses?	
16. What are the current legislation and procedures for housing documenting for citizens, and what updates can be highlighted in comparison with previous periods?	
17. What are the main reasons for these disputes?	
18. What are the problems that arise from the legislation?	
19. What are the main consequences of these problems in the legislation?	
20. How effective is legislation in this sphere?	
21. What are some of the weaknesses of the legislation and existing procedures?	
22. for the solution of the problem what kind of legislation you recommend to add or remove?	
23. What are the problems when applying existing procedures for documentation of homes?	
24. In what way are the legal norms applied in practice?	
25. How are court hearings in this area held?	
26. Do the courts have a specific	

position on the practice of disputes related to the documentation of houses?	
27. Do you think that the judgments generally made in this area generally fair?	
28. What is the practice of enforcement of court decisions? Does the SRERS adhere to those decisions?	
29. Do you have a special note, recommendation, or comment?	

Appendix 3 - Scope of the Legislative Monitoring:

Monitoring criteria for the legislation on real estate registration	
1.	Specific content of norms regulating the registration of real estate in the relevant normative act
4.	Gaps in legislation
5.	Compliance of relevant norms with the Constitution of the Republic of Azerbaijan
6.	Availability of contradicting norms to other normative acts in this area
7.	Realization and implementation of norms
8.	Relevant norms contradict the acts that determine the enforcement mechanisms
9.	Specificity of the list of competent authorities implementing the application of the norms
10.	Availability of practical problems that arise from normative gaps
11.	Existence of responsibilities for breach of law by officials

Appendix 4 - information inquiries form addressed to the courts:

_____ Chairman of the Court
Mr. _____

Requester: _____

Address: _____

Mobile: _____

E-mail: _____

INFORMATION INQUIRY

In order to obtain a statistical information to be used in the study, taking into consideration that the information we request is categorized as public and open, we kindly ask you to ensure that the following information is sent to us within 7 business days, in accordance with the provisions of the Law on Access to Information:

- 1) Statistical data on cases reviewed by the _____ Court in respect of refusal to register real estate by government agencies for 2017;
- 2) Information on the state bodies providing statistical information on the cases reviewed by the _____ Court in respect of refusal of registration by the state bodies in 2017;
- 3) Information about number of the complaints received by the _____ Court in the relation to refusal of the registration of the real estate.
- 4) Information on the claims (complaints) Court reviewed on merits in respect of refusal to register real estate by government agencies for 2017;
- 5) Information on the number of claims (complaints) filed by citizens on the refusal the state bodies to register immovable property which were satisfied for 2017;
- 6) Information on the number of claims (complaints) considered inadmissible by the Court on the refusal of the registration of real estate by government agencies for 2017;
- 7) Information on the number of decisions made based on the execution document issued by the Court on refusal to register real estate by government agencies for 2017;
- 8) Information on the court decisions regarding property registration that have not been implemented;
- 9) The method of information submission: written (by letter to the above address) or by e-mail (to the above-mentioned e-mail);

Signature: _____

_____ 2018 year

Appendix 5– Information inquiries form addressed to executive departments:

MINISTRY OF JUSTICE OF THE REPUBLIC OF AZERBAIJAN

_____ **chief executive officer**
Mr. _____

Requester: _____

Address: _____

Mobile: _____

E-mail: _____

INFORMATION INQUIRY

In order to obtain a statistical information to be used in the study, taking into consideration that the information we request is categorized as public and open, we kindly ask you to ensure that the following information is sent to us within 7 business days, in accordance with the provisions of the Law on Access to Information:

- 1) How many decisions of the _____ Court issued against the State Real Estate Register Service under the State Committee on Property Issues of the Republic of Azerbaijan have been implemented in 2017?
- 2) How many decisions of the _____ Court issued against the State Real Estate Register Service under the State Committee on Property Issues of the Republic of Azerbaijan have not been implemented in 2017?
- 3) What is the reason for the failure to execute the decisions of the _____ Court against State Real Estate Register Service under the State Committee on Property Issues of the Republic of Azerbaijan in 2017?

The method of information submission: written (by letter to the above address) or by e-mail (to the above-mentioned e-mail);

Signature: _____

_____ 2018 year

Appendix 6 - Information inquiries addressed to the State Real Estate Registry Service:

**State Committee on Property Issues of the Republic of Azerbaijan
To the Chairman of the State Real Estate Register Service
Mr. Hikmet Mustafayev**

Requester: _____

Address: _____

Mobile: _____

E-mail: _____

INFORMATION INQUIRY

In order to obtain a statistical information to be used in the study, taking into consideration that the information we request is categorized as public and open, we kindly ask you to ensure that the following information is sent to us within 7 business days, in accordance with the provisions of the Law on Access to Information:

- 1) Information about immovable property registered in 2015-2017 according to the Presidential Decree of 2015 on the list of documents confirming the emergence and acquisition of rights to immovable property before the adoption of the Law of the Republic of Azerbaijan "On the State Register of Real Estate;
- 2) Information about immovable property where the registration was rejected in 2015-2017 according to the Presidential Decree of 2015 on the list of documents confirming the emergence and acquisition of rights to immovable property before the adoption of the Law of the Republic of Azerbaijan "On the State Register of Real Estate;

The method of information submission: written (by letter to the above address) or by e-mail (to the above-mentioned e-mail);

Signature: _____
_____ 2018 year

State Committee on Property Issues of the Republic of Azerbaijan
To the Chairman of the State Real Estate Register Service
Mr. Hikmet Mustafayev

Requester: _____

Address: _____

Mobile: _____

E-mail: _____

INFORMATION INQUIRY

In order to obtain a statistical information to be used in the study, taking into consideration that the information we request is categorized as public and open, we kindly ask you to ensure that the following information is sent to us within 7 business days, in accordance with the provisions of the Law on Access to Information:

Information on the number of re-registered real estate in accordance with Article 147 of the Civil Code of the Republic of Azerbaijan for 2017.

The method of information submission: written (by letter to the above address) or by e-mail (to the above-mentioned e-mail);

Signature: _____
_____ 2018 year

State Committee on Property Issues of the Republic of Azerbaijan
To the Chairman of the State Real Estate Register Service
Mr. Hikmet Mustafayev

Requester: _____

Address: _____

Mobile: _____

E-mail: _____

INFORMATION INQUIRY

In order to obtain a statistical information to be used in the study, taking into consideration that the information we request is categorized as public and open, we kindly ask you to ensure that the following information is sent to us within 7 business days, in accordance with the provisions of the Law on Access to Information:

1. Information on the number of real estate registered in the State Real Estate Register of the Republic of Azerbaijan for 2017;
2. Information on the number of real estate objects which were rejected registration in the State Real Estate Register of the Republic of Azerbaijan for 2017;

The method of information submission: written (by letter to the above address) or by e-mail (to the above-mentioned e-mail);

signature: _____

_____ 2018 year

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Please refer to IDI while using this data.

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