ON BEHALF of THE Republic OF Azerbaijan

**DECISION**

**OF The Constitutional Court**

**of THE Republic OF Azerbaijan**

*Concerning the Dispute on Distribution of Powers Between Authorities in Connection with the Order of the Head of Executive of Baku city N 876 of July 14, 1995 “On Cancellation of the Order of the Executive Committee of Baku City Council of the People’s Deputies N3/81 of April 20, 1990"*

# 16 February, 1999 Baku city

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

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

the legal representative of the body that submitted the petition: Ch.Bashirov, Deputy Chairman of the Supreme Court of the Republic of Azerbaijan;

the legal representatives of the respondent party: Z. Rzayeva, Chief of the Administrative and Legal Relations Department of Executive of Baku city and I. Hajigaibov, Chief of Distribution and Registration of the Inhabited Area Department;

in accordance with Article 130.3.9 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the case by the petition of the Supreme Court of the Republic of Azerbaijan of 12 January 1999, N 5-1/98 concerning the Order of the Head of Executive of Baku city N 876 of 14 July 1995 "On Cancellation of the Order of the Executive Committee of Baku city Council of the People’s Deputies N3/81 of April 20, 1990."

Having heard and discussed the report of Judge R.Gvaladze, statements of Ch.Bashirov, I.Hajigaibov, Z.Rzayeva, the legal representatives of the parties, and having examined the submitted materials, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

 The Supreme Court of the Republic of Azerbaijan asks for verification of conformity of items 2, 2.1 and 3 of the Order of the Head of Executive of Baku city N 876 of July 14, 1995 "On Cancellation of the Order of Executive Committee of Baku City Council of the People’s Deputies N3/81 of 20 April 1990" with Article 28.3, Article 29.3, Article 94.1.12 and 94.1.13 and Article 150.1 of the Constitution of the Republic of Azerbaijan, Article 21 of the Law of the Republic of Azerbaijan of 9 November 1991, "On Property in Azerbaijan Republic", Article 100-1 of the Civil Code of the Republic of Azerbaijan, Articles 2 and 3 of the Law of the Republic of Azerbaijan of 4 April 1996 "On Registration on Place of Residence and Place of Stay", Article 13 of the Statute "On Perfection of Structure and Activity of Bodies of State Authority and Management in regions, cities, city districts, villages and settlements of the Republic of Azerbaijan", approved by the decree of the President of the Republic of Azerbaijan of October 18, 1991.

 In the opinion of body, that submitted the petition, the ownership of citizens fixed in Constitution of the Republic of Azerbaijan as well as in other laws and normative-legal acts are essentially limited by items 2,2.1 and 3 of the specified Order of the Head of Executive of Baku city. Besides, the body that submitted the petition considers that above mentioned items of the Order contradict to the principle of distribution of judicial, executive and legislative powers fixed in the Constitution of the Republic of Azerbaijan.

The copies of the official texts of the Order "On Cancellation of the Order of the Executive Committee of Baku City Council of the People’s Deputies N3/81 of April 20, 1990”, the Statute "On Perfection of Structure and Activity of Bodies of State Authority and Management in Regions, Cities, City Districts, Villages and Settlements of the Republic of Azerbaijan", authorised by the decree of the President of the Republic of Azerbaijan of 18 October 1991, Laws of the Republic of Azerbaijan, "On Property in Azerbaijan Republic” of 9 November 1991, "On Registration on Residence and Stay" of 4 April 1996 are enclosed to materials of the case.

 The Constitutional Court of the Republic of Azerbaijan notes the following:

 It is provided by items 2, 2.1 and 3 of the abovementioned Order of the Head of Executive of Baku city that citizens who passed the passport registration before 1990 can purchase homes (apartments) through buying and sale.

 This restriction is in the force only temporarily up to the settlement of issue related to the return of citizens who were compelled to abandon the places of permanent residence. Besides, the apartment can be given only to close relatives (spouse, children, brothers, sisters), possesing Baku registration. In case of good reasons the Head of Executive of Baku city can authorise the citizens who do not have poss to registration to purchase apartments by the contracts of sale and purchase (buying) and presentation.

 As it is seen, the Order contains the general rules of legal regime of the property those contradict to the principles of international law, Article 28.3, Article 29.3 of the Constitution of the Republic of Azerbaijan, relevant rules of other laws and normative-legal acts of the Republic of Azerbaijan.

 Thus, according to Article 13.1 of the “Universal Declaration of Human Rights" adopted by General Assembly of UN on 10 December 1948, еveryone has the right to freedom of movement and residence within the borders of each state.

Article 17.1 of the above mentioned Declaration states: “Everyone has the right to own property alone as well as in association with others”.

 The legal right of everyone to choose a residence proceeds from requirements of Article 28.3 of the Constitution of the Republic of Azerbaijan. According to Article 29.3 of the Constitution of the Republic of Azerbaijan everyone can possess movable and immovable property. The property right includes the right of the proprietor himself/herself or together with other persons to own, to use and to dispose of property.

 It is mentioned in Article 21 of the Law "On Property in Azerbaijan Republic" of 9 November 1991 that citizen possessing the apartment, apartment house, dacha, garage, other premises and structures has the right to dispose of them at own discretion: to sell, give, to bequeath, to give for rent, to make other bargains which are not contradicting to the legislation.

 Rights of citizens of the Republic of Azerbaijan specified in the given Law are also reflected in Article 101-1 of the Civil Code of the Republic of Azerbaijan.

 Thus, items 2,2.1, and 3 of the mentioned Order of the Head of Executive of Baku city restricts the rights of citizens to purchase apartments, dachas and other structures, and also right to dispose of this property stipulated in the Constitution of the Republic of Azerbaijan, Law "On Property in Azerbaijan Republic" and Civil Code of the Republic of Azerbaijan. Besides, as it is seen from items 2, 2.1, 3 of the above mentioned Order, the sale, purchase and presentation of apartments in Baku city all connected with existence of passport registration, and it contradicts to the Law of the Republic of Azerbaijan of April 4, 1996 "On Registration on Place of Residence and Stay".

 According to Article 2 of this Law, under “the residence of person” it is meant: the house, apartment, service inhabited premise, hostel, senior home and invalids and similar dwellings, in which disabled persons live constantly, mostly as the owner, under the contract of rent or hiring, or on other bases stipulated by the legislation of the Republic of Azerbaijan". In Article 3 of the Law it is provided, that the residence of citizen of the Republic of Azerbaijan is established only by identification card of citizen of the Republic of Azerbaijan.

 As it is seen, the above stated Law does not provide the passport registration of the citizens. Despite this, the right for residing of the citizens is limited to passport registration by the items 2, 2.1 and 3. The discrepancy of the Order to the Laws is the reason of the application of the citizens to courts for protection of the rights. The judicial practice indicates that such reference is satisfied in connection with discrepancy of the order to the Law "On Property in Azerbaijan Republic". As it is seen from the letter of Narimanov district court NС-2 of 26 January 1999, there were decided 2241 cases in 1998 on complaints of the citizens concerning wrongful actions of the officials and in connection with discrepancy of items 2, 2.1, 3 to the Law. All complaints were satisfied.

 It is necessary to note, that by the Order N1216 of November 1998 the Head of Executive of Baku city, having partially changed the Order N 876 of 14 July 1995, has cancelled the first para of item 3 and removed restrictions stipulated in the paragraph concerning the presenting of private homes (apartments) situated in Baku city.

 The Constitutional Court of the Republic of Azerbaijan, having indicated discrepancy of the Order to the appropriate Articles of the Constitution of the Republic of Azerbaijan and other laws, considers necessary to note the following:

 Article 130.3 and 130.5 of the Constitution of the Republic of Azerbaijan provides for examination by the Constitutional Court of the Republic of Azerbaijan the conformity of municipal acts of the Constitution of the Republic of Azerbaijan with the laws of the Republic of Azerbaijan, decrees of the President of the Republic of Azerbaijan, Orders of Cabinet of Ministers of the Republic of Azerbaijan. In present Article of the Constitution of the Republic of Azerbaijan the verification of conformity of the acts of bodies of Executive with the Constitution of the Republic of Azerbaijan, laws and other normative-legal acts is not provided. Therefore the issue on conformity of the specified Order with the Constitution of the Republic of Azerbaijan and law of the Republic of Azerbaijan are not related to the competence of the Constitutional Court of the Republic of Azerbaijan.

 At the same time, the Constitutional Court of the Republic of Azerbaijan considers, that the specified Order of the Head of the Executive of Baku city contradicts to principle of distribution of powers fixed in Article 7.3 of the Constitution of the Republic of Azerbaijan as well as the rules of Article 81.12 and 81.13, Article 94.1 of the Constitution of the Republic of Azerbaijan.

 Thus Article 7.3 of the Constitution of the Republic of Azerbaijan notes: “The state power of the Republic of Azerbaijan is organised on the basis of a principle of separation of powers“.

 The principle of separation of powers means activity of the executive, legislative and judicial authorities within the framework of their competence. According to the Article 81 of the Constitution of the Republic of Azerbaijan the legislative power of the Republic of Azerbaijan is carried out by Milli Majlis of the Republic of Azerbaijan.

 According to Article 94.1 of the Constitution of the Republic of Azerbaijan, general rules concerning transactions, civil-legal agreements, representation and inheritance are established by Milli Majlis of the Republic of Azerbaijan.

 The basic fields of competence of the Head of the Executive are listed in Article 13 of the Statute " On Perfection of Structure and Activity of Bodies of State Authority and Management in Regions, Cities, City Districts, Villages and Settlements of the Republic of Azerbaijan " authorised by the decree of the President of the Republic of Azerbaijan N372 of 18 October 1991. In present Article the Head of Executive is not provided with powers to be engaged in legislative activity.

 Thus, having adopted items 2,2.1 and 3 of the specified Order the Head of Executive of Baku city in infringement of Article 7.3, Article 81.12, 81.13 and Article 94 of the Constitution of the Republic of Azerbaijan, has taken up competence of legislative power.

On the basis of the above stated and being guided by Article 130.3.9 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 83 and 85 of the Law of the Republic of Azerbaijan "On Constitutional Court", the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognise para 2, 2.1 and 3 of the Order of the Head of Executive of Baku city N 876 of July 14, 1995 "On Cancellation of the Order of the Executive Committee of Baku City Council of the People’s Deputies N3/81 of 20 April 1990" as contradicting to Article 7.3, Article 81.12, 81.13 Article 94.1 of the Constitution of the Republic of Azerbaijan.

To recognise items 2, 2.1 and 3 of the Order of the Head of Executive of Baku city N 876 of 14 July 1995 "On Cancellation of Order of the Executive Committee of Baku city Council of the People’s Deputies N3/81 of 20 April 1990" as null and void from the date of coming into force the present decision.

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

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

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