**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

# DECISION

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Conformity of Article 45 of the Law of the Republic of Azerbaijan ”On Banks and*

*Bank Activity in the Republic of Azerbaijan” with Article 13.1, Article 29.2, 29.3, Article 59 and Article 71.2 of the Constitution of the Republic of Azerbaijan*

 **19 November, 1999 Baku сity**

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

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

the legal representative of the body that submitted the petition: B. Asadov, Judge of the Supreme Court of the Republic of Azerbaijan, professor of law;

the legal representative of the respondent: N. Gadirov, Senior advisor of Department for economic legislation of the Milli Majlis of the Republic of Azerbaijan;

the specialists: E. Roustamov, Chairman of the National Bank of the Republic of Azerbaijan and R. Melikova, Chief of legal department of National Bank;

A. Abbasov, Chief of financial and credit department of the Ministry of Economy of the Republic of Azerbaijan;

Y. Mamedov, Chief of department on work with credit organisations of the Ministry of the Finance of the Republic of Azerbaijan;

A. Hadjialiyev, Chairman of legal commission of State Committee on antimonopoly policy and assistance to enterprise of the Republic of Azerbaijan;

has examined the constitutional case by petition of the Supreme Court of the Republic of Azerbaijan of September 13, 1999 N 5-3/99 on conformity of Articles 41 and 45 of Law “On Banks and Bank Activity in Azerbaijan Republic” with Article 13.1, Article 29.1, 29.4 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge R.Gvaladze, statements of the legal representative of the body that submitted the petition, B. Asadov, legal representative of the respondent, N. Gadirov, conclusions of the specialists, E. Roustamov, A. Abbasov, Y. Mamedov, A. Hadjialiyev, having examined materials of the case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS**:

In accordance with Article 41 of the Law of the Republic of Azerbaijan “On Banks and Bank Activity in Azerbaijan Republic” at numerous or regular default by credit organisation of the requirements established or presented according to the present Law, the government of National Bank can make a decision on preservation of deposits, if there is a hope for improvement of financial situation. Term of preservation should not exceed 18 months.

In Article 45 of the same Law it is envisaged, that in necessary cases for normalisation of a financial condition of credit organisation the person, conducting preservation, can make the decision on complete or partial freezing for the term of about three months of deposits of the population, which are invested in the present credit organisation.

In its petition the Supreme Court of the Republic of Azerbaijan asks to verify conformity of Articles 41 and 45 of the specified Law with Article 13.1, Article 29.1, 29.4 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

In connection with the petition the official texts of Articles 41 and 45 of the Law of the Republic of Azerbaijan “On Banks and Bank Activity in Azerbaijan Republic” certified by the Milli Majlis of the Republic of Azerbaijan are enclosed to the constitutional case.

From the contents of petition it is seen, that the body which have submitted the petition, asks to verify conformity of that part of Article 45 of the mentioned law, which provides an opportunity of freezing of deposits, to provision of the Constitution of the Republic of Azerbaijan. In this regard the Constitutional Court of the Republic of Azerbaijan considers the petition in the specified part.

Deciding the given question, the Constitutional Court is guided by the following provisions of the Constitution of the Republic of Azerbaijan regulating the property relations between banks and citizens investors: a principle of freedom of economic activity (Article 15); the ownership (Article 29); the right to be engaged in enterprise or other economic activity, not forbidden by law (Article 59).

In Article 59 of the Constitution of the Republic of Azerbaijan it is envisaged, that everyone can in the order, established by law, freely using the opportunities, abilities and property, separately or together with others to be engaged in enterprise or other economic activity, not forbidden by law.

These provisions are distributed to banks which are carrying out enterprise activity, as well as to the citizens, who, by investing the savings in banks and receiving profit as percents, are engaged in other economic activity, not forbidden by the law.

Stipulated by Article 45 of the Law “On Banks and Bank Activity in Azerbaijan Republic” the freezing of the deposits actually deprives of the citizens of an opportunity to carry out the rights fixed in Article 59 of Constitution of the Republic of Azerbaijan.

According to Article 13.1 of the Constitution of Azerbaijan Republic the property in Azerbaijan Republic is inviolable and is protected by the state. According to Article 29.2 of the Constitution of the Republic of Azerbaijan the ownership, including the right of a private property, is protected by the law. In para III of same Article it is fixed, that the ownership includes the right of the proprietor solely or together with other persons to own, to use and to dispose of property.

Taking into consideration these provisions of the Constitution of the Republic of Azerbaijan, the investor has the right of possession, usage and dispose the deposit, belonging to him / her. The freezing by credit organisation of the deposits, accepted by it, violates the right of the citizen to use and to dispose of property, belonging to him / her, as it is envisaged in the Constitution.

Thus, stipulated by Article 45 of the Law “On Banks and Bank Activity in Azerbaijan Republic” the partial or complete freezing for the term of no more than three months of deposits of the population in credit organisation limits the constitutional ownership of the citizens, and also right to be engaged in other economic activity, not forbidden to the law. In conformity with Article 71.2 of the Constitution of the Republic of Azerbaijan no one can limit realisation of human rights and freedoms.

The Constitutional Court of the Republic of Azerbaijan notes that provision of Article 45 of Law “On Banks and Bank Activity in Azerbaijan Republic”, creating an opportunity for credit organisation in the unilateral order to change terms of contract, concluded with the investors, do not correspond to a principle of justice and to a principle of equality, envisaged in Article 25.1 of the Constitution of the Republic of Azerbaijan.

So, according to Article 38.2 of the Law “On Banks and Bank Activity in Azerbaijan Republic” the acceptance of the deposits is concluded in written form, by drawing up of the contract in duplicate. However, proceeding from provision of Article 45 of the named Law, concluding such contract, citizen the investor gets in a unequal position with credit organisation, as the conditions of the contract are established by credit organisation, and the citizen, as the party of the contract, can not influence its essence in any way. Thus, in credit and contractual relations the citizen becomes the economically weak party. Taking this into account, the legislator provides protection of the rights of the economically weak party. In particular, according to Article 393.2 of the Civil Code of the Republic of Azerbaijan the distribution of the deposits is guaranteed under the first requirement of the investor.

Taking into consideration the stated, the Constitutional Court of the Republic of Azerbaijan considers, that Article 45 of the Law “On Banks and Bank Activity in Azerbaijan Republic” contradicts Article 13.1, Article 29.2, 29.3, Article 59 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

Being guided by Article 130.3.1 of the Constitution of the Republic of Azerbaijan, Article 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 Article 45 of the Law of the Republic of Azerbaijan “On Banks and Bank Activity in Azerbaijan Republic” as null and void and contradicting to Article 13.1, Article 29.2, 29.3, Article 59 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

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

3. The decision is subject to publication in the “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.