# ON BEHALF of THE Republic OF Azerbaijan

**DECISION**

**of The Constitutional Court**

 **of THE Republic OF Azerbaijan**

## On the Order of the Head of Executive of Baku city N 961 of October 5,

## 1999 Concerning the Regulation of Tariffs for the Public Utilities

## 2 March, 2000 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, and A.Sultanov;

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

the legal representatives of the body that submitted the petition: Kh.Veliyev, Deputy Prosecutor General and E. Mirzazade, head of the Department of supervision of the legality of the court decisions on the civil cases of the Prosecutor’s Office of Azerbaijan Republic;

the legal representatives of the respondent: R.Allahverdiyev, Head of the Executive of Baku city, R. Abdullayev, Deputy Chairman of the dwelling and communal department of the Executive, Z.Rzayeva, Head of the legal department of Baku city Executive;

C. Guliyev, specialist, senior reporter of the legal department of the Cabinet of Ministers of the Republic of Azerbaijan;

in accordance with Article 130.3.9 of the Constitution of the Republic of Azerbaijan, has examined in open judicial session the case by petition N 5-1/99 submitted by the Prosecutor’s Office of the Republic of Azerbaijan on February 08, 2000 concerning the Order of the Head of Baku city Executive N 961 of October 05, 1999 concerning the regulation of tariffs for the public utilities.

Having heard and discussed the report of Judge R Gvaladze, statements of the legal representatives of the parties Kh. Veliyev, E. Mirzazade, R. Allahverdiyev, R. Abdullayev, Z. Rzayeva, opinion of the specialist C. Guliyev, and having examined materials of the case, the Constitutional Court of the Republic of Azerbaijan

### DETERMINED AS FOLLOWS:

By the Order of the Head of the Executive of Baku city N 961 of October 05, 1999 concerning the regulation of tariffs for the public utilities since September 01, 1999 on territory of Baku the new tariffs on the exploitation dues and communal expenses for the persons living in buildings, being served irrespectively of the type of property by dwelling and communal exploitation departments, and also for the users and proprietors of indwelling premises were fixed.

According to Annex 1 to the mentioned Order the following rates of dues were introduced:

250 manats for 1 sq.m. of the general area in premises (houses) with complete communal conditions;

150 manats for 1 sq.m in premises (houses) with partial communal conditions, houses with yards, semi-basement and communal premises;

 250 manats for 1 sq.m. of the general area of the private and rented individual garages located in yards;

1000 manats per person for transportation and recycling of household waste in dwelling blocks (without the VAT),

1500 manats per person for usage of the lift in apartment houses (without the VAT).

The Prosecutor’ Office of the Republic of Azerbaijan asks for verification of conformity of the specified order with Article 55 of Housing Code, Articles 13 and 14 of the Law “On Privatisation of Dwelling Fund”, Articles 39 and 150 of the Civil Code of the Republic of Azerbaijan.

By the opinion of the body that submitted the petition, the specified order of the Head of the Executive of Baku city infringes the rights and freedoms of citizens provided for in the Constitution and in other laws and the normative and legal acts.

In connection with the petition in the constitutional case there are certified in the Administration of the Milli Majlis of the Republic of Azerbaijan official texts of Article 55 of Housing Code, Articles 13 and 14 of the Law “On Privatisation of Dwelling Fund”.

The Constitutional Court of the Republic of Azerbaijan in connection with the petition notes the following:

From the Order it is evident, that on the territory of Baku since September 1, 1999 the new payment for public utilities of dwelling premises (houses) has been fixed. The identical payment is provided as for the dwelling area of state and public dwelling fund, and for premises (houses), which are in a private property. Thus, in fact, the order establishes the legal regime of the property that contradicts to the principle of separation of powers, stipulated by the Constitution.

According to Article 7.3 of the Constitution the state power in Azerbaijan Republic is organised on the basis of principle of separation of powers.

The principle of separation of powers assumes realisation of various by content imperious functions by independent branches of power. Sense of such separation is the preservation of guarantees of freedom with a view not to admit replacement of democracy by autocracy. The aim of the principle of separation of powers is the inadmissibility of assignment by one of branches the powers of another.

However, the Executive of Baku, in infringement of the specified principle has exceeded the limits of competence, granted to it by legislation.

Article 13.2 of the Constitution specifies, that there can exist the state, private and municipal property.

According to Article 94.1.13 of the Constitution the Milli Majlis of the Republic of Azerbaijan adopts general rules on the property right, including legal regime of the state, private and municipal property, the rights of the intellectual property, the obligations rights.

According to Article 81 of the Constitution the legislative power in Azerbaijan Republic shall be implemented by Milli Majlis of the Republic of Azerbaijan.

The basic rights of the proprietor are fixed in the Constitution and in a number of laws adopted by Milli Majlis, in which the legal regime of a private property, including the dwelling premises is determined.

Article 29.3 of the Constitution provides, that the property right includes the right of the proprietor solely or together with other persons to own, to use and to dispose of property.

Article 1.1 of the Law “On Property” in Azerbaijan Republic, being based on the mentioned norm of the Constitution, specifies, that the proprietor has the right to own, to use and to dispose of property, belonging to him, at his own discretion.

According to Article 13 of the Law “On Privatisation of Dwelling Fund in Azerbaijan Republic” service and reconstruction of dwelling premises (houses), which have been privatised, is carried out at the expense of the proprietors with obligatory observance of common rules and norms of exploitation and reconstruction of dwelling fund on conditions, established for houses of state dwelling fund.

In Article 14 of this Law it is stressed that the state dwelling and exploitation organisations, as well as reconstructing and building ones can serve dwelling premises (houses), which have been privatised, only on the basis of the contracts with the proprietors (unions of the proprietors, other associations) of these dwelling premises (houses). The proprietors of dwelling premises in completely privatised houses have the right to select organisations independently, including state dwelling and exploitation organisations, as well as reconstructing and building ones, co-operative societies, private concerns and other organisations for service and reconstruction of a house.

The service and reconstruction of dwelling premises in partially privatised houses are carried out by dwelling and exploitation organisations, as well as reconstructing and building ones, those had served these houses before privatisation.

Article 15 of the mentioned Law establishes that the local bodies carry out the control of a technical conditions and duly reconstruction of privatised dwelling fund.

From the stated it is seen, that the service and reconstruction of privatised dwelling premises are carried out at the expense of the proprietor and at his desire on the basis of the agreement that the concluded contract.

However, Head of the Executive of Baku, contrary to the order established by legislative body, determined by his Order a new legal regime of the property, having applied the identical tariffs for dwelling and public utilities as for houses of state dwelling fund, and for privatised dwelling premises (houses).

Nevertheless, according to the Rule On local Executive authority, adopted by the decree of the President of the Republic of Azerbaijan N6 of June 16, 1999, Head of the Executive is not competent to establish legal regime of the property.

Thus, Head of the Executive of Baku, having exceeded the limits of his competence, has carried out the competence referred by the Constitution to Milli Majlis of the Republic of Azerbaijan.

The Order of the Head of the Executive of Baku, having restricted the right of the proprietor at his discretion to own, to use and to dispose of the property, fixed in the Constitution of the Republic of Azerbaijan and laws establishes the compulsory order of regulation of the specified relations.

It is important to note also the following:

* in the mentioned Order of the Head of the Executive of Baku the criterias are not specified, on the basis of which the conclusion about necessity to establish the given dwelling and communal tariffs in particular is made;

- in conformity with Article 55 of Housing Code the Cabinet of Ministers established the rate of payment for the dwelling area in houses of state and public dwelling fund. In infringement of the given Law the Head of the Executive of Baku has usurped the competence of the Cabinet of Ministers of Azerbaijan Republic;

* contrary to Article 149.7 of the Constitution the Head of the Executive of Baku, having issued the specified Order of October 05, 1999 and having worsened the legal status of the persons, extended its effect since September 01, 1999.

Taking into consideration the abovestated the Constitutional Court considers, that accepting the order N 961 of October 05, 1999 the Head of the Executive of Baku has infringed the requirements of Article 7.3, Article 29.3, Article 81, Article 94.1.13 and Article 149.7 of the Constitution of the Republic of Azerbaijan, Articles 13 and 14 of the Law “On Privatisation of Dwelling Fund in Azerbaijan Republic”, Article 55 of the Housing Code of the Republic of Azerbaijan.

 Being guided by Article 130.3.9 of the Constitution, 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 recognize as null and void the Order of the Head of the Executive of Baku N961 of October 05, 1999 concerning the regulation of tariffs for the communal services as contradicting to Article 7.3 of the Constitution of the Republic of Azerbaijan providing for principle of separation of powers

2. To recommend to the Cabinet of Ministers of the Republic of Azerbaijan to establish urgently the order of payment for usage of the dwelling area (rent).

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

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

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