**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

#### *Concerning Article 60 of the Housing Code of the Republic of Azerbaijan*

**12 March, 1999 Baku city**

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

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

the legal representatives of the body that submitted a petition, Ch.Bashirov, Deputy Chairman of the Supreme Court of the Republic of Azerbaijan and B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

in accordance with Article 130.3.1 and 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the case submitted by the petition of the Supreme Court of the Republic of Azerbaijan N 5-1/99 concerning the conformity of Article 60 of the Housing Code of the Republic of Azerbaijan with Article 43.1 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge S.Salmanova, statements of the representatives of the body that submitted a petition, Ch.Bashirov and B.Asadov 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 the conformity of Article 60 of the Housing Code of the Republic of Azerbaijan with Article 11.1 of the International Covenant "On the Economic, Social and Cultural Rights".

The copies of the official text of the Constitution of the Republic of Azerbaijan and Article 11 of the International Covenant "On the Economic, Social and Cultural rights" are enclosed to materials of the considered case.

In connection with a petition, the Constitutional Court of the Republic of Azerbaijan notes the following:

According to Article 60.2.1 of the Housing Code of the Republic of Azerbaijan in case of conviction of the person to deprivation of freedom for the period of more than six months the right on the dwelling space is kept at his/her possession before execution of the verdict.

According to item 9 of para II of the same Article, the dwelling space belonging to the persons who has not reached 18 years of age, men of more than 50 years old, women of more than 45 years old who were condemned to deprivation of freedom with obligation to work as well as condemned to deprivation of freedom for careless crimes shall be kept at their possession until the expiration of the term of punishment.

Thus, in Article 60.2.8 of the Housing Code of the Republic of Azerbaijan the condemnation to deprivation of freedom for the period of more than six months is a ground for deprivation of person of the right for dwelling space, whereas the criminal legislation does not provide for the deprivation of the right of the person in connection with his/her condemnation as the basic or additional measure of punishment. In this situation Article 60.2.8 of the Housing Code of the Republic of Azerbaijan should be considered as the act directed on the restriction of human rights and freedoms.

The indisputable deprivation of the dwelling space belonging to person condemned to deprivation of freedom for the term of more than six months should be regarded as material, moral and psychological damage inflicted on the future fate of such person.

With the purpose of commutation of position of some categories of the condemned persons, in Article 60.2.9 of the Housing Code of the Republic of Azerbaijan the legislator has given privileges having preserved their right on the dwelling space before the execution of the verdict. At the same time the legislator not having shown a consistency, in infringement of provisions fixed in the Constitution of the Republic of Azerbaijan as well as principle of equality of the rights and freedoms of a human being man and citizen has differentiated the citizens on age and on character of the crimes committed by them. Such differentiation limits the right of citizens on dwelling space fixed in Article 43 of theConstitution of the Republic of Azerbaijan and contradicts to principle of equality of the rights and freedoms of human being and citizen stipulated by para I and II of Article 25 of the Constitution of the Republic of Azerbaijan. Practice shows that the lonely persons condemned to deprivation of freedom, as a result of infringement of the above-stated principle, automatically lose the dwelling space.

Taking into account the above-stated, the Constitutional Court of the Republic of Azerbaijan considers that Article 60.2.8 and 60.2.9 of the Housing Code do not conform to Article 43.1 and Article 25.1 and 25.2 of the Constitution of the Republic of Azerbaijan and the right on the inhabited area of the person condemned to deprivation of freedom should be preserved at his/her possession for the whole term of serving of punishment.

Meanwhile, the Constitutional Court of the Republic of Azerbaijan considers necessary to interpret some issues connected with the practice of legal applicability of some provisions of Article 60.1 of the Housing Code.

According to Article 60.1 of the Housing Code of the Republic of Azerbaijan in case of temporary absence of the lessee or one of members of his/her family the dwelling space is kept at their possession during six months.

The legislator having fixed the specified provision proceeded from necessity of complete and all-round maintenance of rights of the lessee and one of members of his/her family from possible violation of their rights. And consequently, the claims for these categories of cases can be lodged with court.

According to the housing legislation, considering the arisen arguments, courts should establish the reasons of absence during six months and more, and these circumstances should be investigated in aggregate with other data and be proved in the appropriate court decision.

Thus, the temporary absence of the lessee or other members of his/her family, including during six months and more, is not the basis for deprivation of their right for the dwelling space. On the contrary, the provision of para I of Article 60 of the Housing Code is directed on suppression of abuses by the parties of their rights and duties, gives them an opportunity to protect their legal rights by means of courts as well as to settle the summary relations arising from the mutual rights and duties.

The right of the lessee of the dwelling space to terminate the contract on the lease in any time with the consent of the family members is provided in Article 87 of the Housing Code of the Republic of Azerbaijan. In case of departure of the lessee and members of his/her family for permanent residence to another place or resettlement to another dwelling space in the same populated area, the contract on the lease of the dwelling space shall be considered as terminated from the date of departure or resettlement.

The Law of the Republic of Azerbaijan "On The Lease" and appropriate Articles of the Housing Code of the Republic of Azerbaijan provide other reasons for cancellation of the contract.

When considering the disputes connected with Article 60.1 of the Housing Code of the Republic of Azerbaijan courts should take into consideration that in case of absence of the grounds stipulated by Article 87 of the present Code and other Acts of the Republic of Azerbaijan, the temporary absence of lessee or members of his/her family during six months and more is not a reason for deprivation of their right for dwelling space.

The condemnation of lessee or members of his/her family to deprivation of freedom cannot serve as the ground for deprivation of their right on the dwelling space. This rule is not applied to the persons condemned to deprivation of freedom for life.

Taking into account the above stated and being guided by Article 130.3.1 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80-83, 85 of the Law "On Constitutional Court", the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognize the provisions of Article 60.2.8 and 60.2.9 of the Housing Code of the Republic of Azerbaijan as null and void in connection with their non-conformity to Article 25.1, 25.2 and Article 43.1 of the Constitution of the Republic of Azerbaijan.

2. When applying Article 60.1 of the Housing Code of the Republic of Azerbaijan it is necessary to take into account that in case of absence of the grounds stipulated in Article 87 of the present code and other legislative acts of the Republic of Azerbaijan, the temporary absence of the lessee or members of his/her family, including during six months and more, does not deprive their rights for dwelling space.

To explain that condemnation of the lessee or one of the members of his/her family to deprivation of freedom does not deprive their rights for the dwelling space. This rule is not applied regarding the persons condemned to deprivation of freedom for life.

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

4. The decision covers the disputes connected with Article 60 of the Housing Code of the Republic of Azerbaijan those are under proceedings of the courts of first instance as well as the legal relations, which have arisen after the coming of the decision into legal force.

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

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