## ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

# DECISION

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Provision of Article 17.5*

*of the Law of the Republic of Azerbaijan “On Enterprises”*

**8 September, 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 subject interested in special constitutional proceedings: F. Mamedov, Head of the Department of state registration of legal entities of the Ministry of Justice of the Republic of Azerbaijan;

specialists: B. Asadov, lecturer of the Faculty of Law of the Baku State University, Judge of the Supreme Court; O. Akhverdiyev, Deputy Minister of Economy of the Republic of Azerbaijan; E. Jafarova, Deputy Head of the Department of Taxation Policy and Prognosis of State Income, Head of Department of the Ministry of Finance; J. Alizade, Head of the Legal Department of the Principal State Tax Inspection of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via procedure of special constitutional proceedings the case by the petition of Cabinet of Ministers of the Republic of Azerbaijan of June 21, 1999, N 18/15-80 on interpretation of Article 17.5 of the Law of the Republic of Azerbaijan “On Enterprises”.

Having heard and discussed the report of Judge S. Salmanova, the statements of legal representative of the subject interested in special constitutional proceedings F. Mamedov, opinions of the specialists B. Asadov, O. Akhverdiyev, E. Jafarova, J. Alizade, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Cabinet of Ministers of the Republic of Azerbaijan in its petition asks for interpretation of Article 17.5 of the Law “On Enterprises” with the purpose to clarify, whether representations of foreign legal entities have the right to be engaged in the territory of the Republic of Azerbaijan in enterprise activity not forbidden by the legislation.

In connection with the petition, official texts of Article 17 of the Law “On Enterprises”, Articles 2, 12, 14 of the Law “On State Registration of Legal Entities”, Article 3 of the Law “On Enterprise Activity”, Articles 16, 19 of the Law “On Protection of Foreign Investments”, Article 1 of the Law “On Tax on profit of enterprises and organizations”, certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

In connection with petition the Constitutional Court notes the following:

The concept of branches and representations founded by the enterprise is introduced in the Law “On Enterprises”. According to Article 17 of the given Law a branch is a separated division of the enterprise carrying out all or the part of functions of the enterprise and located outside of its limits.

A representation is a separated division of the enterprise carrying out representation and protection of interests of the enterprise, concluding on its behalf transactions and carrying out other legal actions and located outside of its limits.

In Article 17.7 it is specified, that branches and representations are granted with property by the enterprise that has founded them, and they carry out their activity on the basis of the Charter certified by the given enterprise.

According to the Article 2 of the Law “On State registration of legal entities”, the state registration of legal entities, branches and representations of foreign legal entities means granting the legal entity the status of legal entity, as well as state certification of foreign legal entities, their branches and representations.

In Article 12 of the given Law it is specified, that legal entities, branches and representations of foreign legal entities can get in the order stipulated by the Law “On Enterprise activity” the license for carrying out activity, requiring special sanction (license), only after state certification.

Thus, from above-stated follows, that branches and representations of enterprises can carry out their activity only after passing the state registration and obtaining of a license on the basis of the Charter, certified by the given enterprise.

In connection with the petition, the Constitutional Court also notes, that the legislation of the Republic of Azerbaijan does not provide any restrictions for realization of enterprise activity by representations of foreign legal entities in territory of the Republic of Azerbaijan (exception makes only Law “On banks and bank activity in Azerbaijan Republic”).

On the contrary, in a number of laws the competence of these divisions of foreign legal entities on realization of enterprise activity is not excluded.

So, according to Article 3.3 of the Law “On Enterprise activity”, the proprietor himself, as well as the person, managing the property of the proprietor (depending on character of enterprise activity and relations with the proprietor), within the limits of the competence, established by the proprietor can be engaged in enterprise activity.

As it is provided for in the Article 17.7 of the Law “On Enterprises”, branches and representations are granted with property by the enterprise, which has founded them, and both these branches and representations should be recognized as subjects, managing the property.

According to Article 16 of the Law “On Protection of Foreign Investments”, representations of the foreign legal entities (i.e. bureau, office, agency) can be established and act in territory of the Republic of Azerbaijan.

In Article 19.2 of the given Law it is stressed, that the branches and representations on territory of Azerbaijan have the right to open bank accounts in banks of the Republic of Azerbaijan.

As it is seen from the Article 14 of the Law “On State Registration of Legal Entities”, branches and representations of foreign legal entity prepare seales, firm forms, trade marks, open bank accounts, and also are registered at tax bodies after state certification.

According to the Article 1.3 of the Law “On Tax On Profit of Enterprises and Organizations”, the payers of the tax on profit also are the companies, firms, any other organizations, established according to the legislation of foreign states, which carry out enterprise activity in territory of the Azerbaijan Republic through constant representation. Speaking about taxation of representation of the foreign legal entity, one should mean a bureau, office, agency and any other acting place (exploration and use of natural resources, construction, taxation, installation, adjustment of equipment, performance of works in the field of rendering of services, stipulated by contracts, etc.), as well as citizens and organizations, authorized by the foreign legal entities to carry out activity, connected with representation in Azerbaijan Republic.

From above-stated follows, that the legislation of the Republic of Azerbaijan does not provide an essential difference between branches and representations of the foreign legal entities. These divisions are included into a category of taxpayers, and their competence, according to the legislation, is determined by the foreign legal entity.

Thus, if in the Charter certified by the foreign legal entity, representation is granted with the right to be engaged in enterprise activity on behalf of the foreign legal entity; representation after passing of state registration and obtaining the license for carrying out activity requiring a special sanction, has the right according to the legislation of the Republic of Azerbaijan and in the order, not forbidden by the legislation, to be engaged in enterprise activity.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan and Articles 75, 76, 78, 80-83, 85 of the Law “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

### DECIDED:

1. By granting in the Charter certified by the foreign legal entity, a representation with the right to be engaged in enterprise activity, representation after passing of state registration and obtaining the license for carrying out activity requiring a special sanction, according to the legislation of the Republic of Azerbaijan and in the order, not forbidden by the legislation, can be engaged in enterprise activity on behalf of the represented foreign legal entity.

2. The decision comes to effect from the date of 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.