## ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

# DECISION

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Certain Provisions of Article 6 of the*

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

**9 March, 2000 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 interested subjects: Sh. Gidayev, Judge of the Supreme Court of the Republic of Azerbaijan; I.Rafibeyli, Deputy Head of Economic Legislation Department of the Milli Majlis of the Republic of Azerbaijan;

experts: F.Garayev, Head of the Department for Prognosis of Development of Market Structures of the Ministry of Economy of the Republic of Azerbaijan; F. Mamedov, Head of Department of Registration of the Legal Persons of the Ministry of Justice; R. Hajiyev, Deputy Director of Legal Department of the Ministry of State Property; I. Gabiyev, Senior Expert of Joint-stock Companies Department; E. Halafov, senior lecturer of Law Faculty of Baku State University,

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 Supreme Court of the Republic of Azerbaijan of December 22, 1999, N 5-4/99 on interpretation of Article 6.1.2 of the Law of the Republic of Azerbaijan “On Enterprises”.

Having heard and discussed the report of Judge S. Salmanova, the statements of legal representatives of interested subjects Sh. Gidayev and I. Rafibeyli, opinions of the experts F.Garayev, F.Mamedov, R.Hajiyev, I.Gabiyev and E.Halafov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition the Supreme Court asks for interpretation of Article 6.1.2 of the Law of the Republic of Azerbaijan “On Enterprises”, providing that the enterprise, which control parcel of shares belongs to the state bodies is the enterprise based on state property.

In connection with the petition, official texts of Articles 4, 6 of the Law of the Republic of Azerbaijan «On Enterprises», item 2 of Appendix “Branch Peculiarities of Privatization of State Property” to the Law of the Republic of Azerbaijan “On Confirmation of the State Program of Privatisation of the State Property in Azerbaijan Republic for the period from 1995 to 1998”, Article 7.7 of the Statute “On the Order of Transformation of the State Enterprise Into the Joint-Stock Company”, authorised by the Law of Azerbaijan Republic N 208-1 G of November 29, 1996, Article 4 of the Law of Azerbaijan Republic “On Property” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

In connection with petition, the Constitutional Court of the Republic of Azerbaijan considers important to analyse a number of following issues.

First of all, it is important to define the concept of an enterprise, disclosing its essence. According to Article 1 of the Law “On Enterprises” an enterprise, irrespective of forms of property, is an independent managing unit which is a legal entity formed according to the present Law, producing and selling its goods, carrying out works and rendering services with the purposes to satisfy public requirements and to gain the profit.

As evident from this definition, organisational and legal form and form of property consist of the essence of an enterprise.

The form of property determines the kind of property (state, private and municipal) of enterprise. Organisational and legal form determines who (physical or legal person) has the right of possession, utilization or using of property, as well as organisational and legal essence of management of the property and conditions of responsibility of the founders on the obligations of the enterprise.

The above stated is reflected within Article 6.1 of the Law “On Enterprises”. In the specified Article it is stipulated, that state enterprises are based on state property and have the state organisational and legal form. The state enterprises based on the state property are as follows:

- the enterprise which property completely belongs to state;

- the enterprise which control parcel of shares belongs to the state bodies.

As evident from the contents of para I, item II of the mentioned Article, in case of participation of other kind of property in foundation of enterprise, it can be formed in organisational and legal form of joint-stock company. The concept of a control parcel of the shares is given in the second item of the appendix under number 11 of the Law of the Republic of Azerbaijan “On Confirmation of the State Program of Privatisation of the State Property in Azerbaijan Republic” for the period from 1995 to 1998. It is envisaged therein that the restrictions on privatisation can be established only in the form of enforcement of the control parcel of shares (51 percents) or the blocking shares (25,5 percents) of ordinary shares (with the right to vote) in state property or in the form of release of the «golden share».

By the sense of Article 6.1.2 of the Law “On Enterprises” if 51 percents of the charter fund of the enterprise constitutes the state property then it is considered as the enterprise based on state property, though this does not exclude possibility of presence of enterprise of other kinds of property.

The reform of relations of the state property by means of privatisation assumes the significant reduction of objects relating to public property, providing at the same time the increase of efficiency of management of objects remaining in the public property by establishment of joint-stock companies.

Article 4 of the Law “On Enterprises” states that, there can exist enterprises of the various kinds based on the mixed form of property. In para II of the same Article of Law it is specified that within the limits prescribed by the legislation of the Republic of Azerbaijan, it is admitted to unite property belonging to the citizens and the legal persons of the Republic of Azerbaijan and other states, with formation on this basis of the mixed form of property.

Article 13 of the Constitution of the Republic of Azerbaijan providing state, private and municipal forms of property does not exclude combination of these forms of property and their joint functioning. Article 15.1 of the Constitution of the Republic of Azerbaijan states: “Development of economics based on various forms of property in Azerbaijan Republic is aimed at prosperity of people.”

Thus, in Article 6.1.2 of the Law of the Republic of Azerbaijan “On Enterprises” it is underlined that the control parcel of the shares belonging to state bodies does not exclude the presence of various forms of property which the enterprise is based on.

In connection with the above stated the Constitutional Court of the Republic of Azerbaijan considers that Article 6.3 of the mentioned Law, according to which the property of the state enterprise is the one of the Republic of Azerbaijan, should be interpreted.

The provisions stipulated in Article 6.1 of the Law of the Republic of Azerbaijan “On Enterprises” mentioning the property of the enterprises means the state property does not cause doubt.

Article 6.1.2 of the given Law provides that the property of the enterprises, 51 percents of charter fund of which makes the state property and the rest part is based on other forms of the property, is a state property. However, similar provisions of the Law do not conform to the ownership envisaged in the Constitution of the Republic of Azerbaijan.

The belonging of property of such enterprises in general to the state is not also mentioned in the Statute On the Procedure of Transformation of the State Enterprise into the Joint-Stock Company. According to Article 7.7 of this Statute the appropriate body of Executive is responsible for activity of joint-stock company founded as a result of transformation of the state enterprise during privatisation, at a rate of share of the state in the charter fund. In this case other proprietors bear responsibility for activity of a company at a rate of their shares in the charter fund.

Thus, in case of belonging of the control parcel of shares of the enterprise to the state, the property corresponding to the state’s share in the charter fund, should be recognized as the state property.

Other shareholders of such enterprise have the right to exercise the rights of proprietor regarding the property which falls within the limits of shares belonging to them.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. According to Article 6.1.2 of the Law of the Republic of Azerbaijan “On Enterprises” in case of belonging of the control parcel of the enterprise’s shares to the state bodies (at least 51 percents) it shall be recognized as the one based on state property and does not exclude the presence in enterprise of other forms of property.

2. The property corresponding to the share of state in the charter fund of the enterprise, which control package of shares belongs to the state bodies, should be recognized as the state property, as it is stipulated in Article 6.3 of the Law of the Republic of Azerbaijan “On Enterprises”.

Other shareholders of the enterprise, which control package of shares belongs to the state bodies, have the right to exercise the rights of proprietor regarding property which falls within the limits of their shares.

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.