**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Conformity of Article 54.1 of the Housing Code of the Republic of Azerbaijan*

*to Article 28.3, Article 43 and Article 71.2 of the Constitution*

*of the Republic of Azerbaijan*

**14 April, 2000 Baku city**

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

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

the legal representatives of the body that submitted a petition: H.Veliyev, Deputy Prosecutor General of the Republic of Azerbaijan, E.Mirzazadeh, Head of the Department for Supervision over the Legality of the Decisions of Courts on Civil Cases; R.Teymurov, legal representative of the respondent of Milli Majlis of the Republic of Azerbaijan;

the expert, Y.Mehtiyev, head of the civil law department of Baku State University, professor;

in accordance with Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the petition submitted by the General Prosecutor’s Office of the Republic of Azerbaijan of 4 February, 2000, № 07/3768, on examination of conformity of Article 54.1 of the Housing Code of the Republic of Azerbaijan to Article 28.3, Article 43 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge F. Babayev, legal representatives of the body which submitted the petition, H. Veliyev, legal representative of the respondent R. Teymurov and conclusion of expert Y. Mehdiyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition the Prosecutor’s Office of the Republic of Azerbaijan seeks to examine the conformity of the provision «via determined procedure» of Article 54.1 of the Housing Code of the Republic of Azerbaijan to Articles 28, 43 and 71 of the Constitution of the Republic of Azerbaijan.

In connection with the petition a copy of the official text of Article 54 of the Housing Code of the Republic of Azerbaijan, certified by the Administration of Milli Majlis of the Republic of Azerbaijan is enclosed to the constitutional case.

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

The housing and legal relations, and also installation on dwelling area are regulated by norms of the Housing Code of the Republic of Azerbaijan.

Article 54.1 of the Housing Code of the Republic of Azerbaijan provides, that in determined procedure the tenant has the right to install his / her spouse, children, parents, and other persons on the dwelling area occupied by him / her with the consent of his / her family members, living with him / her.

As it is seen, one of the conditions of installation of the abovementioned persons is the consent of the tenant’s family members.

The content of the provision of Article 54.1 of the Housing Code of the Republic of Azerbaijan regarding the tenant’s right on installation of other persons «via determined procedure» is indefinite and does not indicate, which bodies and acts determine this procedure. The absence of indication to the normative act, which should «determine the procedure» of installation on dwelling area, allows legislative and executive bodies to determine it on their own discretion, that can bring to violation of the constitutional rights of citizens to housing, free movement and choice of a residence.

The uncertainty of the specified provision of the law causes the difficulties when applying of it by courts, what the explanation contained in item 7 of the decision On the practice of the application of the housing legislation by courts of Republic adopted by the Plenum of the Supreme Court of the Republic of Azerbaijan on 16 October, 1992 was also concerned with.

It provides, that «in determined procedure» notion, as a rule must be realised as the installation with observance of passport rules. At the same time in case of unreasonable refusal of the passport registration the court may recognise the right of person being installed on dwelling area. From the mentioned explanation it is seen, that the «determined procedure» notion as a rule, should be realised as the installation with observance of passport rules.

Alongside with it, it should be noted that the mentioned decision of Plenum was adopted in 1992. The basic rights and freedoms of citizens, including the right to housing is reflected in the Constitution of the Republic of Azerbaijan, adopted in 1995.

Article 28.3 of the Constitution of the Republic of Azerbaijan states: «Everyone legally being on the territory of the Republic of Azerbaijan may travel without restrictions, choose the place of residence and travel abroad». According to Article 43 of the Constitution of the Republic of Azerbaijan «nobody can be deprived of his / her home. The state assists in construction of living premises, takes special measures for realization of right for home».

Similar provisions are also contained in Article 13 of The Universal Declaration on Human Rights, in addition to Article 2.1 of the protocol 4 of the European Convention for The Protection of Human Rights and Fundamental Freedoms.

According to requirements of Article 28.3, Article 43 and 71.2 of the Constitution of the Republic of Azerbaijan, in 1996 the legislator having rejected the passport registration adopted the Law of the Republic of Azerbaijan “On the Registration at Alace of Residence and Stay”.

The Constitutional Court of the Republic of Azerbaijan highlights that the tenant has the right to installation of other persons on the dwelling area occupied by him / her with the consent of his / her family members, without any restrictions. All issues (social, concerning the registration, payment of taxes, etc.) arising after the installation are regulated by the legislative and normative acts of the Republic of Azerbaijan in force.

Thus, the provision «via determined procedure», provided by Article 54.1 of the Housing Code of the Republic of Azerbaijan, is to be recognised as not corresponding to Article 28.3, Article 43 and 71.2 of the Constitution of the Republic of Azerbaijan.

Based on the above stated and being guided by Article 130.3.1 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 82,83 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 provision «via determined procedure», contained in Article 54.1 of the Housing Code of the Republic of Azerbaijan in connection with discrepancy to Article 28.3, Article 43 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

2. The legal relations, arising after installation, are regulated in order determined by legislation of the Republic of Azerbaijan.

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.