**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 8.3 of the Law of the Republic of Azerbaijan*

*“On Registration on Place of Residence and Stay”*

## 12 July, 2000 Baku city

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

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

the legal representatives of the bodies interested in special constitutional proceedings: B. Asadov, Judge of the Supreme Court of the Republic of Azerbaijan; E.Askerov, plenipotentiary representative of the Milli Majlis 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 via special constitutional proceedings the case submitted by petition of the Supreme Court of the Republic of Azerbaijan of June 14, 2000, N 5-1/2000, concerning the interpretation of Article 8.3 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay”.

Having heard and discussed the report of Judge S. Salmanova, the statements of B. Asadov and E. Askerov, the legal representatives of the parties interested in special constitutional proceedings, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition the Supreme Court of the Republic of Azerbaijan specifies that according to Article 8.3 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” one of the bases for refusal to a person in registration on place of residence, except for cases of installation into the inhabited premises as the member of family, if the size of inhabited area provided for each person living in the given area appears less than the norm established by Article 40 of the Housing Code of the Republic of Azerbaijan. The request for interpretation is caused by the fact that the Law says nothing regarding forms of ownership on inhabited premises covered by the mentioned provisions of Law.

In connection with a petition the copies of official texts of Article 40, 118 of the Housing Code of the Republic of Azerbaijan, Article 8 of the Law “On Registration on Place of Residence and Stay” and Article 1 of the Law of the Republic of Azerbaijan “On Property in Azerbaijan Republic” are enclosed to the case.

The Constitutional Court of the Republic of Azerbaijan in connection with petition notes that according to Article 8.3 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” the relevant state body shall refuse the person in registration on place of residence, except for cases of installation into the inhabited premises as the member of family, if the size of inhabited area provided for each person living in the given area appears less than the norm established by Article 40 of the Housing Code of the Republic of Azerbaijan.

According to Article 40.1 of the Housing Code of the Republic of Azerbaijan the norm of the inhabited area in Azerbaijan Republic is established at a rate of twelve square meters for a person.

The restriction of the right of the proprietor on installation in an inhabited premises belonging to him/her of other persons by virtue of norm of the inhabited area and refusal in registration of such persons, contradict to constitutional freedoms and ownership right.

According to Article 29.3 of the Constitution of the Republic of Azerbaijan right of ownership envisages the right of owner to possess, use and dispose of the property himself/herself or jointly with others. Article 1.2 of the Law of the Republic of Azerbaijan «On Property in Azerbaijan Republic», based on the above stated norm of Constitution of the Republic of Azerbaijan, also states that the proprietor at his/her own discretion owns, uses and disposes of the property belonging to him/her.

The inhabited area belonging to the citizen is his/her property and he/she has the right to own, use and dispose of it.

The right to use property relates also to installation of other persons in an inhabited area belonging to the citizen. In Article 118.1 of the Housing Code of the Republic of Azerbaijan it is stipulated that citizens having dwelling house at his/her private property use it for personal residing and residing of the members of their families. They have the right to install in the house (part of a house) other citizens as well as to give it for leasing.

It is necessary also to note that in accordance with Article 28.3 of the Constitution of the Republic of Azerbaijan everyone legally being on the territory of the Republic of Azerbaijan may travel without restrictions, choose the place of residence and travel abroad.

Article 13 of the Universal Declaration of Human Rights states “Everyone has the right to freedom of movement and residence within the borders of each state”. The same right is also envisaged in Article 12 of the International Covenant on Civil and Political Rights and other international documents.

The restriction of the constitutional ownership rights and freedoms by referring to Article 8.3 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” to apartments (houses) which are the private property does not correspond to Article 71.2 of the Constitution of the Republic of Azerbaijan. According to para II of the mentioned Article, no one may restrict implementation of rights and freedoms of a human and citizen.

Taking into account the above-stated, the Constitutional Court of the Republic of Azerbaijan considers that the right to use the inhabited area which is private property, including installation of other persons into the given area, except for the cases stipulated by the legislation, depends on wish of proprietor and cannot be limited by the norm of inhabited area.

At the same time, the Constitutional Court of the Republic of Azerbaijan considers important to note, that the maintenance of constitutional freedoms and ownership rights should not infringe the rights of other persons and public interests. From this point of view, taking into account the requirements of the Constitution of the Republic of Azerbaijan and provisions of a number of laws adopted on its basis regarding apartments (houses) which are the private property, it is necessary to reconsider questions connected with registration of citizens who need the improvement of housing conditions, as well as the regulation of other legal relationships arising after their registration.

Based on the above stated and being guided by Article 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, 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. Bearing in mind the ensuring of constitutional freedoms and ownership rights the provisions of Article 8.3 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” may not cover the cases of registration of the citizens living in apartments (houses) which are the private property.

2. To recommend to the Cabinet of Ministers of the Republic of Azerbaijan according to para I of the given decision and legislation of the Republic of Azerbaijan to take necessary measures for regulation of relationships connected with registration of citizens those need the improvement of housing conditions and other legal relationships arising after registration of the citizens on place of residence, living in apartments (houses) which are the private property.

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

4. The decision is subject to publication in “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.