ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On conformity of Article 5.2 of the Law of the Republic of Azerbaijan “On Privatization of Housing Resources” with the Constitution*

*of the Republic of Azerbaijan*

# 30 October, 2000 Baku city

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

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

the legal representative of the body that submitted a petition: B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representative of the respondent: V.Kerimov, the employee of Milli Majlis of the Republic of Azerbaijan;

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

in accordance with Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the petition of the Supreme Court of the Republic of Azerbaijan of 5 October, 2000, N 5-1/2000, on verification of conformity of Article 5 of the Law of the Republic of Azerbaijan “On Privatization of Housing Resources” with the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge S. Salmanova, legal representatives of the parties, B. Asadov and V. Kerimov, expert Y. Mehdiyev, and having examined the materials of the constitutional case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

By its petition, the Supreme Court of the Republic of Azerbaijan seeks to examine the conformity of Law of the Republic of Azerbaijan “On Privatization of Housing Resources”, providing for privatization of living quarters with limited public utilities by approbation of other tenants, with Articles 25, 29 and 71.2 of the Constitution of the Republic of Azerbaijan.

In connection with the petition, a copy of the official text of Articles 1, 5 and 16 of the Law of the Republic of Azerbaijan “On Privatization of Housing Resources” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

In connection with examined petition the Constitutional Court of the Republic of Azerbaijan notes that according to Article 1 of the Law of the Republic of Azerbaijan “On Privatization of Housing Resources” the citizens of the Republic of Azerbaijan as well as stateless persons who concluded with owner of state or public housing resources the hire contract regarding living quarters shall have the right to convert without any indemnity the living quarters occupied by him/her to private property under conditions and via procedure prescribed by present Law.

However, in accordance with Article 5.2 of the same Law the privatization of non-isolated living quarters (houses) with the limited public conditions occupied by several tenants is allowed by approbation of each of tenants and adult members of their family.

Privatization held in the Republic of Azerbaijan is linked to development and establishment of various forms of property and free enterprise provided by Articles 29 and 59 of the Constitution of the Republic of Azerbaijan. The State along with granting the right for privatization should also create the conditions for citizens to implement this right and ensure the protection of norms and principles envisaged in Constitution upon assignation of a property to their ownership. From this point of view Article 5.2 of the Law of the Republic of Azerbaijan contradicts to a number of provisions of the Constitution.

Thus, privatization of non-isolated apartments with limited public utilities occupied by several tenants depends on subjective opinion of other tenants that leads to groundless difficulties in privatization. As a result Article 71.2 of Constitution which provides that no one may restrict implementation of rights and liberties of a human being and citizen is violated.

In accordance with Article 16 of the Law of the Republic of Azerbaijan “On Privatization of Housing Resources” the disputes arisen in connection with the application of Law shall be considered by court via the procedure provided by legislation of the Republic of Azerbaijan.

As follows from the practice, when considering the disputes related to privatization of non-isolated apartments with limited public utilities occupied by several tenants the courts without examining of the factual circumstances of matter dismiss a claim only for the reason of refusal for privatization of other tenants. As a result, the procedure of privatization of apartments with limited public utilities envisaged in Article 5.2 of above-mentioned Law impedes the ensuring of the right for judicial protection of rights and freedoms which is provided for by Article 60.1 of the Constitution of the Republic of Azerbaijan. This ban puts the tenants in unequal position as regards the tenants of isolated apartments violating thus the right for equality envisaged in Article 25 of the Constitution of the Republic of Azerbaijan.

Granting to citizens of the quarters in communal apartments by housing authorities does not differ by their legal basis from granting of the isolated apartments. In both cases the apartments are given on the single basis and have the common legal regime. Thus, the application of any restriction regarding the privatization of quarters in communal apartments in fact provides for inequality of citizens’ rights depending on their living conditions.

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 recognise as null and void Article 5.2 of the Law “On Privatization of Housing Resources” in connection with its non-conformity with Article 25, Article 60.1 and Article 71.2 of the Constitution of the Republic of Azerbaijan.

2. The decision comes into force from the date of its 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.