ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 228 of the Civil Code of the Republic of Azerbaijan and Article 123.1 of the Housing Code of the Republic of Azerbaijan*

# 27 July, 2001 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 V.Zeynalov;

the legal representatives of the subjects interested in special constitutional proceedings: B. Asadov, Judge of the Supreme Court of the Republic of Azerbaijan and I. Rafibeyli, Deputy Head of Economic Legislation Department of the Milli Majlis of the Republic of Azerbaijan;

the specialist: A.Talibov, lecturer of Civil Law Board of the 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 the petition of the Supreme Court of the Republic of Azerbaijan of 28 June, 2001, N 8-6/2001 concerning interpretation of Article 228.2 of the Civil Code of the Republic of Azerbaijan and Article 123.1 of the Housing Code of the Republic of Azerbaijan.

Having heard the report of Judge A.Sultanov, the reports of the legal representatives of the subjects interested in special constitutional proceedings: B.Asadov and I.Rafibeyli, opinion of the specialist A.Talibov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

 According to Article 123.1 of the Housing Code of the Republic of Azerbaijan family members of the owner of dwelling house who were installed by him/her into the house that belongs to him/her shall have equal rights with owner to use the lodgments in the house, if at their installation it was not stipulated otherwise.

 According to Article 228.2 of the Civil Code of the Republic of Azerbaijan the initiation of the conditions of implementation and termination of the right to use a component part of residential building shall be determined by written agreement concluded with owner and certified via notarial procedure. When agreement concerning termination of the right to use a component part of residential building has not been reached, this right can be terminated on the basis of owner’s claim via judicial procedure by means of payment of compensation corresponding to the market price.

 Supreme Court proceeding from disputes arising in court practice asks for interpretation of Article 228.2 of the Civil Code of the Republic of Azerbaijan and Article 123.1 of the Housing Code of the Republic of Azerbaijan.

The official texts of Article 228 of the Civil Code and Article 123 of the Housing Code of the Republic of Azerbaijan certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of the case.

The Constitutional Court of Azerbaijan notes that Article 123.1 of the Housing Code and Article 228 of the Civil Code regulate the right of citizens to use the habitation, determine various conditions for realization of given right to life.

Thus, according to Article 123.1 of the Housing Code of the Republic of Azerbaijan, that came into force in 1982, at installation into owner’s house of members of owner’s family and other persons equated with them by legislation their right to use the dwelling space shall be initiated after their installation, if it was not stipulated otherwise. However, the indicated Article is not determining the form and real conditions of agreement between mentioned persons entrust the solution of these questions to parties. According to the indicated provision the disputes concerning the procedure of usage of lodgments and proportions of participation in expenses shall be resolved via judicial procedure.

Articles 228.1 and 228.2 of the Civil Code, that came into force on 1 September 2000, stipulate the initiation of the right to use a component part of residential building by its registration in the State register of real estate as well as by certification via notarial procedure of written agreement concluded between members of family and other persons with owner.

Thus, as opposed to the indicated articles of Civil Code Article 123 of the Housing Code does not connect the initiation of the right to use a component part of residential building with its registration in the State register of real estate and certification of written agreement via notarial procedure.

Article 228.2 of the Civil Code stipulates that in case where the agreement on termination of the right to use a component part of residential building was not reached this right can be terminated via judicial procedure on the basis of owner’s request by means of payment of compensation corresponding to the market price. Housing Code does not contain such provision.

As it is apparent from above indicated, the essence of requirements proceeding from Article 228.2 of the Civil Code is that it guarantees the comprehensive legal resolution of issues of property and usage of apartment by family members and other persons.

This is the basis for observance and protection of citizens’ rights to property and lodging enshrined in Constitution.

Thus, according to Article 29 of the Constitution of the Republic of Azerbaijan everyone shall have the right to property. Right to property, including right to private property, is protected by law. Nobody shall be deprived of his/her property without decision of law court.

According to Article 43 of the Constitution of the Republic of Azerbaijan that fixes the right to lodging, nobody might be deprived of his/her dwelling.

Thus, at establishment of the procedure of resolution of disputes those proceed from legal relationships between owner of house (apartment) and members of family installed by him/her, Article 123 of the Housing Code does not take into account all above-mentioned requirements. At the same time the formation of indicated relationships and their settlement directly connect with the mentioned provision.

When adopting new normative legal act that regulates similar civil legal relationships the legislator extends the legal force of such act to legal relationships initiated after its adoption in order not to break the continuance and stability of earlier initiated legal relationships.

The mentioned condition is reflected in Article 7.1 of Civil Code which states that “Acts of civil legislation shall not have a retroactive force and shall cover the relationships initiated after it had came into force, except for cases specified in Article 149.7 of the Constitution of the Republic of Azerbaijan”.

Taking into consideration the above-stated, the disputes connected with legal relationships which initiated after 1st September 2000 should be resolved in accordance with provisions of Articles 228.1 and 228.2 of the Civil Code and the disputes connected with legal relationships initiated before the mentioned date – in accordance with provisions of Article 123 of the Housing Code.

At the same time Constitutional Court particularly notes that formation, realization and termination of the right to use a component part of residential building stipulated in Articles 228.1 and 228.2 of the Civil Code cover on the basis of Article 135, 139, 140, 141 and 144 of the same Code all dwelling houses which are considered as real estate and possessed by person. According to provisions of the indicated articles all rights stipulated by legislation concerning real estate should be certified via notarial procedure and registered in State register.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 65, 66, 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. The disputes connected with legal relationships initiated in connection with usage of residential building (apartment) after 1st September 2000 should be resolved via the procedure stipulated in Articles 228.1 and 228.2 of the Civil Code, and disputes connected with legal relationships initiated before the mentioned date – in accordance with provisions of Article 123 of the Housing Code.

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.