**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

# *On Abolition of Free Transport Workers Union*

## 7 December, 2001 Baku city

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

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

the legal representative of the party submitted the petition: E.Nuriyev, Deputy Prosecutor General of the Republic of Azerbaijan;

the legal representative of the respondent party: S.Ismayilov, Chairman of the Board of the Free Transport Workers Union;

witnesses: F. Mamedov, Head of the Department of State Registration of Legal Persons of the Ministry of Justice; I.Aliyev, Deputy Head of the Main Administration of State Traffic Police of the Ministry of Internal Affairs; H.Huseynov, President of “Azeravtonagliyat” State Concern; T.Mamedova, Head of Department of the Labour Policy of the Ministry of Labour and Social Security of Population; G.Hajiyev, Head of Department of the Labour Inspection of the Ministry of Labour and Social Security of Population; S.Nasibov, Head of the Law Department of the Executive of Baku city; Sh.Jafarov, Deputy Head of the Department of Transport of the Executive of Baku city and N.Hasanov, Head of the Law Department;

# in accordance with Article 130.3.7 of the Constitution of the Republic of Azerbaijan examined via procedure of constitutional proceedings in open judicial session the constitutional case on abolition of the Free Transport Workers Union in connection with the petition of the Prosecutor’s Office № 06/4190 and 06/1476 of 17 September, 2001.

Having heard Judge B.Garibov’s report, statements of E. Nuriyev, the legal representative of the party that submitted the petition, S.Ismayilov, the legal representative of the respondent party, evidences of F.Mamedov, I.Aliyev, H.Huseynov, T.Mamedova, G.Hajiyev, S.Nasibov, Sh.Jafarov and N.Hasanov, having familiarized with the materials of the case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The petition of the Prosecutor’s Office notes that Free Transport Workers Union opposing to the aims and duties of its Charter as well as opposing to Article 83 of the Law of the Republic of Azerbaijan “On Road Traffic” established illegal checkpoints in Baku and on 103rd, 129th, 174th kms of Baku-Guba highway. The mentioned Union assuming powers of the state bodies acted on the mentioned checkpoints under “monitoring group” and implemented control for movement of transport.

### Under pretence of infringement of the traffic rules, members of the Union repeatedly demanded from drivers to present driving licenses, documents concerning right to carry on business and other documents as well as illegally withdrawing the documents drew up protocols “On Administrative Delinquencies” and thus, roughly violated rights of citizens.

In this connection, the Ministry of Justice sent in three warnings to the Union within one year. According to Article 13 of the Law “On Public Unions”, first warning of 11 July 2000 to the Union underlined the illegitimacy of its actions, which are contrary to provisions of its Charter and infringe the Law. The union was suggested to eliminate illegitimate actions.

The second warning of 23 March 2001 indicated that according to Article 2.3 of the Law of the Republic of Azerbaijan “On Non-Governmental Organisations (public unions and funds)”, a NGO can be established and function for the aims not prohibited by the Constitution and laws of the Republic of Azerbaijan. Chairman of the Board of the Union was informed of inadmissibility of actions exceeding the bounds of aims and duties provided for by the Charter of the Union as a non-commercial organisation.

The third warning of 3 May, 2001 noted that the right of public unions to presentation of materials on administrative delinquencies provided for by Article 409.1.2 of the Code “On Administrative Delinquencies“ of the Republic of Azerbaijan should not be interpreted as a norm empowering public unions with the right to carry out illegal examinations, stop travel facilities, withdraw documents from drivers and other force measures. Moreover, the Union was warned for the last time to eliminate all delinquencies caused.

Taking into account the above mentioned and three written warnings addressed to the Union within one year according to Article 31.4 of Law of the Republic of Azerbaijan “On Non-Governmental Organisations (public unions and funds)”, the Prosecutor’s Office of the Republic of Azerbaijan asks the Constitutional Court for abolition of the mentioned Union.

Constitution of the Republic of Azerbaijan as well as a range of international documents provide for the right to free associations. Free activity of associations shall be guaranteed. However, from the materials of the case it is obvious that the Union exceeded the bounds of duties and aims determined by its Charter. The Union interfering into activity of state bodies and other organisations infringed the Law under pretence of protection of drivers’ rights, interfered into activity of the State Concern “Azeravtonagliyat” and State Traffic Police and carried out a range of illegal checks-up in the traffic sphere. Law of the Republic of Azerbaijan “On Road Traffic” does not provide for the right of any physical or legal person as well as of any public organisation, except for the authorized state bodies, to stop the means of transport and check up drivers’ documents.

The Constitutional Court underlines that the State considering public associations as a part of society shall create all conditions established by law which are necessary for the activity of such associations. However, public associations in their activity shall observe the Constitution and laws. Article 80 of the Constitution of the Republic of Azerbaijan states that infringement of provisions of the Constitution and laws of the Republic of Azerbaijan including usurpation of rights and liberties and also failure to fulfil responsibilities specified in the Constitution and laws of the Republic of Azerbaijan shall be persecuted.

Ignoring three written warnings sent to it, the Union continued to interfere into activity of the state bodies, put obstacles into activity of the specific organisations and violated human rights provided for by the Constitution and laws of the Republic of Azerbaijan. Thus, the Union in its activity violated principles of the supremacy of the Constitution and protection of human rights which are the main attributes of the legal state.

Being guided by Articles 130.3.7 of the Constitution, 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. To abolish the Free Transport Workers Union registered by the resolution of 2 June, 1999, № 1134 of the Board of the Ministry of Justice.

2. To recommend to the Prosecutor’s Office of the Republic of Azerbaijan to provide for examination of the facts via procedure determined by legislation which were presented by the representative of the respondent party during the court session.

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

4. The decision is a 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.