**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 179 of the Civil Code of the Republic of Azerbaijan*

# 28 January, 2002 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 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;

based on 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 December, 2001, N 8-11/2001 concerning interpretation of Article 179 of the Civil Code of the Republic of Azerbaijan.

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

**DETERMINED AS FOLLOWS:**

 In Article 179 of the Civil Code of the Republic of Azerbaijan, which entered into force from 1 September 2000, specified the terms of obtaining of ownership to immovable property.

 In its petition the Supreme Court asks to give interpretation as to from which date the acquisitive prescription provided in Article 179 of the Civil Code of the Republic of Azerbaijan shall be calculated, taking into account the negative influence covering the formation of the unified court practice of adoption by courts of different decisions, connected with this kind of claims caused by the fact that neither the Civil Code of the Republic of Azerbaijan nor the Law of the Republic of Azerbaijan “On Approval, Entry into Force of the Civil Code of the Republic of Azerbaijan and Issues of Legal Rregulation related to these Issues” of define whether the acquisitive prescription shall cover the period before this Code entered into force.

The official texts of Article 7 and 197 of the Civil Code of the Republic of Azerbaijan certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of case.

In connection with the petition, the Constitutional Court notes the following:

In the Civil Code of the Republic of Azerbaijan (Article 179) among the ways of obtaining of ownership to property, the acquisitive prescription is indicated as a new institution.

According to Article 179.1 of the Civil Code of the Republic of Azerbaijan, the person who is not owner of the property but *bona fide,* openly and uninterruptedly possessed it during ten years as it was his/her own immovable property shall get ownership on this property (acquisitive prescription). According to Article 179.2 of the same Code, the person referring to the acquisitive prescription can add to his/her possession period all the period during which another person, whose successor in this person is, possessed this property. Definition of such institution in Civil Code of the Republic of Azerbaijan first of all is based on Article 29.2 of the Constitution of the Republic of Azerbaijan, which stipulates, that none kind of property shall prevail over another.

Acquisitive prescription is applied in case of actual using of someone's property without legal grounds. At the same time, acquisitive prescription cannot be applied with respect to a person who fulfills an actual possession on legal grounds (long term contract of rent etc.). One of the necessary requirements of obtaining of ownership to immovable property is completion of ten years term of acquisitive prescription, stipulated in Article 179.1 of the Civil Code.

In accordance with this Article, one of the main conditions for application of acquisitive prescription of ownership to immovable property is *bona fide* possession of immovable property. This circumstance, except for intentional take-over of property by the person who fulfills the actual possession contrary to the will of the owner of property, was directed against unlawful misappropriation of property. On the other hand, the open fulfilling of possession implies the using of own immovable property not secretly but openly, independently from any person and fulfilling of obligations connected with this property.

The continuity of acquisitive prescription is one of the abovementioned conditions. For instance, filing of a claim by plenipotentiary person as to restitution is the reason for interruption of time period and implies the break of continuity.

Thus, taking into account that the analyzed conditions are closely linked to each other the absence of one of them makes impossible the obtaining of ownership.

The regulation via such procedure of civil legal relationships connected with acquisitive prescription is based on the provisions of the Constitution of the Republic of Azerbaijan. For instance, the Constitution (Article 13) by guaranteeing an equal protection of various types of property, stipulates that property cannot be used against the human and citizen’s rights and freedoms, interests of state and society, dignity of an individual. In addition, according to Preamble of the Constitution, guarantees of regulation of civil rights are first of all directed at ensuring of everyone with adequate level of welfare in compliance with fair economic and social order.

The civil legal regulation of economic relations consists of obtaining by its participants the subjective ownerships and observance of duties. Within the circle of features attributable to state governed by the rule of law there has been also included the ensuring of equality and adequacy of rights and duties of participants of legal relationships including the civil ones. Violation of these elements (principles) along with rendering of negative influence on stability of these relationships cause the inequality of rights of its participants.

It is necessary to note, that according to Article 7.1 of the Civil Code of the Republic of Azerbaijan, which envisages the effect of civil legislation within the time period, the acts of civil legislation shall not have retroactive force and shall be applied with respect to relationships arisen after their entry into force, except for cases provided for by Article 149.7 of the Constitution of the Republic of Azerbaijan. On the other hand, according to Article 7.2 of the present Code the acts of civil legislation shall have retroactive force in cases where it is directly provided for by law.

Evidently, from the point of view of necessity to fair ensuring and protection of rights and interests of participants of civil turn, including the preservation of integrity and continuity of previously arisen and continuing legal relationships the force of norms of substantive law shall be applied with respect to relationships, which arose after adoption of this norm.

From the analysis of the Law of the Republic of Azerbaijan “On Approval, Entry into Force of the Civil Code of the Republic of Azerbaijan and Issues of Legal Regulation Related to these Issues” and from the Civil Code of the Republic of Azerbaijan it is evident that the legal force of provisions of Article 179 of Civil Code does not cover the period before 1 September 2000.

In accordance with the above mentioned the legal force of Article 179 of the Civil Code, that determines the time of obtaining the ownership to immovable property, shall be applied with respect to legal relationships arisen after 1 September 2000.

Being guided by Article 130.4 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. The legal force of Article 179 of the Civil Code, which determines the time of obtaining the ownership to immovable property, shall be applied with respect to legal relationships arisen after 1 September 2000.

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.