**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 5 of the Law of the Republic of Azerbaijan*

*“On Registration on Place of Residence and Stay” as well as Provisions on “Description of the Identity Card” Approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan”*

**31 January, 2003 Baku city**

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

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

the legal representatives of the interested subjects: I.Nasirov, Chairman of Sabayil district court; Y.Kerimov, Judge of Sabayil district court; S.Kerimov, Deputy Head of Administrative and Military Legislation Department of the Milli Majlis of the Republic of Azerbaijan; Kh.Ashrafov, Employee of the Legal Department of the Cabinet of Ministers of the Republic of Azerbaijan; F.Babayev, Head of Division of Passport Registration Department of the Ministry of Internal Affairs of the Republic of Azerbaijan and E.Alizadeh, the citizen;

in accordance with Article 130.6 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via special constitutional proceedings the petition of Sabayil district court of 30 December 2002, N S-01 concerning interpretation of Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” as well as provisions on “Description of the Identity Card” approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan”.

Having heard and discussed the report of Judge E.Mamedov, the statements of legal representatives of parties I.Nasirov, Y.Kerimov, S.Kerimov, Kh.Ashrafov, F.Babayev and the citizen E.Alizadeh, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The civil case of the complainant E.Alizadeh against the respondents – Passport Registration Department of the Ministry of Internal Affairs (hereinafter PRD) and the Ministry of Justice of the Republic of Azerbaijan was being examined by the Sabayil district court. The complainant claims that when substituting old soviet passports for identity cards of citizens of the Republic of Azerbaijan the PRD referring to the legislation of the Republic of Azerbaijan in force refused to issue his identity card on account of absence of the place of residence of complainant and thus, violated his civil and other rights.

The PRD proves its actions by the relevant provisions of Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” and provisions on “Description of the Identity Card” approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan”.

The Sabayil district court having applied to the Constitutional Court asks for interpretation of Article 5 of the Law “On Registration on Place of Residence and Stay” as well as provisions on “Description of the Identity Card” approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan” concerning the “place of residence”, which can be applied on the civil case.

Taking into account the petition of Sabayil district court the Constitutional Court of the Republic of Azerbaijan notes the following:

Article 24 of the Constitution of the Republic of Azerbaijan provides that everyone from the moment of birth possesses inviolable and inalienable rights and freedoms. Rights and liberties envisage also everyone’s responsibility and obligations to the society and other persons.

The right to citizenship as well as the right to free move and right to choose the place of residence are among the most important rights and freedoms of a human being. The petition of Sabayil district court establishes the necessity for detailed legal analysis of these rights. According to Article 52 of the Constitution of the Republic of Azerbaijan a person having political and legal relations with Azerbaijan Republic and also mutual rights and obligations shall be the citizen of the Republic of Azerbaijan.

The citizenship is the basis for relations between a person and society. The citizenship as the main ground for the legal status of a person within a state makes this situation clear and definite. The civil belonging allows to a person to enjoy the different rights and freedoms. The state shall protect and take care of its citizens.

According to Article 6 of the Law of the Republic of Azerbaijan “On Citizenship”, the citizenship of the Republic of Azerbaijan shall be proved by the following documents: birth-certificate, identity card of the citizen of the Republic of Azerbaijan and passport of the citizen of the Republic of Azerbaijan.

The birth-certificate approves the fact of birth from the legal point of view and reflects the information of the important events concerning the birth. This document shall be considered as of the primary importance for approval of the right to a citizenship. The mentioned document gives grounds for recognition as citizens of the Republic of Azerbaijan the persons who were born on the territory of the Republic of Azerbaijan by citizens of the Republic of Azerbaijan or parents one of whom is a citizen of the Republic of Azerbaijan in accordance with Article 52 of the Constitution of the Republic of Azerbaijan.

As it is evident, the identity card of a citizen is the most important document for implementation of his/her civil rights. As opposed to other documents certifying the citizenship, the identity card reflects the most detailed information of its holder. Indication of such information in the document serves for unification of the holder and for the exact distinction from other citizens.

Article 4.1 of the Law “On Identity Card of the Citizen of the Republic of Azerbaijan” provides that the identity card of a citizen of the Republic of Azerbaijan shall be the document that certifies the personality of a citizen within the territory of the Republic of Azerbaijan. This document creates for its holder the possibility to enjoy his/her constitutional rights proceeding from the citizenship rights. In order to enjoy these rights each citizen must have the identity card.

According to Article 3.1 of the Law of the Republic of Azerbaijan “On Entry and Exit From the Country” passport of the citizen of the Republic of Azerbaijan shall be the only document certifying the personality of a citizen abroad as well as the document that was issued to him/her for implementation of the right to leave and enter a state. The passport shall be issued on the basis of the identity card. The receipt of the passport shall depend of a citizen’s will to leave Azerbaijan Republic. It is evident from the mentioned provision that in case of submission of the application form and the documents indicated in the Law the citizen shall certainly receive the identity card. The Law of the Republic of Azerbaijan “On Identity Card of the Citizen of the Republic of Azerbaijan” does not provide for any grounds for issuing of the identity card to a citizen.

Thus, the receipt of the identity card of the citizen of the Republic of Azerbaijan via the procedure specified in legislation should be considered as the right of each citizen. And illegal refusal to issue the identity card to a citizen should be considered as the restriction of the right to a citizenship and other constitutional rights proceeding from it. However, one should bear in mind that submission of application to get the identity card on the place of citizenship is an obligatory for a citizen.

The words “the relevant state bodies on the place of residence” used in Law should be clarified in connection with the examined petition. According to the legislation of the Republic of Azerbaijan the specialized bodies of the Ministry of Internal Affairs (RPD) shall be considered as “the relevant state bodies” unless there will be adopted another decision in this respect.

In order to determine the place of residence of a citizen, first of all his/her factual place of residence as well as place of stay can be taken into account.

For instance, according to Article 27.1 of the Civil Code of the Republic of Azerbaijan the place of factual residence of a citizen shall be considered as the place of his/her residence.

According to Article 28.2 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.

Undoubtedly, the right to move freely and the right to freely choose the place of residence are also envisaged in international legal documents, particularly in Article 12 of the International Covenant on Civil and Political Rights and Article 2 of the Additional Protocol N4 to the European Convention on Human Rights. According to the provisions of the Constitution of the Republic of Azerbaijan, the right to move freely and the right to freely choose the place of residence proceed from the right of a person to freedom. And by its broad meaning the freedom, within its content, means the possibility to move freely.

Unlike the Soviet legislation, the legislation of the Republic of Azerbaijan taking into account the above mentioned does not restrict human rights and freedoms when registering persons on place of residence: vice versa it makes them more realizable.

Whereas the Law “On Identity Card of the Citizen of the Republic of Azerbaijan” was devoted to the document certifying the civil rights, the Law “On Registration on Place of Residence and Stay” is obviously different by its essence. As it gets evident from its title, the issues envisaged within the Law are connected with the registration of the citizens, foreigners and stateless persons.

According to Article 2 of the Law “On Registration on Place of Residence and Stay”, the place of residence shall be a dwelling house, apartment, official living quarters, hostel, houses for old people and disabled persons and other similar dwelling areas where a person permanently or mainly lives as an owner, on the basis of contract, rent contract or other basis provided for in the legislation of the Republic of Azerbaijan.

The place of stay shall be the place where a person lives temporarily, i.e. hotel, resort, holiday home, pension home, camping-site, tourist center, hospital and other similar institutions.

The place of residence of persons under age shall be the place of residence of their legal representatives, i.e. parents, adoptive parents, tutors or trustees.

As it gets evident from the provisions of law, the legislator not putting any restrictions on definition of the place of residence and place of stay of each person, focuses special attention on necessity to register on the chosen place for permanent or temporary stay via the procedure specified in legislation.

According to Article 1 of the Law “On Registration on Place of Residence and Stay”, citizens of the Republic of Azerbaijan, foreigners and stateless persons (hereinafter referred as persons) should be registered on the place of residence and place of stay. The aim of the registration on the place of residence and place of stay is the creation of proper conditions for putting into books the persons living in Azerbaijan Republic, as well as fulfillment by them of their duties with respect to other persons, state and society, implementation of human rights and freedoms (social security, pensions, military draft, execution of the court decisions, etc).

According to Article 1.2 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” the registration on place of residence and place of stay shall not be of permissive nature and can entail legal consequences only in cases provided for by the legislation of the Republic of Azerbaijan. Informing the registration bodies of contemporary and temporary places of residence is both the right and obligation of citizens. The registration bodies are empowered by legislation to approve act of free choice of contemporary and temporary place of stay of a citizen according to his/her wish. Thus, the registration of citizens on place of residence and place of stay must not violate citizens’ right to choose freely the place of residence.

On the other hand, the right to choose freely the place of residence is of obligatory character and cannot be restricted in some cases. Article 12 of the International Covenant on Civil and Political Rights provides that the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

Cases of restrictions of registration are not clearly indicated in the Law “On Registration on Place of Residence and Stay”.

The cases, which can restrict the right to choose freely the place of residence, must not be interpreted in other way than it is specified in law.

Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” reflects the provisions connected with the registration of citizens on place of residence. These provisions consist of two parts closely connected to each other. The first part provides that registration of citizen on place of residence shall be carried out when a citizen gets the identity card of the citizen of the Republic of Azerbaijan for the first time. The second part specifies that the citizen who changed his/her place of residence should apply to the relevant state body for the registration within 10 days at the latest after entry to the new place of residence. The relevant state body must register the citizen without delay and issue to him/her the identity card within 10 days according to the Law of the Republic of Azerbaijan “On Identity Card of the Citizen of the Republic of Azerbaijan”. Along with the application form, citizen must submit the following documents for registration on place of residence: identity card or birth-certificate; the document, which can be considered as the ground for occupancy of the dwelling area (the registration certificate on ownership, the rent or leasing contract or other document provided for by the legislation of the Republic of Azerbaijan), or application of the person who rendered the dwelling area to the citizen.

As it gets evident from the mentioned provisions, Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” provides for registration of citizen whose place of residence is known. These cases are connected with issuing of identity card and then with its substitution.

Presence of the “place of residence” part in the section related to the information regarding citizens in the text of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay”, Article 5 of this Law as well as provisions on “Description of the Identity Card” approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan” does not give grounds for non-issuing of the identity card to the citizen who do not have place of residence. Thus, except the cases of restrictions of registration specified in the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” in all other cases the registration bodies must approve the act concerning the free choice of the place of residence of a citizen based on his/her wish.

Non-issuing of the identity card to the citizens who do not have place of residence can cause the violation of the right to citizenship and other constitutional rights proceeding from it, in particular, the right to take part in political life of society and state (Article 54 of the Constitution of the Republic of Azerbaijan), the right to take part in governing the state (Article 55 of the Constitution of the Republic of Azerbaijan), electoral right (Article 56 of the Constitution of the Republic of Azerbaijan), the right to education (Article 42 of the Constitution of the Republic of Azerbaijan) and the right to lodge an application (Article 57 of the Constitution of the Republic of Azerbaijan).

Article 53.1 of the Constitution of the Republic of Azerbaijan provides that in no circumstances a citizen of the Republic of Azerbaijan may be deprived of citizenship of the Republic of Azerbaijan. Refusal to issue the identity card to citizens who do not have place of residence can be considered as violation of the right to equality. For instance, according to Article 25.3 of the Constitution of the Republic of Azerbaijan the state guarantees the equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organizations. Rights and freedoms of a person and citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social attributes.

Non-issuing of the identity card of the citizen of the Republic of Azerbaijan to the citizens who do not have place of residence can be understood as violation of provisions of Article 71.1 and 71.2 of the Constitution of the Republic of Azerbaijan. According to these provisions, protection of citizen’s rights and freedoms envisaged in the Constitution of the Republic of Azerbaijan shall be the obligation of Legislative, Executive and Judiciary. No one can restrict rights and freedoms of a person and citizen.

Taking into account the lack of indication of cases for refusal to issue the identity card within the Law of the Republic of Azerbaijan “On Identity Card” the specific remarks must be introduced into the “place of residence” section by using the similar methods, which are used for filling in other sections of identity card. The practice of filling in of the “patronymic” section for the persons with unknown fathers, “military rank” section for women and “eyes color” section for blind persons can be applied therein.

Thus, the Constitutional Court considers that the requirements of legislation concerning the registration of all persons who live within Azerbaijan Republic, the fulfillment by them of their obligations with respect to other persons, state and society should be necessarily implemented. And the registration of persons who do not have place of residence should be ensured by the bodies of local Executive of the Republic of Azerbaijan. Taking into account the experience of other states, these bodies should provide for the issuing of the identity cards of the Republic of Azerbaijan to these citizens by registering them on special places.

Moreover, there are similar problems in Ukraine and Byelorussia where the regional registration centers have been established in order to solve this issue.

Being guided by Article 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 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. Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” provides for the registration of citizens with the fixed place of residence.
2. The text of Article 5 of the Law of the Republic of Azerbaijan “On Registration on Place of Residence and Stay” and presence of the “place of residence” section in provisions on “Description of the Identity Card” approved by the Law of the Republic of Azerbaijan “On Approval of Specimen of the Identity Card of the Citizen of the Republic of Azerbaijan” cannot be considered as the ground for non-issuing of the identity cards to the citizens who do not have place of residence.
3. According to item 2 of this decision, to recommend to the Cabinet of Ministers of the Republic of Azerbaijan to provide the citizens who do not have place of residence with the registration on special places and issue the identity cards to them.
4. The decision of the Constitutional Court of the Republic of Azerbaijan comes into force from the date of it’s publication.
5. The decision is subject to publication in the "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.
6. The decision is final and cannot be cancelled, changed or interpreted by any body or official.