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HISTORY OF DEVELOPMENT OF HOUSING LEGISLATION IN AZERBAIJAN

ІСТОРІЯ РОЗВИТКУ ЖИТЛОВОГО ЗАКОНОДАВСТВА В АЗЕРБАЙДЖАНІ

The main purpose of the research the primary object of the study is to investigate the development history of housing legislation in Azerbaijan and to analyze the regulation of housing relations. In ancient times, there were not norms regarding housing rights in Azerbaijan and explores the development history of housing legislation.

Methods. The systematic analysis, historical approach to the generalization of normative scientific and practical materials and other methods has been used while writing the research. With the help of general and specific scientific methods the author coherently analyzed the data.

Scientific novelty of the article. The right of private ownership of housing as a constitutional right is unlimited. A person must use his or her private property in such a way that it does not affect the interests of other individuals and legal entities.

The article also notes that in the 7th-8th centuries, Muslim law began to play an important role in Azerbaijani law. During the 23 months of existence of the Azerbaijan Democratic Republic only 1 (one) legal act reflecting housing issues, the law "On the terms of use of housing, commerce and other areas and determination of maximum prices for use", was adopted on April 12, 1920. After the restoration of independence, on November 9, 1991, the Law on Property in the Republic of Azerbaijan consisting of 24 Articles was adopted. The second item of Article 4 of this Law states that the property in the Republic of Azerbaijan consists of state property, collective property and private property. The article analyzes the provisions of this Law.

The researcher defines in the conclusions that the right to housing is one of the constitutional rights. He emphasizes that the Constitution, which is the Supreme Law of the state, contains provisions regarding housing rights.

As it is seen, the privatization of flats is a voluntary state event. There is no compulsory privatization. Privatization of housing is an individual right of a citizen of the Republic of Azerbaijan or a stateless person who has concluded a housing lease with the owner of a state or public housing fund.

Key words: *Constitution, Housing Code, Housing Rights, Property Law, Housing Law, Housing Fund.*

Основна мета дослідження полягає у вивченні історії розвитку житлового законодавства в Азербайджані й аналізі регулювання житлових відносин у галузі житлового законодавства з давніх часів до наших днів, а також у вивченні історії житлового законодавства.

Методи. Під час написання дослідницької роботи були використані методи систематичного аналізу, узагальнення нормативних науково-практичних матеріалів, історичний підхід тощо. Автор аналізував дані в скоординованій формі за допомогою загальних і спеціальних наукових методів.

Наукова новизна статті. Право приватної власності на житло як конституційне право не обмежено. Людина повинна використовувати свою приватну власність таким чином, щоб це не зачіпало інтереси інших фізичних і юридичних осіб.

У статті наголошується, що у VII–VIII століттях мусульманське право стало відігравати важливу роль в азербайджанському праві. Протягом 23 місяців існування Азербайджанської Демократичної Республіки був прийнятий тільки 1 (один) нормативно-правовий акт, що відображає житлові питання – Закон «Про умови використання житла, торгівлі та інших областей і визначення максимальних цін за їх користування», що був прийнятий 12 квітня 1920 року. Після відновлення незалежності 9 листопада 1991 року було прийнято Закон «Про власність в Азербайджанській Республіці» із 24 статей. У другій частині статті 4 цього Закону підкреслюється, що власність в Азербайджанській Республіці складається з державної, колективної і приватної власності. У статті аналізуються положення цього закону.

У заключній частині дослідник зазначає, що житлове право є одним із конституційних прав. Він підкреслює, що в Конституції, що є найвищим законом держави, містяться положення, які відображають права на житло. У заключній частині дослідник зазначає, що житлове право є одним із конституційних прав. Він підкреслює, що в Конституції містяться положення, що відображають права на житло. Як видно, приватизація житла є добровільним державним заходом. Немає ніякої обов'язкової приватизації. Приватизація житла є індивідуальним правом громадянина Азербайджанської Республіки або особи без громадянства, яка уклала договір оренди житла з власником державного або державного житлового фонду.

Ключові слова: *Конституція, Житловий кодекс, житлове право, майнове право, житлове законодавство, житловий фонд.*

Significant changes and progress have been made in the life of Azerbaijan society in recent years, and positive changes manifested within the country have also influenced the purposeful housing policy of the state. The Republic of Azerbaijan has taken decisive steps in the area of housing, treated with deep respect and care for the individual and his /her personality.

The main aim of the study is to investigate the development history of housing legislation in Azerbaijan and to analyze the regulation of housing relations.

Methods. The researcher systematically analyzed the materials using systematic analysis and a historical approach. The historical approach helps to investigate the development history of housing legislation in Azerbaijan.

Review of last publications. Considering the research carried out by a number of foreign and national researchers on the subject, we can note the following. For example, researcher V.T.Batichko in his monograph "The Housing Law" analyzes the subject matter, meth-

od, basic principles in the field of housing relations, issues of housing policy and rules for the use of residential areas, bases and rules for the provision of housing under social contracts, types of housing and other issues.

Turkish researcher Mehmet Ayan in his work “The Propety Law” deals with property rights and the protection of this right, movable and immovable property.

Another Russian researcher V.P.Tudzilov in his work “The concept of housing accommodation” deals with the concept of housing and the right to housing.

Another Russian researcher G.F.Sheshko in his work “Comment to the Housing Code of the Russian Federation (paragraph-by-paragraph)” explains Comments to the Housing Code of the Russian Federation.

The Russian researcher L.Y. Mikheyeva in the article “The system of citizens' rights to living quarters” deals with citizens' housing rights.

To all appearance, housing issues remain a pressing problem in almost all countries.

Presentation of the main text. According to the French philosopher Auguste Comte, a concept can only be adequately understood until its history is known [2, p. 16]. Agreeing with the position of Auguste Comte, we see that the earliest source of civilization in the slave-owning system of Azerbaijan, one of the oldest centers of civilization, was custom if we consider the development history of housing legislation. a law had emerged in connection with the development of state power. In the early days, the Law was replaced by the decisions of the governor and the council of elders.

In ancient Azerbaijan, which was not so rich with legal sources, it is not possible to provide detailed information about the initial character of the Law, as well as the right to housing eligibility. M.F. Melikova and Kh. J. Ismayilov were right saying that the lack of law monuments such as the statutes of King Bakhhoris in ancient Egypt, the Code of Hammurabi in ancient Babylon, the laws of Manusmriti in ancient India, The Law of the Twelve Tables (Latin: *Leges Duodecim Tabularum* or *Duodecim Tabulae*) in ancient Rome, in ancient Azerbaijan does not allow to reflect the comprehensive view of the issues of public administration and Law [2, p. 33].

There is no information on the elements of housing law relations in the legal norms existing in the ancient slave-owning states of Azerbaijan – Mannea, Atropatene, and Albania. This problem did not cease to exist after Avesta, the oldest political and legal monument of the Azerbaijani people, appeared on the territory of the Mannae, Media. Avesta is a diverse source of numerous theological, ethical, historical-epic and legal norms that emerged at different times and places.

I.H. Aliyev believed that “Avesta”, written in golden letters on the 12,000 cow skin or trees, existed much earlier than Alexander the Great. Avesta was consolidated as law in the 1st century BC [4, p. 118–119].

The original Avesta consisted of 21 nasks (books) and 815 chapters. The reason why these books have not survived until today is related to the destruction and fire resulting from the attack of Alexander the Great. The primary Avesta is claimed to have 345,700 words (gahs), and only 83,000 of them have reached us,

and they have been collected in books called *The Vendidad* (a corruption of Avestan *Vī-Daēvō-Dāta*, “Given Against the Demons”), “The *Yasna* (“worship, oblations”)), “The *Visperad* (“prayer to all patrons”))” [6, p. 27]. However, the mentioned books do not include legal relations on housing.

The formation of feudal economic relations in the territory of Azerbaijan dates back to the beginning of the 3rd century AD. Albania and Atropatene were among the first countries where feudal relations were formed. The Sassanid state, which came to power in Iran in 224, occupied Atropatene and Albania in 226 AD. A.H. Fazili considers the Sassanid period to be the peak of Zoroastrianism [6, p.179].

The “Tensar Letter” dated back to the 6th century and “Matikan” written in 620, are referred to the legal monuments of the Sassanid period in Azerbaijan. “Matikan” is also known as the Sassanid Code of laws. Although the Sassanid Code of laws contains property relations, it does not contain any instructions on the housing.

Z.M. Bunyadov shows that at the end of the first half of the 7th century, Azerbaijan was occupied by the Arab Caliphate and included into it as two provinces – Azerbaijan and Arran [6, p. 7]. At the end of the 7th – early 8th centuries – after Islamic religion became dominant in Azerbaijan, Shariah and Muslim Law, an integral part of Islam, began to play an essential role in Azerbaijan’s Law.

During the 23 months of existence of the Azerbaijan Democratic Republic only 1 (one) legal act reflecting housing issues, the law “On the terms of use of housing, commerce, and other areas and determination of maximum prices for use”, was adopted on April 12, 1920. [4, p. 435].

The second chapter (Articles 71–84) “Construction Rights” of the Civil Code of the Azerbaijan SSR, which came into force on September 8, 1923, was adopted at the third convocation of the second session of the Central Executive Committee of Azerbaijan on June 16, 1923, after the establishment of Soviet power in Azerbaijan, is devoted to the issues related with the flat rent, as well as other issues related with the housing area [9]. According to Article 71 of this Code, contracts for the provision of urban land for construction have been signed for 49 (forty-nine) years for stone buildings and 20 (twenty) years for other constructions between the communal departments and the cooperative associations or other legal entities, as well as individual citizens.

The following four (4) articles of the Criminal Code of Azerbaijan SSR, consisting of 264 Articles which came into force on March 1, 1961, were adopted by the Azerbaijan SSR dated December 8, 1960:

- 1) Article 132 – Violation of housing immunity of citizens;
- 2) Article 162-1 – Violation of norms established on the number of floors and rooms, the area of the flat;
- 3) Article 166 – Illegal transfer of housing area to another person for money;
- 4) Article 214-1 – Violation of the rules for the purchase of building materials.

As in all spheres of social and economic life during the Soviet era, including in the 70-80s of the 20th cen-

ture, housing was regulated by the state. The majority of the population got housing areas from the local authorities or factories, plants, and companies they worked for permanent use for free. However, the flat could also be bought with money by joining the construction of cooperative housing. The particular interest of citizens in the construction of cooperative housing and their participation in the organization of housing and construction cooperatives played an essential role in solving such social problems as housing. Housing and construction cooperatives in Azerbaijan were mainly organized in Baku.

It should be noted that courts also played an important role in securing citizens' rights to housing. In this regard, the decision No.2 of the Plenum of the Supreme Court of Azerbaijan SSR dated July 21, 1972, entitled "On Court Practice on Citizens' Resettlement Claims," draws attention. In the Preamble of the decision, it was stated: "Protecting the housing rights and interests of the citizens of the Soviet Union secured by Law is one of the essential tasks of the judicial bodies. The courts of the Republic hear a large number of cases related to civic housing disputes, including claims of citizens on resettlement. Courts properly hear such cases in compliance with the norms of housing legislation, and the violated housing rights and interests of citizens are restored. At the same time, many shortcomings hinder the proper resolution of disputes in the courts.

As a result of the collapse of the USSR, on October 18, 1991, at the session of the Supreme Soviet of Azerbaijan, the Constitutional Act on State Independence was adopted, and the state independence of our country was restored. The Constitutional Act states that the independent Azerbaijan State is the legal successor of the Azerbaijan Democratic Republic, which existed in 1918–1920.

The acquisition of housing rights by the citizens of the USSR for the first time was reflected in the third Constitution of the USSR dated October 7, 1977. To regulate the housing rights more broadly, the Housing Principles of the USSR and the union republics by the Decision of the Supreme Soviet of the USSR dated June 24, 1981, and the Housing Code of Azerbaijan SSR was adopted on July 8, 1982, under these Principles. The norms regulating relations with the housing and construction cooperative for the first time are reflected in a separate chapter in this Code. Thus, Chapter 5, which combines 9 (nine) articles of the afore-said Code, is entitled "Provision of Citizens with Living Areas in the Houses of Housing- Construction Co-operative and Use of This Area" (Articles 109–117). Many norms regulating various areas of housing relations, including those in the field of housing co-operative and previously incorporated in separate legislative acts, have been incorporated into the Housing Code. Although the gaps in the legislation on housing-construction co-operatives were removed by the adoption of the Housing Code of the Azerbaijan SSR, the circumstances required the adoption of specific legislative acts to regulate relations with housing-construction co-operatives. That is why the Decree of the Soviet of Ministers of the Azerbaijan SSR No. 252 from June 3,

1983 approved the "Model Charter of Housing and Construction Co-operative in the Azerbaijan SSR." Moreover, by the decision of the Baku Soviet of People's Deputies on April 8, 1988 "Rules for the Registration of Citizens in Need of Improvement of Housing in Baku and Distribution of flats" and the Regulation on "the costs of selling and maintaining the flats in the state and public housing funds to the citizens" under the Decree of Soviet of Ministers of the Azerbaijan SSR No. 257 dated on June 14, 1989, was approved. The privatization of flats was started based on the last Decree.

Norms related to housing regulations were mainly reflected in the Housing Code, the Civil Code, and partly in the Code of Administrative Offenses of the Azerbaijan SSR dated December 13, 1984, and the Criminal Code of the Azerbaijan SSR dated December 8, 1960.

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Article 22 of the Constitutional Act states that "property can be in the following forms: state property, private property, and collective property. Private and collective property is permitted and guaranteed by Law; the Law defines the methods of their acquisition and use, the limits of their activities. Private and collective property cannot be subjected to forced transference. In cases stipulated by law, private and collective property can be transferred for the benefit of the Republic of Azerbaijan provided that damages are paid. Full confiscation of movable and immovable property is not allowed".

After independence, on November 9, 1991, the "Law on Property in the Republic of Azerbaijan", consisting of 24 Articles, was adopted. The second item of Article 4 of this Law states that the property in the Republic of Azerbaijan consists of state property, collective property and private property.

Article 10 of the same Law states that, the state housing fund is in the state property of the Republic of Azerbaijan.

Under Article 17 of the "Law on Property in the Republic of Azerbaijan", the public associations, which are considered as juridical persons, could have buildings, structures, housing funds.

The law of private property plays an essential role in the content of the property right. The law of private property is the broadest right in its content. It gives opportunity to the owner to use the property in his/her possession for any type of activity not prohibited by law and to exercise any action concerning his/her property not prohibited by Law, including transfer of the right to possess, use and dispose of property to other persons, to amortize it, to use as a deposit and otherwise.

The owner simultaneously concentrates all three competences mentioned above (ownership, use, and disposal).

There is an opinion in the legal literature that, besides the right of ownership, use and disposal, there are numerous other proprietary competences in the content of the private property rights, and the trilateral list is not of universal significance. The Anglo-American Law does not provide a legal definition of private property rights, indicating that the number of owner's competence is more than ten.

English lawyer A.M. Honore offered the following 11 elements of ownership right:

1) The right of ownership, which is understood as the exclusive physical control over the property and the exclusive right to use it;

2) The right to use or personal use of the item independently if it does not contain the following two competences;

3) The right of management, that is, to determine who uses it and how;

4) The right to take income, that is, the right to receive a benefit which gives the exercise of two previous competences;

5) The right to amortize, to consume and spend at one's discretion, change, or, in a word, even destroy everything;

6) The right to secure from expropriation (the word "expropriation" is derived from the Latin word "expropriatio," meaning "forced amortization of private property") or safety;

7) The right to give property;

8) The right of termlessness (concerning possession, use and disposal);

9) The prohibition of the use of things to the detriment of others;

10) The loss of property for debt repayment;

11) The existence of the residual nature, that is, the rules for restoring the violated power.

According to N.N. Alekseyev, "in economic conditions where private property is being abolished and in economic conditions governed individually or collectively, everything can theoretically be perfectly imagined, in the social life of the whole of society, the importance is established on the isolation of the natural power. In capitalism, every single owner takes care of his economic interests".

Under Article 21 of the "Law on Property in the Republic of Azerbaijan", the citizen's property includes land plots, houses, flats, gardens, garden houses, garages, household appliances and personal production items, cash, etc. The amount or value of the property acquired by the citizen under the Law or the contract was not limited.

A member of an flat, house-building, garden, garage cooperative acquires the right on the property after s/he has fully paid her/his share of the rented flat, garden, country- house, garage or other building or structure.

A citizen, who owns an flat, dwelling house, garden, garage, other buildings, and structures, may dispose of that property at his discretion: to sell, donate, make a will, lease, and enter into other transactions not contrary to the Law.

Adoption of the Law of the Republic of Azerbaijan dated January 26, 1993 "On Privatization of Hous-

ing in the Republic of Azerbaijan" can be considered as the first step towards strengthening the process of privatization of housing in our country. This Law, comprising 16 articles, contains the main provisions of the privatization of housing, the principles, the scope of bodies authorized to carry out privatization, the range of privatized housing (flats), and many general issues of privatization. Besides, the Law specifies the privatization of housing, the scope of buildings that cannot be privatized, the provision of utilities to privatized flats, as well as the settlement of disputable cases of privatization.

Privatization refers to the acquisition of companies, workshops, production sites, manufacturing units of large enterprises, their plant and equipment, and also liquidated assets from state-owned and local executive bodies by private individuals and joint-stock companies as an exclusive property right [8].

Housing privatization is an integral part of privatization. Article 1 of the Law on Privatization of Housing in the Republic of Azerbaijan states: "The citizens of the Republic of Azerbaijan, as well as stateless persons, who have concluded housing lease agreement with the owner of the state or public housing fund, have the right to transfer the residential houses (houses) to their private property by the terms and conditions established by this Law".

According to Article 3 of this Law, the main principles of privatization of housing are the following:

- basing the privatization of flats on volunteering;

- free privatization of flats (houses);

- ensuring the rights of citizens to claim ownership of their flats by the terms and conditions set out in the Law on Privatization of Housing in the Republic of Azerbaijan;

- Privatization transparency, state control over privatization and public control.

As it is seen, the privatization of flats is a voluntary state event. There is no compulsory privatization. Privatization of housing is an individual right of a citizen of the Republic of Azerbaijan or a stateless person who has concluded a housing lease with the owner of a state or public housing fund.

Citizens, who privatized flats (houses), possess, use and dispose of these flats with the consent of the adult family members: they may make it will, sell, donate, lease, other transactions that are not contrary to the Law. The privatization of flats is carried out by the State Real Estate Register Service under the State Committee on Property Issues of the Republic of Azerbaijan.

Following the return of national leader Heydar Aliyev to power in 1993, as in all other areas of public life, significant changes have occurred in the sphere of housing rights. The reorganization of the economic system has given a new breath to the socio-economic relations. First, the country has entered a free market economy. Secondly, the privatization program has been successfully implemented, and, finally, the unlimited opportunity on all forms of ownership has played an essential role in the fundamental improvement of the social and material welfare of citizens [10].

The first Constitution of the independent Azerbaijan Republic was adopted in a nationwide vote (referendum) after drafting it under the leadership of the great leader Heydar Aliyev on November 12, 1995 [12]. Speaking about the Constitution of independent Azerbaijan, Heydar Aliyev said: "The Constitution should, first of all, reflect the relations between the state, the government, and the people. Distribution of power, supreme executive, legislative, and judicial powers must be based on the will of the people and secured by elections. The state must be people's business. Not people should be for the state, but the state shall secure the nation and these principles should be the basis of our Constitution" [11].

The Constitution of the Republic of Azerbaijan contains provisions on property and housing rights.

Article 43 of the Constitution of the Republic of Azerbaijan is about housing rights [1].

Conclusions. The study concludes that the right to housing and the right to housing inviolability are recognized as one of the fundamental human and civil rights. Currently, the legal basis for the implementation of citizens' housing rights is regulated under the Constitution of the Republic of Azerbaijan, the Civil Code of the Republic of Azerbaijan, the Housing Code of the Republic of Azerbaijan, other legal acts and international treaties to which the Republic of Azerbaijan is a party.

We propose, adding paragraph III to Article 43 of the Constitution of the Republic of Azerbaijan and reading it as follows: "Confiscation of private property is permitted in exceptional cases".

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