

# On Illegal Authority of Departments of Housing and Communal Services

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While the Soviet model has been renounced in many areas of property relations in Azerbaijan, it is still a dominant model in housing management. Although the vast majority of the apartments that people live in are privately owned, their management is still in the monopoly of the state. The Soviet-era departments of housing and communal services (DHCS) meant for the management of the state-owned public housing funds continue to manage privately owned apartments, which is the direct violation of the constitutional rights of the proprietors.

According to Article 29 of the Constitution of the Republic of Azerbaijan, the property right is the right of a proprietor to own, use and dispose of property. Although a citizen can own a property in Azerbaijan, he or she has limited access to use and dispose of it. Issues from the definition of the amount of the housing fees to the disposal of the land plot where the apartment is located are decided not by the residents, but an outsider organization – the DHCS. DHCS continue collecting “garbage money”, “flat fees” and sometimes even local taxes, by disregarding the requirements of housing legislation. Already for nine years these institutions have been rendering “services” to the landlords against their will.

Discussions on DHCS have been around for a long time and although their legal status is disputed, they continue to exist. Unlike in the Soviet time and early years of independence, the range of services provided by the DHCS and personnel has shrunk dramatically. Their job is to collect money. Until recently, the authority of DHCS to verify the

place of residence, which was the main leverage over the population, has been taken away from them. The reality is that there is no alternative to the housing and utility system in Azerbaijan since there are no private companies or associations specialized in housing fund and owners have to address property issues on their own. As a result, The DHCSs have maintained their dominant position in managing apartments.

The DHCS-s, which we refer to as "JEK" in everyday life, are inherited from the Soviet time. Established in 1959, the DHCS was a state body in charge of managing public housing fund and was the first tier of the housing sector in the USSR. when first established, these bodies were called Housing Exploitation Committees (Housing and Utilities Departments), which is why we refer to them as "JEK".

In the 70s of the last century, JEKs in some parts of the former USSR were replaced with the Directorates for the Residential Buildings Operations (DHBO). At the beginning of the 80's, they turned into Regional Operational Authorities (ROA). JEKs were subordinate to the housing Administration of the Local Soviets. These institutions were responsible for the maintenance of residential and service buildings in certain areas, as well as for garbage collection, greening, the cleaning of the area, etc.

The DHCS-s, which were part of the USSR housing sector, still operate in Azerbaijan, with their operations previously regulated through the "Housing Code of Azerbaijan SSR", which was adopted in 1982 and dismissed in 2009. The Code assigned housing and utility organizations to be in charge of managing the state and public housing fund. Article 19 of the Code stated that housing and utility organizations operating on the basis of the state budget are created for the management of the state and public housing fund. According to the Code, the function of these organizations is to protect the housing fund and use it properly, to provide citizens with the highest

level of housing service, as well as to control the compliance of citizens living space, and balconies with the requirements of maintaining the surrounding area.

However, the new Housing Code of the Republic of Azerbaijan, which came into force in 2009, legally ousted the housing and utility departments from managing the housing fund.

According to the new Code, the state housing fund is managed by relevant government agencies, while the municipal housing fund by municipalities. The private housing fund is managed either by the proprietor directly or a managing organization of his or her own choice. Article 141 of the Code states that the owners of a multi-apartment building are obliged to adopt one of the following methods of management of the building:

- *Direct management of the building by area owners;*
- *Management through a joint venture of apartment owners or specialized consumer cooperatives;*
- *Management by managing organizations.*

As is seen, none of the three (state, municipal, and private) ownership forms of the housing fund is about the service of the DHCS. The Code provides for the establishment and of joint ventures or specialized consumer cooperatives and delegating the housing management to them. Despite all this, MIS continues to provide “services” to private apartments. In fact, this service includes the collection of “housing fees” and household waste, and in some cases, the collection of property taxes, which is within the authority of municipalities, etc. However, all the hardships of multi-apartment buildings, including their financial costs, are borne by the residents.

While the legal removal of DHCS-s from the housing management occurred through the adoption of the new Code, the illegal activities of these departments in relation to private ownership go far back. Article 14 of the Law “On the Privatization of the Housing Fund of the Republic of

Azerbaijan" adopted on January 26, 1993 states *that state-owned housing and utility-departments and construction agencies can serve the owners of the privatized apartments (houses) only on the basis of a contract.* The law also states that the owners of flats in the fully privatized buildings are entitled to independently select organizations, including state-owned housing and utilities, co-operatives, private firms and other business entities for home service and repair. At present, 94% of the housing stock is privately owned. According to official statistics, the total number of privately owned flats exceeds 1.8 million and only 13 thousands of such flats are managed by a body established by property owners themselves, which is apparently less than one percent. The majority of the remaining private houses are managed by the DHCS-s, and a small part by HCC-s (housing and construction cooperatives). At present, those 84 Joint Ventures of Flat Owners (JVFO), which have been established with the support of the Ministry of Economy in accordance with the Housing Code and cover 104 residential buildings, cannot properly operate because a number of issues arising from the Code, including common property, tariff mechanisms, administrative responsibility and so on remain unresolved. There is no such practice yet of any DHCS contracting with any proprietor in accordance with the requirements of the legislation, and during this period, they have been serving the proprietors against their will of the proprietors and collected the housing fees in return.

At present, DHCS act as a part of urban and rural executive committees. For example, the capital city DHCS are subordinate to the Department of Housing and Communal Services (DHCS) under the Baku City Executive Power. This department was established by the Baku City Executive Power on the basis of the Decree #444 issued on May 12, 1999. The department's function is to improve the housing and communal services, increase the utilization of the housing fund and utility facilities, take measures to protect and renovate them, and so

on. It also includes major overhaul, modernization and construction of the housing fund and utilities, and replacement of and technical maintenance of worn-out elevators. However, the existing authority of the Housing and Utilities Department directly contradicts the new Housing Code.

Currently, tariffs for Soviet flats are determined by the Cabinet of Ministers' Resolution No. 40 of 10 March 2000 **"On Approval of Tariffs for Use of Living Area (Flat Rate) and Housing and Communal Services in the State and Public Housing Funds in the Republic of Azerbaijan"**. According to this Regulation, the owners of the privatized flats are charged 1.5 azn per month per square meter of housing for maintenance of houses where flats are located. The DHCS-s continue to collect housing fees from homeowners. However, the houses charged this money are not state-owned public properties, but privately owned.

There are two main sources of funding for DHCS: state budget and housing fees collected from the population. The direction of these expenditures is not open to the public, and the extent to which they are transparently spent is disputable.

*The philosophy of housing management is not only about providing people with the right to dispose of property, but also enhancing their participation and management capacities. It is not accidental that joint ventures of homeowners can be considered as a small municipality. In this regard, the government should immediately bring clarity to the status of the DHCS and, in accordance with the requirements of the Housing Code, should delegate the management of multi-flat buildings to the ownership of the proprietors.*