The Arbitrariness of Housing Cooperatives on Unprotected Private Property

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Public debates about the protection of property rights in Azerbaijan are mainly focused on the injustice of court decisions and the difficulty of acquiring ownership rights to real estate. In spite of the fact that our ownership rights over the apartments we live in are recognized, we cannot take advantage of our right to manage them. This is due to the fact that despite our constitutional rights, the apartments we live in are managed, on the one hand, by the state, in the form of the Housing Maintenance Office (HMO), and, on the other hand, by private companies, in the form of housing-construction cooperatives (HC).

Article 29 of the Constitution of the Republic of Azerbaijan envisages *the right of owner to possess, use and dispose of their property*. Although a citizen can own property in Azerbaijan, he or she has limited access to use and dispose of it. Issues from determining the amount of the housing fees to the disposal of the land plot where the apartment is located are not decided by the owner, but by third-party institutions – HMOs and HCs. Both institutions regularly collect *garbage fees, housing fees, elevator fees* from property owners. While the first institution provides services to the population, most likely, in contravention of Article 29 and therefore, illegally, which we further explain below, the second institution artificially *prolongs its activity* by violating the period allotted to it by law.

HMOs, which are a relic of the Soviet model of the regulation of housing relations, still maintain a majority position in housing management throughout the country. This institution is

popularly known as *ZhEK* (Russian – *Жилищно-эксплуатационная контора*). It is responsible for the housing stock of the country that was built during Soviet rule. Although most of these apartments, built in the 1950s and 60s, have outlived their expected lifespans, they are still inhabited. The Housing Code, which came into force in 2009, calls into question the legal status of HMOs, but they nevertheless continue to operate. Since the fall of the Soviet Union, both the range of services provided by HMOs and the personnel operating under them and providing services have decreased sharply. At the moment, their work mainly consists of collecting money. In our article *On the Illegal Authority of Departments of Housing and Communal Services*, we have provided detailed information about the current position and legal status of HMOs in housing management. Therefore, we would like to focus on HCs in this article.

What is the Function of Housing Cooperatives in Housing Management?

Unlike HMOs, Housing Cooperatives are recognized as participants in housing relations in the Housing Code. Section 5 of the Code is called Housing and Construction Cooperatives and this section regulates the organization and operation of HCs and the legal status of HC members. According to Article 109 of the Housing Code, housing cooperatives are a form of voluntary association based on the membership of physical and/or legal entities for the purpose of construction and/or reconstruction of relevant buildings by pooling property share fees of their members, as well as managing residential and non-residential areas in a cooperative building for a certain period. Housing Cooperatives are created not on a permanent basis, but for a certain period. Thus, Housing Cooperatives are created for the period required for the construction and/or reconstruction of a cooperative building, the full distribution of the residential and non-residential areas available in that building among its members, and the full payment of the membership shares.

Housing Cooperatives are considered consumer cooperatives by their legal status. The number of its members is greater than or equal to five but cannot exceed the number of residential and non-residential areas in the multi-apartment building constructed by the cooperative. *Within one month after the construction and/or reconstruction of the cooperative building is fully completed, housing cooperatives must be dissolved or transformed into a joint society of apartment owners.* Therefore, for an HC to be formed the members must have ownership rights in more than 50% of the total number of residential and non-residential areas in multi-apartment buildings. Property owners living in the building form a joint society of apartment owners on the principle of 50% + 1 person, or entrust the management of the building to the management of a private company of their own free will. In any case, it is important to note one issue: after the multi-apartment building is put into operation, the Housing Cooperative must put an end to its activity, and the decision regarding the management of the building should be transferred to the residents of the building.

According to the Housing Code, a member who has fully paid the share fee and acquired the ownership right to the residential (non-residential) area allocated to him can leave the HC while retaining the ownership right to the relevant area. At the same time, when the member of the Housing Cooperative fully pays the share fee, he acquires the right of ownership to the residential area (Article 112.1).

Who Should Manage Apartment Buildings?

According to the Housing Code, the state housing fund is managed by relevant state institutions, while the municipal housing fund by municipalities. The private housing fund is managed directly by the owner or by a managing organization of the owner’s choice. Article 141 of the Code states that the owners of the apartment building are obliged to choose one of the following methods of management of the building:

• direct management of the building by the owners;

• management via a joint venture of apartment owners or a specialized consumer cooperative

• management by a governing body.

The mechanism of *direct management of the building by the property owners* is mainly applied in the management of buildings with few apartments for the purposes of efficiency. The creation and management of *joint ventures (condominium) or specialized consumer cooperatives* is a very common practice in the world. The main advantage is that the residents of the building are closely involved in the management of the building, not only in the decision-making process, but also in the implementation process. As for the management of the building by the company, although this mechanism includes high-quality and professional service, on the one hand, the demand for their service is not very high due to the high cost of service fees. In any case, all 3 forms of governance require the abolition of housing cooperatives.

Official information on the number of apartment buildings in Azerbaijan has not been made accessible to the public. We know only that by 2021, there are 1,53 million residential buildings in the country, and 1,47 million of them are owned by the population. The share of apartment buildings in residential buildings is not disclosed. Personal conversations with the representatives of the relevant state institutions have revealed that there is no accurate accounting of apartment buildings, and there are different figures in various institutions. According to information in the periodical press, there are about 11.000 apartment buildings on the balance sheet of the Baku City Housing and Communal Management Department alone. Independent real estate experts say that there are 30.000-35.000 apartment buildings across the country. About 2.000-2.500 of these buildings are managed by Housing Cooperatives. According to the Ministry of Economy,

up to 250 joint societies of apartment owners have been established with the support of the Ministry. However, over the past 13 years since the adoption of the Housing Code, their number should have been tens of thousands.

As housing construction grows, one can observe an increase in discontent with the activities of Housing Cooperatives in the media and social networks. This discontent can be categorized as follows:

• Service fees for apartments are high or periodically increased without taking into account the opinion of residents;

• Restriction of utility services due to non-payment or delay of service fees (suspending electricity supply, natural gas, drinking water to the apartment, etc.);

- In spite of the fact that the meters required for the use of communal services (electricity, natural gas, drinking water) are free to the population by law, housing cooperatives charge residents for the purchase and installation of the meters;
- Creation of artificial barriers for the privatization of an apartment by a member of the housing cooperative;
- Preventing the creation of a Joint Society of Apartment Owners (JSAO), which is supposed to be established and managed by apartment owners;
- Sale of an apartment of HC to several persons

Let us consider some of the problems listed above. These problems stem from gaps in governance rather than legislation. The state institutions that monitor the fulfillment of legislative obligations turn a blind eye to what is happening; they are not interested in policing the timely abolishment and the illegal activities of HCs.

For example, Article 393-1 of the Code of Administrative Offenses provides fines for violations of housing legislation.

If housing cooperatives are not canceled within the one month provided for by law, or if a decision is not made to transform the owners of apartments into a joint venture, in this case, a fine of 2.000 manats is to be imposed on officials, and on legal entities 5.000 manats. Currently, there are hundreds of HCs that have not yet become a single society of apartment owners, and they continue to function without being fined. Additionally, the officials of the apartment buildings are to be fined in the amount of 300-800 manats and legal entities in the amount of 1.000-2.000 manats for obstructing the apartment owners' choice of management method in accordance with the Housing Code. This penalty also does not appear to be applied regularly. Examples show that Housing Cooperatives are not only not interested in turning over management to JSAOs, but also they even create various obstacles for the owner who takes the initiative in this direction. The Ministry of Economy and local executive authorities are the bodies responsible for administrative fines for violations of housing legislation. However, the Ministry of Economy has limited authority to enforce legislation. The Regulation of the Ministry of Economy (the institution was called the Ministry of Economy and Industry at that time) approved in 2014, indicates the Ministry as the central executive authority that implements state policy and regulation in the areas of housing and communal services. According to the Regulation, one of the duties of the Ministry is to control the compliance of management entities with the requirements of the Housing Code, as well as to demand the conclusion of contracts with the property owners living in the building in accordance with the rules for the management of apartment buildings; to receive information from participants in housing relations in order to investigate compliance with the requirements of relevant legislation and to analyze them; to take necessary measures on appeals. In the new Regulation of the Ministry approved in 2019, these obligations and authorities were taken from the Ministry. They were not given to other bodies either and thus, the issue of enforcing housing management compliance with the

requirements of the Housing Code is no longer under state control. Local executive authorities are responsible for managing the state housing fund, but they manage buildings through HMOs.

One of the issues fueling discontent among apartment owners is Housing Cooperatives' collection of funds for the purchase and installation of meters required for the use of communal services (electricity, natural gas, drinking water). This is illegal. Pursuant to Article 11 of the Law on Electric Power, Article 13 of the Law on Gas Supply and Article 31 of the Law on Water Supply and Wastewater, meters for these utilities are to be supplied and installed at the expense of the supplier enterprise to apartment owners. The aforementioned laws state that residential buildings can be allowed to operate only after they are equipped with meters. According to Article 102.2 of the Urban Planning and Construction Code, the operating permit is issued after the construction object has been inspected and its compliance with the established requirements has been established. Therefore, the costs of meters and their installation should be included in the sale price of the apartment or the share fee, and therefore, included in the total costs of building construction for the builder.

Another problem is related to the suspension of electricity and heating energy, gas and water supply by HCs if apartment owners do not pay maintenance fees for the residential area. In accordance with Article 139.1 of the Housing Code, the amount of payment for utilities is determined in contracts concluded with the persons engaged in the relevant type of activity on the basis of the tariffs determined according to legislation. In this regard, according to the requirements of the valid normative legal acts, the provision of utility services provided to consumers in apartment buildings can be suspended only by the relevant supplier enterprise. In other words, Azerishig OJSC has the right to stop electricity, Azersu OJSC- water, and Azerenerji OJSC has the right to

suspend natural gas supply. HCs do not have this right.

In some cases, housing cooperatives are converted into LLCs (Limited Liability Companies) in order to avoid rarely enforced fines above by pretending to meet the requirements of Article 109.5 of the Housing Code. This is justified by the fact that the people are not interested in creating LLC, and the law requires that HCs be dissolved and transformed into another institution within a month. In this case, these LLCs see themselves as a management company. In fact, this is another violation of the law. This is due to the fact that Article 141.2 of the Code states that management methods can only be provided and decided upon by the owners of the apartment buildings. Article 141.3 of the Code states that the management method of the apartment building is chosen at the general assembly of the owners of the building and can be chosen or changed at any time based on its decision. In other words, LLCs created by HCs do not have legal standing to continue their operations and should yield to decisions adopted by the general assembly of the owners of the building.

Thirteen years have passed since the adoption of the main normative act, the Housing Code, which regulates relations in the field of housing management. Unfortunately, the requirements of the Code have not been realized. Owners cannot fully secure the property rights over the building in which they live. They are best allowed to decide on the interior of the apartment they live in. They cannot participate in the management of the outside of the apartment, that is, the common areas (roof, basement, building area, etc.). Illegalities committed by Housing Cooperatives are minor in comparison with the major problem – leaving private housing out of control.