**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Articles 373.2 and 384.0.4 of the Civil Code of the Republic of Azerbaijan*

**03 June 2013                                                                            Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova, Mahir Muradov, Sudaba Hasanova (Reporter-Judge), Rovshan Ismaylov, Jeyhun Garacayev, Rafael Gvaladze, Isa Najafov and Kamran Shafiyev;

attended by the Court Clerks Faraid Aliyev and Elmaddin Huseynov,

representatives of interested parties – Hagani Mammadov, Judge of Court of Appeal of Baku city; Rovshan Muradov, Head of Sector of Economical Legislation Department of Milli Majlis of the Republic of Azerbaijan,

expert – Server Suleymanli, Deputy Dean of Law Faculty of the Baku State University, Associate Professor of the Department Civil Law, Doctor of Philosophy in Law,

specialist – Bagir Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

in accordance with the Article 130.4 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of Court of Appeal of Baku city on interpretation of Articles 373.2 and 384.0.4 of the Civil Code of the Republic of Azerbaijan.

having heard the report of Judge Sudaba Hasanova, the reports of the legal representatives of the subjects interested in special constitutional proceedings, expert and specialist, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Court of Appeal of Baku city having applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) asked to give an interpretation of Articles 373.2 and 384.0.4 of the Civil Code of the Republic of Azerbaijan (hereinafter referred to as the Civil Code).

In the inquiry it is specified that the claim of “Azeriqazbank” Open Joint Stock Company (hereinafter referred to as OAO “Azeriqazbank”) to I. Abdinov and A. Nazarov concerning unpaid basic debt in amount of 10,000 (ten thousand) USD, debt on interest in amount of 12,310.32 USD, penalty in amount of 8,939.50 USD (forfeit) of foot up to 31,249.82 USD according to the credit agreement signed on September 10, 2007 was partially satisfied by the decision of Yasamal district court as of September 11, 2012, it was decided to collect from defendants for benefit of Bank in total 23,203,32 USD (appropriate amount in AZN according to Central Bank’s rate on payment day) as a payment of debt.

In the appeal made by defendants it was specified that according to the credit agreement signed on August 10, 2007 between OAO “Azeriqazbank” and A. Nazarov the credit in the amount of 10,000 USD for twenty four months with charge of 26% per annum was issued and as a guarantee of this agreement the guarantee agreement was signed with I. Abdinov. However, on the credit which shall be extinguished by the debtor till August 10, 2009 according to the schedule specified in the Addition No. 1 according to point 5.1 of this agreement any fee on a credit debt was not paid. According to statements of defendants, the term of limitation of action on case was passed in view of the fact that the claimant timely did not make against them the demand, and applications submitted by them on this matter was not taken into account by court of first instance.

 At consideration of the case in court of appeal instance the claimant's representative based on Article 384.0.4 of the Civil Code noted that limitation of action in principle should not be applied to this dispute.

Considering distinction in viewpoints of parties and lack of single court practice for this category, the Court of Appeal of Baku city came to a conclusion concerning necessity of the interconnected interpretation of Articles 373.2 and 384.0.4 of CC.

In connection with the inquiry, the Plenum of the Constitutional Court considers necessary to point out the following.

According to parts I and II of Article 13, Article 29.2 and Article 59 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution), the state-owned, private and municipal property is recognized and protected in an identical form, the security of property including business activity and freedom of the agreement in civil circulation proved by the right to be engaged in other economic activity which is not forbidden by the law is guaranteed.

The state guarantees the right of property irrespective of form of property; this right is protected by all means that are not forbidden by the law, and judicial protection acts as a fixed asset of protection. Namely in the case of the judicial resolution of dispute concerning property the rights of all disputing parties – as the persons assuming satisfaction of the property demands made by them and the judicial act having an obligatory legal force and persons not concordant with the made demands are guaranteed. It should be noted that subjects of the civil relations for protection of rights and legitimate interests shall have potential of real implementation by procedural means. The equality before the law and court is provided with consideration of each legal case in an identical procedural order and a form, identical procedural guarantees for the parties. It reaches identical satisfaction of legal requirements of concerned parties, for them are created the equal opportunities for protection of the interests before court.

According to the specified provisions of Constitution the regulation of legal relationship in the field of civil circulation in the constitutional state shall be based on the principles of equality of everyone before the law and court, a security of property and freedom of the agreement, balance of public and private interests in case of determination of legal status of subjects of these relations, respect for criteria of harmony and balance in case of determination of conditions of implementation of their rights and possible restrictions.

Protection of stability of civil circulation along with establishment of permission of reasonable requirements of the parties, in a judicial proceeding also is inclusion in right regulation of financial norms of law which give the chance to other party to demand not to consider a dispute in fact at the appeal of the person to court for protection of the right after the expiration of considerable time since the moment when the person has learned about violation of the right.

Such regulation relating to all participants of the civil relations found the reflection in provisions of the civil legislation concerning limitation of action, orders of their calculations, bases of suspension and interruption of their current. Terms of limitation of action are divided into general and special. General term of limitation of action does not depend on legal status of subjects of legal relationship, form and a type of property. For some claims, the special terms of limitation of action established also in comparison with general terms of limitation of action, they can be reduced or extended.

According to Articles 372.1 and 372.2 of the Civil Code, limitation of action extends to a right to claim from other person of making or evasion from making of any action. Limitation of action is a period for protection of a right of a person whose right has been violated through the claim.

According to the civil legislation, general term of limitation of action constitutes ten years, limitation of action in respect of claims relating to contract requirements shall be 3 years, and limitation of action in respect of claims relating to contract requirements connected with immovable property shall be 6 years (Articles 373.1-373.2 of CC). At the same time, for specific types of claims the present Code has provided a possibility of establishment of special terms of limitation of action, reduced or longer in comparison with total period (Article 373.4 of the Civil Code).

The purpose of institute of limitation of action is creation of definiteness and stability of civil circulation and legal relationship, disciplining their participants, ensuring timely protection and recovery of rights and legitimate interests of subjects of legal relationship from point of view of terms. Thus, lack of reasonable time of restriction for forced protection of violated rights can lead to violation of rights protected by law and interests of defendants and third parties that did not consider the necessity of collection and storage of proofs important for consideration of the case. Usage of limitation of action by court based on the statement of disputing party preserves participants of civil dispute against unreasonable lawsuits and at the same time forces for timely implementation and protection of the rights.

Rules on terms of limitation of action and their calculation are established also in legislations of a number of the countries (Russia, Ukraine, Kazakhstan, Belarus, Germany, France, Turkey, etc.), in spite of the fact that in legislations of these countries terms of limitation of action are determined differently, they serve for the same purpose.

The similar legal position is expressed in the decision of the Plenum of the Constitutional Court of December 27, 2001 “On interpretation of Article 373 of the Civil Code of the Republic of Azerbaijan”.

The European Court of Human Rights (hereinafter referred to as the European Court) in its Decision of July 7, 2009 relating to the case of Stagno vs. Belgium has specified that the purpose of limitation of action specified in legislation is definiteness. In such a way it protects potential defendants from requirements at which term is passed exempts courts from need to make decisions after there has passed certain time, based on uncertain and incomplete proofs.

The principle legal position of the European Court consists of the standard of “lawfulness” set by the Convention, a standard which requires that any legal act (any law) be sufficiently precise to allow a person – if needed, with appropriate advice – to foresee, to a degree that is reasonable in relevant circumstances, the consequences which a given action may entail (decision of European Court dated July 31, 2000 on case of Jėčius vs. Lithuania and decision of Grand Chamber of the same Court as of March 28, 2000 and on July 22, 2004 on cases of Baranowski and Broniowski vs. Poland).

Along with the aforementioned for promotion of claim in connection with protection of violated rights of a person, the correct establishment of the beginning of term of limitation of action is important from the point of view of rational implementation of person’s right for judicial protection and restoration of the violated rights. The beginning of a course of term of limitation of action is connected on the one hand with the objective moment of violation of the subjective right, and on the other hand the subjective moment when the authorized person has learned or had to learn about violation of rights. Existence of these two various circumstances, and also their not coincidence in certain cases is the important factor exerting impact on establishment of the beginning of term of limitation of action.

According to the provisions, providing usage of limitation of action, the claim in respect of protection of a right is accepted by court for consideration regardless of expiration of limitation of action. Limitation of action is applied by court only on the basis of a petition of a party submitted prior to adoption of court decision. Expiry of limitation of action for application, which a party has submitted a petition is a ground for adoption by court of decision on refusal of claim (Articles 375.1 and 375.2 of the Civil Code).

At the same time, according to the legal position created in the previous decisions the Plenum of the Constitutional Court considers necessary to note that rejecting the claim by the reason of the expiration of limitation of action, the court at first has to investigate, has or not the applicant the corresponding subjective rights, and whether there are violations of this right by the respondent. The judicial act which rejected the claim by the reason of the expiration of limitation of action which however is not resolving an issue of violation of subjective civil law in itself is contradictory and unreasonable as results to which the court in connection with the expiration of limitation of action came to the necessary bases does not refer (decision of Plenum of the Constitutional Court of May 8, 2008 in connection with the complaint of L.Binnatova).

At the same time, it is necessary to consider that by preparation of case for judicial review the requirement of the judge to the parties to present the proofs or explanations in connection with the expiration of limitation of action is not admissible. If the concerned party, that is the defendant in the protest given on the action for declaration refers to the expiration of limitation of action, the judge for ensuring the correct and timely ensuring solution of case can offer to provide as preparation of case for legal proceeding to each of the parties the corresponding proofs in connection with the term of limitation of action.

In many of its decisions the Plenum of the Constitutional Court mentioning the purpose and value of this institute noted that from the point of view of solution of a civil case according to the law the correct application of provisions of the legislation concerning terms of limitation of action is important (decisions of the Plenum of the Constitutional Court of June 30, 2005 in connection with complaint of G. Gashimov and others, of October 30, 2007 in connection with complaint of R. Salamov and of January 16, 2009 in connection with complaint of H. Khalilov).

In connection with the question specified in the inquiry the Plenum of the Constitutional Court notes that according to Article 389.1 of the Civil Code establishment, change or the termination of the civil rights and obligations is implemented based on the agreement approved between two or several persons.

According to Article 385.1 of the Civil Code according to the liability one person (debtor) is obliged to make a certain action for benefit of other person (creditor), for example to pay money, to transfer property, to perform work, to render service, etc., or to refrain from a certain action, and the creditor has the right to demand from the debtor of execution of his obligation. Article 386.1 of this Code with some exceptions establishes availability of the conclusion of the contract between its participants for emergence of the liability.

One of such contracts is the credit agreement specified in Article 739.2 of the Civil Code. According to given contract the bank or other credit institution undertakes to transfer to the debtor money (credit) in the amount of and on the conditions provided by the contract, and the debtor undertakes to return this amount and to pay percent.

It should be noted, what in the conditions of the free entrepreneurship and market economy obligation fulfillment arising from property and connected with property of the non-property relations has great economical and social value. Fair obligation fulfillment provided by the contract, first of all, serves for legitimate interests of the parties and civil circulation.

From this point of view in case of implementation of the rights and fulfillment of duties from the parties, accomplishment of actions is required, as conscientiousness requires. In the course of the fulfillment of obligations, the parties, with the purpose of creating of preconditions for the contract to be carried out, act together and refrain from any actions, which may impede achievement of the contract’s goals or endanger the obligations fulfillment (Articles 425.1 and 425.2 of the Civil Code).

The civil legislation along with ensuring of freedom of the conclusion of the contract constituting the legal basis of contract, provided general terms of the conclusion of the contract (types and forms of contracts, its standard conditions, the bases of change and termination, etc.), including a number of the provisions regulating force of the signed contract.

Article 399 of the Civil Code established the following concerning duration of contract:

- contract shall enter into force and shall be binding on parties from the time

of its execution (Article 399.1 of the Civil Code);

- parties may establish that terms of executed contract apply to their

relations existing prior to the execution of contract (Article 399.2 of the Civil Code);

- contract may establish that its termination shall terminate obligations

thereunder. Contract not containing such a condition is considered as in effect, until time parties fulfill their obligations set forth therein (Article 399.3 of the Civil Code);

- expiration of contract’s term does not free parties from liability for violation thereof, made prior to expiration of the term (Article 399.4 of the Civil Code).

In the credit contract only validity periods of the credit contract and term of repayment of the loan inherent in these legal relationship can be established separately (the main amount and the added percent).

Due to the fact that the specified terms become an origin of the corresponding legal consequence under the agreement, shall be considered that validity period of the credit contract covers the moment of the conclusion of the contract and complete fulfillment of obligation and a loan term (the main amount and the added percent) receipt of the credit and term of the corresponding payments.

The term of the credit contract by the legal nature regulates time of origin, change and termination of rights and obligations of parties where as loan term regulates time of fulfillment of obligation, established in credit contract.

Thus, credit relations have term and are contractual relations, implementation term of which is determined by periods. Liabilities established in credit contract that is the term of accomplishment of liabilities, connected with payments of a principal debt and liabilities connected with settlement of percent on the credit contract are established according to the order, which is in advance provided in the contract.

As it was noted above, in case of violation of the right of the person to his protection the law applies terms of limitation of action to a circumstance of application of enforcement measures to the person who violated the right. Application of enforcement measures upon the demand of the concerned party is possible only within terms of limitation of action.

In this sense, the establishment of the beginning of a course of term of limitation of action, which creates a basis of timely implementation the rights of the requirement of restoration of the rights of the person whose rights was violated, has the special value.

Provisions of Article 377 of the Civil Code regulate the bases and orders of a course of limitation of action for promotion by the interested person of the claim concerning non-execution of liabilities.

The general order of the beginning of a course of term of limitation of action established in Article 377.1 of the Civil Code. This article covers not terms of the limitation of action connected with the liabilities following from contracts, but a circumstance of the beginning of a course of terms of limitation of action in connection with execution of non-contractual liabilities. The beginning of a course of term of limitation of action according to liabilities of the credit contract should not be caused by that the creditor shall know about violation of a right to claim according to these liabilities, and even about availability of such right.

This legal status is clearly reflected, as in Articles 377.2 and 377.3 of the Civil Code, and in general in provisions of Civil Code concerning terms of limitation of action, in connection with separate types of contracts.

According to Article 377.2 of the Civil Code according to liabilities with a certain completion date the course of term of limitation of action begins upon termination of completion date.

The course of term of limitation of action in connection with the liabilities following from contracts begins next day after date when the creditor can require from the debtor of execution of a debt (Articles 368 and 377.2 of the Civil Code).

At the same time the analysis of provisions of the limitation of action connected with terms shows that the fact of validity in itself does not grant to the creditor the right to demand from the debtor of forcible fulfillment of obligation.

Considering specified the Plenum of the Constitutional Court considers that if other circumstance is not provided in the credit contract, the course of term of limitation of action begins upon termination of completion date according to all liabilities established in contract.

As for Article 384.0.4 of the Civil Code the Plenum of Constitutional Court notes that in this article are established the circumstances which does not include limitation of action.

It is necessary to consider that Article 384.0.4 of the Civil Code regulates not a right to claim which follows from the contract, but the circumstances connected with the corporeal rights. The corporeal rights being the full and limited rights are divided into two primary groups: the full corporeal right – the property right; the limited corporeal rights – the servitude, a usufruct, inheritance on a construction, pledge and a mortgage. Feature of these rights consists that not use by these rights does not become the reason of their elimination and the possibility of promotion of the requirement against everyone is not limited by a certain term.

The principle of not submission of the corporeal rights to terms of limitation of action is one of generally accepted principles of the right, and serves for providing of provisions of the Article 29, Article 60.1 and Article 71.2 of the Constitution.

In Article 384.0.4 of the Civil Code it is enshrined that terms of limitation of action do not extend to claims of owner concerning elimination of any violations of his/her right even if these violations are not connected with dispossession.

On the other hand, because the relations existing between credit institution and the client are the relations following from the contract and limitation of action does not belong to them, then it can result in insignificance of the terms established under the contract.

Due to the fact that credit disputes constitute a claim arising from contractual relations and three years term provided in the Article 373.2 of the Civil Code is applied to them, it shall be not correct to identify these disputes with claims to which terms of limitation of action do not belong and accordingly the provisions of the Article 384.0.4 of the Civil Code also cannot cover the claims arising from contractual relations.

Considering the above-mentioned the Plenum of the Constitutional Court comes to a conclusion that:

- To the disputes, which arise from credit relations shall be applied a three years term of limitation of action provided by the Article 373.2 of the Civil Code.

- According to the Articles 373.2 and 377.2 of the Civil Code if other circumstance is not provided in credit contract, a limitation term of action begins upon termination of completion date according to all liabilities established in contract.

- Non application of term of limitation of action to claims connected with protection of the corporeal rights provided in Article 383.0.4 of the Civil Code cannot be referred to the relations that arose from credit contract.

Being guided by the Article 130.6 of the Constitution of the Republic of Azerbaijan and the Articles 60, 62, 63, 65-67 and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To the disputes, which arise from credit relations a three years term of limitation of action provided by the Article 373.2 of the Civil Code of the Republic of Azerbaijan shall be applied.

2. According to essence of the Articles 373.2 and 377.2 of the Civil Code of the Republic of Azerbaijan if other circumstance is not provided in credit contract, a limitation term of action begins upon termination of completion date according to all liabilities established in contract.

3. Non application of limitation term of action to claims connected with protection of corporeal rights provided by the Article 383.0.4 of the Civil Code of the Republic of Azerbaijan cannot be referred to as the relations that arise from credit contract.

4. The decision shall come into force from the date of its publication.

5. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

6. The decision is final, and may not be cancelled, changed or officially interpreted by any institution or official.