**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of the Article 231.4 of the Civil Procedure Code*

*of the Republic of Azerbaijan*

**4 July 2014 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova (Reporter-Judge), Mahir Muradov, Jeyhun Garajayev, Rafael Gvaladze and Isa Najafov,

Attended by the Court Clerk Faraid Aliyev,

With participation of

Interested parties’ representatives – Sayyad Gafari (Judge of Court of Appeal of Sumgait city), Eldar Askerov (Senior Advisor of the Department for Administrative and Military Legislation of Milli Majlis of the Republic of Azerbaijan),

Expert – Movsum Movsumov (Docent of Civil Procedure and Commercial Law of Law Department of the Baku State University, Doctor of Law);

Specialist – Muzaffar Agazade (Secretary General of the Court of Appeal of Sumgait city),

in accordance with the Article 130.6 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of the Court of Appeal of Sumgait city on interpretation of the Article 231.4 of the Civil Procedure Code of the Republic of Azerbaijan,

having heard the report of Judge Sona Salmanova as well as the reports of the parties’ legal representatives interested in special constitutional proceeding and specialist, conclusions of expert, and after relevant examination of the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Court of Appeal of Sumgait city having applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) asked for interpretation of the Article 231.4 of the Civil Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the CPC) from the point of view of the Article 4.1 of this Code and the Articles 60, 127 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution).

From the inquiry and attached documents, it is clear that Hachmaz District Court by its decision dated September 3, 2012 satisfied the claim of F.Bayramova against B. Alkhasov and T. Alkhasova for eviction of them from the house.

This decision was upheld by appeal and cassation instances. Moreover the Hachmaz District Court by its decision of October 31, 2013 partially satisfied claim of B. Alkhasov and T. Alkhasova against F.Bayramova concerning the requirement to recover expenses for construction of the house and made the decision on payment by F.Bayramova of 7,586 AZN to B. Alkhasov and T. Alkhasova. This decision also came into force.

During of execution of the judgment of the court of first instance dated September 3, 2012 B. Alkhasov and T. Alkhasova took a legal action with the statement for provision of delay on execution of the decision. By the ruling of Hachmaz District Court of December 19, 2013 the application was not allowed. By the ruling of this court of December 30, 2013 the complaint made concerning the specified ruling also was not satisfied.

Alkhasovs have filed the appeal complaint to the Court of Appeal of Sumgait city against ruling of Hachmaz District Court of December 30, 2013.

In the inquiry of Court of Appeal of Sumgait city it was specified that according to the Article 231.1 of the CPC, further to petition of persons participating in case and with consideration of property status of the parties judge who considered a case is entitled to adjourn execution of decision, decide on execution of decision in installments, modify method and procedure of execution of decision.

According to the Article 231.4 of this Code the complaint on court ruling concerning adjourn or an extension of the deadline for execution of decision, modify method and procedure of its execution, suspension of proceeding on execution, a temporary restriction of the right of the debtor to departure from the country can be made.

According to inquirer, in an issue of application of the specified regulations of CPC there is controversy. In spite of the fact that some judges agree that both parties have the right to file appeal complaints on such rulings, nevertheless other judges, based on expression “delay of execution of the decision”, in particular, literally interpreting a provision “delay”, insist on emergence of such right only in cases of satisfying of application.

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

Civil process is a set of the actions fulfilling in the courts of general jurisdiction directed to protection of the rights of persons in the order established by the legislation. Legal proceedings of each participant of civil process in civil legal proceedings are regarded as result of implementation of his procedural rights and obligations.

The CPC along with establishment of general civil procedure rules, including, the principles and conditions of proceeding, persons participating in case and other participants of civil process, their rights and obligations, regulates implementation of civil procedure by courts of general jurisdiction, adoption of judicial acts by them and their execution, their appeals and consideration of claims.

Task of legal proceedings on civil cases and economic disputes is judicial confirmation of the rights and interests of each individual or legal entity, which follow from the Constitution, laws and other normative legal acts of the Republic of Azerbaijan. Civil legal proceedings promote strengthening of legality and public order, education of citizens in the spirit of strict respect for laws (Article 2 of the CPC). According to the Article 4.1 of this Code all individuals and legal entities are entitled in accordance with procedure specified by law to exercise the right to appeal to court for protection of their rights and freedoms, as well as for protection of interests guaranteed by law.

The case is initiated in court upon petition of individual or legal entity for protection or endorsement of his/her rights and interests protected by law (Article 5.1 of the CPC).

Examination of a case on its merits by courts of first instance is fulfilled respectively on the basis and within claim requirements or the request addressed in court. Civil legal proceedings in courts of first instance come to the end after implementation of judicial review. This proceeding, as a rule, ends by adopt of decision by which the case solved in essence or adopt of ruling concerning the discontinuance. During judicial review the other type of the judicial act – ruling can be adopted.

Judicial ruling is the judicial act that is not solve the case on its merits, but officially establishing the right of court or the judge both the acceptance of the claim to proceeding, the leaving of the claim without consideration, suspension of proceeding, its termination and also, use of other legal powers provided in the CPC.

The persons participating in case and other persons on whom ruling has a direct bearing have the right of appeal of ruling which is accepted by court in the form of the separate act in the cases specified in the CPC (Articles 267.1 and 267.2 of the CPC).

Thus, as it is stated above, the CPC regulates from the procedural point of view, all actions of courts, the persons participating in case, and other participants of civil process connected with filing of claims and other types of applications, their acceptance to judicial proceedings, hearing of cases, pronouncement of judicial acts, execution of these acts, their appeal and review of judicial acts.

Set of these procedural actions, and procedural rights and obligations of courts, parties or other participants of civil process make in fact the civil legal proceedings.

In civil legal proceedings, all judicial acts adopted in courts of the first or appeal instances are execute after the introduction in a legal force.

One of compulsory provisions of efficiency and reality of justice is connected with implementation of judicial acts.

According to Article 129 of the Constitution, courts adopts decisions on behalf of the state and their execution is obligatory.

Obligation of execution of judicial acts also reflected in Article 5 of the Law of the Republic of Azerbaijan “On Courts and Judges”. According to this article, courts on the considered cases adopts resolutions, sentences, rulings and judgments (hereinafter referred to as the decisions) on behalf of the Republic of Azerbaijan. In the order provided by the legislation of the Republic of Azerbaijan, the effective court decisions shall be implemented in an obligatory, timely and precise manner by all individuals and legal entities on the territory of the Republic of Azerbaijan.

Compulsory execution of decisions of the courts and other bodies of the Republic of Azerbaijan is implemented by executive officials. The requirements of the executive official connected with execution of decisions of the courts and other bodies are obligatory in the territory of the Republic of Azerbaijan for all bodies, legal entities, their officials and individuals. The persons who are not fulfill the requirements of executive officials connected with execution of decisions of the courts and other bodies, interfering execution of the obligations assigned to them bear responsibility in the order provided by the legislation of the Republic of Azerbaijan (Articles 2 and 3 of the Law of the Republic of Azerbaijan “On Execution” (hereinafter referred to as the Law “On Execution”)).

According to Article 12 of the Law “On Execution”, the executive official within two months from the date of obtaining the executive document has to make executive actions and provide implementation of the requirements specified in the executive document. In exceptional cases implementation of the requirements specified in the executive document on the basis of granting the head of executive structure can be prolonged by the head of executive service (the chief executive official) up to one month.

Having started proceeding according to the executive document forcing the debtor to making or not making of certain actions, the executive official establishes term for voluntary accomplishment by the debtor of the actions specified in the executive document.

Thus, according to Article 8.2 of the Law “On Execution” the executive official within three days after receipt of the executive document makes the decision on the beginning of proceeding. If in the judgment is not established the other executive term for voluntary execution by the debtor of the requirements specified in the executive document, the executive official in this decision appoints no more than, ten-day term from the moment of the beginning of proceeding and hands to the debtor the notification on it. In the notification it is specified that upon termination of this term the specified requirements will be executed forcibly.

If the judicial act is not executed by the debtor voluntarily during the established ten-day term, the executive official shall apply according to requirements of Article 43.1 of this Law the other measures of forced execution – the address of the requirement of property by arrest of property of debtor and its sale; address of the requirement of the salary, pension and other profit of the debtor; the address of the requirement of the money of the debtor which is available for the third parties and on his other property; withdrawal at the debtor of the certain things specified in the executive document and their transfer to the execution creditor; to other measures according to this Law and other legal acts of the Republic of Azerbaijan providing execution of the executive document.

At the same time, the legislator, considering the rights and legitimate interests of the parties of legal proceedings, also provides suspension of execution of judicial acts, including delay of their execution.

According to the Article 231.1 of the CPC the judge who considered the case have the right according to the application of the persons participating in case proceeding from a property status of the parties or other circumstances to delay or spread execution of the decision, and also to change a method and an order of its execution. Apparently from contents of article, for execution of the judgment only the judge of court of first instance who considered the merits of the case can resolve an issue of provision of delay.

Along with it, according to Article 15 of the Law “On Execution” the parties can apply to court that considered case with a request for provision of delay or an extension of the deadline for executing the executive document, and also, change of a method and order of execution of the executive document. In view of a property status of the debtor and other circumstances, court considers these addresses in the order established in Article 231 of the CPC.

Provision of delay of execution of the judgment that took legal effect is expressed in transferring of its execution by judicial ruling for other term. Execution of the decision postponed for such term which reasonably more than the term established by the law for the operation of the decision to execution, the term established by the law for voluntary execution of the decision on the started executive proceeding or to start taking measures of compulsory execution, and in case of establishment in the solution of term of its execution – is more than this term.

In case of satisfaction by court of the address for a postponing of execution of the decision that took legal effect:

- the decision cannot be turned to execution (the writ of execution cannot be issued) before the end of the period of delay;

- at provision of delay after receipt of a writ of execution, the executive official cannot make the decision on the beginning of proceeding according to the executive document before the end of the period of delay;

- if the decision on the beginning of proceeding according to the executive document is made before delay provision, then the executive official cannot fulfill executive actions before the end of the period of delay.

At the same time, it should be noted that the right of a judicial guarantee of the rights and freedoms enshrined in Article 60 of the Constitution provides not only making of legal and reasoned decision by court, but also its timely execution.

Proceeding from the aforementioned the Plenum of the Constitutional Court highlights that in view of the fact that provision of delay prolongs the term of real protection of the interests protected by the law and the violated rights of the execution creditor, provision of similar delay shall have exclusive character, shall be applied in the presence of serious obstacles and difficulties to implementation of executive actions, shan't be directed to restriction of the rights of the persons participating in case.

Thus, the bases of provision of delay on execution of the judgment shan't create serious obstacles to implementation of executive actions. By consideration of an issue of provision of delay on accomplishment of the decision, the court proceeding in each case from Article 60, Article 71.2, Article 127.4 of the Constitution and a concept of justice, shall estimate and resolve execution of the judgment which took legal effect based on the principle of harmony with ensuring balance of the rights and legitimate interests of all execution creditors and debtors. The possibility of provision of delay on execution of the judgment shall conform to the requirement of justice, to be adequate and not to affect an essence of constitutional rights of participants of executive proceeding.

At the same time the court has to estimate comprehensively, completely and objectively, and then consider thoroughly all grounds specified by debtor for granting of delay in execution of decision, as well as possible protests of execution creditor against granting of such delay to prove the conclusions on an issue in relevant judicial act.

According to a position of the European Court of Human Rights (hereinafter referred to as the European Court) concerning execution of the judicial acts which took legal effect, that right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that the Article 6 para. 1 (art. 6-1) should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 (art. 6) as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “court” for the purposes of Article 6 of Convention (decision on case of Hornsby v. Greece of March 19, 1997).

The European Court also noted that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under the Article 6 §1.

It should be noted that the possibility of the appeal of decisions adopted on the merits of the case or rulings adopted in the form of the separate act, which are not solving the case in essence has been fixed in the CPC without establishment of any exceptional circumstance. Thus, in the cases and an order provided by this Code, judicial acts on civil cases can be appealed in an appeal and cassation order. Establishment by the legislator of such order regulating appeal of judicial acts creates an opportunity for cancellation or change of illegally and unreasonably adopted judicial acts, including decisions, guarantees solution of any dispute based on the law and justice.

The provisions of Constitution directed to the protection of the human rights and freedoms, establishing a judicial guarantee of the rights and freedoms, the right of repeated appeal to the court and the basic principles and conditions of administration of law are important (Articles 60, 71 and 127 of the Constitution).

Thus, according to Article 127.4, justice is administered on the basis of legal equality of citizens before the law and the court.

According to Article 60.1, everyone is guaranteed the protection of his rights and freedoms in the administrative manner and in court. This constitutional provision guarantees protection of the rights and freedoms of everyone not only in court of the first instance, but also in courts of appeal and cassation instance. The right of submission of the complaint in any judicial instance follows from the right for legal protection.

The right of appeal of the judgment, being an integral part of the rights and duties making the legal status of the personality should not be limited except for the circumstances that are directly provided by the legislation and has to be provided to each person.

Thus, the Plenum of the Constitutional Court notes that the right of submission of the claim to the decision on provision of delay to the decision which took legal effect shall be provided, and also concerning refusal of provision of such delay, and it is not necessary to perceive a provisions of Article 231.4 of the CPC as the regulation limiting the right of submission of the claim of one of the parties.

According to the above-mentioned, the Plenum of the Constitutional Court comes to conclusion that Article 231.4 of the CPC irrespective of satisfaction of the application concerning provision of delay on execution of the decision, includes the right of submission by the persons participating in case of the claim against judicial ruling.

Being guided by the Article 130.6 of the Constitution of the Republic of Azerbaijan and the Articles 60, 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 AS FOLLOWS:**

1. The Article 231.4 of the Civil Procedure Code of the Republic of Azerbaijan irrespective of satisfaction of application on provision of delay in execution of decision, includes the right of submission by the persons participating in case of the claim against judicial ruling.

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

3. 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”.

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