ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

OF THE CONSTITUTIONAL COURT

OF THE REPUBLIC OF AZERBAIJAN

*On Possibility to Submit a Complaint on Judicial Acts on Civil Cases,*

*Adopted before 1 September, 2000*

# 3 August, 2001 Baku city

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Hajiyev (Chairman), Judges: F.Babayev, B.Garibov (Reporter Judge), R.Gvaladze, S.Salmanova, A.Sultanov, E.Mamedov,

joined in the proceedings by: the Court Clerk I.Ismayilov;

legal representatives of the subjects interested in special constitutional proceedings: A. Mirzaliyev, Judge of the Supreme Court of the Republic of Azerbaijan and S. Kerimov, Deputy Head of the Department on Administrative and Military Legislation of the Milli Majlis of the Republic of Azerbaijan; M. Movsoumov, expert, acting Head of Civil Procedure Board of Law Faculty of Baku State University, candidate of legal sciences;

being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open session via special constitutional proceedings the case by the petition of the Supreme Court of the Republic of Azerbaijan, N 8-7/2001 of 26 June, 2001, concerning the possibility to submit a complaint on judicial acts on civil cases, adopted before 1 September, 2000.

Having heard and discussed the report of Judge B.Garibov, statements of legal representatives of subjects interested in special constitutional proceedings, A.Mirzaliyev and S.Kerimov, the conclusion of expert, M.Movsoumov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS**:

On the basis of Article 7.5 of the Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Criminal Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter”, before entry into force of the mentioned Code, sentences and other judicial decisions adopted by courts on the basis of provisions of the Criminal Procedure Code of the Republic of Azerbaijan, which had been in force before 1 September, 2000, can be re-examined by the Court of Appeal or Supreme Court of the Republic of Azerbaijan via procedure provided for by Articles 383-407, 409-427, 461-467 of the Criminal Procedure Code.

However, the Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Criminal Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter” does not provide examination of judicial acts adopted before 1 September, 2000 on the basis of provisions of the Criminal Procedure Code which came into force from 1 September, 2000.

The Supreme Court of the Republic of Azerbaijan asks for interpretation of possibility to examine civil complaints on judicial acts on civil cases adopted before 1 September, 2000 via the procedure of appeal or cassation.

Texts of Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Criminal Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter”, Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Civil Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter”, Article 1 of the Civil Procedure Code of the Republic of Azerbaijan and Article 4 of Law of the Republic of Azerbaijan “On Courts and Judges” certified by the Administration of the Milli Majlis of the Republic of Azerbaijan are enclosed to the materials of the constitutional case.

In connection with the petition the Constitutional Court notes the following:

On the basis of the Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Civil Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter”, the Civil Procedure Code of the Republic of Azerbaijan which entered into force from 1 September, 2000 reflects constitutional principles of implementation of justice. The Code provides for the new institutions (order proceedings, appeal, cassation, additional cassation, etc.) with the view of comprehensive and effective protection of constitutional rights and freedoms of citizens.

Rights and obligations of persons participating in a case and other participants of the case, provided for by the Civil Procedure Code as well as regulation of legal procedures of the civil proceedings serve for ensuring of justice and legality of judicial acts on civil cases.

According to the Code, civil proceedings consist of certain stages. Consistency of proceedings (submission of complaints, preparation of cases for examination by a court, judicial examination and adoption of a decision, submission of complaints on decisions, which have not entered into force, etc.) provides a comprehensive, complete and objective examination of a case, implementation of rights and obligations of the participants of the case as well as aimed at a fair trial.

Implementation of the right to appeal against judicial acts via the procedure of appeal and cassation serves for prompt and comprehensive examination of legality and validity of the adopted judicial acts.

However, Law of the Republic of Azerbaijan “On Confirmation, Entry into Force of the Civil Procedure Code of the Republic of Azerbaijan and the Issues of Legal Regulation as to the Matter” does not contain proper norms, those provide the possibility of implementation of the right to appeal against judicial acts, adopted before 1 September, 2000, contained in the Civil Procedure Code.

In connection with the above-stated it is necessary to note, that the right to judicial guarantee of rights and freedoms and the right of repeated appeal to a Court (Article 60 and 65 of the Constitution of the Republic of Azerbaijan) are of great importance among the constitutional rights and freedoms.

Being based on the mentioned provisions of the Constitution, Article 4.1 of the Law of the Republic of Azerbaijan “On Courts and Judges” provides that examination of cases shall be implemented by Courts of first, appeal and cassation instances. The ascertainment of this procedure is aimed both at the ensuring of the right to appeal acts, adopted by courts of first instance and verification of their legality and validity in courts of appeal and cassation instances. Right to appeal to the mentioned instances is also provided for by the Civil Procedure Code currently in force. However, the absence of possibility to appeal against judicial acts, adopted before 1 September, 2000 creates conditions for upholding of illegal and groundless judicial acts, breaks the order of consistent examination of a case on all stages of examination, restricts the right of citizens to submit a complaint in comparison with the persons, those appeal against judicial acts, adopted after 1 September, 2000.

At the same time, indetermination of the right to submit a complaint against judicial acts in the mentioned Law does not exclude application of constitutional norms, ensuring implementation of the mentioned right.

Thus, according to Article 147.2 of the Constitution of the Republic of Azerbaijan, the Constitution of the Republic of Azerbaijan possesses direct legal power. The mentioned constitutional provision is also reflected in Civil Procedure Code of the Republic of Azerbaijan. According to Article 1.2 of the Code the norms of the Constitution of the Republic of Azerbaijan possess higher legal force and direct effect on the territory of the Republic of Azerbaijan. In case of conflict between norms of the Constitution of the Republic of Azerbaijan and norms, regulating procedure of legal proceedings, the norms of the Constitution of the Republic of Azerbaijan shall be applied.

The necessity of ensuring of restoration of the violated rights is also reflected in some international agreements.

According to Article 8 of the Universal Declaration of Human Rights, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the Constitution or law.

It is necessary to take into account, that Article 6 of the European Convention on Human Rights and Freedoms provides the right to a fair trial of civil and criminal cases. According to the practice of the European Court of Human Rights the requirements of Article 6 of the Convention regarding a fair trial shall cover both courts of the first and appeal instances. This requirement is aimed at the fair examination of cases via the procedure of appeal and cassation on the basis of complaints against decisions (acts) of the first instance courts.

The Constitutional Court of the Republic of Azerbaijan notes, that on the basis of the above-mentioned provisions of the Constitution of the Republic of Azerbaijan the judicial acts on civil cases, adopted before 1 September, 2000, may be appealed to the courts of appeal and cassation instances taking into account the procedure and terms, provided for by the proper Articles of the Civil Procedure Code (Articles 357-401, 402-431, 432-438).

With the view of implementation of the right to appeal against judicial acts, adopted before 1 September, 2000 in terms, provided for by the Criminal Procedure Code, the terms of submission of a complaint shall be dated from the day of entry into force of the present Decision.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80-83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Judicial acts on civil cases, adopted before 1 September, 2000, may be appealed to courts of appeal and cassation via procedure and in terms, provided for by the proper Articles of the Civil Procedure Code of the Republic of Azerbaijan (Articles 357-401, 402-431, 432-438) from the day of entry into force of the present Decision.

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

3. The decision is subject to publication in the "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

4. The decision is final and cannot be cancelled, changed or interpreted by any body or official.