ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 373 of the Civil Code of the Republic of Azerbaijan*

# 27 December, 2001 Baku city

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

joined in the proceeding by: the Court Clerk, I.Ismaylov;

the legal representatives of the subjects interested in special constitutional proceedings: B. Asadov, Judge of the Supreme Court of the Republic of Azerbaijan and I.Rafibeyli, Officer of the Milli Majlis of the Republic of Azerbaijan;

based on Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session via special constitutional proceedings the petition of the Supreme Court of the Republic of Azerbaijan of 18 November, 2001, N 8-10/2001 concerning interpretation of Article 373 of the Civil Code of the Republic of Azerbaijan.

Having heard the report of Judge S.Salmanova, the reports of the lawful representatives of the subjects interested in special constitutional proceedings, B.Asadov, and I.Ra­fibeyli, having taken into account the opinion of the expert, Prof. Y.Mextiyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 73 of the Civil Code of the Republic of Azerbaijan, adopted on 11 September 1964, provides that the general term for protection of the rights on the basis of the suit brought by a person whose rights have been violated (limitation of action) shall be 3 years and 1 year – on the basis of the suits brought by legal persons against each other.

According to Article 373 of the Civil Code of the Republic of Azerbaijan, which came into force on 1 September 2001, the general term for limitation of action shall be 10 years. The Article also provides for special terms for limitation of action.

In its petition the Supreme Court of the Republic of Azerbaijan asks to clarify by interpretation of Article 373 of the Civil Code of the Republic of Azerbaijan, the extension of the term for limitation of action provided for by the mentioned norm over the requirements of legal relationships arisen after entry of the new Code into the legal force.

The official texts of the Law “On confirmation, entry into force of the Civil Code of the Republic of Azerbaijan and issues of legal regulation as to the matter” of 28 December, 1999, Articles 7 and 373 of the Civil Code of the Republic of Azerbaijan which came into force on 1 September, 2001 and Article 73 of the Civil Code of the Republic of Azerbaijan which lost its force, certified by Administration of Milli Majlis of the Republic of Azerbaijan have been enclosed to materials of the case.

In connection with the petition, the Constitutional Court notes the following.

According to Article 25.1 of the Constitution of the Republic of Azerbaijan everyone shall be equal before law and court.

Taking into account the requirements of para 3 of the mentioned Article, Article 8 of the Civil Procedure Code of the Republic of Azerbaijan provides that proceedings on civil cases and economic disputes shall be implemented on the basis of principle of equality of everyone before law and court. Court shall equally treat each participant of a case regardless of his/her race, nationality, religion, sex, origin, property, social and official status, membership of political parties, professional and public unions, location, subordination, a legal person’s form of property and other distinctions not provided for by law.

Equality before law and court shall be provided for by examination of each civil case via the same procedure and indivisible procedural forms as well as by guarantees for persons participating in a case. Thus, there are conditions created to meet legal demands by persons interested in issue of suit as well as citizens are provided for with equal abilities for protection of their interests before court. The procedural equality of rights of parties contributes to realization of procedural remedies by them for protection of their rights and interests.

These norms also apply to limitation of action.

Legislator determines the term for right to request from another person to fulfill specific action or refrain from its fulfillment.

According to Article 372.2 of the Civil Code of the Republic of Azerbaijan, the limitation of action shall be the term for protection of rights on the basis of the suit brought by a person whose rights have been violated.

The significance of the limitation of action lies in the following: first of all it disciplines the participants of legal relationships, obliges them to protect theirs rights in due time, promotes the contractual and financial discipline; secondly, the limitation of action promotes elimination of vagueness and instability in civil legal relationships; thirdly, the limitation of action provides judicial bodies with possibility to resolve disputes on the ground of objective truth, eliminating the possibility for parties concerned to turn to the long-standing evidences whose validation is either impossible or too difficult.

The absence of provisions on other procedure in law means that limitation of action applies to all requests. Thus, the absence of the terms for limitation of action would always create conditions to dispute the arisen relations. The terms for limitation of action divide into two forms – general and special. The general term for limitation of action does not depend neither on legal status of subjects of the legal relationships nor on the form and sort of property.

Special terms for limitation of action shall be determined for specific forms of suits. They can be either abridged or prolonged in comparison with general terms.

According to Article 373 of the Civil Code of the Republic of Azerbaijan that came into force on 1 September 2000, the general term for limitation of action shall be 10 years, the terms for limitation of action on the basis of requirements of agreement and requirements originated from commitments to be implemented from time to time shall be 3 years and on the basis of requirements of agreement on immovable property – 6 years.

According to Article 73 of the Civil Code of the Republic of Azerbaijan, adopted on 11 September 1964, the general term for protection of rights on the basis of the suit brought by a person whose rights have been violated (limitation of action) shall be 3 years and 1 year – on the basis of the suits brought by legal persons against each other.

Apparently, terms for limitation of action in newly adopted Civil Code differ from the terms provided for by the previous Code. However, Law of the Republic of Azerbaijan “On confirmation, entry into force of the Civil Code of the Republic of Azerbaijan and issues of legal regulation as to the matter” does not provide for provisions concerning application of terms for limitation of action specified in newly adopted Civil Code.

It should be noted that according to Article 7.1 of the Civil Code of the Republic of Azerbaijan, civil legislative acts shall not have retroactive force and shall be applied to relations arisen after they entered into effect, except the cases provided for by Article 149.7 of the Constitution of the Republic of Azerbaijan. According to Article 7.2 of the present Code acts of civil legislation shall have retroactive force in cases when it is provided for by law. According to Article 7.3 of the Code acts of civil legislation shall not have retroacti­ve force if their application can cause damage to subjects of civil law and worsen their conditions.

Thus, except the exclusions specified in Article 7 of the Civil Code of the Republic of Azerbaijan, acts of civil legislation shall not have retroactive force and shall be applied to relations arisen after they entered into effect.

In case of adoption of the new normative legal act on civil legal relationships with identical essence, in order to avoid the damage to duration and stability of previously arisen legal relationships, the legislator shall apply the legal force of such act to legal relationships arisen after they entered into effect.

In connection with the stated, the terms for limitation of action provided for by Article 373 of the Civil Code shall be applied on the basis of the requirements proceeded from legal relationships arisen after 1 September, 2000 and the terms for limitation of action provided for by Article 73 of the previously adopted Civil Code shall be applied on the basis of the requirements proceeded from legal relationships arisen before 1 September 2000.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. The terms for limitation of action provided for by Article 373 of the Civil Code shall be applied on the basis of the requirements proceeded from legal relationships arisen after 1 September, 2000. Terms for limitation of action provided for by this Article taking into account Article 7 of the Civil Code can be applied also to requirements proceeded from legal relationships arisen from the mentioned date.

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.