**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On conformity of Article 359 of the Civil Procedure Code of the Republic of Azerbaijan to Articles 25.1, 26, 60.1 and 71.1-2 of the Constitution*

*of the Republic of Azerbaijan*

**25 February, 2003 Baku city**

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

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

the legal representative of the party that submitted the petition: B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representative of the respondent party: S.Karimov, employee of the Administration of Milli Majlis of the Republic of Azerbaijan;

the expert: M.Aliyev, the lecturer of the Civil Procedure, Labour and Environmental Law Board of the Law Faculty of Baku State University;

in accordance with Article 130.3 of the Constitution of the Republic of Azerbaijan has examined via special constitutional proceeding in open court session the petition submitted by Supreme Court of the Republic of Azerbaijan of January 14, 2003. N 8-1/2003 concerning verification of conformity of Article 359 of the Civil Procedure Code of the Republic of Azerbaijan to the Articles 25.1, 26.1, 60.1 and 71.1-2 of the Constitution of the Republic of Azerbaijan.

Having heard the report of Judge F. Babayev, the statements of the lawful representatives of the subjects of special constitutional proceedings: B.Asadov, and S.Kari­mov, opinion of the expert M.Aliyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 359 of the Civil Procedure Code of the Republic of Azerbaijan stipulates that the appellate complaint (appeal) may be filed against all resolutions of court of first instance which not entered into legal force, except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specified in legislation.

Supreme Court of the Republic of Azerbaijan in its petition asks to verify the conformity of Article 359 of the Civil Procedure Code to the Articles 25.1, 26.1, 60.1 and 71.1-2 of the Constitution of the Republic of Azerbaijan concerning the exceptions for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specified in legislation, as these provisions restrict the physical and legal persons’ right to get the legal defence.

The official texts of Articles 4 and 359 of the Civil Procedure Code certified by Administration of the Milli Majlis of the Republic of Azerbaijan have been enclosed to materials of case.

With respect to the guarantees of rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and international legal acts, the Constitutional Court of the Republic of Azerbaijan notes as follows:

When analysing the Civil Procedure Code it gets evident that the legislator regulating the right to apply to the courts of higher instance (appeal and cassation instance courts) stipulated for the observation of sequence of examination of cases in court instances. According to the rules and provisions, determined by the mentioned Code, the appeal complaint against acts of first instance courts on civil cases shall be lodged with the court of appeal instance and the cassation complaint against its acts shall be lodged with the court of cassation instance.

The legislator who determined sequence of lodging of complaints allows to abolish unlawful and ill-founded court acts as well as provides for the guarantee of resolution of all disputes on the basis of law and justice.

However, the provision of the Article 359 of the Civil Procedure Code, which stipulates that “…except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specially provided for in legislation”, deprives, in accordance with relevant Articles of this Code, of the right to lodge a complaint against court’s decisions delivered on these cases.

The provisions of the Constitution (Articles 25, 26, 60 and 71), which are aimed at protection of the human rights and freedoms, at ensuring the equality before court and law and the right to apply reputedly to court, get particular importance.

According to the Article 25.1 of the Constitution everyone are equal before law and court.

As it gets evident this provision that establishes the equality before law and court as well as the observance of legislation by everyone determines also the equality of everyone before court. Because of its being vitally important for human being and citizen this right was enshrined in Constitution that compiles the rights, freedoms and duties.

 According to Article 26 of the Constitution everyone shall be enabled to defend his/her rights and freedoms by means not prohibited by legislation. The state shall ensure the protection of human rights and freedoms.

Moreover, Article 60.1 of the Constitution ensures the protection of rights and freedoms in court.

This provision establishes the legal defence not only in courts of first instance but also in courts of appeal and cassation instances. The right to complain to every court instance proceeds from the right to legal defence. The existence of this right in democratic society is reflected in Constitution and legislation of the state.

In connection with petition it is necessary to note that this right covers the resolution by court of any dispute connected enjoyment by everyone of civil rights and duties.

Right to legal defence in civil cases provides not only for the possibility of starting of court proceedings but also, for the state guarantee of due formation, composition and course of proceedings. Depending on the will of parties the course of proceedings in courts of first, appeal and cassation instance shall be continued till the exhaustion of possibilities of legal defence.

Right to legal defence is not absolute. Undoubtedly, a person can be subject to some restrictions provided for in Procedure legislation. But the amount of claim and the loss of the right based on the vogue wording “the decisions delivered on the disputes specified in legislation” are inadmissible taking into account its importance and significance in democratic society.

According to Articles 71.1 and 72.2 of the Constitution executive, legislative and judiciary shall respect and protect the human rights and freedoms enshrined in Constitution.

Restoration of the rights on the basis of fair trial has been enshrined in a number of international law acts including Article 14 of the International Covenant on Civil and Political Rights, Articles 8, 10 of the Universal Declaration on Human Rights, Articles 6, 13 of the European Convention on Human Rights and Fundamental Freedoms and Article 4 of the resolution on Basic Principles of Judicial Independence.

All physical and legal persons shall be entitled to enjoy the legal defence via the procedure specified by legislation in order to protect and ensure their rights freedoms and interests protected by the legislation.

According to Article 4.1 of the Civil Procedure Code all physical persons and legal persons shall, via the procedure specified in legislation, be entitled to enjoy the right to legal defence for the purposes of ensuring and observance of their rights, freedoms and interests guaranteed by legislation. The above-mentioned right to apply to court can be comprehended as the right to apply to court of any instance. In such case, the impossibility to lodge the appeal as it derives from the provision of Article 359 of the Civil Procedure Code stating “except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specially provided for in legislation” does not correspond to the requirements of above-mentioned Article.

In its decision of August 3, 2001 the Constitutional Court of the Republic of Azerbaijan noted that Article 6 of European Convention on Human Rights and Freedoms provides right to fair trial of civil and criminal cases. In accordance with practice of European Court of Human Rights the requirements of Article 6 concerning fair trial relate not only to the courts of the first instance but also to the courts of appeal one. This requirement is directed at fair examination, via appeal and cassation procedures, of complaints against decisions (acts) of courts of first instance.

The Constitutional Court of the Republic of Azerbaijan comes to conclusion that provision of Article 359 of the Civil Procedure Code “except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specially provided for in legislation” contradicts to Articles 25.1, 26, 60.1, 71.1 and 71.2 of the Constitution of the Republic of Azerbaijan as well as to the above-mentioned rules of international law and restricts the citizens’ full and effective realization of their rights in a court.

Being guided by Article 130.3.9 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:**

To recognize the provision of Article 359 of the Civil Procedure Code of the Republic of Azerbaijan “except for disputes where a claim amount does not exceed an amount equal to 100 minimum monthly salaries or disputes specially provided for in legislation” as null and void because of its non-conformity to Articles 25.1, 26, 60.1, 71.1 and 71.2 of the Constitution of the Republic of Azerbaijan.

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.