**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Verification of Conformity of Article 71.4 of the Civil Procedure Code of the Republic of Azerbaijan to Articles 60.1 and 61.1 of the Constitution*

*of the Republic of Azerbaijan*

**25 March, 2003 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, I.Najafov, E.Mamedov,

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

the legal representative of the subject submitted the petition: A.Mirzaliyev, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representative of the respondent subject: I.Babayev, employee of Administration of Milli Majlis of the Republic of Azerbaijan;

expert: M.Damirchayeva, candidate of legal sciences, lecturer of the Civil Procedure, Labour and Environmental Law Board of the faculty of law of Baku State University of the Republic of Azerbaijan;

in accordance with Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined via special constitutional proceedings in open court session the constitutional case connected with the petition of the Supreme Court of the Republic of Azerbaijan January 14 2003, N 8-1/2003 regarding the examination of conformity of Article 71.4 of the Civil Procedure Code to Articles 60.1 and 61.1 of the Constitution of the Republic of Azerbaijan.

Having heard the report of Judge S.Salmanova, the statement of the lawful representatives of the parties: A.Mirzaliyev and I.Babayev and the opinion of expert M.Da­mir­chayeva, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to Article 71.4 of the Civil Procedure Code in cases and under circumstances specified by Articles 19 and 20 of this Code, the parties to the case concerned may raise an objection against a representative.

According to Article 19.2.2 of the Civil Procedure Code judge may be objected where he/she is one of the parties or if he/she was or is a direct relative of any of persons participating in case or of their representative, or in a family relationships with such persons and representative.

In its petition the Supreme Court of the Republic of Azerbaijan indicates that Article 71.4 of the Civil Procedure Code restricts the protection of human rights and freedoms and asks to verify it as to its conformity with Articles 26.1 and 71.2 of the Constitution of the Republic of Azerbaijan.

The official texts of Articles 19, 20, 69 and 71 of the Civil Procedure Code certified by Administration of Milli Majlis of the Republic of Azerbaijan have been enclosed to materials of case.

In connection with petition the Constitutional Court of the Republic of Azerbaijan notes as follows:

The civil Procedure legislation enables the person to realize his/her rights and freedoms directly or by means of his/her representative.

According to Article 69.1 of the Civil Procedure Code any physical or legal person shall have the right to lodge a claim with the court personally or by means of duly appointed representative.

Representation in court means the activity of one person in the interests of another one within the competences granted on behalf of represented person with the view to get the decision that is more suitable for the latter as well as to render assistance for realization of his/her rights, prevention of the violation of his/her rights within the trial and helping in administration of fair trials on civil cases.

Not all the participants, but only the parties to civil case, third persons, who submitted the separate claims concerning examined dispute and third persons, who did not submit such claims can plead the cases by means of representative.

The need for representation in court is reasoned by different circumstances. In this connection the fact that some parties concerned do not have civil Procedure capability (minor persons and persons, who are considered by court as incapable) cannot plead a case personally their rights are protected by representatives. In case where the legal persons cannot be personally the parties to a case they can realize their Procedure rights and duties by means of representative.

Representation in court is connected with the wish of parties concerned to get the high-qualified legal assistance to protect their rights and freedoms in court. This is based on the requirements of the Constitution of the Republic of Azerbaijan.

The representation in court promotes the realization by citizens of their constitutional right to legal defence (Article 60.I).

Moreover, according to Article 61.1 every person shall have the right to get qualified legal assistance.

However, some provisions of the civil Procedure legislation impede the realization of above-mentioned constitutional rights and freedoms of citizens.

For instance, according to Article 71.4 of Code, in case of availability of circumstances and grounds specified in Articles 19 and 20 of this Code the parties concerned may raise an objection against representative.

Article 19 of Civil Procedure Code determines the grounds and circumstances of inadmissibility of considering the case by the judge and raising an objection against him/her. Article 20 of the Code envisages the grounds for raising an objection against expert, specialist, interpreter and court clerk.

The analysis of mentioned Articles of Civil Procedure Code indicates that an objection against representative can be raised only on the grounds specified in Articles 19.2.2, 19.2.3, 20.2.1 and 20.2.2 of that Code.

According to the meaning of Articles 19.2.2 and 19.2.3 where representative is one of the parties or if he/she was or is a direct relative of any of party concerned or of this party’s representative, or where he/she is directly or indirectly interested in the outcome of trial, or there exist other circumstances giving rise to doubts as to his/her impartiality and fairness such circumstances are the basis for raising an objection to representative by parties concerned.

Articles 20.2.1 and 20.2.2 of the Civil Procedure Code provides for other circumstances that can be the ground for raising an objection against representative, those are: where he/she was or is under service or any other kind of subordination to parties concerned or their representatives; where he/she carried out an inspection, the materials of which were used as the grounds for application to court or are used in course of hearing of this civil case.

As it evident, the grounds indicated in Articles 19.2.2, 19.2.3, 20.2.1 and 20.2.2 of the Civil Procedure Code directly relate to the expression of the will of parties concerned as to participation in trial of a person as representative.

At the same time it is inadmissible to apply regarding representative all circumstances and grounds specified in Articles 19 and 20 of Civil Procedure Code. In contrast to judges the objection to representative on all these grounds is impossible in practice and this Code contains similar circumstances applied to the institution of representation.

Thus, the Constitutional Court considers that according to Article 71.4 of the Civil Procedure Code application of grounds and circumstances for raising an objection against representative as specified in Articles 19, 20 of the same Code does not conform to the right to legal defence of the rights and freedoms of every person (Article 60 of Constitution) and the right to get the qualified legal assistance (Article 61 of Constitution).

Being guided by Article 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 66, 75, 76, 78, 80, 83 and 85 of the Law “On Constitutional Court” of the Republic of Azerbaijan, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognize Article 71.4 of the Civil Procedure Code of the Republic of Azerbaijan as null and void because of its non-conformity with Articles 60.1 and 61.1 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.