**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*Commentary on Article 254.1.4 of the Code of Civil Procedure*

*of the Republic of Azerbaijan*

**25 March, 2004 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan in attendance of:

Judges F.Abdullayev (President Judge), B. Qaribov, F.Babayev, R.Qvaladze E.Mammadov, I.Najafov, S.Salmanova (Reporting Judge) and A.Sultanov and Court Secretary I.Ismayilov,

in presence of the representative of the inquiring party in the constitutional procedure Judge A.Mirzaliyev of the Supreme Court of the Republic of Azerbaijan and I.Babayev of the Administration of the National Assembly (Milli Majlis) of the Republic of Azerbaijan,

expert Reader M.Aliyev of the Chair of Civil Process, Labour and Environmental Law of the Law Department of the Baku State University

has examined in the open session under the special constitutional procedure in accordance with Article 130 Section IV of the Constitution of the Republic of Azerbaijan the request of the Supreme Court of the Republic of Azerbaijan of 16 February 2004 (ref.# 8-1/2004) to officially interpret Article 254.1.4 of the Code of Civil Procedure of the Republic of Azerbaijan.

Having heard a report of Judge Salmanova and statements from the representative of the interested parties Judge A.Mirzaliyev and I.Babayev and expert M.Aliyev, studied materials and deliberated the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 254.1.4 of the Code of Civil Procedure of the Republic of Azerbaijan stipulates that if a case under the constitutional procedure can not be examined unless another case is resolved under civil, criminal or administrative procedure, then case procedure is temporarily suspended.

The inquiry (request) of the Supreme Court of the Republic of Azerbaijan noted that there existed a difference of opinion about application of this provision of the Code of Civil Procedure. Some courts when suspending case procedure for civil cases refer to cases tried in courts whereas other also refer to cases under pre-trial investigation. Arguing that such situation impedes forming of general judicial practice, the Supreme Court requested official interpretation of the said Article from the Constitutional Court.

The official texts of Articles 82, 254, 255 and 256 of the Code of Administrative Procedure as authenticated by the Administration of the National Assembly of the Republic of Azerbaijan were appended to the inquiry.

The Plenum of the Constitutional Court has noted the following in relation to the inquiry.

Article 60 of the Constitution guarantees everyone judicial protection of rights and liberties. The right to judicial protection (fair trial) is also established in international legal instruments. Article 7 of the Universal Declaration of Human Rights states that all people are equal before the law and are entitled without any discrimination to equal protection of the law. Article 10 establishes that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The same provision is contained in Article 14 of the International Pact on Civil and Political Rights.

Once started, a process in a civil case shall continue ceaselessly until it is resolved. But it is not always possible to quickly complete a trial in the court of justice. During the trial, circumstances may emerge that would inhibit objective and speedy examination of the legal dispute. Suspension of the process is possible on the grounds enumerated in the law when circumstances hinder continuation of the trial. In such case, the case is suspended until temporarily inhibiting circumstances are resolved in another judicial process.

By defining in the Code of Civil Procedure (henceforth “CCP”) specific cases when a court is designated to suspend case procedure (CCP Article 254) and when it is allowed to do the same (CCP Article 255), the legislature divides cases of suspension into mandatory and non-mandatory categories. One of the cases of mandatory suspension is given in Article 254.1.4 stipulating impossibility of continuing case procedure in a case under the constitutional procedure unless another case is resolved under civil, criminal or administrative procedure. For cases provided in CCP Article 254.1.4 significance lies not in reciprocal connection between the cases but only in such dependence whereas unless a legal problem arising outside the bounds of disputed legal relationship is resolved examination of the case is altogether impossible.

Suspension of case procedure when impossibility of continuing thereof is determined by a court or an administrative agency hinges on determination of facts having prejudicial importance in another case.

Facts determined by all courts in relation to a court decision or a verdict that entered legal effect shall be accepted as evidence without further examination. For example, if a valid court decision defines responsibility of a possessor of a high threat for damages, and the possessor of the threat brings a retroactive claim directly against a party that inflicted damage, then facts determined within the first process would have a prejudicial character for the second one and can not be dismissed. Facts that lead to conviction of an individual on charges of property theft can form a basis of a court decision upon a claim of damages. Facts and legal relations determined by a court decision or a verdict that entered legal effect can not be disputed at another trial.

In accordance with CCP Article 82.2, circumstances determined in a valid judgement of a court that relate to persons which are parties in another trial must be accepted as they are by another court. CCP Article 82.3 states that facts determined in a valid judgement of a court that relate to persons which are parties in another trial shall not be proven again by another court. CCP Article 82.4 establishes that determination of whether and by whom certain acts were committed made in a valid verdict of a court in a criminal case must be accepted as it is by a court examining a civil case.

CCP Article 256 provides terms of suspension of case procedures; specifically, Article 256.0.3 states that in cases specified in Article 254.1.4 case procedure is suspended until a court decision, judgement, verdict or procedural decision enters legal effect in a related case or until a decision is made in a related case examined in the administrative manner.

Therefore, for civil cases the legislature attached prejudicial importance only to a valid court verdict, decision, judgement or procedural decision. Decisions taken by law enforcement agencies conducting pre-trial investigation do not have prejudicial importance and can not cause suspension of case procedure in a civil case.

In consideration of the foregoing, the Plenum of the Constitutional Court has come to a conclusion that the provision of Article 254.1.4 of the Code of Civil Procedure “if a case under the constitutional procedure can not be examined unless another case is resolved under civil, criminal or administrative procedure” refers to entry into legal effect of a court decision, judgement, verdict or procedural decision taken in a respective court procedure.

Guided by Article 130 Section IV of the Constitution of the Republic of Azerbaijan and Articles 60, 62, 63, 65, 66, 67 and 69 of the Law of the Republic of Azerbaijan on the Constitutional Court, the Plenum of the Constitutional Court

**DECIDED:**

1. The provision of Article 254.1.4 of the Code of Civil Procedure of the Republic of Azerbaijan “if a case under the constitutional procedure can not be examined unless another case is resolved under civil, criminal or administrative procedure” refers to entry into legal effect of a court decision, judgement, verdict or procedural decision taken in a respective court procedure.
2. The Decision shall become effective from the day it is published.
3. The Decision shall be published in the newspapers Azerbaycan, Respublika, Xalq Qazeti and Bakinskiy Rabochiy and in the Bulletin of the Constitutional Court of the Republic of Azerbaijan.
4. The Decision is final and cannot be annulled, amended or officially interpreted by whichever person or entity.