**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On complaint lodged by A.M. Ibrahimova concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of January 28, 2004 to Constitution and legislation*

*of the Republic of Azerbaijan*

**28 October, 2004 Baku city**

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

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

in accordance with Article 130.5 of the Constitution of the Republic of Azerbaijan has examined in open court session via the procedure of constitutional proceeding the constitutional case on complaint lodged by A.M. Ibrahimova and on complaint of Telman Farrukh Miriyev concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of January 28, 2004 to Constitution and legislation of the Republic of Azerbaijan.

Based on the letter No. 2n-348 of the Chairman of Supreme Court of the Republic of Azerbaijan dated October 19, 2004, the case proceeded in absence of the respondent representatives.

Having heard the report of Judge F. Babayev, applicant’s representative A. Ibrahimova, S. Alkhasov and I., Shirinov and having studied the materials of the case, Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

In accordance with decision of the Narimanov district court from September 4, 2003 the claim raised by the plaintiff T. Miriyev against respondent L. Avakyan requesting the consideration of the deal as executed, the contract on purchasing and sale of the 1/5 portion of the house located at 74 S. Rahman str. executed between T. Miriyev and L. Avakyan shall be deemed as executed and Department for Technical Inventory and Registration of Ownership Rights was instructed to issue the registration certificate to the name of Telman Farrukh Miriyev.

Narimanov district court (judge E.S. Babayev) has made the decision on September 16, 2003 on the basis of the claim from August 21, 2003 of A. Ibragimova against T. Miriyev for consideration of deal as concluded and removal from the apartment, until the resolution of dispute by the Appeal instance court, to which T. Miriyev has applied.

S.Guliyeva and A. Ibrahimova as interested parties have submitted the appeal complaint against the decision from September 4, 2003 and have requested the direction of the complaint along with civil case to the Appeal Court of the Republic of Azerbaijan. In accordacne with decision of the Narimanov District Court from September 22, 2003, since S. Guliyeva and A. Ibrahimova were not entitled to submit the appeal claim as interested parties, the appeal and attached documentation were returned.

In disagreement with court decision S. Guliyeva and A. Ibrahimova has submitted the appeal complaint and has requested the cancellation of decision and adopting of new resolution for claim satisfaction. In accordance with decision of the Board on Civil Cases of the Appeal Court from October 30, 2003, the decision of the Narimanov District Court was cancelled and appeal complaint from September 4, 2003 to be processed in accordance with its subject.

T. Miriyev have submitted the cassation complaint and have requested the cancellation of the decision of the Appeal Court from October 30, 2003 and overruling of the appeal complaint. Board on Civil Cases of the Supreme Court has made the decision no to accept the case of appeal against the decision of the Narimanov District Court as legally ungrounded on January 28, 2004.

In accordance with the letter of the Chairman of Supreme Court from June 21, 2004, A. Ibrahimova was notified that there were no grounds established for sending her cassation complaint to the Plenary Session of the Supreme Court.

In the complaint submitted by A. Ibragimova to the Constitution Court of the Republic of Azerbaijan the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan was deemed illegal and its termination was requested. The complaint was grounded by the fact that, the Board on Civil Cases of teh Supreme Court of the Republic of Azerbaijan, has exceeded its authority, and have resolved the issue of the legality of the submission of complaint against the decision of the first instance court and therefore violated its rights for justice stipulated under the Constitution of Azerbaijan Republic.

The Plenary Session of the Constitution Court of the Republic of Azerbaijan notes the following:

Article 60 of the Constitution of the Republic of Azerbaijan stipulates the right for protection of human rights and freedoms in the court of law. One of the main provisions of the above Article is also the right of any court to operate within its authority. This requirement is also stipulated under the provisions of Article 6 of the European Convention on Human Rights and Main Freedoms.

For avoidance of the remaining in force of illegal and ungounded court decisions, the mechanism is provided within the court justice system legislation of the Republic of Azerbaijan, providing the description of authorities, rights and responsibilities of various court instances.

It shall be noted, Civil Procedures Court of the Republic of Azerbaijan, which provides the reflection of the rights stipulated under the Constitution and Internaitonal Treaties, also has provisions for guarantee of the fair court justice for violated civil rights.

Three stage court system stipulated under the Civil Procedures Court of the Republic of Azerbaijan provides the mechanism for indifferent, fair, legal and grounded settlements of civil disputes. The authorities of each court instance are stipulated specifically in the Civil Procedures Code.

The authorties of the Appeal Court are stipulated under Article 398 of the Civil Procedures Code of the Republic of Azerbaijan. In accordance with this Article the Appeal Court shall be entitled to leave the decision of the first instance court unchanged, make the decision on partial termination of the decision or its change and direction back to the first instance court.

However, the Appeal instance court has violated the provisions of Article 398 of the Civil Procedures Code, and has made the decision to cancel the decsion of the Narimanov District Court from September 22, 2003 on regarding the claim of T. Miriyev, and processing of the case on the basis of appeal procedures.

In accordance with Article 416 of the Civil Procedures Code the cassation instance court shall review the correct application of the material and procedural legal norms of the decision made by the appeal instance. In accordance with provisions of Article 418.1 of the Civil Procedures Code the material or procedural violation of legal norms or their incorrect application shall form the groounds for cancellation of the decision of verdict of the appeal instance court. Article 417 of the Code also stipulates the authorities of the cassation instance. In accordance with this Article cassation instance shall be entitled to cancel completely or partially the decision of the appeal instance and shall direct the case for another review to the appeal instance.

Description of the above Articles shows that the responsibility of the cassation instance court only stipulates the review for the correct application of only material and procedural norms and making the decision on the basis of these findings.

Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan overexceeded the authroties provided under Article 417 of Civil Procedures Code, have completely or partially cancelled the decision of the appeal instance, and instead of directing the case for anorther review by the appeal court has changed the decision and made the verdict that is not stipulated under the legislation.

It shall be noted that changes to the decision or verdict of the appeal instance court can only be made in cases, when there will be necessary to consider the some issues (for example division of court costs) indepdendent of the correctness of decision in termsn of facts and legal grounds. On the other side along with decision made by the Board on Civil Cases of the Supreme Court of Azerbaijan Repulbic, which falls outside of its authority, it also has accepted the authority of the Appeal instance and has made the decision on acceptability of appeal, thus violating the provision of Article 366.1 of the Civil Procedures Code.

In accordance with above, the Plenary Session of the Constitution Court has drawn the decision, that violation of provisions of Article 417 of the Civil Procedures Code by cassation instance court has resulted in the violation of rights of A. Ibrahimova for fair court justice on protection of rights and freedoms, as per Article 60 of the Constitution of the Republic of Azerbaijan.

In accordance with above, the Plenary Session of the Constitution Court hereby decides, that the decision of the Board on Civil Cases of the Supreme Court from January 28, 2004 shall be considered as cancelled, and the relevant aspect of the case shall be reviewed additionally in accordance with procedures of legislation.

Using the guidance of parts V and IX of Article 130 of the Constitution of the Republic of Azerbaijan, Articles 52, 62, 63, 65-67 and 69 of the law of the Republic of Azerbaijan “On Constitution Court” the Plenary Session of the Constitution Court of the Republic of Azerbaijan

**DECIDED:**

To recognize the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of January 28, 2004 made under the claim of Telman Farrukh Miriyev as null and void because of its contradiction to Article 60 of the Constitution of the Republic of Azerbaijan, and Articles 366 and 417 of the Civil Procedures Code of the Republic of Azerbaijan and the case shall be processed on the basis of this Decision and via the procedure specified in the Civil Procedure Code of the Republic of Azerbaijan.

2. The decision of the Constitutional Court of the Republic of Azerbaijan comes into force from the date of its publication.

3. The decision is subject to publication in the "Azerbaijan", “Respublika”, “Xalg gazeti”, “Bakinsky rabochiy” newspapers and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

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