**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On complaint lodged by I.M. Allahverdiyev and others concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of April 1, 2004 to Constitution and legislation of the Republic of Azerbaijan*

**9 November, 2004 Baku city**

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

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

Applicant, I. Allahverdiyev

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 Imran Misir Allahverdiyev and others for termination of decision against Baku Electronic Casting Open Joint-Stock Company concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of April 1, 2004 to Constitution and legislation of the Republic of Azerbaijan.

Based on the letter No. 8m-356/04 of the Chairman of Supreme Court of the Azerbaijan Republic dated October 20, 2004, the case proceeded in absence of the respondent representatives.

Having heard the report of Judge B. Garibov, information from I. Allahverdiyev and having studied the materials of the case, Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

I. M. Allahverdiyev, Q. N. Muradov, A. D. Zulfugarov, A. B. Ibrahimov, H. H. Gadirov, D.X. Rahimov, E. B. Mammadov, Q. I. Dadashov, V. M. Arazov, A.A. Ibrahimov, B.Y. Abdulov, R.Z. Mammadov (hereinafter referred to as I.M. Allehverdiyev and others) have indicated in their complaint that due to the fact that their claim against the decision No. 28 of Baku Electric Casting Open Joint-Stock Company dated February 27, 1998 was rejected by the decision of Narimanov District Court from September 10, 2003 on the basis of expiry of claiming period.

In accordance with decision of the Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan decision of first instance court was left unchanged.

In accordance with decision of Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan from April 1, 2004, the decision of the Board on Civil Cases of Appeal Court was left unchanged, and cassation was rejected.

In accordance with the letter of Chairman of the Supreme Court of the Republic of Azerbaijan from June 1, 2004 the direction of the cassation complaint to the Plenary Session of the Supreme Court of the Republic of Azerbaijan by I. M Allahverdiyev and others was rejected for absence of basis stipulated under Article 424 of the Civil Procedures Code.

Thereafter it is indicated in the Complaint that applicants were employed by the respondent organization, have been injured on job and lost the ability to work, receiving the compensation for on-job injury.

Although the legislation of the Republic of Azerbaijan stipulates only the increase of compensation payments to employees who had injuries and health deterioration on job, as well as to family members of employees, who died as a result of such injuries or health deterioration, decision No. 28 from February 27 1998 has stipulated the reduction of the amount of payments to above persons due to reduction of the salaries to employees of the plant as a result o change of production levels.

This has resulted in reduction of actual compensation payments to the people injured on job and violation of their rights stipulated under the legislation.

Also it is indicated in the complaint that same category claim of 10 other persons against the enterprise was satisfied. (Decisions of Narimanov District Court from Octobr 9, 2000, Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan from April 16, 2001, Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan June 8, 2001).

Thus, applicants have considered the decision of cassation instance court as illegal and groundless, and have requested review of compliance with Constitution and Civil Procedures Code of the Republic of Azerbaijan.

In relation with complaint the Plenary Session of Constitution Court notes the following.

It is observed from case materials that I. M. Allahvediyev and others applied to Narimanov District Court with the claim to cancel the decision No. 28 of February 27, 1998 of Baku Electric Vasting Open Joint-Stock Company “on implementation of procedures of paragraph 3 of the charter from 02.02.98 at the time of temporary production stoppage at the plant or production at monthly volumes less than 100 tons”. The claim was grounded by the fact that plaintiffs worked at the enterprise at different times, were injured and lost their ability to work and were paid the compensation for losing work ability. However, the respondent on the basis of total reduction of tariff salaries at later time, has recalculated and reduced the amount of monthly compensation payable to these people. Such provisions are not stipulated under the legislation of the Republic of Azerbaijan.

In accordance with decision of Narimanov District Court from September 10, 2003 the claim was rejected on the basis of parts 3 and 4 of Article 296 of Labor Code of the Republic of Azerbaijan (on fund and other compensation payments, as well as any other disputes on incurred damage, the employee may raise the claim wthin 1 year of the date of discovery of violation of his rights) and Article 375.2 of Civil Code of the Republic of Azerbaijan.

Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan in its decision from November 20, 2003 and Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan in its decision of April 1, 2004 have accordingly left unchanged the decisions of first and appeal instance courts.

One of the main aspects of production development is the protection of health and safety of employees in accordance with legal provisions. Functions performed in this area include activities on provision of safety of employees and improvement of work conditions.

Right of safe and healthy work environment waas stipulated under Constitution of the Republic of Azerbaijan (part VI of Article 35).

From this point of view for damage incurred to the health and safety of individual (as well as in connection with implementation of work functions) liabilities are stipulated.

Thus, Civil Code of the Republic of Azerbaijan considers the damage to health or life of the individual and delict and recognizes as one of the types of liabillities. In this Code also are stipulated procedures for compensation of such damage (Articles 1117 – 1127 of Civil Code).

It shall be notes that delict liability is an efficient tool for protection of civil rights and serves to protection of life and health. In the event of damage to life and health the person faced with morale strees and psychological breakdown, and on the other side incurs financial losses. In addition, such person incurs costs for resoration of his health.

Negative aspects experienced by the person, whose incurred damage to his health or lost his life do not only infuence him, but indirectly may influence his family members, people close to him. Considering this complex of negative factors the legislation stipulates that there shall be imperative norm for raising the claim on compensations of such damages was established.

Thus, in accordance with Article 384.0.3 of the Civil Code of the Republic of Azerbaijan no claim period is established for any claims associated with payment of compensation for damage to health and life of the individual.

Such norm is also stipulated under the Labor Contract of the Republic of Azerbaijan.

It was established in part 4 of Artticle 296 of the Code that in connection with money and other financial claims, as well as settlement of disputes arising from compensation of damage, the employee may apply to the court within a period of 1 year from the date of indication of his rights violation.

To part 4 of this Article is also added second sentence to part 2 of Article XX of the Law of the Republic of Azerbaijan “On changes and amendments and invalidation of certain legislative acts of of the Republic of Azerbaijan due to application of the Civil Code of the Republic of Azerbaijan. In accordance with this amendment no time limit is established for claiming period associated with damage to health and life of employees (This Law has entered into force on May 4, 2002).

As it seen from case materials, first instance and appeal courts did not apply part 4 of Article 296 of the Labor Code, which was valid at the time of court proceedings.

In accordance with Article 416 of Civil Procedures Code of the Republic of Azerbaijan cassation instance court shall review the correct application of material and procedural norms applied by the appeal instance court. In accordance with Article 418.1 of the same Code violation of material and procedural norms or their incorrect application shall serve as basis for cancellation of the decision of appeal instance court.

Considering the above, Plenary Session of the Constitution Court decides that the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan dated April 1, 2004 contradicts the provisons of Articles 416 and 418.1 of the Civil Procedures Code. This in turn violates the provisions of Article 60 of Constitution of the Republic of Azerbaijan stipulating everybody’s rights to protect his rights and freedoms under fair court trial.

Using the guidance of parts V, IX and X 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:**

1.To recognize the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of April 1, 2004 made under the claim of I. M. Allahverdiyev and others as null and void because of its contradiction to Article 60 of the Constitution of the Republic of Azerbaijan, Article 296.4 of the Labor Code of the Republic of Azerbaijan and Articles 416 and 418.1 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.