**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On complaint lodged by S.H. Ibragimova concerning verification of conformity of the decision of September 24, 2003 of the Board of Civil Cases of the Supreme Court*

*to the laws and Constitution of the Republic of Azerbaijan*

**3 December, 2004 Baku city**

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

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

applicant S. Ibragimov

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 S.H. Ibragimova concerning verification of conformity of the decision of September 24, 2003 of the Board of Civil Cases of the Supreme Court to the laws and Constitution of the Republic of Azerbaijan.

Although the time and venue of the court meeting was advised in advance in writing, the representative of respondent - Supreme Court did not present, the constitution case was conducted in his absence.

Having heard the report of judge R. Gvaladze, applicant Z. Mammadova, having studied the materials of the case, the Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

In accordance with decision of the Goychay District Court of April 23, 2003 the claim of Sahiba Ibrahimova against the District Department of the Ministry of Economic Development of the Republic of Azerbaijan and Q. Guliyev, for invalidation of the contract was rejected.

In accordance with the decision of the Appeal Court of the Republic of Azerbaijan from July 10, 2003 the above decision of the District Court was cancelled, and the contract by and between the Department for Privatization and Management of State Property of the Ministry of Economic Development of the Republic of Azerbaijan and G. Guliyev on auction sale of non-resident area at the building No. 123 at M.A. Rasul-zade str., Goychay city, and validity of the state certificate issued to G. Guliyev on sale of state property was terminated. The sale price of the non-resident area at the value of 26 659 000 manats, paid by G. Guliyev was demanded for reimbursement.

In accordance with decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan from September 24, 2003 the decision of the appeal instance court was changed and claim made by S. Ibrahimova was rejected.

In her complaint submitted to the Constitution Court, S. Ibragimova has considered the decision as illegal and groundless and requested its review for compliance with Constitution and Legislation of the Republic of Azerbaijan. The complaint also was reasoned by the opinion cassation instance court has exceeded its authority stipulated under the civil procedures legislation, and have made new decision on case essence.

Without consideration of the essence of the case, Plenary Session of the Constitution Court has noted the following on the complaint of S. Ibragimova.

On the subject case the Board on Civil Cases of the Supreme Court has violated provisions of Article 416 of the Civil Procedures Code and evaluated the factual base of the case and evidences.

Thus, the decision of the appeal instance court was explained by the fact that in contradiction with provisions of legislation the information on the auctioning of disputed property was not published in the “Mulkiyyet” newspaper, the auction was performed without the knowledge of S. Ibrahimova, and by this her right to participate in the acution and to purchase the auctioned property was violated.

Board on Civil Cases of the Supreme Court during the cassation review has used the Mulkiyyet newspaper announcement, not known or evaluated by the appeal court as the basis for rejection of the decision made based on the newspaper material.

Board on Civil Cases of the Supreme Court has also violated provisions of Articles 418.1 and 417.0.3 of the Civil Procedures Code. In accordance with essence of indicated norms, cassation instance court, different from the appeal instance court, does not make new decision on the essence of the case. If it established the material or procedural legal norms violation or incorrect application it may cancel the decision or verdict of the court. In the event of cancellation of mentioned court acts the cassation instance court may direct the case back to the appeal instance court for another review.

Board on Civil Cases of the Supreme Court has established the wrong application of legislation, and instead of directing the case to the appeal instance court, it made the new decision on essence of the case calling it change to the decision.

In accordance with above, the Plenary Session of the Constitution Court has drawn the decision, that due to violation of provisions of Articles 416, 417.0.3 and 418.1 of the Civil Procedures Code. This has resulted in the violation of rights of Z. Mammadova 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 has drawn the decision, that due to violation of provisions of Articles 416, 417.0.3 and 418.1 of the Civil Procedures Code, and Article 60 of the Constitution of the Republic of Azerbaijan the decision of the Board on Civil Cases of the Supreme Court from September 24, 2003 on the claim of S. Ibrahimova against the Goychay District Department of the the Minsitry of Economic Development and G. Guliyev shall be deemed invalid. Relevant aspect of the case shall be reviewed additionally in accordance with procedures and within the timing established under the 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:**

 1. Decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of September 24, 2003 made under the application of Sahiba Ibrahimova against the District Department of the Ministry of Economic Development of the Republic of Azerbaijan and Q. Guliyev, for invalidation of the contract shall be considered as null and void on the basis of contradictions to Article 60 of the Constitution of the Republic of Azerbaijan, and Articles 416, 417.0.3 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 shall be revised in order determined by civil procedural legislation 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 interpreted by any body or official.