**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On complaint lodged by Z.A. Mammadova concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of July 7, 2002 to Constitution and legislation of the Republic of Azerbaijan*

**February 9, 2005 Baku city**

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

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

Applicant Z. Mammadova

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 Z. Mammadova concerning verification of conformity of the decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of July 7, 2002 to Constitution and legislation of the Republic of Azerbaijan.

The case proceeded in absence of the respondent representatives.

Having heard the report of Judge R. Gvaladze, information from applicant Z. Mammadova and having studied the materials of the case, Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

In accordance with decision of the Nasimi District Court of Baku City from September 13, 2001 the claim of the Housing and Utilities Management Department (HUMD) was satisfied and the decision on removal of Suleyman Aliyev, from his apartment located at 9/59 Shamsi Badalbeyli street of Baku city was made, and counter claim of S. Aliyev against HUMD and Zivar Mammadova on cancellation of the writ and lose of rights on apartment was rejected.

Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan in its decision from November 19, 2001 has left the decision unchanged.

Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan in its decision from January 16, 2002 has cancelled the decision of the Appeal Court and directed the case for additional review by the same court.

In accordance with decision of the Board on Civil Cases of the Appeal Court of the Republic of Azerbaijan from April 8, 2002, the decision of the Nasimi District Court of Baku was changed in terms of removal of S. Aliyev and his family members from the disputed apartment, and leaving the other parts of decision unchanged.

In accordance with decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan from June 7, 2002 the decision of the appeal instance court from April 8, 2002 was changed, and demand for removal of S. Aliyev from the apartment was rejected, the claim of S. Aliyev against Z. Mammadova and Nasimi HUMD was satisfied, and writ issued to the name of Z. Mammadova was recognized invalid.

Z. Mammadova deemed the final decision of the cassation instance as illegal and groundless and in her complaint has indicated that the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan has exceeded its authority stipulated under the civil procedures legislation, and have made new decision on case essence. In connection with this the applicant has requested the review of the case for compliance with Constitution and legislation of the Republic of Azerbaijan.

Without consideration of the essence of the case, Plenary Session of the Constitution Court has noted the following.

In review of the cases on complaints of “Aztelecom” Production Union, A.N. Zalov, C. Z. Ibrahimov and others and decisions made, the Plenary Session of Constitution Court has noted that in accordance with procedures established under the legislation, the cassation instance court shall review the procedural and material compliance with legal provisions of the decision of appeal instance court. If violation or incorrect application of these norms is established the cassation instance court shall be entitled to cancel the decision or verdict of the appeal instance and to direct the case for additional review by the appeal court (Articles 416, 418.1, 417.03 of the Civil Procedures Code).

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, by this violating the provisions of above articles of 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, protested by Z. Mammadova shall be deemed invalid 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:**

1.The decision of the Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan of July 7, 2004 made under the claim of the Housing and Utilities Management Department (HUMD) and the decision on removal of Suleyman Aliyev, from his apartment, and counter claim of S. Aliyev against HUMD and Zivar Mammadova on cancellation of the writ and lose of rights on apartment to recognize as null and void because of its contradiction to Article 60.1 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 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.