**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*Review of the complaint by Sona Niftulla qizi Mammadova concerning conformity of the decisions of the Plenum of the Supreme Court of 3 March 2005*

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

**28 June, 2005 Baku city**

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

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

in presence of complainant’s representatives R.Orujov and F.Mammadov

based on a complaint lodged by Sona Mammadova,

has examined in the open session under special constitutional procedure in accordance with Article 130 Section V of the Constitution of the Republic of Azerbaijan the constitutional case of conformity of the decision of the Plenum of the Supreme Court of the Republic of Azerbaijan of 3 March 2005 to the Constitution and laws of the Republic of Azerbaijan.

Having heard a report of Judge Sultanov and statements from complainant’s representatives R.Orujov and F.Mammadov, studied materials and deliberated the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

On 27 October 2004 the Plenum of the Constitutional Court of the Republic of Azerbaijan ruled to:

deem the procedural decision of the Civil Collegium of the Supreme Court of 3 October 2003 and the decision of the Civil Collegium of the Supreme Court of 5 November 2003 in the civil case brought by a claim of Sona Mammadova concerning return of paid moneys and compensation of damage in relation to annulment of an apartment purchase contract contravening Article 60 of the Constitution of the Republic of Azerbaijan and Articles 413, 88, 407.2, 416 and 417.0.2 of the Code of Civil Procedure of the Republic of Azerbaijan and therefore void; and order a new trial in the manner and at times prescribed by the civil procedure of the Republic of Azerbaijan.

In line with the above decision of the Plenum of the Constitutional Court, the Plenum of the Supreme Court reviewed new circumstances of the case in relation to breach of rights and freedoms. On 3 March 2005 the Plenum of the Supreme Court ruled to:

reverse the decision of the Civil Collegium of the Supreme Court of 5 November 2003 and the judgement of the Civil Collegium of the Court of Appeals of 29 August 2003; and

order a new appellate trial of the case.

However, the decision of the Plenum of the Supreme Court had no mention whatsoever of the procedural decision of the Civil Collegium of the Supreme Court of 3 October 2003 deemed void by the Plenum of the Constitutional Court.

In a repeat complaint lodged with the Constitutional Court, Sona Mammadova claimed that the Plenum of the Supreme Court failed to apply Articles 13.7, 431-4.2.2, 431-3.3 and 431-4.1 of the Code of Civil Procedure (henceforth “CCP”) applicable to this case and applied CCP Article 431-4.2.1, which was inapplicable thereto, and thus violated provisions of Article 130 Section IX of the Constitution of the Republic of Azerbaijan. She further claimed that the said decision breached the following constitutional rights: equality, protection of human and citizen rights and freedoms, property, free enterprise, judicial protection of rights and freedoms as well as the right to keep court jurisdiction unchanged and the right to demand compensation for damages. Based on these claims, she requested the Constitutional Court to review conformity of the stated decision of the Plenum of the Supreme Court to the Constitution and laws of the Republic of Azerbaijan.

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

According to Article 130 Section IX of the Constitution, decisions of the Constitutional Court of the Republic of Azerbaijan have mandatory effect throughout the Republic of Azerbaijan. According to Articles 63.4 of the Law of the Republic of Azerbaijan on the Constitutional Court, decisions of the Constitutional Court are final and can not be annulled, amended or officially interpreted by whichever person or entity. Article 66.2 of the same Law states that upon entering legal effect a decision of the Constitutional Court shall be unconditionally enforced and officials failing to do so are liable by law of the Republic of Azerbaijan. When defining competencies and adjudication procedures of the Constitutional Court, the Constitution and other legislative acts of the Republic of Azerbaijan have not foreseen establishment of any entity, including judicial one, that would have competence to provide official legal assessment of decisions of the Constitutional Court.

In compliance with a procedure for review of new circumstances in relation to breach of rights and freedoms stipulated in CCP Chapter 44-1, if the Plenum of the Constitutional Court deems a decision of the Supreme Court or other court decisions void and orders a retrial of a case, the Plenum of the Supreme Court, in the manner and at times prescribed by the civil procedure, shall either reverse or uphold a pertinent court decision or forward a case for a retrial to the instance which breached respective rights and freedoms. In doing so, the Plenum of the Supreme Court can act to redress violations of substantive or procedural law only in line with legal positions stated by the Constitutional Court.

The Plenum of the Constitutional Court points out once more that during case re-examination the Plenum of the Supreme Court can be considered acting in conformity with Article 130 Section IX of the Constitution only if, in addition to reviewing the case, it makes specific orders to rectify judicial errors indicated in decisions of the Constitutional Court of the Republic of Azerbaijan with the purpose of restoration of infringed human rights and freedoms at the instance which allowed the errors and at times prescribed by relevant law.

During a procedure concerning new circumstances in relation to violation of rights and freedoms, review of the matters of law by the Plenum of the Supreme Court should not pre-empt competencies of the Constitutional Court nor misrepresent (re-examine, extend, limit or in any way re-interpret) its decisions and endanger effectiveness of the constitutional judicial procedure but be consistent with the constitutionally-defined role of the cassation court. Hereby, the Supreme Court and other courts of the land shall pass decisions only within bounds defined by the Constitutional Court for a respective case. These bounds comprise legal issues and rights and freedoms deemed violated as defined in a pertinent decision of the Plenum of the Constitutional Court (the decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan of 25 January 2005 “Review of conformity of Part III Paragraph 8 and Part IV Paragraph 7 of the Law of the Republic of Azerbaijan No. 688-IIQD of 11 June 2004 on Amendments to Certain Legislative Acts of the Republic of Azerbaijan”).

In such case, the Plenum of the Supreme Court does not examine the substance of the case under the procedure concerning new circumstances in relation to violation of rights and freedoms but simply provides a bridge between the Constitutional Court and a court instance that will carry on with case procedure.

According to CCP Article 431-2, in relation to enforcement of decisions of the Constitutional Court of the Republic of Azerbaijan and the European Court of Human Rights, the Plenum of the Supreme Court reviews solely the matters of law. Article 431-4.1 of the same Code notes that the Plenum of the Supreme Court of the Republic of Azerbaijan makes a ruling subsequent to review of a case and defines procedural limits of the Plenum of the Supreme Court. Therefore, in such cases the Plenum of the Supreme Court is competent to make a decision only within and in reference to legal positions defined by the Constitutional Court.

In the case under review, the Plenum of the Supreme Court disregarded provisions of Article 130 Section IX of the Constitution of the Republic of Azerbaijan and CCP Article 431.4.2 by adopting a decision inconsistent with the decision of the Plenum of the Constitutional Court of 27 October 2004.

The Plenum of the Constitutional Court also notes that CCP Article 9.1 establishes that a court of justice should abide by principles of adversarial process and equality of arms and make decisions based on facts and law. CCP Article 431-3.3 requires that during a procedure concerning new circumstances in relation to violation of rights and freedoms parties in the case should be informed about a place and time of a trial.

As seen from materials of the case, the Plenum of the Supreme Court failed to inform Mammadova about its session of 3 March 2005 which examined new circumstances in relation to violation of rights and freedoms, thus violating complainant’s right to equality before the law as established in Article 25 of the Constitution.

In addition to being superficial, the pertinent decision of the Plenum of the Supreme Court was not properly substantiated from the point of substantive and procedural law. Although the descriptive part of the decision specified all decisions in the case made by the first-instance, appellate and cassation courts, the reasoning part of the decision ended with a reference to a disputed episode in the following fashion: “The Plenum of the Supreme Court maintains that because the Civil Collegium of the Court of Appeals disregarded matters of substantive and procedural law when examining the case, both the decision and the procedural decision of the Civil Collegium of the Court of Appeals should be reversed and the case should be retried by the appellate court. For example, when determining value of renovation expenses incurred on the disputed apartment, the opinion of the court appraiser was not properly correlated with other evidence.”

Article 431.4.1 of the CCP establishes that a decision of the Plenum of the Supreme Court should be made in line with requirements of Articles 430.2 and .3 of the same Code. Article 430.2 clearly states that a decision of the Plenum of the Supreme Court should refer to a legal provision used to substantiate it. Failure to abide by this requirement entails a serious violation of the law on the part of the Plenum of the Supreme Court, which stated in its decision that the Civil Collegium of the Court of Appeals had breached substantive and procedural law but failed to provide reference to legal provisions that allowed reaching such conclusion.

In consideration of the foregoing, the Plenum of the Constitutional Court has come to the conclusion that because the decision of the Plenum of the Supreme Court of the Republic of Azerbaijan of 3 March 2005 made under the procedure concerning new circumstances in relation to violation of rights and freedoms in the civil case brought by the claim of Mammadova concerning return of paid moneys and compensation of damage in relation to annulment of an apartment purchase contract contravenes Articles 25, 60 and Article 130 Section IX of the Constitution of the Republic of Azerbaijan, Articles 63.4, 66.1 and .2 of the Law of the Republic of Azerbaijan on the Constitutional Court and Articles 430.2.7, 431.1-3.3, 431.1-4.1 and 431.1-4.2 of the Code of Civil Procedure of the Republic of Azerbaijan, the said decision shall be deemed void. In line with the present Decision and the decision of the Plenum of the Constitutional Court of 27 October 2004, the case shall be tried again in the manner and at times prescribed by the civil procedure of the Republic of Azerbaijan.

Guided by Article 130 Sections V and IX of the Constitution of the Republic of Azerbaijan and Articles 52, 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. As the decision of the Plenum of the Supreme Court of the Republic of Azerbaijan of 3 March 2005 made under the procedure concerning new circumstances in relation to violation of rights and freedoms in the civil case brought by the claim of Mammadova concerning return of paid moneys and compensation of damage in relation to annulment of an apartment purchase contract contravenes Articles 25, 60 and Article 130 Section IX of the Constitution of the Republic of Azerbaijan, Articles 63.4, 66.1 and .2 of the Law of the Republic of Azerbaijan on the Constitutional Court and Articles 430.2.7, 431.1-3.3, 431.1-4.1 and 431.1-4.2 of the Code of Civil Procedure of the Republic of Azerbaijan, the said decision shall be deemed void. In accordance with the present Decision and the decision of the Plenum of the Constitutional Court of 27 October 2004, the case shall be tried again in the manner and at times prescribed by the civil procedure of the Republic of Azerbaijan.
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 can not be annulled, amended or officially interpreted by whichever person or entity.