**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OFTHEREPUBLICOFAZERBAIJAN**

*On verification of conformity of decision of the Judicial Board on Civil Cases*

*of the Supreme Court of the Republic of Azerbaijan as of 2 March 2005 with the Constitution and laws of the Republic of Azerbaijan in connection with the complaint of Ali Kalayev*

**04 Aprel 2006 Baku city**

Plenum of the Constitutional Court of the Republic of Azerbaijan composed of F.Abdullayev (Chairman), F.Babayev, S.Salmanova, B.Garibov (reporter judge), R.Qvaladze, E.Mammadov, I.Nadjafov and A.Sultanov,

with participation of the secretary I.Ismayilov,

applicant A.Kalayev his representatives F.Bagirova and R.Ibrahimov

representative of respondent A.Kalbaliyev, Judge of the Supreme Court of the Republic of Azerbaijan;

expert: R.Bayramov, associate professor of Department of Civil Law of the Baku State University;

specialists: Kh.Aliyev, lawyer of Service of State real estate register at Cabinet of Ministers of the Republic of Azerbaijan, J.Bagirov, lawyer of Legal department of Executive Power of Baku city;

in accordance with Article 130.5 of the Constitution of the Republic of Azerbaijanexamined in open judicial session via special constitutional proceedings the case on complaint of A.Kalayev concerning verification of conformity of decision of the Judicial Board on Civil Cases hereinafter referred to as the JBCC) of the Supreme Court of the Republic of Azerbaijan as of 2 March 2005 to the Constitution and laws of the Republic of Azerbaijan,

Having heard the report of Judge B.Garibov, speech of the representatives of applicant F.Bagirova and R.Ibrahimov, speech of the representative of respondent A.Kalbaliyev, opinion of expert R.Bayramov, information of specialists Kh.Aliyev and J.Bagirov having considered materials of the case, Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

A. Kalayev specifies in the complaint that on the basis of the order No. 034355 issued on June 16, 1975 issued to his father T. Kalayev, they together with family members (father T. Kalayev, stepmother D. Kalayeva, he, sister R. Kalayeva, brother N. Kalayev) moved for accommodation in the apartment (address: Baku city, Nizami Street, Building 60, Apartment 23). His father died in 1984. The stepmother D. Kalayeva in the middle of 1995 for the purpose of privatization within 45 days submitted necessary documents to appropriate authorities and on August 15, 1995 was issued the decree of the Head of Sabail District Executive Power concerning transfer of this apartment to her property. On the eve of obtaining the certificate on the property right to the specified real estate, D. Kalayeva, R. Mustafayeva (Kalayeva), N. Kalayev were killed on September 26, 1995 in this apartment under the obscure circumstances. Corpses were found on September 29, 1995 and transferred to A. Kalayev on October 2, 1995. For burial of the dead near their father, he took them out to the city of Ganja.

The order of the Head of Executive Power of Sabail District as of October 4, 1995 cancelled the decree as of August 15, 1995, and the above-mentioned apartment on October 6, 1995 with other decree was allocated to N. Allakhverdiyev (the order was issued on 07.10.1995). In 1995 keys from the apartment by the prosecutor's office, carrying on an investigation on criminal case, were transferred to him as to the relative of the dead and since that time he lives in this apartment.

The claims for cancellation of the order issued to N. Allakhverdiyev submitted to them in 1996 and in 1999 by means of the letter were returned back by courts. His claim to N. Allakhverdiyev, to Head of Executive Power of Sabail District, to Administration of Technical inventory and registration of the property rights of the Baku city concerning annulment of decrees of Head of Executive Power of Sabail District, concerning transfer of the disputed apartment to N. Allakhverdiyev, of act of privatization of the specified apartment and the certificate on registration and acceptance of him as the heir-at-law of this apartment, with the decision of Sabail District Court of August 18, 2004 was not satisfied.

The complaints made concerning this decision, by the decision of Judicial Board on Civil Cases of the Court of Appeal of the Republic of Azerbaijan (hereinafter referred to as the JBCC of the Court of Appeal) as of November 11, 2004 and the decision of Judicial Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan (hereinafter referred to as the JBCC of the Supreme Court) as of March 2, 2005 were not satisfied. In response to the complaint as the additional cassation, by the letter of the Chairman of the Supreme Court as of May 10, 2005 No. 8m-288/2005 he was informed concerning the lack of any reasons for consideration of the case at the Supreme Court Plenum.

The applicant claiming that the decision of JBCC of the Supreme Court as of March 2, 2005 broke his rights for equality and housing specified in the Articles 25 and 43 of the Constitution of the Republic of Azerbaijan, asked to verify the compliance of these act to the Constitution and laws.

From the circumstances of a civil case established by courts it is seen that on the basis of the order as of June 16, 1975 No. 034355 as an exchange the apartment No. 23 on Nizami Street, 60 was transferred by the Executive Committee of Council of People's Deputies of Baku city to Talyat Kalayev. In this order as family members were also specified Kalayeva Dilyara (wife), Kalayev Ali (son), Kalayeva Rena (daughter), Kalayev Nail (son).

 After T. Kalayev's death in 1984, being the tenant of this apartment, D. Kalayeva with children from marriage with T. Kalayev - R. Mustafayeva (Kalayeva) and N. Kalayev in common was lived in the specified apartment.

According to point 1 of the order of the Head of Executive Power of Sabail District as of August 15, 1995 No. 2385 “On privatization of regional housing stock and gratuitous transfer to personal property to the citizen D.M.Kalayeva” the conclusion of the commission on privatization of housing stock of the Sabail district as of August 3, 1995 (Minutes No. 24) was approved and the 3-roomed isolated apartment No. 23 at Nizami Street, 60 (living residence area - 57,0 sq.m, and total area - 78,0 sq.m), on the basis of the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan”, was given to D. Kalayeva, in personal property.

In the second point of this document the Management of Housing and Communal Services of the district was commissioned to exclude this apartment from housing stock of local council, in the third point the Technical Inventory Bureau was requested to issue to the owner the registration certificate and technical data sheet.

From contents of this act having normative character it is also evident that Housing Management Office No. 5 of Housing Maintenance and Utilities Board was commissioned to sign the standard contract with the private apartment for providing maintenance and repair, and also to send the copy of the order to Technical Inventory Bureau of Baku city, to notary office, to Housing Maintenance and Utilities Board, to Passport Office of Police Department (for opening of the house register) (points 4 and 5 of the decree).

According to the documents of the case D. Kalayeva, R. Mustafayeva (Kalayeva), N. Kalayev were at the same time killed in this apartment and the Registry Office of Sabail district of November 3, 1995 certified their death. Till this time the document on the property right to the apartment was not received.

By the order of the Head of Sabail District Executive Power as of October 4, 1995 No. 2818 “On annulment of the decree of Head of Executive Power of Sabail District as of August 15, 1995 No. 2385”, on gratuitous transfer of the apartment located at Nizami St., Building 60, Apartment 23, to D. Kalayeva, referring to the fact that she cannot receive the registration certificate in connection with murder of her and other family members, the decree of the Head of Executive Power of Sabail District as of August 15, 1995 No. 2385 was recognized as invalid, Housing Maintenance and Utilities Board of the area was commissioned to restore the apartment in housing stock of Executive Power of Sabail District (points 1 and 2 of the decree No. 2818).

On the basis of the letter of the Deputy Head of Executive Power of the Baku city No. 7-1526/17 as of October 5, 1995, the Head of Executive Power of Sabail District as of October 6, 1995 No. 2840 made the decision to issue the order for providing of N. Allakhverdiyev with the apartment, and on October 7, 1995 the order No. 047201 was issued. On the basis of the registration certificate as of January 11, 1996 on the property right, the apartment is in N. Allakhverdiyev's property.

From the submitted documents it is evident that the applicant for resolution of a civil case on which the judicial acts which are a subject of consideration of the constitutional procedure in 1996 were taken out and in 1999 appealed to people's court of the Sabail district of the Baku city (district court), however they were returned to it by means of the letter not considered in essence.

In connection with primary claim of A. Kalayev against respondents N. Allakhverdiyev, Head of Executive Power of the Baku city, Department of Technical Inventory and Registration of Ownership Rights of Baku city concerning annulment of decrees of the Head of Executive Power of Sabail District on bout transfer of the apartment located at Nizami St., Building 60, Apt. 23 (Baku city) to N. Allakhverdiyev, the act of privatization of the specified apartment and the certificate of registration and acceptance by him as the heir-at-law of this apartment, the counterclaim of N. Allakhverdiyev to A. Kalayev and members of his family, concerning moving out by the decision of Sabail district court as of August 18, 2004 the first claim was not satisfied, and the counterclaim was satisfied.

The first instance court proved part of the decision on primary claim referring to the Article 126 of the Civil Code of the Republic of Azerbaijan acting till 2000 (hereinafter referred to as the former Civil Code) and stating that property right arises from moment of registration of the contract on transfer of property to other person, by means of its condemnation. According to point 10 of the decision of Plenum of the Supreme Court No. 3 as of June 16, 1995, privatization of the apartment is officially made by the conclusion of the contract certified by the notary with body under which authority the apartment is. The property right to the privatized apartment arises with registration of the contract.

However, between D. Kalayeva and the body which was engaged in privatization such contract was not concluded and apartment on her name on the right of personal property was not registered. After D. Kalayeva's murder together with children, the decree No. 2385 as of August 15, 1995 was nullified and the specified apartment, was returned in housing stock of executive power.

The court came to conclusion that D. Kalayeva had no personal property and therefore after her death the apartment did not remain as inheritance. On the other hand, in view of the fact that Mustafayeva (Kalayeva) and N. Kalayev were killed in one day with D. Kalayeva and at the same time, they has no share in inheritance.

JBCC of the Court of Appeal also did not satisfy the complaint and having uphold the judgment of the first instance court, in its decision once more referred to point 10 of the decision of Plenum of the Supreme Court of the Republic of Azerbaijan No. 3 as of June 16, 1995 “On application by courts of the legislation on privatization of housing stock” and the Articles 73 and 82 of the former Civil Code and came to a conclusion that D. Kalayeva had no personal property and therefore after her death the apartment did not remain as inheritance. On the other hand, for protection of the rights of the person, whose rights were violated in connection with the claim, the three-year term of limitation period is missed.

JBCC of the Supreme Court of the Republic of Azerbaijan with the decision as of March 2, 2005, having applied the Article 49.2 of the Housing Code of the Republic of Azerbaijan - according to which for annulment of the order the three-year term from the date of its delivery is established - left the appeal without satisfaction, and upheld the judgment of appeal instance.

Plenum of the Constitutional Court in connection with A. Kalayev's complaint notes that it is necessary to carry out the comparative analysis of amendments to the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” made till October 4, 1995, that is before of date of adoption of the decree No. 2818 of the Head of Executive Power of Sabail District which served as the reason for termination of recognition of D. Kalayeva as the subject of privatization legal relationship in connection with death.

Among the bases for formation and termination of the property right, the privatization (including, privatization of the state housing stock) as the means stimulating freedom of economic activity and serving to free transition of property from one kind to another (excepting the cases connected with the state and public interests) proceeds from the principles, ideas and norms of the Constitution.

According to Article 1 of the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” (hereinafter referred to as the Law) citizens of the Republic of Azerbaijan and the stateless persons who signed the contract on hiring of living spaces with the owner of the state or public housing stock have the right gratuitously transfer the living spaces (houses) occupied by them to personal property under the terms and in the order established by the present Law.

At the same time Articles 4, 8 and 9 of the Law acting during this period provided a peculiar privatization mechanism (such order worked till September 19, 1995), according to which, powers on privatization of the state housing stock belonged to various bodies, it was required to sign the relevant contracts subject to notarization and also to have state registration and acceptance for the accounting of the privatized apartments, in the order established by Law.

Thus, in Article 4 of the Law which was in force during adoption of the decree No. 2385 as of August 15, 1995 it is specified that privatization of the state housing stock is carried out by the relevant local public authorities having housing stock in its disposal, the ministries, head departments, the enterprises, the organizations, institutions, and the privatization of public housing stock, the relevant cooperative, trade-union and other public organizations having own housing stock.

Article 8 of this Law which was in force during this period, provided that transfer of apartments to property of the citizens living in them is carried out by the conclusion of the contract with the owner of the apartment or the body authorized by it certified by the notary, and Article 9 carrying out the state registration of the privatized apartments by their acceptance on the account of the body of technical inventory as it should be established by the legislation for houses (apartments) of individual housing stock.

 Clarification of legality of argument that the contract on transfer of the apartment to D. Kalayeva's property certified by the notary, assumed as a basis in the judicial acts connected with A. Kalayev's claim (the decision of Sabail district court, the decision of JBCC of the Court of Appeal) was not signed, make necessary the research also of other acts having normative character which are regulating privatization process, being in force on August 15, 1995.

Thus, in the paragraph the first point of the first appendix No. 2 to the decree of the Head of Executive Power of Baku city No. 1385 as of July 2, 1993 “On rules of execution of the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” it is defined that documents on transfer of apartments (rooms) to property of citizens are processed by housing bodies of areas and are presented to local executive authorities. From the section II of the appendix No. 3 to the decree it is seen that housing bodies of the area submit to this body the contract on gratuitous transfer of the apartment, and also the draft of decree of the head of executive power of the area.

Below is the list of the documents to be submitted to authorized bodies for the purpose of state registration and acceptance into accounting of apartments transferred to personal property: copy of the decree of the head of executive power, notarized copy of contract on gratuitous transfer of housing area, housing plan (scheme), the passport of owner (owners) of property (the section III).

As evident, the legislation regulating sequence of actions of authorized bodies and organizations, in connection with privatization, sequence of the submitted and processed documents provided the edition of order of head of local executive power about privatization after signing a notarized contract.

It should be noted that in the Decree of the Head of Executive Power of Sabail District No. 2385 as of August 15, 1995 there were no requirement for conclusion by D. Kalayeva of any notarized contract.

On the other hand, at the decree of the Head of Executive Power of Sabail district No. 2818 as of October 4, 1995 concerning nullification the above- mentioned decree as the reason is specified that they could not receive the registration certificate on the apartment in connection with murder of D. Kalayeva and members of her family.

The legislator in the new edition of Articles 4, 8 and 9 of the Law of the Republic of Azerbaijan “Onintroduction of modifications to the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan”” (this Law came into force on September 19, 1995, i.e. before murder of D. Kalayevaand her family on September 26, 1995), improved the specified mechanism, having delegated powers on privatization of the state and public fund to uniform body, having excluded a condition of the conclusion of the contract certified of a notarial order and having left behind local executive authorities only function on write-off of apartments (houses) from balance.

Thus, according to Article 4 of the Law, privatization of living spaces (houses) of the housing stock which is in state ownership, and also in public property on the basis of addresses of citizens is carried out by bodies of technical inventory and registration of the property rights.

In article 8 of the Law the list of the documents submitted by citizens, and also powers of appropriate authorities in connection with addresses of citizens is defined, and in Article 9.1 it is provided that the body of technical inventory and registration of the property rights within the month from the date of receipt of the petition from the citizen wishing to privatize the room (house) occupied by him, makes the state registration of transfer of this apartment (house) to personal property of the citizen, makes the registration certificate on the property right of the citizen to living spaces (house) and submits it to the owner of premises, sends the notice to the relevant local executive authority, and also to body of tax administration.

In the second part of this article, cases of refusal of bodies of state technical inventory and registration of the property rights in privatization of apartments are specified.

Thus, submission of forged documents by the citizen or existence of dispute of the apartment that occupied by him serves as a cause of failure in privatization, according to the decision made by the specified body.

Generally, the legislator, having established the state registration as an indispensable condition of completion of transfer of the apartment (house) to personal property, at the same time differently treated to order implementation of initial and subsequent provisions of the Law existing till September 19, 1995.

Thus, if, according to Article 9 of the Law which was in force till September 19, 1995 registration of the apartment in body of technical inventory for the purpose of completion of privatization was specified as the citizen's duty, from the point of view of Article 9 of the Law that came into force since September 19, 1995 it is imputed obligations of government body of technical inventory and registration of the property rights to which the citizen in connection with the property rights to which the citizen directly addresses in connection with privatization.

As evident, the legislator created more favorable legal situation in connection with the mechanism of completion of privatization.

It is also necessary to note that in point 3 of the decision of Milli Mejlis of the Republic of Azerbaijan as of September 19, 1995 “On introduction of modifications to the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” it is commissioned to regional, city executive authorities to bring within one month into accordance with the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” all issued by them acts of privatization of apartments and all not considered, before coming into effect of the Law “On introduction of modifications to the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” petitions from citizens, which addressed for privatization of apartments in offices of local executive power to send to appropriate authorities of the state technical inventory and registration of the property rights.

However, courts, resolving the dispute, did not investigate the reason of application or non-application by appropriate authorities concerning D. Kalayeva of these rules established by the legislator, but also did not refer at all to provisions of articles of the Laws which were earlier adopted or later.

Legislation of the Republic of Azerbaijan without excluding cases of emergence of contradictions between laws during their application, in connection with protection of the violated or challenged rights established also an order of their overcoming.

Thus, the Law of the Republic of Azerbaijan “On normative legal acts”, being in force till November 26, 1999, in case of detection of contradictions between the laws which are subject to application, at consideration of concrete cases by judicial authorities obliged them to make decisions on the basis of the laws which came into force later (Art. 7 of the Law).

The similar rule found its reflection also in Article 7 of the acting Law of the Republic of Azerbaijan “On normative legal acts”.

However, the court of the first instance in the decision on A. Kalayev's claim referred not to the norms of the legislation governing the relations on privatization, but only to the point 10 of the decision of the Supreme Court Plenum, which is does not have relation not only to Articles 4, 8 and 9 of the Law in the new edition, but also to Article 126, 528, 554 of the former Civil Code. The judgment of appeal instance applied the point 10 of the decision of the Supreme Court Plenum, and the Articles 73 and 82 of the former Civil Code regarding terms of limitation period.

The decision of the cassation instance court was guided by the Article 49.2 of the Housing Code of the Republic of Azerbaijan (three-year term in connection with requirements concerning nullification of order). The situation which resulted from such approach from the point of view of the purposes of justice cannot be estimated as positive circumstance as leads to violation of the constitutional norms regulating the property right.

At the same time, Plenum of the Constitutional court also considers that non-receipt by D. Kalayeva of the registration certificate on the property right to the apartment in connection with death should not be accepted as not bringing to the end of privatization.

Thus, according to provisions of the former Civil Code the civil rights and duties arise on the bases provided in the legislation, and from though not provided by law of the actions of the citizens and the organizations generating the civil rights and duties according to general provisions and sense of the civil legislation (Article 4 of the former Civil Code).

In Article 9.2 of this Code it is specified that legal capacity of the citizen arises with his birth and stops with death. According to the Law the content of legal capacity of citizens is defined by possibility of possession of the right of personal property, a right of use of a house and other property, the right to inheritance, the right to bequeath property, etc. (Article 10 of the former Civil Code). From the point of view of these provisions the action of the person, connected with privatization of the apartment (house), according to the rules provided in the relevant legislation (collecting necessary documents, their submitting to competent authorities), result from legal capacity of the person, being an indicator of expression of his will, and pursue the aim of achievement of positive legal result.

However, the actual realization of the right of privatization and its transformation in the subjective right (the death as the biological factor independent of will prevented of non-receipt of the registration certificate on the property right to the apartment (house), on the other hand, lack of the bases for refusal provided in the legislation concerning the died person has to be estimated at privatizations of the apartment (house) as already created right of personal property.

As evident, D. Kalayeva made necessary actions with the purpose of privatization, however her death did not allow to finish this process. Existence of the order of the Head of Executive Power of Sabail District No. 2385 as of August 15, 1995 specifies that established by the legislation cases of refusal in privatization (Art. 5, 6, 9.2 of the Law) could not be applied to her.

Execution and application of the legislative provisions directed on change of a type of the property and a legal regime belonging to civil subjects of property have to be carried out so that not to cause damage to other values of the constitutional value.

From this point of view the conditions established by legislation, order and terms governing hereditary relations concerning the apartment which is in personal property of D. Kalayeva were rejected by the decree of Head of Executive Power of Sabail District No. 2818 as of October 4, 1995 concerning restoration in the state housing stock of the specified apartment that led to violation of the property right and called into question the legality of the specified act.

The Constitutional Court Plenum also notes that protection of the violated subjective civil rights was made within the terms of limitation period established by the law.

In Articles 73, 74 of the former Civil Code the general and shortened terms of limitation period are established. At the same time, Article 85 of this Code provides the circle of requirements connected with protection of the subjective rights irrespective of terms of limitation period.

According to third part of the specified article the requirement of the state organizations concerning return of the state property which is in illicit possession of collective farms, cooperatives, other public organizations and citizens are also among cases to which terms of limitation period are not applied.

From this provision follows that only in case of illegal possession of state ownership the requirement of the state organizations for its return are not limited to terms. Despite existence of other types of property, except state, its more guaranteed situation established by advantages inherent in it in economic system of socialism, in comparison with other types of property.

From this point of view the application of the specified articles of the former Civil Code for the solution of the disputes following from the civil legal relationship which arose before loss of force by them (September 1, 2000) without taking into account of provisions of the Constitution of the Republic of Azerbaijan acting since November 27, 1995 cannot be considered as the fair.

Thus, according to parts I and II of Article 13 of the Constitution the property in the Republic of Azerbaijan is inviolable and is protected by state. The property may be state, private and municipal.

According to parts I and II of Article 29 of the Constitution everyone has the right to own property.

The property right, including the right of personal property, is protected by the law. On the basis of part V of the specified article the State ensures the right of inheritance.

In essence, these norms recognizing the property right of each subject of civil law and existence for them of identical legal regime in a civil turn, at the same time deny the existence of distinctions in volume of the means and opportunities connected with protection of their subjective rights (including non-use of terms of limitation period). Other understanding of these provisions would lead to an inequality of different types of property, pretentiousness of other constitutional norms, and finally would cause systemic damage of them.

The Constitution of the Republic of Azerbaijan is the basis of legislative system of the Republic of Azerbaijan and possesses highest legal power (Article 147 of the Constitution).

According to Article 149.3 of the Constitution laws should not contradict the Constitution. According to point 8 of “Transitional clauses” provisions of laws and other normative-legal acts acting on the territory of the Republic of Azerbaijan before acceptance of the present Constitution remain valid if they do not contradict the present Constitution.

It is not a coincidence that legislator, defining in new Civil Code of the Republic of Azerbaijan a circle of requirements for use of terms of limitation period, defined them irrespective of types of property according to norms of the Constitution (Article 384.0.4 of the Civil Code).

All people are equal with respect to the law and court (Article 25.1 of the Constitution). From the point of view of this constitutional norm providing guarantees of equal rights and duties of everyone at the equal relations and circumstances, point 3 of Article 85 of the former Civil Code has to be applied also to requirements, about return of illegally acquired objects of personal property.

According to requirements of Article 416 of the Civil Procedural Code of the Republic of Azerbaijan (hereinafter referred to as the CPC) the Court of cassation instance verify the correctness of application of material and procedural legal norms by court of appeal instance and in cases of violation of material and procedural legal norms or in case of their wrong application the court of cassation instance directs case to court of appeal instance for reconsideration (Articles 417.0.3, 418.1, 418.3 of the CPC).

Thus, Plenum of the Constitutional Court considers that the decision of Judicial Board on Civil Cases of the Supreme Court as of March 2, 2005 on a civil case in A. T. Kalayev's claim against Head of Executive Power of the Baku city, Department of Technical Inventory and Registration of the property rights of the Baku city for nullification of decrees of executive power of the Sabail district concerning transfer of the apartment located at Baku city, Nizami St., Building 60, Apartment 23 to N. Allakhverdiyev, of the act of privatization and the registration certificate on the specified apartment and acceptance of this apartment as the heir-at-law and the counterclaim of N. Allakhverdiyev to A. T. Kalayev and members of his family concerning moving out from the apartment located at Baku city, Nizami St., Building 60, Apartment 23 has to be recognized as null and void in connection with discrepancy with the Articles 13, 25, 29, 147, 149 of part III of the Constitution of the Republic of Azerbaijan, point 8 of “Transitional clauses”, Articles 5, 6, 8 and 9 of the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” (in edition of September 19, 1995), Articles 416, 417.0.3, 418.1, 418.3 of the CPC.

Plenum of the Constitutional Court, considering inevitability of negative influence of the legal position expressed in this decision on legitimate interests of N. Allakhverdiyev pays attention to need of their providing according to the legislation.

Being guided by 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 Constitutional Court”, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To Recognize the decision of Judicial Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan as of March 2, 2005 on a civil case in A. T. Kalayev's claim against Head of Executive Power of Baku city, Department of Technical Inventory and Registration of the property rights of Baku city for nullification of decrees of executive power of the Sabail district concerning transfer of the apartment located at Baku city, Nizami St., Building 60, Apartment 23 to N. Allakhverdiyev, of the act of privatization and the registration certificate on the specified apartment and acceptance of this apartment as the heir-at-law and the counterclaim of N. Allakhverdiyev to A. T. Kalayev and members of his family concerning moving out from the apartment located at Baku city, Nizami St., Building 60, Apartment 23 in connection with discrepancy with the Articles 13, 25, 29, 147, 149 of part III of the Constitution of the Republic of Azerbaijan, point 8 of “Transitional clauses”, Articles 5, 6, 8 and 9 of the Law of the Republic of Azerbaijan “On privatization of housing stock in the Republic of Azerbaijan” (in edition of September 19, 1995), Articles 416, 417.0.3, 418.1, 418.3 of the CPC. To reconsider case according to the present decision, in order and terms established by the civil procedure legislation of the Republic of Azerbaijan.

 2. The decision shall come into force from the date of its publication.

 3. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

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