**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On conformity of some judicial acts to Constitution and laws of the Republic of Azerbaijanin connection with the complaint of Javid Ismayilzadeh*

**13 February 2007 Baku city**

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

with participation of the secretary I.Ismayilov,

applicant J.Ismayilzadeh and his representative D.Jafarov

representative of defendant: A.Mirzaliyev, Judge of the Supreme Court of the Republic of Azerbaijan

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 J.Ismayilzadeh concerning verification of conformity of decision of the Judicial Board on Civil Casesof the Court of Appeal of the Republic of Azerbaijan of 02May 2006anddecision of the Judicial Board on Civil Cases of the Supreme Court of the Republic of Azerbaijan as of 3 August 2006 to Constitution and laws of the Republic of Azerbaijan

Having heard the report of Judge B.GAribov, speech of the representatives of applicant D.Jafarov and defendant A.Mirzaliyev, having considered materials of the case, Plenum of the Constitutional Court

**DETERMINED AS FOLLOWS:**

J.Ismayilzadeh specifies in the complaint that since 1986 for the purpose of improvement of living conditions he together with four family members consisted on the room account. The 2-roomed cooperative apartment belonging to HCC Elm-2 at the address: Baku city, Lermontov St., 3, quarter 59 according to the solution of general meeting of members of cooperative of November 10, 1991 and the corresponding order was allocated to him.

In 1992 the claim made by A. Guseynova with the requirement to move him out from this apartment, having passed various judicial instances, it was not satisfied in the absence of the bases. A. Guseynova addressed with complaints concerning these acts various bodies, and in the letter of the Supreme Court as of April 30, 2004 it was specified the groundlessness of these complaints.

However, 11 years later after the last judicial act by the decision of Plenum of the Supreme Court of the Republic of Azerbaijan (hereinafter referred to as the Plenum of the Supreme Court) as of August 26, 2005 the decisions passed on this civil case were cancelled and case was sent for new judicial review in Sabail district court.

On the basis of acts of the judicial instances which reconsidered this civil case, A. Guseynova and F.Rasulova's main and additional claim requirements were satisfied.

In response to the complaint for consideration of this civil case as the additional cassation in the letter of the Chairman of the Supreme Court of the Republic of Azerbaijan of August 23, 2006 it was specified that there are no bases for consideration of the case on Plenum of the Supreme Court.

The applicant, having specified that in the acts adopted by the courts which reconsidered the case a some norms of the Civil Code and of Civil Procedure Code of the Republic of Azerbaijan existing till September 1, 2000 are violated, the legal provisions of decision of the Constitutional Court of the Republic of Azerbaijan of August 3, 2001 “On possibility to submit a complaint on judicial acts on civil cases, adopted before 1 September, 2000” that led to violation of judicial guarantees of its rights and freedoms and the property rights (Articles 13, 29 and 60 of the Constitution of the Republic of Azerbaijan) are not considered, asks to cancel the decision of Judicial Board on Civil Cases of the Court of Appeal of the Republic of Azerbaijan (hereinafter referred to as the Court of Appeal) as of May 2, 2006 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 August 3, 2006.

From circumstances of the case established by court it is seen that the disputed apartment belonging to HCC Elm-2 of Academy of Sciences of the Republic of Azerbaijan at the address: Baku city, Lermontov St. 3, a long time remaining empty and without owner, according to the solution of general meeting of members of cooperative of November 10, 1991 and according to the decision of the Head of Executive Power of the Sabail area of April 22, 1992 on the basis of the order No. 006681 with the purpose of improvement of living conditions was allocated to J.Ismayilzadeh registered on housing list since April 4, 1986. From 1991 until now he lives in this apartment and since May 17, 2002 he is the owner of apartment.

By the decision of people’s court of the Sabail district as of March 24, 1992 the claim of A. Guseynova to J.Ismayilzadeh for eviction from the apartment was rejected; this decision was conditioned by the fact that the claimant never lived in this apartment and the power of attorney as of January 11, 1992 was issued to A. Guseynova not as the right for accommodation but as powers for storage of property and the apartment, and, being guided by that J.Ismayilzadeh did not capture the disputed apartment but moved in it with the consent of board members of cooperative.

Board on Civil Cases of the Baku city court cancelled this decision with its own decision as of April 21, 1992 and sent the case for reconsideration.

The Presidium of the Baku city court by the decision of July 10, 1992 upheld the decision of Sabail district court as of March 24, 1992. After that until the middle of 1994 on this civil case, various acts were adopted by separate judicial instances.

At last, by the decision of JBCC of the Supreme Court of the Republic of Azerbaijan as of July 8, 1994 which considered the specified civil case on the first instance, A. Guseynova's claim to J.Ismayilzadeh and to executive power of the Sabail district concerning recognition as invalid of the order issued on the disputed apartment, and eviction of the respondent together with a family from the disputed apartment was not satisfied in view of groundlessness.

By the decision of Presidium of the Supreme Court of the Republic of Azerbaijan (hereinafter referred to as the Presidium of the Supreme Court) of January 24, 1995 the protest of Prosecutor's office of the Republic of Azerbaijan as supervision on this decision was not satisfied.

In the decision of JBCC of the Supreme Court as of July 8, 1994 and the decision of Presidium of the Supreme Court as of January 24, 1995 it is specified that as the former inhabitant of the disputed apartment from the point of view of the norms of law governing the property relations in the Republic of Azerbaijan was not an owner and long time did not live in the specified apartment, having lost the rights for the apartment in connection with final departure from the city of Baku, and issue of the order by the decision of general meeting of members of cooperative, and therefore the order of the Head of Executive Power of the Sabail district issued on the basis of this decision was lawful. In the power of attorney issued to A. Guseynova on January 11, 1992 was indicated her power on protection and safety of property, and the power of attorney issued to F.Rasulova on September 3, 1992 was issued to undertake official actions for sale of the specified A. Guseynova's apartment, however any of them was not signed by the principal. Besides, the second power of attorney was made after the principal's exception from members of cooperative on November 10, 1991, that is on September 3, 1992. The reference made by the former resident of the apartment on purchase and sale of the specified apartment and part of property of A. Guseynova was not taken for 40 (forty) thousands of rubles as the contract of purchase and sale in connection with discrepancy to requirements of the Civil Code.

However, after the long period by the decision of Plenum of the Supreme Court as of August 26, 2005 which considered case in an order of the additional cassation, the decision of JBCC as of July 8, 1994 and the related decision of Presidium of the Supreme Court as of January 24, 1995 were cancelled, and case was sent to Sabail district court for reconsideration.

Plenum considered that JBCC of the Supreme Court, considering case as court of the first instance, violated requirements of norms of a substantive and procedural law, referring at refusal in the claim generally that F.Rasulova and A. Guseynova could not show the original of the power of attorney issued to them by the former resident of the apartment did not give an assessment to that the share on the disputed apartment was completely paid, did not take into account the issuance to F.Rasulova of power of attorney and according to requirements of Article 321 of the CPC did not take any measures for ensuring participation in case hearing of the former resident of the apartment and receiving his written explanation.

On the other hand, Plenum in the decision also indicated the violations of requirements of Article 5 of the Decree of the Supreme Council of the Republic of Azerbaijan of November 9, 1991 “On entering into force of the Law of the Republic of Azerbaijan “On property in the Republic of Azerbaijan”.

By the decision of Sabail district court of February 9, 2006 A. Guseynova and F.Rasulova's claim to J.Ismayilzadeh for recognition of the order and registration certificate as invalid, concerning eviction from the apartment and removal from the passport record and moving in the apartment was satisfied, and the order concerning transfer of the disputed apartment to J.Ismayilzadeh and the registration certificate of July 17, 2002 were recognized as invalid, the contract of purchase and sale for this apartment was considered as concluded, and to territorial administration of Baku city of Service of the State Registry of Real Estate at the Cabinet of Ministers of the Republic of Azerbaijan it was entrusted to issue the registration certificate to A. Guseynova, to J.Ismayilzadeh together with family members was subject to eviction from the specified apartment and to removal from the passport record and A.Guseynov to moving in this apartment.

According to the conclusion to which the court came, the former resident of the apartment on the basis of Article 21.3 of the Law of the Republic of Azerbaijan “On property in the Republic of Azerbaijan” which acted during this period, was free in the right to give orders concerning the apartment. The cost of the disputed apartment - 40 thousand rubles, was paid to him by A. Guseynova. Besides, he transferred the relevant documents to A. Guseynova for official registration of purchase and sale of the apartment. In the power of attorney issued to F.Rasulova on September 3, 1992 her rights on management and use of property and the right to sign all acts allowed by the law and other powers are specified. From this point of view, court considered that the contract of purchase and sale between the former resident of the apartment and A. Guseynova was signed on the basis of the Article 43 of the Civil Code which was in force at that time.

The JBCC of the Court of Appeal by the decision as of May 2, 2006 upheld the decision of Sabail district court. JBCC of the Supreme Court by the decision of August 3, 2006 uphold a judgment of appeal instance.

Plenum of the Constitutional Court of the Republic of Azerbaijan in connection with the constitutional complaint of J.Ismayilzadeh, without raising the issue of, whether correctly according to the adopted judicial acts the civil case which is a subject of the constitutional judicial proceedings and in view of need of the analysis of norms of the Civil Procedural Code of the Republic of Azerbaijan which became invalid on September 1, 2000 is solved in essence (hereinafter referred to as the former CPC), and the Civil Procedural Code of the Republic of Azerbaijan which came into force from this date (hereinafter referred to as the CPC) the judicial acts regulating an order of the appeal which entered into force, and also the moment of the introduction of judicial acts in validity the notes the following.

According to the Constitution of the Republic of Azerbaijan the human and civil rights and freedoms are expressly enforced within the territory of the Republic of Azerbaijan. Disputes related to violation of human and civil rights and freedoms are resolved by courts. Legal protection of rights and liberties of every citizen is ensured (parts of VI and VII of Article 71 and Article 60.1 of the Constitution).

The right for legal protection, being among basic rights and freedoms of the person and citizen, at the same time is accepted as a guarantee of all other rights and freedoms and it cannot be limited. This right is not limited only by the right to apply to the court but provides also the justice that capable effectively restore the violated rights and freedoms in the limits provided by the legislation.

Universal character of system of ensuring the rights and freedoms of the person by means of justice covers also possibility of submission of the complaint to the relevant courts with the purpose of protection of the person against of illegal and unreasonable judgments.

From the point of view of implementation of the guarantees provided in the Constitution, rational and fair implementation of justice puts forward need of balance for the legislation of the rights and duties, procedural procedures, governed and especially within terms that is an important condition of elimination of legal uncertainty which can face court (judge, the parties, other participants of legal proceeding), and also interested persons during judicial proceedings.

According to former CPC powers on consideration of civil cases by judicial authorities as courts of the first instance-possessed district (city) people’s courts. However, the Supreme Court of the Republic of Azerbaijan, the Supreme Court of Nakhichevan AR and the Baku city court also had the right to accept civil cases for consideration as courts of the first instance (Articles 115 and 117 of former CPC). On the basis of this Code, according to the decisions which did not enter into force, the persons participating in case and also the corresponding prosecutors within 10 days could make the appeal or bring a protest to the Supreme Court of the Republic of Azerbaijan, the Supreme Court of Nakhichevan AR and to the Baku city court (Article 295-297 of former CPC). It is also necessary to note that from the moment of the announcement of the decision of JBCC of the Supreme Court that considered case as the court of the first instance it entered into force and on it the appeal and a protest could not be made (Article 212.2 and Article 295.3 of former CPC). On the basis of the Article 327 of this Code the decision of court of cassation instance connected with the complaint and a protest entered into force from the moment of adoption and did not provide the right of its appeal.

At the same time in the specified Code for the purpose of law enforcement and validity of the judicial acts which entered into force also the procedural stage regulating procedure of their reconsideration as judicial supervision, a circle of people, having the right of bringing of a protest, courts considering such cases, their powers, etc. was defined. Implementation of this stage depended on bringing of a protest by chairpersons of the courts and plenipotentiary prosecutors (Articles 333, 334 and 342 of the CPC).

On the basis of the specified Code the Deputy Prosecutors of the Republic of Azerbaijan and vice-chairmen of the Supreme Court of the Republic of Azerbaijan had the right as judicial supervision to bring a protest in Presidium of the Supreme Court on the decision of JBCC of the Supreme Court which considered case in the capacity of court of the first instance. After the decision of Presidium of the Supreme Court as a last resort of procedural protection in Plenum of the Supreme Court the protest from the Procurator-General of the Republic of Azerbaijan and the Chairman of the Supreme Court of the Republic of Azerbaijan could be brought (Articles 333 and 334 of former CPC).

From the documents which are available in case it is evident that the protest as judicial supervision brought by the Deputy General Prosecutor of the Republic of Azerbaijan on the decision of JBCC of the Supreme Court on a civil case of A. Guseynova and F.Rasulova's claim against J.Ismayilzadeh, was not satisfied by the decision of Presidium of the Supreme Court.

According to former CPC for the purpose of cancellation of illegal and unreasonable judgments as a last resort of procedural protection this decision could be protested by the General Prosecutor of the Republic of Azerbaijan in Plenum of the Supreme Court of the Republic of Azerbaijan to what A. Guseynova and F.Rasulova resolutely objected.

Thus, the decision of JBCC of the Supreme Court as of July 8, 1994 and the decision of Presidium of the Supreme Court of January 24, 1995 remained in force after all means of procedural protection provided by former CPC were settled, and since September 1, 2000 new CPC of the Republic of Azerbaijan came into force.

Formation of more perfect and reliable mechanisms of protection for the purpose of ensuring the rights and freedoms of the person as a result of the legal reforms which are carried out including in judicial system, need of elimination or minimizing of an inequality from the point of view of time frames, with observance of the rules and conditions established in acts of normative character does not exclude possibility of contest of judgments (acts) which are adopted before carrying out of reforms and entered into force, legality and validity of which called into question.

Thus, in point 5 of the Article 7 of the Law of the Republic of Azerbaijan “On adoption of the Criminal Procedural Code of the Republic of Azerbaijan, coming into force and related with it the issues of legal regulation”, adopted in connection with Criminal Procedural Code of the Republic of Azerbaijan which came into force on September 1, 2000 established possibility of reconsideration in the relevant court of appeal instance or in the Supreme Court of the Republic of Azerbaijan, according to the provisions provided in Articles 383-407,409-427,461-467 of the Criminal Procedural Code, judgments and other final decisions adopted by courts of the first instance on the basis of the provisions of the Criminal Procedural Code of the Republic of Azerbaijan which were in force till September 1, 2000.

The Constitutional Court of the Republic of Azerbaijan, considering necessary to distribute these rules also to the judgments adopted on civil cases in the decision of August 3, 2001 “On possibility to submit a complaint on judicial acts on civil cases, adopted before September 1, 2000” specified that Judicial acts on civil cases, adopted before 1 September, 2000, may be appealed to courts of appeal and cassation via procedure and in terms, provided for by the proper Articles of the Civil Procedure Code of Republic of Azerbaijan (Articles 357-401, 402-431, 432-438) from the day of entry into force of the given Decision.

As it is also evident, in this legal position of the Constitutional Court finds its confirmation the right for appeal of judicial acts (including the judicial acts which entered into force) in the relevant instances, however with observance of specified terms provided by the CPC.

The legislator for the purpose of creation of the effective mechanism of restoration of rights violated by illegal and unreasonable judicial acts (including, entered into force) defined procedures of reconsideration of these acts in courts of appeal and cassation instances (Article 357-401, 402-421 of the CPC), having connected them with some conditions, including with observance of terms of the complaint.

Thus, according to Article 360 of the CPC the appeal complaint can be made within 1 month from the date of providing (receiving) judicial decision, and the appeal complaint on the basis of Article 405 of the specified code within 3 months after decision-making and decision of court of appeal instance (according to Article 393 of the CPC the judgment of appeal instance enters into force from the moment of adopting).

The legislator provided in the Articles 422-438 of the CPC as the institutes of additional guarantees of legality and validity of judgments which entered into force the procedure stage as the additional cassation and procedure on newly discovered facts. At the same time, the beginning of these procedures also possible with observance of the corresponding terms of the complaint (statement).

Thus, representation, a protest or the complaint as the additional cassation can be lodged to the Supreme Court of the Republic of Azerbaijan within 2 months after adoption of the decision by Boards of the Supreme Court of the Republic of Azerbaijan, and statements of the persons participating in case on the judicial acts which entered into force on newly discovered facts can be submitted no later than one month from the date of detection of the circumstances specified in Article 432 of the CPC which formed the basis for second trial (Articles 426.2, 434.1 of the CPC).

In general, observance of the rules connected with procedural terms during implementation of the right of the appeal of the judicial acts that entered into force is one of important conditions as they have imperative character. Thus, according to Article 130.1 of the CPC the rights for the exercise of certain procedural actions terminate with expiration of a period specified by the law or set by the court.

On the basis of the decision of the Constitutional Court of the Republic of Azerbaijan as of August 3, 2001 “On possibility to submit a complaint on judicial acts on civil cases, adopted before 1 September 2000” from the date of the entering into force of the specified decision, A. Guseynova and F.Rasulova according to the Article 426.2 of the CPC had a right within 2 months to appeal against the above judicial decisions on Plenum of the Supreme Court as the additional cassation, however they did not use it in proper time.

Thus, from the documents which are available in case materials including from A. Guseynova and F.Rasulova's complaint lodged on June 13, 2005 to the Supreme Court of the Republic Azerbaijan it is seen that they addressed to various government bodies, and on the date when they brought the complaint to the Supreme Court that is May 22, 2001, the CPC did not provide the right of the appeal of earlier adopted judicial acts. They also did not make the complaint as the additional cassation meeting the requirements of Article 425 of the CPC, directly to the Supreme Court with observance of procedural terms for the purpose of realization of such right that arose on the basis of the decision of the Constitutional Court of the Republic of Azerbaijan of August 3, 2001. In such cases, the satisfaction of again made complaint to the judicial act that entered into force is inadmissible.

It should be noted that the judicial act that entered into force finalizes the existence or lack of the challenged fact of the substantive law or based on this right and on request of the authorized person without any conditions obliges their implementation. For this reason, after use of all ways of protection provided in the procedural legislation, the judicial act that entered into force possesses such legal signs as an irrefutability, exclusiveness and obligation.

The irrefutability of the judicial act which entered into force does impossible its appeal in higher judicial instances without observance of the corresponding conditions and requirements, and consideration of these complaints in courts of higher instances.

Exclusiveness of the judicial act does not allow contest of the already solved case and its reconsideration in courts. It is no coincidence that according to Article 233.3 of the CPC after entry of decision into legal force the parties and other persons participating in case as well as their successors have not the right to raise a court case with respect to the same claims, upon the same ground, as well as to dispute facts and legal relationships in a different proceeding.

According to the Article 129 of the Constitution of the Republic of Azerbaijan, the decisions made by court are taken out on behalf of the state and their implementation is obligatory. Obligation of the judicial acts that entered into force, providing implementation of them by all government bodies and officials in the order established by the law, irrespective of any circumstances, at the same time forbids creation of restrictions and obstacles of their execution under the pretext of assumptions of illegality and groundlessness of these acts. According to the CPC, the judicial acts that entered into force are obligatory and are subject to unconditional execution over all territory of the Republic of Azerbaijan. Their non-execution serves as the reason of the corresponding responsibility (Articles 15.2 and 15.3 of the CPC).

Such approach of the legislator to contest of judgments (including the judgments which entered into force) in the relevant judicial instances, relying on the principle of legal certainty, first of all, it is aimed on providing of stability of the judicial acts which entered into force.

Such position found the reflection also in practice of the European Court of Human Rights. Thus, in the decision on case of “Brumărescu vs. Romania” of October 28, 1999 it is specified that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question.

In other decision of this Court it was noted that legal certainty presupposes respect for the principle of *res judicata* , that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (case of “Ryabykh vs. Russia” as of July 24, 2003, European Court of Human Rights).

From this point of view the decision of the Supreme Court as of the August 26, 2005, which 11 years later satisfied A. Guseynova's complaint submitted as the additional cassation (after the exhaustion of the means of protection provided in the CPC, which was in force till September 1, 2000 and also in the decision of the Constitutional Court of the Republic of Azerbaijan of August 3, 2001), on the final and obligatory judgments which entered into force on once to already solved dispute between the same parties, in the same subject and of the same bases, without observance of requirements of Article 426.2 of the CPC connected with terms and also acts of courts of the first, appeal and cassation instances which newly were considering case on the basis of this decision and which solved dispute in essence inversely created the real legal status which from the point of view of guarantees of protection of the rights and freedoms established by the Constitution of the Republic of Azerbaijan (Article 60.1 and Article 71.7 of the Constitution) and the relevant norms and the principles of the CPC, is inadmissible.

Such situation creating illusion of existence of possibility of contest of the judicial acts which entered into force not in the terms provided by the legislation, and in not limited temporary space together with denial of the requirement of the principle of “res judicata” which is a component of legal certainty concerning implementation of justice in reasonable terms breaks stability and steadiness of the judgments which entered into force on already resolved disputes. On the other hand, there is a danger of continuous contest of final judicial acts by the persons participating in process calling into question their legality and validity. This circumstance reduces belief of society in justice.

It is not coincidentally that in the Article 2 of the CPC as one of problems of civil legal proceedings it is specified that it serves restoration of legality, law and order and education of citizens in the spirit of strict respect for laws.

The property in the Republic of Azerbaijan is inviolable and is protected by state. Everyone has the right to own property. Property rights, including rights for private owners, is protected by law (Article 13.1 and parts I and II of Article 29 of the Constitution).

According to the Article 71.1 of the Constitution observance and protection of the human and civil rights and freedoms established by the Constitution is the duty of legislative, executive and judicial bodies.

However, in spite of the fact that after settlement of dispute passed long time, because of presentation of case at new consideration and adoption of various judicial acts, the property right of D.Ismailzade was obviously violated.

Thus, Plenum of the Constitutional Court comes to a conclusion that by the decision of JBCC of the Supreme Court of the Republic of Azerbaijan as of July 8, 1994 on a civil case on A. Guseynova and F.Rasulova's claim to J.Ismayilzadeh and by the decision of Presidium of the Supreme Court of the Republic of Azerbaijan of January 24, 1995 case was already resolved, and when submission of the complaint to the specified acts in Plenum of the Supreme Court of the Republicof Azerbaijan as the additional cassation by courts did not take into account the legal position of the Constitutional Court of the Republic of Azerbaijan stated in the decision of August 3, 2001 “On possibility to submit a complaint on judicial acts on civil cases, adopted before 1 September, 2000”. Existence of such circumstances excludes reconsideration of this complaint as the additional cassation made without observance of the terms specified in Article 426.2 of the CPC.

On the basis of the stated above, in connection with discrepancy of the decision of Plenum of the Supreme Court as of the August 26, 2005 (which served as the reason of reconsideration of a civil case in connection with this complaint) with the Article 13.1, parts I and II of the Article 29, the Article 60.1, parts I and VII of the Article 71 of the Constitution of the Republic of Azerbaijan, the Article 426.2 of the CPC, and also discrepancy of the adopted on the basis of this decision the decision of Sabail district court dated February 9, 2006, the decision of JBCC of the Court of Appeal of the Republic of Azerbaijan as of May 2, 2006 and the decision of the JBCC of the Supreme Court dated August 3, 2006 with the Article 13.1, parts I and II of the Article 29, the Article 60.1 of the Constitution of the Republic of Azerbaijan have to be considered as null and void.

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 as null and void the decision of Plenum of the Supreme Court dated August 26, 2005 on the civil case of A. Guseynova and F.Rasulova's claim against J.Ismayilzadeh in connection with its discrepancy with the Article 13.1, parts I and II of the Article 29, the Article 60.1, parts I and VII of the Article 71 of the Constitution of the Republic of Azerbaijan, the Article 426.2 of the CPC, and also adopted on the basis of this decision the decisions of Sabail district court dated February 9, 2006, of JBCC of the Court of Appeal of the Republic of Azerbaijan dated May 2, 2006 and of the JBCC of the Supreme Court dated August 3, 2006 in connection with discrepancy with the Article 13.1, parts I and II of the Article 29, the Article 60.1 of the Constitution of the Republic of Azerbaijan.

To reconsider case having assumed as a basis the legal position held in present decision, in order and terms established by 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.