**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Article2 of the Administrative Procedure Code and Article 25 of the Civil Procedure Code of the Republic of Azerbaijan from the point of view of jurisdiction of procedures on cases on administrative offences*

**4 October, 2012 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Fikret Babayev, Rovshan Ismaylov, Jeyhun Garajayev(Reporter-Judge), Isa Najafov and Kamran Shafiyev;

attended by the Court Clerk Ismail Ismaylov,

the legal representatives of the subjects interested in special constitutional proceedings: Gurban Abbasov, Judge of Administrative Economic Court N1 of Baku city, Eldar Askerov, senior advisor of the Department for Administrative and Military Legislation of Milli Mejlis of the Republic of Azerbaijan;

expert: Farhad Mehdiyev, associate professor of Department of theory and history of slate and law of the Law Faculty of Baku State University;

in accordance with Article 130.6 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of Administrative Economic Court N1 of Baku city on interpretation of Article 2 of the Administrative Procedure Code of the Republic of Azerbaijan and Article 25 of the Civil Procedure Code of the Republic of Azerbaijan from the point of view of jurisdiction of procedures on cases on administrative offences.

having heard the report of Judge Jeyhun Garajayev, the reports of the legal representatives of the subjects interested in special constitutional proceedings and expert, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Administrative Economic Court No. 1 of Baku city in its inquiry to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) asks for interpretation of application of the Article 2 of the Administrative Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the APC) and the Article 25 of the Civil Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the CPC) covering the issues of court jurisdiction during consideration of cases on the basis of the Code of Administrative Offences of the Republic of Azerbaijan (hereinafter referred to as the CAO).

In the inquiry, it is specified that courts of general jurisdiction, besides consideration of cases on administrative offenses, also carry out functions on bringing to administrative responsibility. In the legislation, authority on bringing to administrative responsibility also assigned to administrative and economic courts. As a result of incorrect use of authority by courts on bringing to administrative responsibility the jurisdiction order is broken. In view of the fact that authority to apply an administrative penalty besides courts, it is given to also administrative and collegiate bodies, municipalities, the complaints submitted by individuals and legal entities in an administrative form to the acts and decisions adopted by noted bodies, have to be considered by administrative and economic courts. However, according to the requirement of Article 3 of the Law of the Republic of Azerbaijan of October 21, 2005 “On Administrative Procedure” (hereinafter referred to as the Law “On Administrative Procedure”, this Law does not belong to criminal procedure activity of administrative bodies for criminal prosecution and their activities for cases of administrative offenses.

According to a conclusion of the party applying for interpretation, except the cases of administrative offenses referred by legislation to courts of general jurisdiction, that is the cases regulated by the provisions specified in Article 360 of the CAO and the Code of Criminal Procedure of the Republic of Azerbaijan, the lawsuits connected with all administrative affairs, considered by administrative bodies within the powers belong to disputes regulated by APC. Adoption of various decisions as a result of existence of different opinions between judges concerning jurisdiction of administrative disputes, leads to violation of the rules of jurisdiction. Non-compliance with rules of jurisdiction in the considered cases finally becomes the reason of cancellation of these decisions by superior courts and extensions of term of consideration of cases. For ensuring the consideration of cases by the general and administrative economic courts, with compliance of rules of jurisdiction, there is a need of interpretation of the issue by the Constitutional Court.

In connection with the inquiry, Plenum of the Constitutional Court first of all notes that various assessment of issue of court jurisdiction in jurisprudence, inexact application of the legislation in this sphere finally break a guarantee of “right of everyone for consideration of his/her case in the law court specified by the legislation” specified in Article 62 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution).

The “judicial guarantee of protection of the rights and freedoms of everyone” specified in Article 60 of the Constitution is an inalienable right of everyone which cannot be limited under any circumstances. The legislation provide for the special guarantees for implementation in full of the right for judicial protection and restoration of the violated rights in the form meeting the requirements of the basic principles of justice. One of such guarantees is the court jurisdiction that is precisely established by the legislation, for efficiently consideration of any lawsuit by the professional judge. The clear and exact indication in the legislation of issue of court jurisdiction of disputes is important from the point of view of a judicial guarantee of the rights and freedoms of the person and the citizen.

According to Article 6 of the Convention “On Protection of Human Rights and Fundamental Freedoms” (hereinafter referred to as the Convention) in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial court established by law. One of the main requirements of this norm means comprehensive and objective consideration of any case by courts “within a reasonable time”. Consideration of the case “within a reasonable time”, first of all promotes restoration of the violated human rights. For this reason at exact and unambiguous clarification of issue of court jurisdiction in jurisprudence, at consideration of cases the red tape will be excluded and they will be considered in the appropriate order of legal proceedings and within procedural terms.

In the case law the European Court of Human Rights (hereinafter referred to as the European Court), from the point of view of Article 6 of the Convention, noted importance of taking into consideration of some factors at an assessment of “reasonable time” in justice: complexity of case, behavior of the claimant, action of judicial authorities and public authorities in general, and risk degree for the applicant. The issue of court jurisdiction is the responsibility factor assigned to the government. In the decision of the European Court as of July 13, 1983 on case of Zimmermann and Steiner v. Switzerland it was noted that “the Convention places a duty on the Contracting States to organize their legal systems so as to allow the courts to comply with the requirements of Article 6.1 including that of trial within a “reasonable time”.

The European Court also highlighted the importance of the exact indication of issue of court jurisdiction in national legislations of the European countries. Thus, the European Court in the decision of September 16, 2010 on the case of Chernichkin v. Russia noted that inexact definition by the legislator of issue of court jurisdiction violates the right of the individuals for judicial protection and requirements of Article 6.1 of the Convention.

The legislation of Azerbaijan also forbids violation of court jurisdiction. Thus, according to Article 15 of the Law of the Republic of Azerbaijan of June 10, 1997 “On Courts and Judges” (hereinafter referred to as the Law “On Courts and Judges”) the change established by the legislation of the Republic of Azerbaijan of court jurisdiction of cases or their groundless withdrawal from procedure of the lawful judge is forbidden. Besides, according to Article 31.1 of the CPC the breach of rules of jurisdiction is not be permitted.

In the legislation of Azerbaijan, from the point of view of merits of case, rules of court jurisdiction are regulated by the normative legal acts of procedural character codified on the respective sphere (the decision of Plenum of the Constitutional Court of February 10, 2012 “On interpretation of Articles 512.2 and 519.0.4 of the Criminal Procedure Code of the Republic of Azerbaijan”). From this point of view, for the solution of the question that brought up in the inquiry, it is expedient to analyze the codified normative legal acts of procedural character that are available in the legislation.

Bodies (officials) authorized to consider cases on administrative offenses specified in Article 357 CAO. According to this article, cases on administrative offenses are considered by district (city) courts, the commission for cases of minors and protection of their rights (collegiate body), and also appropriate authorities of executive power of the Republic of Azerbaijan, the Central Bank, Service of financial monitoring at the Central Bank (officials).

The CAO on the structure differs from other codified normative legal acts. While, the Civil Code of the Republic of Azerbaijan and CPC are the various normative legal acts, the CAO unites in itself material and procedural articles. Therefore, the general courts, by hearing of cases on administrative offenses, guided by a material and legal procedure of the CAO. Articles 409-438 of the CAO regulate stages, conditions and rules of procedural procedure on administrative offenses.

In Article 20 of the Law “On Courts and Judges”, with the indication of powers of district (city) courts it is noted that the district (city) court as court of the first instance, considers civil, criminal cases, cases of administrative offenses and other cases within their jurisdiction provided by the legislation.

However, it is necessary to take into consideration that unlike other bodies and officials specified in the CAO, district (city) courts consider the cases on administrative offenses attracting rather heavy sanctions. Article 360.1 of the CAO specifies the norms providing case of administrative offenses that considered by district (city) courts. If in events, stipulated in given article the case on administrative violations is subordinated not only to the authorized body (official), but also a court and sent by the authorized authority (official) for consideration to the court, such case is resolved in court (Article 360.2 of the CAO).

However, the court jurisdiction on administrative offenses precisely specified in Article 360.1 of the CAO, an issue of jurisdiction of the complaints made by appropriate authorities of executive power of the Republic of Azerbaijan on cases of the administrative offenses provided in Special Part of the CAO, according to opinion of applicant, in jurisprudence interpreted differently.

In this regard, Plenum of the Constitutional Court notes that the complaint or a protest to decisions on cases of administrative offenses lodge on the basis of Article 430 of the CAO in the following order:

- on the decision of the judge – in court of appeal instance;

- on the decision of collegiate body – in court in the location of collegiate body;

- on the decision of authorized body (official) – to higher authorized body (official) or in court.

In its turn, the Article 431 of the CAO establishes an order of submission of the complaint or a protest on the decision on the case of administrative offense. According to this article, the complaint to the decision of the judge on the case of administrative offense filed a court of appeal instance and the complaint to the decision of collegiate body in district (city) court in the location of collegiate body. The complaint to the decision of authorized body (official) is made in district (city) court, in a residence of the applicant, or in a place of a location of the legal entity (Article 431.1.3 of the CAO).

Until coming into force of the Law “On Administrative Procedure” and APC and establishment of administrative and economic courts, the issue of court jurisdiction in the CAO did not create any disputes. However, with coming into force of APC, the nature of administrative responsibility in legal system of Azerbaijan began to be interpreted differently.

According to the CAO, administrative responsibility, being a type of legal responsibility, expressed in application by authorized body or the official of an administrative action against the person who made administrative offense. According to Article 3 of this Code only such person, who was declared guilty for committing administrative violations under this Code and had performed a deed (action or inaction) having all other signs of an administrative violation, shall be brought to administrative responsibility and punished.

On the other hand, according to requirements of the Law “On Administrative Procedure” and APC, the claimant, with the purpose of bringing of administrative body (official) to administrative responsibility, can make the complaint to administrative and economic court.

Thus, the basis of administrative responsibility in the legislation of the Republic of Azerbaijan is defined by two circumstances:

- violation of administrative legal requirements (administrative offenses);

- non-execution or wrong execution of administrative and legal duties.

Article 12 of the CAO gives the clarification of the notion “administrative offence”. According to this article, an administrative offence is characterized as a guilty (deliberate or careless) deed (action or inaction), infringing upon social relations protected by this Code, which would lead to administrative liability.

Act considered as administrative offense in case if it established in Special Part of the CAO as administrative offense and the responsibility provided for its commission. The administrative penalty is, as a rule, applied in the relation of the person who made administrative offense and it expressed to that the person committed administrative offense is exposed to material and moral influence. Some administrative penalties at the same time unite in itself both moral and material influence or their application leads to restriction for a certain time of the rights of the person who made administrative offense. Authorized government bodies and their officials apply these penalties.

Administrative disputes have other legal nature. Administrative and legal disputes, are meant as the disputes arising between administrative body (appropriate authorities of executive power, their local (offices) and other structures, municipalities and also any natural or legal entity to whom on the basis of the law the authority to adopt the administrative act) is given and natural or legal entities in connection with adoption, cancellation, change of the administrative act, and also with actions or inaction of administrative body. Administrative disputes are, as a rule, connected with adoption, refuse to adopt, execution, non-execution or cancellation of administrative acts and also with recognition of illegality of the administrative act, actions of administrative body of the actual character, etc.

Until the creation of administrative and economic courts and carrying out the corresponding reforms in the legislation, the administrative disputes were considered on the basis of CPC. As a result of reforms the administrative process became other branch. The Law of the Republic of Azerbaijan of July 10, 2011 N143-IVQD “On introduction of changes to the Civil Procedural Code of the Republic of Azerbaijan” from the list of the cases considered by courts of law withdrew the word “administrative” and from CPC the Chapters 26-29 and 38 regulating administrative process.

Thus, as a result of the carried-out legislative reform the administrative disputes as a rule, are assigned to authority of administrative and economic courts and proceedings of such cases are regulated by APC.

Article of 2 of the APC regulating the court jurisdiction of administrative disputes also does not exclude the possibility of establishment of other order of jurisdiction of administrative disputes. It is necessary to take into account that the circle of the cases considered by the general courts is not limited by the cases specified in Articles 25.1 and 25.3 of the CPC. According to Article 25.4 of CPC, courts of law also consider another cases referred by law to their jurisdiction. Here, by another cases are meant as the provisions directly specified in the law or cases which not under powers of other, specialized courts of special jurisdiction (for example, administrative and economic courts).

The separation of administrative and economic courts from courts of law, consideration and solution of administrative disputes by specialized courts in the order of special procedure and administrative legal procedure are an important step in the direction of more effective implementation of the constitutional requirements connected with human rights institutes and serve for efficiency of administrative judicial protection.

By the legislation, to administrative and economic courts powers is not conferred to consider cases on administrative offenses. In the cases provided by the law, the natural and legal entities can make in the order of administrative procedure the complaint to administrative and economic courts, the complaint to the administrative acts adopted by administrative bodies. The APC by establishing the procedural rules of consideration and the solution of the administrative disputes that arose between administrative bodies and natural or legal entities provides legal protection of the person, under administrative trial.

The APC also serves for creation in the administrative and legal sphere of effective system of the procedural and legal guarantees connected with ensuring the right of file to court the complaint to the decision and actions (or inaction) the official. According to Article 2.1 of the APC judicial proceeding of cases on administrative disputes considered by administrative-economic courts and administrative-economic board, unless other rules of jurisdiction are specified by law.

As evident, Article 2.1 of the APC establishes consideration of administrative disputes by administrative and economic courts not in imperative but in a dispositive form i.e. if the law did not provide other form of procedure, dispute is considered in administrative and economic court. Phrase in this norm “unless other rules of jurisdiction are specified by law” indicates the norms of CPC and APC.

It is clear, that the relations following from administrative offenses and regulated by the CAO are also part of the public (general) law. In case this directing norm is not reflected in Article 2.1, the cases connected with administrative offenses could be considered by administrative and economic courts. However, in view of the fact that the relations connected with administrative offenses by the nature possess repressive character and arise at violation of administrative legal requirements (administrative offenses), they differ from type of the relations regulated by the Law “On Administrative Procedure”.

According to the CAO, the complaint or a protest, on decisions on these cases, on the nature differs from the complaint made in the administrative and procedural sphere. In the first case, the complaint is made as judicial control on matter where the administrative penalty is applied, and in the second case, the complaint, in connection with administrative dispute, filed as primary administrative claim. According to Article 72.1 of the Law “On Administrative Procedure” the complaint to administrative acts can file in a judicial proceeding. According to Article 72.5 of the same Law, such complaint (the administrative claim) made in the order determined by the relevant law of the Republic of Azerbaijan. As evident, the complaint made on the administrative act is called as the administrative claim by the legislator and according to Article 72.5 the matter is regulated by APC.

According to Article 1 of the Law “On Administrative Procedure” this Law establishes legal bases, the principles and procedural rules of the activity which is carried out by administrative bodies in connection with adoption, execution or cancellation of administrative acts. According to Article 3 of the same Law its provisionscover the activity of the bodies established (classified) by the legislation of the Republic of Azerbaijan as administrative body. In addition, it is specified that this Law doesnot belong to criminal procedure activity of administrative bodies for criminal prosecution and activities on cases of administrative offenses.

The resolution of the Cabinet of Ministers of the Republic of Azerbaijan of August 28, 2007 N136 “On adoption of “Classification of administrative bodies”” specified the list of administrative bodies. The reason of entering into force of this statutory act in one day with the APC there was an exact definition in a standard order of the main subjects of administrative process. Administrative bodies are the main subjects of the public relations regulated by APC and CAO. These subjects carry out administrative procedure on cases referred by the Law to their powers. Administrative procedure is the activities that is carried out by the appropriate administrative authorities on adoption, execution, change and cancellation of the administrative act and on consideration of administrative complaints. In noted field of activity the administrative bodies, bear responsibility in an administrative and procedural order.

Its position in connection with concept and the nature of the notion “administrative body” and “administrative act” the Plenum of the Constitutional Court in detail stated in the decision as of April 4, 2012 “On interpretation of Article 87.2 of the Law of the Republic of Azerbaijan “On Execution” and Article 2.1 of the Administrative Procedural Code of the Republic of Azerbaijan”.

As for the legal nature of the decisions on administrative offenses made by administrative bodies even if these decisions will be adopted contrary to the order provided by the Law “On Administrative Procedure”, and in the order provided the CAO they will be considered as the administrative act. However, the legislation provides the different procedural rules connected with their execution and challenge.

Considering above-noted the Plenum of the Constitutional Court comes to the following conclusion:

- Articles of 2 of the APC and 25 of the CPC concerning court jurisdiction do not belong to the relations connected with disputes on administrative disputes;

- the complaints and protests given on the administrative acts (decisions) adopted by administrative body on cases of administrative offenses, according to Articles 430.2.3 and 431.1.3 CAO shall be considered by regional (city) courts of law.

Being guided by Article 130.6 of the Constitution of the Republic of Azerbaijan and Articles 60, 62, 63, 65-67 and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Articles of 2 of the APC and 25 of the CPC concerning court jurisdiction do not belong to the relations connected with disputes on administrative disputes.

2. Complaints and protests given on the administrative acts (decisions) adopted by administrative body on cases of administrative offenses, according to Articles 430.2.3 and 431.1.3 CAO shall be considered by regional (city) courts of law.

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

4. 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”.

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