**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Articles 498, 502.1 и 503.3 of the Criminal Procedure Code of the Republic of Azerbaijan in connection with the decision of Criminal Board of the Supreme Court of the Republic of Azerbaijan of May 23, 2012*

8 November, 2012 Baku city

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

attended by the Court Clerk Ismail Ismaylov,

representative of the body filed an inquiry: Ilgar Jafarov, Head of Department for the Maintenance of State Prosecution of the Prosecutor’s Office of the Republic of Azerbaijan;

representative of the respondent body: Shahin Yusifov, Chairman of Criminal Board of the Supreme Court of the Republic of Azerbaijan

expert: Firuza Abbasova, associate Professor of the Criminal Procedure Board of Baku State University;

specialist: Eldar Askerov, senior advisor of the Department for Administrative and Military Legislation of Milli Mejlis of the Republic of Azerbaijan, Tagi Eynullayev, Deputy Head of the Department of International Cooperation of the Ministry of Justice of the Republic of Azerbaijan;

in accordance with Article 130.3 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of Office of Public Prosecutor of the Republic of Azerbaijan on verification of conformity of the decision of the Supreme Court of the Republic of Azerbaijan of May 23, 2012 to Constitution and laws of the Republic of Azerbaijan.

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

**DETERMINED AS FOLLOWS:**

From inquiry of Office of Public Prosecutor of the Republic of Azerbaijan (hereinafter referred to as the Office of Public Prosecutor) submitted to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) it is clear that in Baku city was arrested A. Sadygov who had been accused for commission of robbery in the territory of the Russian Federation and was in the international search.

In this regard the criminal case opened in the Russian Federation was directed to the Republic of Azerbaijan with a request to continue criminal prosecution concerning A. Sadygov on the basis of the legislation of the Republic of Azerbaijan according to requirements of the Minsk Convention “On Legal Aid and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993 (hereinafter referred to as the Minsk Convention) of the Commonwealths of Independent States.

In the Republic of Azerbaijan A. Sadygov was accused under Articles 181.3.2 and 181.3.3 of the Criminal Code of the Republic of Azerbaijan (hereinafter referred to as the CC) and along with it in against him the charge under Articles 29, 120.2.1, 120.2.11 of the CC in connection with attempt at murder of the person was brought.

By a sentence of the Court on Grave Crimes of Baku city of September 23, 2011 A. Sadygov was found guilty under Articles 181.3.2 and 181.3.3 of the CC and condemned on punishment in the form of imprisonment for a period of 14 years, from the content of the sentence declared to him the part provided in Articles 29, 120.2.1 and 120.2.11 of the CC was extracted.

By its decision as of December 6, 2011 the Criminal Board of the Court of Appeal of Baku city did not satisfy the appeal protest and uphold the sentence of court of the first instance.

By its decision as of May 23, 2012 the Criminal Board of the Supreme Court of the Republic of Azerbaijan (hereinafter referred to as the Criminal Board of the Supreme Court) did not satisfy the cassation protest and uphold the decision of Criminal Board of the Court of Appeal of Baku city.

By the investigating authorities of the Republic of Azerbaijan the part provided in Articles 29, 120.2.1 and 120.2.11 was extracted from the content of the charge declared to A. Sadygov in view of the fact that at bringing of new charge (attempt at murder of the person) according to Article 498 of the Criminal Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the CPC) and the Minsk Convention the corresponding consent of competent authorities of the Russian Federation was not received.

In inquiry the Office of Public Prosecutor asks for verification of conformity of the decision of the Supreme Court of the Republic of Azerbaijan of May 23, 2012 to the Constitution and laws of the Republic of Azerbaijan according to point 4 of part III of Article 130 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution).

Because of the fact that the inquiry in fact connected not with verification of conformity of acts to the Constitution and laws but with interpretation of the legal norms important for jurisprudence, Plenum of the Constitutional Court considers necessary official interpretation of Articles 498, 502.1 and 503.3 of the CPC via special constitutional proceedings.

Plenum of the Constitutional Court also specifies that the issue that raised in inquiry of Office of Public Prosecutor have special value for all law-enforcement bodies.

Due to the issue that raised in inquiry, Plenum of the Constitutional Court notes the following.

Implementation of criminal prosecution concerning the person accused of commission of crime or condemned by court of foreign state or his extradition with the purpose of execution of a sentence and also transfer of the person condemned on punishment in the form of imprisonment for serving of punishment to the state of his/her citizenship is one of the types of international cooperation providing for the principle of inevitability of punishment and rehabilitation opportunity for a certain person.

The bases and orders of legal aid on implementation of criminal prosecution and extradition of the person on criminal cases are regulated by the relevant norms of acts of international law and national legislation.

Legal aid is carried out also on the basis of bilateral contracts between the countries, and on the basis of multilateral conventions.

For the purpose of development and increase of fruitfulness of the international cooperation in areas of fight against crime, protection of the rights and freedoms of the person the Republic of Azerbaijan joined the European Convention “On Extradition” of December 13, 1957, to the European Convention “On Mutual Legal Aid on Criminal Cases” of April 20, 1959, the Minsk Convention, the Kishinev Convention “On Legal Aid and Legal Relations on Civil, Family and Criminal Cases” of October 7, 2002 (hereinafter referred to as the Kishinev Convention) signed at a meeting of Council of Heads of States of the Commonwealth of Independent States.

The norms of the specified international conventions are implemented in the legislation of the Republic of Azerbaijan and reflected in a number of normative legal acts.

In the Constitution and acting legislation there is a number of the conditions limiting the implementation of extradition.

According to Article 53.2 of the Constitution in no circumstances a citizen of the Republic of Azerbaijan may be expelled from the Republic of Azerbaijan or extradited to foreign state.

Proceeding from the guarantee of the right for citizenship fixed in the Constitution, in the criminal legislation it is established that the citizens of the Republic of Azerbaijan who committed a crime on the territory of the foreign state are not delivered up to the foreign state. At the same time for the commission of act by citizens of the Republic of Azerbaijan outside the Republic of Azerbaijan if this act is recognized as a crime in the Republic of Azerbaijan and in the state in the territory of which it was made and if these persons were not condemned in the foreign state the criminal prosecution on the basis of the Criminal Code is provided (Articles 12.1 and 13.1 of the CC).

Alongside with it in Article 2 of the Law of the Republic of Azerbaijan of May 15, 2001 “On extradition of the persons who committed a crime” possibility of extradition of the person which extradition is requested by the foreign state is established in case if the act made by him is considered as a crime according to the legislation of the Republic of Azerbaijan and the requesting state and if for commission of this act punishment in the form of imprisonment not less than for one year or more severe punishment is prescribed.

According to content of Article 1.1 of the Law of the Republic of Azerbaijan “On extradition of the persons who committed a crime” extradition of the persons who committed a crime is extradition of the person living or staying in the territory of the Republic of Azerbaijan for bringing by the foreign state to criminal liability or execution of the sentence imposed by court for the acts made by it outside the Republic of Azerbaijan.

The limits of the criminal prosecution which is carried out concerning the person which was delivered for commission of crime on the territory of the foreign state are defined in Article 66 of the Minsk Convention, in Article 80.1 of the Kishinev Convention, in Article 4 of the Law “On extradition of the persons who committed a crime” and in Article 498 of the CPC.

In Article 4 of the Law “On extradition of the persons who committed a crime” it is specified that the person who is delivered on the basis of inquiry of the foreign state can be pursued in the order provided by the legislation of this state, only for commission of crime, being the basis of his extradition. The delivered person cannot be made responsible or delivered to the third state without consent of the relevant executive power of the Republic of Azerbaijan for the crime committed before extradition and which is not the basis of extradition.

According to Article 498 of the CPC a person who has been extradited without the consent of the prosecuting authority of the Republic of Azerbaijan which received the request may not be charged with or punished for an offence committed before he was extradited, but for which he was not extradited. Without the consent of the prosecuting authority of the Republic of Azerbaijan which received the request, a person may not be extradited to a third state.

In the international acts adopted within interstate cooperation in rendering legal aid on criminal cases alongside with extradition of the person the obligations for implementation of criminal prosecution by bodies of criminal prosecution of the state by the citizen of which the person the committed crime in the territory of the state giving inquiry is are also specified.

Procedures of criminal prosecution on rendering of legal aid are regulated by Articles 72.1 and 73.2 of the Minsk Convention, Articles 91.1 and 92.2 of the Kishinev Convention and Articles 502 and 503.3 of the CPC.

According to Article 502.1 of the CPC the prosecuting authority of the Republic of Azerbaijan, on the basis of an official request from the competent authority of a foreign state and in accordance with the legislation of the Republic of Azerbaijan, bring a criminal prosecution against citizens of the Republic of Azerbaijan suspected of committing an offence on the territory of the requesting state.

According to Article 503.3 of this Code if the criminal case brought by the requesting competent authority of the foreign state is transferred, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed should pursue the investigation of the case in accordance with the legislation of the Republic of Azerbaijan. All the documents and evidence in the criminal case file shall be certified by the stamp of the competent authority of the foreign state.

As evident, extradition of the person who committed a crime and continuation of criminal prosecution on demand on the territory of the country, existence of various forms of legal aid on criminal cases proceeds from legal norms of the existing acts of international law and the national legislation.

It is necessary to consider that according to the principles of the exclusive jurisdiction of the state over the citizens and inadmissibility of extradition of citizens to other states which are fixed in the Constitution and are reflected in criminal, criminal procedure legislations, in connection with implementation of criminal prosecution the corresponding form of legal aid and legal norms following from this has to be applied to these citizens.

If the criminal case brought by required authority of the foreign state is directed as legal aid, in difference from an extradition the investigation on given case has to be continued by required body of criminal prosecution of the Republic of Azerbaijan, according to the legislation of the Republic of Azerbaijan.

It means that it has to be carried out according to the requirements of the CPC setting limits of criminal prosecution on such criminal case and change of the charge brought against accused (addition of charge or removal of its certain part).

 In Article 139 of the CPC the facts which need to be proven are specified. The facts and circumstances of the criminal act, the connection of the suspect or accused with the criminal act, the criminal ingredients of the act provided for in criminal law, the guilt of the person in committing the act provided for in criminal law belong to these circumstances.

It should be especially noted that the proof consist of the obtaining, verification and assessment of evidence in order to establish facts of importance for the lawful, thorough and equitable determination of the criminal charge (Articles 138.1 and 144 of the CPC). Only set of the admissible proofs allowing to draw a reliable and final conclusion is perceived from the point of view of requirements of the CPC, as sufficiency of proofs (Article 146 of the CPC).

Thus, at implementation of criminal prosecution concerning the suspect (accused) on the basis of inquiry of foreign state, by the body of criminal prosecution the legal assessment has to be given to the materials attached to given inquiry according to the criminal procedure legislation, the charge brought against this person has to be based on proofs and is certified by materials of criminal case.

Taking into consideration the above mentioned the Plenum of the Constitutional Court comes to the following conclusions:

Article 498 of the CPC sets limits of criminal prosecution in connection with legal aid on extradition of the person;

According to Articles 502.1 and 503.3 of the CPC the prosecution concerning the citizens of the Republic of Azerbaijan suspected in commission of crime on the territory of the requesting state and also on the directed criminal case is carried out according to the legislation of the Republic of Azerbaijan. In this case, the body of criminal prosecution of the Republic of Azerbaijan does not depend on a legal position of authority of the foreign state in connection with criminal case.

The bodies which are carrying out the criminal procedure on the basis of Article 7.0.5 of the CPC of the Republic of Azerbaijan have to consider the legal positions reflected in the present decision and be guided by them in law-enforcement practice.

Being guided by Article 130.4 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. Article 498 of the CPC sets limits of criminal prosecution in connection with legal aid on extradition of the person.

2. According to Articles 502.1 and 503.3 of the CPC the prosecution concerning the citizens of the Republic of Azerbaijan suspected in commission of crime on the territory of the requesting state and also on the transferred criminal case is carried out according to the legislation of the Republic of Azerbaijan. In this case, the body of criminal prosecution of the Republic of Azerbaijan does not depend on a legal position of authority of the foreign state in connection with criminal case.

3. The bodies carrying out the criminal procedure on the basis of Article 7.0.5 of the CPC of the Republic of Azerbaijan have to consider the legal positions reflected in the present decision and be guided by them in law-enforcement practice.

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

5. 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”.

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