ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

# OF The Constitutional Court

# of THE REPUBLIC OF AZERBAIJAN

*On the Conformity of Articles 256 and 259 of the Code on Administrative Delinquences of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan*

## 13 July, 1999 Baku city

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Hajiyev (Chairman), Judges, F.Babayev, B.Garibov, R.Gvaladze, S.Salmanova (Reporter Judge), A.Sul­tanov, E.Mamedov,

joined in the proceedings by: the Court Clerk I. Ismayilov,

the legal representatives of the body that submitted the petition: Ch.Bashirov, Deputy Chairman of the Supreme Court of the Republic of Azerbaijan and M.Agazade, Judge of the Supreme Court of the Republic of Azerbaijan;

legal representative of the defendant: N.Safarov, Head of Administrative and Military Legislation Department of Milli Majlis of the Republic of Azerbaijan;

being guided by Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via procedure of constitutional proceedings the case by the petition of the Supreme Court of the Republic of Azerbaijan of May 26, 1999, N 5-2/99 on conformity of Articles 256 and 259 of the Code of Administrative Delinquences of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge S.Salmanova, the statements of M.Agazade and N.Safarov, legal representatives of the parties, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Supreme Court of the Republic of Azerbaijan asks for verification of the conformity of Articles 256 and 259 of the Code of Administrative Delinquencies of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan.

In connection with a petition, the official texts of Articles 250, 256 and 259 of the Code of Administrative Delinquencies of the Republic of Azerbaijan certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to case.

The Constitutional Court of the Republic of Azerbaijan notes the following:

According to Article 256 of the Code of Administrative Delinquencies of the Republic of Azerbaijan, the person brought to administrative responsibility has the right to use legal assistance of the lawyer during consideration of case.

According to Article 259.1 of this Code, with the purpose to render the legal assistance to the person brought to administrative responsibility the lawyer can take part in consideration of case.

Article 61 of the Constitution of the Republic of Azerbaijan provides that every person shall have the right to get qualified legal assistance. According to para III of the same Article every citizen has the right for the lawyer’s advice from the moment of his/her detention, arrest or accusation of crime by competent state bodies.

In Article 71.2 of the Constitution of the Republic of Azerbaijan it is envisaged no one may restrict implementation of rights and freedoms of a human being and citizen. According to para V of this Article none of the provisions of Constitution may be interpreted as regulation directed to prohibition of rights and freedoms of a human being and citizen.

It is provided by Article 12 of the Constitution of the Republic of Azerbaijan that the highest priority objective of the state is to ensure rights and freedoms of a person and citizen.

In accordance with Article 24.1 of the Constitution of the Republic of Azerbaijan everyone, from the moment when they are born possess inviolable and inalienable rights and freedoms.

Thus, the Constitution of the Republic of Azerbaijan guarantees to everyone the right to get qualified legal assistance.

In Article 7 of The Universal Declaration of Human Rights, adopted by UN on 10 December, 1948 it is stated that all people are equal before the law and have the right to equal protection of the law without any distinction.

Item 3 (d) of Article 14 of the International Covenant "On Civil and Political Rights" of 1966 states that everyone has the right to be judged at his/her presence and to protect himself/herself personally or via lawyer.

The document of the Copenhagen meeting of the Conference on Human Dimension of OSCE held on June 29, 1990 provides that number of elements of fairness, which are essentially necessary for complete expression of dignity attributable to human personality, equal and integral rights of all people includes the following:

All people are equal before the law and have the right without any discrimination to equal protection by the law. In this regard, the law shall prohibit any discrimination and shall guarantee to all persons equal and effective protection against discrimination on the ground of any attribute (5.9); - each human being shall have effective means of legal protection against administrative decisions with the view to guarantee the respect for fundamental rights and to provide non-damage upon legal system (5.10);

The administrative decisions directed against any person shall be completely proved (grounded) and must contain the instruction on available usual remedies (5.11).

Articles 256 and 259 of the Code of Administrative Delinquences of the Republic of Azerbaijan do not provide the right of person who has committed an administrative delinquency to use the assistance of lawyer from the moment of detention. It contradicts to the abovementioned provisions of the Constitution of the Republic of Azerbaijan based on international legal acts.

Deprivation of the right of any person to use the assistance of the lawyer from the moment of detention infringes his/her constitutional rights. Such provision also contradicts to Basic Law – the Constitution of the Republic of Azerbaijan.

Besides, Article 63.4 of the Constitution of the Republic of Azerbaijan states that proofs received against the law must not be used when administering justice. The deprivation of the person brought to administrative responsibility of the right for the qualified legal assistance before consideration of case, can promote the getting of such proofs (evidences) by bodies (officials) empowered by Article 250 of the Code of Administrative Delinquencies of the Republic of Azerbaijan to carry out the administrative detention.

Being guided by Article 130.3.1 and 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80-83 and 85 of the Law of the Republic of Azerbaijan "On Constitutional Court", the Constitutional Court of the Republic of Azerbaijan

**decided**:

1. In connection with non-conformity of Articles 256 and 259 of the Code of Administrative Delinquencies of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan to recognize the provisions restricting the right of person, who committed the administrative offence, to get the legal assistance as null and void.

2. Bodies (officials) empowered to carry out administrative detention are obliged provide any person detained via administrative procedure with the right for legal assistance for the moment of his/her detention.

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

4. The decision is subject to publication in "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

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