**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

# DECISION

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of "The Organized Group" Conception,*

*Envisaged in the Criminal Code of the Republic of Azerbaijan*

## 20 April, 1999 Baku city

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

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

the legal representatives of the subject interested in special constitutional proceedings: O.Magsoudov, Deputy Chairman of the Supreme Court of the Republic of Azerbaijan and V.Nazarov, Judge of the Supreme Court of the Republic of Azerbaijan;

specialists: G. Alikhanov, Head of Department for Supervision of Investigations held by the General Prosecutor’s Office of the Republic of Azerbaijan; A.Mamedov, acting Head of the Investigation Department of the Ministry of Internal Affairs of the Republic of Azerbaijan; R.Mansurov, Head of Investigation Department of the Ministry of National Security of the Republic of Azerbaijan;

expert: R.Shamsizadeh, candidate of legal sciences, senior lecturer of the Criminal Law Board of Baku State University;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via procedure of special constitutional proceedings the case by the petition of the Supreme Court of the Republic of Azerbaijan of 3 March 1999 N 5-1/99 as to interpretation of "organized group" conception, envisaged in Articles 37, 93-3-93-8 of the Criminal Code of the Republic of Azerbaijan.

Having heard and discussed the report of Judge E. Mamedov, statements of the legal representatives of the subject interested in special constitutional proceedings and conclusion of expert, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In Article 37.2 of the Criminal Code of the Republic of Azerbaijan the commission of a crime by organized group is regarded as the circumstance that aggravates the liability (responsibility). By the law of the Republic of Azerbaijan of 7 April 1998 "On Introduction of Modifications and Amendments to the Criminal Code and Other Codes of the Republic of Azerbaijan with the Purpose of Perfection of Legislation" the second section - "Crimes against property" was included to the Criminal Code of the Republic of Azerbaijan. In para IV of Articles 93-3 - 93-8 of this section the commission of crime by organized group is provided as a qualifying attribute. Taking into account the ambiguous understanding of “organized group” conception in judicial practice, the Supreme Court of the Republic of Azerbaijan asks to give its interpretation.

In connection with the petition the official texts of above mentioned Articles of the Criminal Code of the Republic of Azerbaijan, resolution of Milli Majlis of the Republic of Azerbaijan of 11 April 1995 "On the Procedure of Application of Some Rules of the Criminal Code of the Republic of Azerbaijan", certified by Milli Majlis of the Republic of Azerbaijan are enclosed to the constitutional case

From the documents available in the case, it is evident that:

In Article 37 of the Criminal Code of the Republic of Azerbaijan among 11 circumstances, which aggravate the liability, the commission of crime by organized group is also noted.

In para IV of Articles 93-3 (theft), 93-4 (plundering), 93-5 (robbery), 93-6 (extortion of property), 93-7 (swindle) and 93-8 (plunder of another's property by means of appropriation or embezzlement) of the Criminal Code of the Republic of Azerbaijan the commission of crime by organized group is provided as a qualifying attribute of appropriate crime.

However, despite the fact that "the organized group" conception is often mentioned in the Criminal Code of the Republic of Azerbaijan, its conception has not been clarified by any law of the Republic of Azerbaijan, including the Criminal Code as well.

At such situation in order to give interpretation of "the organized group" conception it is necessary to analyze some provisions, envisaged in current legislation of the Republic of Azerbaijan and also some approaches, which can be undoubtedly admitted with the purpose of application of law.

In the Criminal Code of the Republic of Azerbaijan there are provided some kinds of criminal groups: group of the persons, group of the persons of preliminary collusion arrangement and organized group. All these kinds of criminal groups have a common attribute - commission of crimes by the group of persons, i.e. with participation of two and more persons. At the same time, these groups differ from each other by other characteristic attributes. They enable the use of these forms of complicity in commission of crime either as circumstance, which aggravate the criminal liability, or as a qualifying attribute of commission of some crime.

From the point of view of possibility to create a threat to public security, the group of the persons is less dangerous as opposed to other kinds of criminal groups. It is regarded as the simplest form of complicity in commission of crime by the criminal groups. The only attribute of complicity in commission of crime by two and more persons in composition of such criminal group is the availability of simple agreement among them for joint commission of crime irrespectively of time and place of getting this agreement.The complicity in commission of crime in composition of the group of persons is possible at their casual association, including the sudden occurrence of some situation and also at the feeling falsely understood as solidarity.

The group of persons united by preliminary agreement is situated between the group of persons and organized group and includes some characteristics attributable to these two extreme kinds of criminal groups.

Group of the persons united by preliminary agreement and organized group are more complex forms of association of two and more persons with the purpose of commission of one or several crimes. Their difference from usual group of the persons is contained first of all in availability of preliminary agreement. The consent to joint the commission of a crime is achieved in this case beforehand, before the crime is really committed. There is certain temporary interval in these groups between adoption of the decision to commit a crime and its real execution.

Another obligatory attribute of the group of persons united by preliminary agreement and organized group is their stability. However their stability is different. Thus, the structure of the group of persons united by preliminary agreement is less stable, the members of group freely leave it and the new members can easily join it. The stability of composition and organizational structures, the unity of its members, the constancy of forms and methods of criminal activity which are attributable to the organized group considerably complicates the joining new members and the extremely negative attitude of other members of group creates a serious problem for person who wants to leave the group as well as increases the probability of duration of time and variety of the joint criminal activity.

The peculiarities, which are typical for the group of persons united by preliminary agreement and organized group, create the special psychological atmosphere that is characteristic for each of them. Thus, as opposed to the group of persons, in the group of persons united by preliminary agreement one can easily distinguish firm organization and also the most active and authoritative members of group. It clearly expresses the anti public direction and the origin of business relations, alongside with personal ones, among members as to the commission of crimes. Being the more perfect kind of criminal group, the organized group consists of following attributable features: distribution of roles while commission of crimes; promotion of leader, organizer and chief of group; observance of strict discipline in group; generality of criminal intentions; development of the similar characters of behavior, based on the single values; substitution of the personal relations between members of group for the business ones, based on the joint commission of crimes; elaboration of the plan of commission of crimes; careful preparation for commission of crime; preliminary definition of the way of commission of crime; possibility to use the difficult ways of commission of crimes; coordination of actions while commission of crime in accordance with the prepared plan; distribution of the criminal incomes in accordance with the status of person in group and not infrequently the creation of special money fund in it.

The gang is the most dangerous form of the organized group. The sub-item "A" of item 3 of the Resolution of Milli Majlis of the Republic of Azerbaijan "On the Procedure of Application of Some Rules of the Criminal Code of the Republic of Azerbaijan" of 11 April 1995 states: "The necessary attributes of a gang are: availability of two or more persons; steady organizational unity among members; availability of an arm at one of the members and other members being informed about it; preliminary association of the members with the purpose of attack". As it is seen from this clarification, the gang has all basic attributes attributable to organized group, and in order to distinguish the gang from other forms of organized group the members of gang should have purpose to make one or several attacks, as well as availability of side-arm or fire arm (at least at one of the members, with other members being informed).

Thus above mentioned common attributes fully characterize the organized group and in response to petition of the Supreme Court of the Republic of Azerbaijan allow to give necessary interpretation of appropriate provisions of the Criminal Code of the Republic of Azerbaijan.

On the basis of the above stated and being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 83 and 85 of the Law of the Republic of Azerbaijan "On Constitutional Court", the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To clarify that "Organized group" conception with reference to the Criminal Code of the Republic of Azerbaijan shall mean the criminal group consisting of two and more persons, united beforehand with the purpose to commit one or several crimes;

Such its attributes as stability of its structure and organizational structures, unity of its members, constancy of the forms and methods of criminal activity can testify the stability of the organized group.

2. In order to differ the organized group from other kinds of criminal groups, one should take into account the following features, alongside with other ones, of the organized group: distribution of roles while commission of crimes; promotion of leader, organizer and chief of group; observance of strict discipline in group; generality of criminal intentions; development of the similar characters of behavior, based on the single values; substitution of the personal relations between members of group for the business ones, based on the joint commission of crimes; elaboration of the plan of commission of crimes; careful preparation for commission of crime; preliminary definition of the way of commission of crime; possibility to use the difficult ways of commission of crimes; coordination of actions while commission of crime in accordance with the prepared plan; distribution of the criminal incomes in accordance with the status of person in group and not infrequently the creation of special money fund in it.

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.