ON BEHALF Of THE REPUBLIC OF AZERBAIJAN

DECISION

**OF The Constitutional Court**

**of THE REPUBLIC OF AZERBAIJAN**

# *On Challenging of Court Decisions on Administrative Delinquences*

# 8 July, 1999 Baku city

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

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

the legal representatives of the body that submitted a petition: N.Allahverdiyev, Deputy Prosecutor General of the Republic of Azerbaijan, B.Farzaliyev, Deputy Chief of the Department on Execution of Laws in Bodies of the Ministry of Internal Affairs;

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

in accordance with Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via special constitutional proceedings the case by the petition of General Prosecutor’s Office of the Republic of Azerbaijan of 11 May, 1999, N 7/859 on conformity of Article 275.2 of Administrative Delinquences Code of the Republic of Azerbaijan to the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge B. Garibov, the statements of legal representatives of parties N. Allahverdiyev, F. Farzaliyev and N. Safarov, the Constitutional Court of the Republic of Azerbaijan

**Determined as follows:**

In Article 275.1 of Code of Administrative Delinquences of the Republic of Azerbaijan it is specified that the person, regarding whom the decision was rendered as well as a victim can challenge the decision of court on administrative delinquences.

According to para II of the same Article, the decision of regional (city) court or judge about imposing of administrative penalty is final and cannot be challenged via procedure of proceedings on cases concerning administrative delinquences, except for those cases which are stipulated by legal acts of the Republic of Azerbaijan and the given Code.

In the legislation of the Republic of Azerbaijan there are no rules providing for procedure of the challenging of court decisions on those or other categories of cases concerning administrative offences.

Thus, according to specified Article, the decision of court (judge) about imposing of administrative penalty is final and not subject to appeal.

It is envisaged in Article 60.1 of the Constitution of the Republic of Azerbaijan that judicial protection of rights and freedoms of everyone is ensured. According to para II of the same Article, everyone may appeal to court regarding decisions and activity (or inactivity) of state bodies, political parties, trade unions, other public organizations and officials.

By its petition the General Prosecutor’s Office of the Republic of Azerbaijan asks for verification of conformity of Article 275.2 of the Code of Administrative Delinquences of the Republic of Azerbaijan to Articles 60, 65, 71 of the Constitution of the Republic of Azerbaijan.

In connection with a petition, official texts of Articles 211, 256, 275, 276, 283 of the Code of Administrative Delinquences 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 specifies the following:

According to Article 125.3 of the Constitution of the Republic of Azerbaijan the judicial power is implemented by way of constitutional, civil and criminal legal proceedings and other forms of legislation provided for by law.

The finality of the court decision about imposing of administrative penalty or the ruling concerning appeals against decrees (resolutions) of other bodies on the cases of administrative offences is the characteristic and distinctive feature of administrative judicial proceedings from other forms of judicial proceedings. The presence in the law of provisions about finality of judicial decision indicates that such decision shall be executed immediately after it is rendered. From the legal point of view, such decision cannot be challenged by the person regarding whom the decision was rendered and hence the execution of decision cannot be suspended.

Among rights and duties of person brought to administrative responsibility, Article 256.1 of Code of Administrative Delinquences of the Republic of Azerbaijan provides also for the right to challenge the decision on case. This provision is reflected in Article 275.1 of the specified Code as well.

It is stated in Article 275.2 of Code of Administrative Delinquences of the Republic of Azerbaijan that the decision of regional (city) court (judge) about imposing of administrative penalty is final and not subject to an appeal via procedure of proceedings on administrative delinquences.

Law provides for wide circle of cases on administrative delinquences to be adjudicated by courts but cancellation or modification of decision rendered on merits as well as the new consideration of case is permitted only for few categories of cases.

The analysis of Articles 211 and 283 of Code of Administrative Delinquences of the Republic of Azerbaijan indicates that out of 40 categories of cases on administrative delinquences considered by courts only on 7 categories the decision of judge can be cancelled or modified upon the protest of the public prosecutor by judge himself/herself or chairman of higher court. As regards the others 33 categories of cases, the decision of court are not subject to the appeal or protest. Thus, in the specified cases the person, upon whom the administrative penalty is imposed, is deprived of right to challenge the court decision and the chairman of higher court has no right of reconsideration of decision illegally and unreasonably rendered by court.

Items 1, 2, 3 of Article 276.1 of Code Administrative Delinquences of the Republic of Azerbaijan define the procedure of the challenging of decisions rendered by bodies those are invested with power to adopt decision on cases concerning administrative delinquences. This procedure excludes the right of citizens to challenge the judicial decisions about imposing of administrative penalties.

Article 71.1 of the Constitution of the Republic of Azerbaijan specifies that to observe and to protect rights and freedoms of a human being and citizen is responsibility of bodies of legislative, executive and legal power. According to para II of the same Article no one may restrict implementation of rights and freedoms of a human being and citizen.

However, Article 275.2 and items 1, 2, 3 of Article 276.1 of the Code of Administrative Delinquences of the Republic of Azerbaijan in fact exclude the challenging of decision of court or judge, essentially limiting thus the implementation by the citizens of rights and freedoms envisaged in Constitution.

Article 8 of the Universal Declaration of Human Rights adopted by UN on December 10, 1948 states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law."

According to Article 71.6 of the Constitution of the Republic of Azerbaijan rights and freedoms of a human being and citizen act on the territory of the Azerbaijan Republic by themselves. Para VII of same Article provides that any disputes related to violation of rights and freedoms of a human being and citizen are settled in law courts.

It is stipulated by Article 149.3 of the Constitution of the Republic of Azerbaijan that the laws should not contradict the Constitution.

Article 275.2 and items 1, 2, 3 of Article 276.1 of the Code of Administrative Delinquences of the Republic of Azerbaijan hinder from protection by courts of fundamental rights and freedoms proclaimed by the Constitution and restrict the right of citizens to apply to court.

Thus, Article 275.2 and items 1, 2, 3 of Article 276.1 of the Code of Administrative Delinquences of the Republic of Azerbaijan restricting the right of the citizens to challenge the court decisions concerning imposing of administrative penalties to a higher court contradict to Article 60 and paras I, II, VI and VII of Article 71 of the Constitution of the Republic of Azerbaijan.

According to Article 65 of the Constitution of the Republic of Azerbaijan, every person convicted by court has the right to appeal, as specified by the law, to the higher law court asking for reconsideration of the verdict and also for pardon and commutation of the sentence.

The right to challenge the decision of court is provided also by Civil Procedure Code. Hence, Article 275.2 and items 1, 2, 3 of Article 276.1 of the Code of Administrative Delinquences of the Republic of Azerbaijan form an exception of the standard procedure.

In accordance with Article 94.1.1 and 94.1.6 of the Constitution of the Republic of Azerbaijan the general rules concerning the use of rights and freedoms a person and citizen specified in Constitution, state guarantees of these rights and freedoms, judicial proceedings, execution of court verdicts are established by Milli Majlis of the Republic of Azerbaijan.

Proceeding from above stated, the procedure of the challenging of decision of court concerning administrative delinquency should be determined by Milli Majlis of the Republic of Azerbaijan.

Being guided by Article 130.3.1, 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 82, 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 recognize Article 275.2 and items 1, 2, 3 of Article 276.1 of the Code of Administrative Delinquences of the Republic of Azerbaijan restricting the right of citizens to challenge the court decisions about imposing of administrative penalties to higher court as null and void in connection with their non-conformity to Article 60 and paras I, II, VI, VII of Article 71 of the Constitution of the Republic of Azerbaijan.

2. To recommend to Milli Majlis of the Republic of Azerbaijan to determine the procedure of the challenging of decision of court concerning cases about administrative delinquency.

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.