**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of the Provision of Article 21.3 of the Law of the Republic of Azerbaijan “On Police” Regarding the Terms of Administrative Detention*

**27 April, 2001 Baku city**

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

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

the legal representatives of the interested subjects: M.Agazade, Judge of the Supreme Court of the Republic of Azerbaijan; N. Safarov, Head of the Department on Administrative and Military legislation of Milli Majlis of the Republic of Azerbaijan; S.Mehraliyev, Head of the Investigation Office of the Ministry of Internal Affairs and G.Yusifov, Head of the Legal Maintenance Section of the Logistics of the Ministry of Internal Affairs;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via procedure of the special constitutional proceedings the case submitted by the petition of the Supreme Court of the Republic of Azerbaijan of 16 March, 2001, N 5-2/2001 on interpretation of Article 21.3 of the Law of the Republic of Azerbaijan “On Police” regarding the terms of administrative detention.

Having heard and discussed the report of Judge E. Mamedov, statements of representatives of the interested subjects, M.Agazade, Judge of the Supreme Court of the Republic of Azerbaijan, N.Safarov and S.Mehraliyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 21.3 of the Law of the Republic of Azerbaijan “On Police” provides, that without Court’s (Judge’s) ruling an immediate detention of any person by police officer for the term not exceeding 48 hours is permitted in the following cases:

1. If a person is detained when perpetrating a crime or an administrative delinquency or just after its perpetration;

2. If an incident’s eye-witnesses, including its victims indicate the person, suspected in perpetration of the crime or administrative offence;

3. If the suspected person, his clothes, items or lodging contain traces of the crime or administrative delinquency.

According to Article 399.1 of the Code “On Administrative Delinquences” the term of administrative detention of the person committed an administrative delinquency shall not exceed 3 hours, excluding cases determined by articles 399.2 and 399.3 of the Code.

Article 399.2 of the Code “On Administrative Delinquences” provides that for the definition of the circumstances of delinquency, committed by a person regarding whom the proceeding on the breach of the frontier regime or a regime in entry points of the Republic of Azerbaijan is conducted, an administrative detention is permitted for the term of 24 hours and in case of absence of identification documents of the person committed an administrative delinquency, the detention is permitted for the term of 3 days by a Judge’s ruling.

According to Article 399.3 of the Code “On Administrative Delinquences” the term of administrative detention of a person, regarding whom the proceeding on administrative delinquency foreseeing an imposition of administrative penalty in the form of administrative detention is conducted, cannot exceed 24 hours.

In it’s petition the Supreme Court of the Republic of Azerbaijan asks to give interpretation of the above-mentioned provisions of the Law of the Republic of Azerbaijan “On Police” and Code “On Administrative Delinquences” concerning the terms of administrative detention.

In connection with the petition, the official texts of Articles 21.3 and 22 of the Law of the Republic of Azerbaijan “On Police” and Articles 398 and 399 of the Code “On Administrative Delinquences” are enclosed to materials of the constitutional case.

The Constitutional Court of the Republic of Azerbaijan notes that according to Article 28 of the Constitution of the Republic of Azerbaijan everyone has the right to freedom. Right to freedom might be restricted only as specified by law, by way of detention, arrest or imprisonment.

Right to freedom takes a prior place among the fundamental human rights and in international law as well.

Article 3 of Universal Declaration of Human Rights provides that everyone has the right to life, freedom and security of person.

According to Article 9.1 of the International Covenant on Civil and Political Rights everyone has the right to freedom and security of person. No one shall be arrested ad arbitrium or hold in detain. No one shall be deprived of freedom except cases provided for in law.

Second principle of the Code on principles of protection of all persons, subjected to the detention or imprisonment in any form, confirmed by the General Assembly of UN provides that: “…arrest or detention shall be implemented only according to provisions of law and by competent officials or persons”.

Right to freedom is accepted all around the world as one of the most substantial and fundamental human rights. According to the international legal norms, the Constitution of the Republic of Azerbaijan guarantees this right.

At the same time, constitutional and international legal norms do not exclude restriction of the freedom in cases provided for in law. Cases and reasonable terms of any person’s immediate detention without Court’s (Judge’s) ruling are determined by legislation.

Article 21 of the Law of the Republic of Azerbaijan “On Police” binds the restriction of any person’s right to freedom by police for the term not exceeding 48 hours with the perpetration of a crime or an administrative delinquency.

Article 22.2 of the Law of the Republic of Azerbaijan “On Police” provides that in cases determined by Article 21.3 of this Law, the terms of restriction of the right to freedom in connection with the perpetration of an administrative delinquency are determined by the legislation of the Republic of Azerbaijan on administrative delinquences and in connection with the perpetration of a crime – by the criminal-procedure legislation of the Republic of Azerbaijan.

According to these and adopted later requirements of this Law and Criminal-Procedure Code and the Code “On Administrative Delinquences”, the terms of detention for the perpetration of a crime or an administrative delinquency without Court’s (Judge’s) ruling were determined.

According to the Criminal-Procedure Code the detention as a measure of the procedural compulsion stands for a shot-term restriction of the freedom of a person with the detention in places of temporary custody in cases determined by this Code. In criminal procedure the arisen suspicions in perpetration of a crime by a person and also the pre-sence of Court’s or prosecution body’s ruling serve as the grounds for the detention of this person.

Article 148 of the Criminal-Procedure Code of the Republic of Azerbaijan determines the grounds for the detention of a person suspected in perpetration of a crime without Court’s (Judge’s) ruling. The provision of this Article “detention of a person shall not exceed 48 hours” is congruent with the above-mentioned provision of Article 21 of the Law of the Republic of Azerbaijan “On Police” regarding the terms of the detention.

Articles 398 and 399 of the Code “On Administrative Delinquences” regulate an administrative detention and its terms.

According to Article 398.1 of the Code of the Republic of Azerbaijan “On Administrative Delinquences” an administrative detention, that is to say the restriction of the natural person’s freedom for a short term is applied in exceptional cases when such measure is re-cognized as necessary for ensuring the sound examination of the case on administrative delinquency in due time or for ensuring the implementation of the decision on administrative delinquency.

On the basis of Article 399.1 of the Code “On Administrative Delinquences” regulating the terms of administrative detention, the term of administrative detention of a person committed an administrative delinquency shall not exceed 3 hours, except the cases provided for in Articles 399.2 and 399.3 of the present Code.

As it follows from Article 399.1 of the Code “On Administrative Delinquences” the term of detention of a person committed an administrative delinquency without Court’s (Judge’s) ruling is 3 hours.

However, provisions of Article 399.2 of the Code “On Administrative Delinquences” instead of 3 hours-long term of a person’s detention, in such cases as the breach of the frontier regime or a regime in entry points of the Republic of Azerbaijan admit a 24 hours-long term of the detention of a person and in case of absence of the person’s identification documents, by the Judge’s ruling - a 3 days-long term of the detention.

On the basis of Article 399.3 of the Code “On Administrative Delinquences” the term of administrative detention of a person, regarding whom the proceeding on administrative delinquency foreseeing an imposition of administrative penalty in the form of administrative detention is conducted, cannot exceed 24 hours.

As it follows from the Code “On Administrative Delinquences” the term of admi-nistrative detention without Judge’s ruling shall not exceed 24 hours in any case. This term can not be equate with it’s upper limit despite the fact that it is absorbed by a 48 hours-long term provided for in Article 21 of the Law of the Republic of Azerbaijan “On Police”.

Thus, at application of an administrative detention by police for the term not exceeding 48 hours provided for in Article 21 of the Law of the Republic of Azerbaijan “On Police” it is necessary to base on a 3 hours-long term and in exceptional cases a 24 hours-long term according to Article 399 of the Code “On Administrative Delinquences” of the Republic of Azerbaijan.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 65, 66, 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. The term of detention not exceeding 48 hours provided for in Article 21 of the Law of the Republic of Azerbaijan “On Police” applies according to Article 148 of the Criminal-Procedure Code of the Republic of Azerbaijan to suspected person, committed a crime and at the definition of the term of detention of the person committed an administrative delinquency, it is necessary to base on the limits provided for in Article 399 of the Code “On Administrative Delinquences” of the Republic of Azerbaijan.

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

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

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