ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 56.1 of the Taxation Code of the Republic of Azerbaijan*

*and Articles 75 and 213 of the Criminal Code of the Republic of Azerbaijan*

# 8 April, 2002 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, I.Najafov, E.Mamedov (Reporter Judge),

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

the legal representatives of the subjects interested in special constitutional proceedings: E. Nuriyev, Deputy Prosecutor General of the Republic of Azerbaijan and I.Rafibeyli, Deputy Head of the Department on Economic Legislation of the Milli Majlis of the Republic of Azerbaijan;

the expert: professor F. Samandarov, Head of the Criminal Law Board of the Law Faculty of Baku State University;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined via special constitutional proceedings in open court session the petition submitted by the Prosecutor’s Office of the Republic of Azerbaijan of 11 February, 2002, N 06/302 concerning interpretation of Article 56.1 of the Taxation Code of the Republic of Azerbaijan and Articles 75 and 213 of the Criminal Code of the Republic of Azerbaijan.

Having heard the report of Judge E. Mamedov, the reports of the lawful representatives of the subjects interested in special constitutional proceedings, E.Nuriyev and I. Rafibeyli, the opinion of the expert F.Samandarov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition, the Prosecutor’s Office notes that in accordance with Article 56.1 of the Taxation Code of the Republic of Azerbaijan a person cannot be brought to the responsibility for infringement of taxation legislation and cannot have any taxation obligations if three years passed from the date of the infringement of the taxation legislation. Article 2.4 of the mentioned Code provides for the possibility to envisage the provisions concerning the taxation crimes in the Criminal Code of the Republic of Azerbaijan.

According to Articles 15, 75 and 213 of the Criminal Code, evasion from tax payment and other compulsory payments in significant and large amounts shall be considered as less grave crime and a person cannot be brought to responsibility if seven years have expired from the date of commission of such crime.

Admitting that the legislation contains contradictory provisions concerning the terms of bringing to responsibility for tax evasion and taking into account the obstacles as to application of this provisions, the Prosecutor’s Office of the Republic of Azerbaijan asks to give interpretation of Article 56 of the Taxation Code and Articles 75, 213 of the Criminal Code.

The official texts of Article 56 of Taxation Code of the Republic of Azerbaijan and Articles 75, 213 of the Criminal Code of the Republic of Azerbaijan certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of the case.

In connection with the petition, the Constitutional Court notes the following:

In the range of sources of formation of State and municipal budgets taxes occupy the special place and role. By means of regulation of tax relations, the State ensures the realization of objects and problems it faces together with municipalities. Volume and durability of relations existing between budget system and taxes are closely tied with their influence on development of economic and social processes in State and society. Exactly owing to financial resources (including taxes), the State have a possibility of financing of implementation of it’s functions in economic, social, ecological and other fields.

According to Article 11 of the Taxation Code, the tax is obligatory, individually gratuitous payment collected from taxpayers via alienation of bankrolls belonging to them in the form of ownership with the view of financial maintenance of State functioning and municipalities that is subject to the transfer to the State and local budgets as well as the State fund-in-trusts.

Thus, the obligation to pay the tax by physical and legal persons, its individuality and gratuity are the main characteristics, which distinguish the taxes from other obligatory payments.

Recognition of taxes as the financial guarantee for functioning of a State and municipalities make them responsible for resolution of social problems.

According to Article 16.1 of the Constitution of the Republic of Azerbaijan, State of Azerbaijan takes care of improvement of prosperity of all people and each citizen, their social protection and proper living conditions.

Ensuring of realization of these functions create the legal obligations of physical and legal persons connected with payment of taxes established by law. The analysis of Taxation Code shows, that the relations connected with collection of taxes, which emerge between State and taxpayers, are the relations based on the inequality of parties, on the prevalence of the will of one of participants in comparison with another.

The Taxation Code of the Republic of Azerbaijan, being guided by provisions of Constitution, regulates also the issues of tax control and bringing to responsibility for infringement of tax legislation.

In Article 73.1 of the Constitution of the Republic of Azerbaijan it is enshrined, that payment established by the law taxes and other State collection *in corpore* and in proper time is a duty for everyone. Thus, tax payment via the legal procedure (including the fixed date and amount) is one of the main constitutional duties of each person.

Non-fulfillment of obligations as to the payment of taxes is a ground for bringing of such persons to responsibility. In accordance with the legislation in force the commission of such offence is a ground for several types of legal responsibility. The types of legal responsibility depend on the character of legal relations.

On the basis of Article 53.1 of the Taxation Code, taxpayers, fiscal agents and theirs representatives as well as the officials of tax bodies, which are determined by this Code, shall bear the responsibility for infringement of tax legislation via procedure provided for in this Code, Code “On Administrative Deliquencies” and other laws of the Republic of Azerbaijan.

At the same time, depending on the peculiarity of action a person shall bear only one type of legal responsibility for commission of tax offence. As it provided for in Article 53.2 of the Taxation Code, no one can be brought to responsibility repeatedly for the same action (inaction), which is the infringement of tax legislation.

Financial sanctions and interests fixed by Taxation Code shall be applied with respect to the taxpayers and fiscal agents for infringement of tax legislation. In accordance with Articles 51 and 52 of the Taxation Code, application of financial sanctions for infringement of tax legislation, shall be implemented by taxation bodies or, on the basis of the claim lodged, by the court in accordance with Civil-Procedure Code.

Application of financial sanctions on the basis of Taxation Code has as its object the restoration of budget that was exposed to material losses as a result of non-fulfillment or improper fulfillment of tax duties.

In accordance with Article 2.4 of the Taxation Code, among the legislative acts, in which the taxation and tax control issues can be included, there is also foreseen the Code “On Administrative Deliquencies” and Criminal Code.

It should be noted, that in some cases part of Taxation Code relating to the infringement of tax rights, is located closely to the provisions of the Code “On Administrative Offences”. For instance, Article 53.4 of the Taxation Code stipulates, that in accordance with provision of the given Code and Code on Administrative Offence, when examining the circumstances of infringement of tax legislation there should be determined as follows: whether it was committed deliberately or as a result of carelessness; whether the guilty person has come to age fixed for starting of administrative responsibility; existence of aggravating or attenuating circumstances.

In cases provided by legislation, the infringement of tax legislation is a reason for bringing the person to criminal responsibility. However, it should be taken into account, that in connection with infringement of tax legislation the *corpus delicti* and respective responsibility for this should be determined by Criminal Code and not by Taxation Code.

For instance, according to Article 3 of the Criminal Code, the ground for criminal responsibility is the commission of an act (action or inaction), which contains all characteristics of *corpus delicti* provided for only by this Code. *Corpus delicti* in connection with tax evasion is provided for by Article 213 of the Criminal Code.

Among the main provisions of this Code concerning the determination of criminal responsibility, there exist also the provisions concerning the terms of bringing to responsibility. These terms, depending on qualification of any crime (ascription to a crime, which does not represent the high danger for the society, less, grave or especially grave crime) determine, via the procedure provided for by Article 75.1 of the Criminal Code, the possibility for bringing to or exemption from responsibility from the date of commission of the crime.

Analysis of Article 213 of the Criminal Code shows that according to Article 15.2 of the Criminal Code the actions qualified by Articles 213.1-213.3 shall be recognized as cri­mes, which do not represent the high danger for the society, and the actions described in Article 213 should be recognized as lesser crime in accordance with Article 15.3 of the same Code.

Thus, on the basis of Article 75 of the Criminal Code, the person who committed the action provided for in Articles 213.1-213.3 of the Criminal Code, can not be brought to criminal responsibility after expiry of two years from the date of commission of the crime, and for actions provided for in Article 213.4 - after expiry of seven years.

From the above mentioned it is possible to conclude, that three years term of bringing to responsibility for infringement of the law connected with tax legislation that is envisaged in Article 56.1 of the Taxation Code, should be applied in cases of infringement of tax legislation provided in Articles 57-60 of the Taxation Code.

Establishment in the Taxation and Criminal Codes of the different terms in connection with bringing to responsibility for infringement of the tax legislation, serves for ensuring of the stability of the tax relations, including durability and steadiness of the legal and economic position of taxpayers. Therefore, the term of bringing to responsibility for infringement, which is provided for in Taxation Code, connected with tax legislation should be applied via the procedure determined by Article 56 of the Taxation Code. And the term of bringing to criminal responsibility for criminal action provided for in Article 213 of the Criminal Code should be applied via the procedure provided for in Article 75 of the Criminal Code.

Establishment of the terms of bringing to responsibility for infringement of tax legislation, creating the conditions for stability of economic situation, increasing of the trust of participants of economic activity, serve finally for ensuring of the mechanism of legal safety of these subjects.

Being adopted *inter alia* by the European Court of Justice the principle of legal distinctness is regarded as one of the main principles of “the concept of legal safety”. Legal distinctness as general idea was included into many legal systems. And its basis, including the terms of bringing to legal responsibility, constitutes the beforehand notification that ensures the stability of legal situation.

Being guided by Article 130.4, 130.6 of the Constitution of the Republic of Azerbaijan, Articles 66, 75, 76, 78, 80, 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 bringing to responsibility for infringement of law connected with tax legislation provided in the Taxation Code of the Republic of Azerbaijan should be applied via the procedure determined by Article 56 of the Taxation Code. And the term of bringing to criminal responsibility for criminal action provided for in Article 213 of the Criminal Code should be applied via the procedure provided for in Article 75 of the Criminal Code.

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.