**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

On interpretation of Part II of the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan” of 28 November 2003

# 7 September, 2004 Baku city

The Constitutional Court of the Republic of Azerbaijan composed of F. Abdullayev (Chairman), Judges, F.Babayev, B. Garibov, R. Gvaladze, E. Mamedov, I. Najafov and A. Sultanov (Reporter Judge),

attended by the Court Clerk R.Mahmudov,

the legal representatives of the subjects interested in special constitutional proceedings: S. Bektashi, Chairman of local Economical Court N1 and U.Mamedov, Judge of the same court, I.Rafibeyli, Deputy Chief of Department of the Administration of the Milli Majlis of the Republic of Azerbaijan;

the specialists: F.Najafov, employee of the Ministry of Finance of the Republic of Azerbaijan;

 in accordance with Article 130.6 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of local Economical Court N1 of the Republic of Azerbaijan of 25 June 2004, N M-161/5 concerning interpretation of Part II of the Law of the Republic of Azerbaijan “On introducing of modifications and amendments to Tax Code of the Republic of Azerbaijan” of 28 November 2003,

having heard and discussed the report of Judge A. Sultanov, the statements of legal representatives of the subjects interested in special constitutional proceedings S.Bektashi and I.RAfineyli, opinion of specialist F.Najafov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The local Economical Court N 1 of the Republic of Azerbaijan in the inquiry directed to the Constitutional Court on pending case concerning the claim of firm “ASKKO” to branch N 2 of Departments of taxes of a Baku city specified that branch N 2 of Departments of taxes of Baku city on case, being based on entered into force on 1 January, 2004 the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan” of 28 November 2003 has not taken into consideration the presented by organisation-claimant (firm “ASKKO”) the declaration of value-added tax for January 2004, and during cameral tax audit has not taken into consideration a part of value-added tax an order specified by Article 175.1 of the Tax Code valid till 1 January 2004, to the sum 13.754.700 AZN and given on bank account of the organisation of the claimant the order concerning repeated payment N 99793/6846, 99794/6846 and 99795/6846 of 2 March, 2004.

Also in inquiry it was noted that firm “ASKKO” in the suit states that the Part II of the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan” was published only on 31 January, 2004 and in this connection the value-added tax was calculated and transferred according to the former law. In this connection, considering that the bill submitted by firm on 11 February, 2004 was unreasonably rejected by Tax department, claimant asks to cancel the directions on bank account.

The local Economic Court N1 in the inquiry to Constitutional Court for the purpose to ascertain of clearness of application of a Part II of the above-stated Law asks to specify the date of entering into force of the given Law.

In connection with inquiry the Constitutional Court notes the following.

The law for a society is a written legal document, having great value in regulation of public relations, the resolution of economic, social and others problems of state, on protection of the rights and freedom of citizens, increase of their civil liability. In this respect the adopting, publication and usage of these laws are the main conditions.

The Constitution of the Republic of Azerbaijan, being the fundamental Law of state, has the higher validity. Laws should not contradict to the Constitution, and have a binding character for all from the date of publication.

Provisions concerning legislative system of the Republic of Azerbaijan and legal normative acts concerning it are determined by Articles 147-151of the Constitution.

According to the Constitution the legislative powers in the Republic of Azerbaijan are implemented by Milli Majlis and Milli Majlis on legal matters adopt a constitutional laws, laws and decrees (Articles 81 and 93).

According to Article 97.1 of the Constitution, drafts of the laws are submitted to the President of the Republic of Azerbaijan for signing within 14 days from the day of their acceptance. The President of the Republic of Azerbaijan signs laws and publishes them (Article 109.19).

The President of the Republic of Azerbaijan signs the laws within 56 days after their presentation. If the President of the Republic of Azerbaijan has objections against a law he may return it to Milli Majlis of the Republic of Azerbaijan within specified term without signing, together with his comments (Article 110).

In view of the stated in inquiry, firstly it is necessary to clear up a question of since what time it is necessary to consider entering into force, application and execution of laws and other statutory acts. Article 1 of the Law “On normative legal acts” defines the order of drafting, entering into force and implementation of laws and other normative-legal acts of the Republic of Azerbaijan, and also the interaction connected with them of corresponding state bodies.

According to Article 98 of the Constitution, if not specified otherwise in the law and decree of Milli Majlis of the Republic of Azerbaijan the law and decree become valid from the date of their publication.

On the sense of given Article if in the law and decree the date of their entering into force is specified then the law and the decree come into force from the indicated date. At the same time for the resolution of question the particular importance have application and execution of laws.

The order of application and execution of laws is determined by Article 149 of the Constitution of the Republic of Azerbaijan. According to part III of given Article, application and implementation of only published laws is mandatory for all citizens, legislative, executive bodies and judiciary, legal entities and municipalities.

In general any normative-legal act, concerning the rights, freedoms and duties of individual cannot be applied and executed before publication and information of public.

Just therefore in Article 38 of the Law “On normative legal acts” it is provided that laws of the Republic of Azerbaijan, decrees and orders of the President of the Republic of Azerbaijan should be published in the official publications “Azerbaijan” newspaper and “Legislation Journal of the Republic of Azerbaijan” which are considered as official publications.

Case-law of the European Court of Human Rights has important significance in connection with publication and execution of laws and other normative legal acts. According to case-law of the European Court, the law should preliminary be given to publicity, be simple and clear, precisely and accurately formulated, expressed, and also should contain the guarantees against arbitrariness concerning those who fall within the application of this law.

In cases when deprivation of the right of freedom is made secretly or on the basis of unpublished legal norms, requirements of publicity will be broken. The requirements of publicity shall be applied also with respect to all acts which possess less legal force in comparison with the law. So, having established the violation of Article 5.1 of the European Convention on case Amuur vs. France, the Court recognized the unpublished direction on regulation of the questions connected with the maintenance of foreign citizens in a transit zone, as insufficient on volume and not containing the corresponding guarantees which are required for a law.

On the basis of the above-stated, it is possible to come to such conclusion that only the published law can be subject to application and execution. Otherwise it is impossible to speak about of its application, execution and the responsibility connected with it.

Regarding Part II of the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan” adopted by Milli Mejlis of the Republic of Azerbaijan on 28 November, 2003 it is noted that this Law came into force from 1 January, 2004. However the given Law was published in the newspaper “Azerbaijan” only on 31 January, 2004.

Plenum of the Constitutional Court considers that the Part II of the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan”, entered into force on 1 January, 2004. However according to Article 149.3 of the Constitution of the Republic of Azerbaijan it can be accepted to application and execution only from the date of its publication, which is since 31 January, 2004. At the same time, it should to noted, that according to Article 149.7 of the Constitution, the normative acts that improve legal conditions of individuals and legal entities, that lift or mitigate the legal responsibilities should have retroactive force. Therefore at application and execution of the mentioned Law it is necessary to consider provisions of Constitution.

Being guided by parts VI and IX of Article 130 of the Constitution of the Republic of Azerbaijan, Articles 60, 62, 63, 65, 66, 67, and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. According to Part II of the Law of the Republic of Azerbaijan “On introduction of modifications and amendments to Tax Code of the Republic of Azerbaijan”, entered into force on 1 January, 2004. However according to Article 149.3 of the Constitution of the Republic of Azerbaijan it can be accepted to application and execution only from the date of its publication, which is since 31 January, 2004. Therefore at application and execution of the mentioned Law it is necessary to consider provisions of Article 149.7 of the Constitution.

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

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

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