**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 333.1 of the Criminal Code of the Republic of Azerbaijan*

**18 July, 2005 Baku city**

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

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

legal representatives of interested parties, Sh. Y. Yusifov and M. N. Tagizadeh, Judges of the Court of Appeal of the Republic of Azerbaijan; S. Mammadov, Deputy Head of the Administrative and Military Legislation Department of the Milli Mejlis of the Republic of Azerbaijan; professor F.Samandarov, Expert, Head of the Law Department of Baku State University, Doctor of Legal Sciences,

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session via the procedure of constitutional proceeding the constitutional case on application of 25 May 2005 submitted by the Court of Appeal of the Republic of Azerbaijan regarding the interpretation of the provisions of the Article 333.1 of the Criminal Code of Azerbaijan

Having heard the report of judge I. Najafov, the reports of Sh.Y.Yusifov, S.Mammadov, the legal representatives of interested parties in special constitutional proceedings and comments of the expert F.Samandarov, the Plenum of the Constitutional Court of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to the Article 333.1 of the Criminal Code of the Republic of Azerbaijan, the self-willed abandonment by military servant of his military unit or the place of his military service or non-coming to the place of service in time without good reason for more than three days but not more than 10 days and even though for less than three days but repeatedly during six months committed by a military servant passing the military service on conscription constitutes a ground for bringing that person to criminal responsibility.

In its application the Court of Appeal of the Republic of Azerbaijan states that there is need to interpret Article 333.1 of the Criminal Code of the Republic of Azerbaijan as there is vagueness in the application of the above-mentioned norm and the lowest degree of the abandonment period, which can create a ground for criminal responsibility, is not clearly stipulated.

In connection with the submitted application the Plenum of Constitutional Court notes as follows:

One of the main duties of the citizens stipulated in the Chapter IV of the Constitution of the Republic of Azerbaijan is the defense of Motherland. Citizens of the Republic shall serve in the army in accordance to legislation (Article 76 of the Constitution).

A military servant should strictly respect the military discipline defined in the laws of the Republic of Azerbaijan and the Military Charters. The main objective of the military discipline is to ensure the organization of the agreed unified activity of military servants. The military discipline is based on the conscious perception of the military obligations by each military servant and personal responsibility for the defense of his Motherland – Azerbaijan Republic.

The rules of military service are defined in the Law of the Republic of Azerbaijan “On Military Service”, the Charter “On the Military Service”, the Law of the Republic of Azerbaijan “On the Status of Military Servants”, and the Military Charters. Steady and permanent observation of the rules of military service is the main point of the military discipline. Strong military discipline is one of the necessary conditions to ensure the qualitative military training of the Armed Forces of the Republic of Azerbaijan.

The conditioning of the definition of the criminal actions against the military service and their punishment by the legislator serves first of all for the establishment and strengthening of the military discipline.

The concept of the responsibility for the crimes against the military service is reflected in relevant part of the Criminal Code of the Republic of Azerbaijan.

For instance, according to the Article 327 of the Criminal Code, the crimes against the established procedure of passing the military service committed by military servants who are on military service in the Armed Forces of the Republic of Azerbaijan, other forces and military units on conscription or agreement, or by other persons having the status of military servant by virtue of law, as well as the military officials involved in the trainings or control meetings shall be considered as the crimes against the military service. The complicity of the persons not stipulated in this article in the crimes against the military service implies the responsibility according the relevant articles of this chapter.

The criminal responsibility for the self-willed abandonment by military servant his military unit or the place of his military service is reflected in the Article 333 of Criminal Code. According to this article, the self-willed abandonment by military servant of his military unit or the place of his military service or non-coming to the place of service in time without good reason for more than three days but not more than 10 days and even though for less than three days but repeatedly during six months committed by a military servant passing the military service on conscription shall be punished by placement in the disciplinary military unit for a period not exceeding one year.

The analysis of objective aspects of the criminal action stipulated in the Article 333.1 of the Criminal Code is highly important for the right solution of the issue identified in the submitted application.

The self-willed abandonment by a military servant of his military unit or the place of his military service or non-coming to the place of service in time without a good reason constitutes the objective aspect of the interpreted crime and is the prolonged crime.

The self-willed abandonment is understood as the abandonment by military servant of his military unit or the place of his military service or non-coming to the place of service without the commander’s (chief’s) permission. And the non-coming in time is the non-returning of a military servant, who left the territory of military unit or place of service on the basis of permission, to the military unit or place of service at the fixed time without good reason.

The beginning of the period of self-willed abandonment of the military unit starts from the moment of the abandonment by a military servant of the military unit or place of service, and the beginning of non-coming to the place of service in time shall be counted from the moment of the end of the period of returning.

This crime is considered finished at the time when a military servant comes back to the military unit or the place of service or when he is detained.

One of the necessary signs of the objective aspects of the crime stipulated in the Article 333.1 of the Criminal Code is the period of the self-willed abandonment and non-coming in time.

According to the disposition of the Article 333.1 of the Criminal Code, to be brought to responsibility the self-willed abandonment and non-coming in time should constitute the following periods:

1. from 3 to 10 days;

2. if repeated during 6 months even if for less than 3 days.

The repeat of the actions means when the self-willed abandonment or non-coming in time is repeated for two or more times during 6 months even if for less than 3 days.

It should be noted that in case a military servant who is at military service on conscription abandons willfully his military unit or place of service for less than 3 days or does not come to his place of service in time for not a good reason for the first time, he, according to the Article 48 of the Disciplinary Charter of the Armed Forces of the Republic of Azerbaijan, can be punished through reproach; reprimand; severe reprimand; deprivation of next release from the military unit to outside or from the ship to the shore; designation of out of turn duty (except for sending to the guard, duty and fight duty) – up to 5 service duties; arrest up to 5 days in the guardhouse; deprivation of badges; deprivation of military rank of chief soldier (chief sailor).

When a military servant abandons willfully the military unit or his place of service or does not come to the service in time for two or more times during six months after the disciplinary reproach, then he can be brought to criminal responsibility for the same actions according to the Article 333.1 of the Criminal Code.

Taking into consideration the objective aspect of the Article 333.1 of the Criminal Code, the Plenum of the Constitutional Court comes to conclusion that the starting point of the periods stipulated in this article should be calculated from the time of self-willed abandonment of the military unit or the place of service or non-coming to the place of service at the fixed time without a good reason.

Along with this, when examining such cases one should take into consideration that in case the disciplinary reprimand for such an action taken for the first time is abolished by the relevant military management then the self-willed abandonment or non-coming in time for the second time does not constitute the repetition of action. It should be also taken into account that the note to the Article 333 of Criminal Code provides that a person who took the actions stipulated in the Articles 333.1-333.4 of this Code for the first time because of the hard conditions may be released from criminal responsibility.

Being guided by article 130.6 of the Constitution of the Republic of Azerbaijan, articles 62, 63, 65, 66, 67, 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. The beginning of the periods stipulated in the Article 333.1 of the Criminal Code of the Republic of Azerbaijan should start from the moment of the self-willed abandonment by a military servant of his military unit or place of service or his non-coming to the place of service at the fixed time without a good reason.

2. The decision of the Constitutional Court of the Republic of Azerbaijan comes into force from the date of its publication.

3. The decision is subject to publication in the "Azerbaijan", “Respublika”, “Xalg gazeti”, “Bakinsky rabochiy” newspapers and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

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