**ON BEHALF OF REPUBLIC OF AZERBAIJAN**

**DECISION**

# OF THE PLENUM OF THE CONSTITUTIONAL COURT

**OF THE REPUBLIC OF AZERBAIJAN**

# *On Interpretation of Article 265.5 of the Civil Procedure Code of the Republic of Azerbaijan and Article 82.3 of the Law of the Republic of Azerbaijan*

# *“On execution of judicial decisions”*

**15 February, 2008 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of F.Abdullayev (Chairman), S.Salmanova, B.Garibov, E.Mamedov (Reporter Judge), F.Babayev, S. Hasanova, , R. Gvaladze and A.Sultanov;

attended by the Court Clerk I.Ismayilov,

the legal representatives of interested parties: I.Shirinov, judge of the Nasimi district court of Baku city, J.Javadov, senior adviser of the Nasimi district court of Baku city and I.Jafarov, senior adviser of department of the administrative and military legislation of Milli Meclis of the Republic of Azerbaijan,

the expert Djabir Guliyev, Acting Associate Professor of the Chair of Criminal Law, of the Law Department of the Baku State University,

the specialist - B. Asadov, associate professor of chair of civil law of the Baku State University, Judge of the Supreme Court of Republic of Azerbaijan,

has examined in open session via special constitutional proceedings in accordance with Article 130.6 of the Constitution of the Republic of Azerbaijan the constitutional case initiated by Nasimi district court of Baku city concerning the interpretation of Article 265.5 of the Civil Procedure Code and Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions”.

Having heard the report of Judge E. Mamedov and statements of representatives of interested parties, opinions of expert and specialists, studied materials and examined the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In the request of Nasimi district court of Baku city there has been noted about examination of a case concerning bringing by the judicial execution officer to a criminal liability of the debtor R.Magerramov on the basis of Article 265 of the Civil Procedure Code of the Republic of Azerbaijan (hereinafter referred to as CPC) for default of the writ of execution. For default of the decision the debtor has been brought to administrative responsibility, then, despite the warning made to him, he refused to execute the writ of execution and consequently the court asked to bring him to a criminal liability. The court through consideration of legal norms subject to application on this matter has established among them the presence of the various approaches as to settlement of this issue.

So, in Article 265.5 of CPC it is specified that where an effective court resolution has not been executed, court during one month should issue a particular decision on initiation of a criminal case with respect thereto and notify prosecutor.

However, according to Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” in case the executive document is not executed again without valid excuse, the judicial execution officer shall pass to corresponding body the representation confirmed by the head of structure of judicial execution officers about bringing by the judicial execution officer of the person, obliged to execute the judgment, to a criminal liability via the procedure established by the legislation of the Republic of Azerbaijan.

Thus, while, Article 265.5 CPC in case of default of judgment specifies that court during one month should issue a particular decision on initiation of a criminal case with respect thereto and notify of Prosecutor Office, Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” demands, that in case the executive document is not executed again without valid excuse, the judicial execution officer shall pass to corresponding body the representation confirmed by the head of structure of judicial execution officers about bringing by the judicial execution officer of the person, obliged to execute the judgment, to a criminal liability via the procedure established by the legislation of the Republic of Azerbaijan.

The Nasimi district court considers that from the point of view of prevention of occurrence of doubt about impartiality of the judge and increase of confidence to court Article 355 of the Criminal Procedure Code defines the possibility of adoption of particular decision by results of judicial proceedings that seems more successful than the norms of Article 265.5 of CPC and Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” which differ from each other. Article 355 of Criminal Procedure Code defines the possibility of adopting of particular decision as a result of judicial proceedings. That Article unlike civil procedural legislative norms admits to adopt and direct to heads of corresponding bodies a particular decision not about criminal case initiation but only about action or omission of the individuals who are not brought to criminal liability, lacks and mistakes in activity of officials of state structures, and also infringement of requirements of Criminal Procedure Code in pretrial process.

According to Nasimi district court the similar position of the legislation is not casual and is directed on maintenance of impartiality of judges when considering the cases in criminal legal proceedings. Therefore the mentioned court adopting the decision concerning appeal to Constitutional Court asked to give interpretation of Article 265.5 of CPC and Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” from the point of view of requirements of Article 127.2 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as Constitution).

In connection with this request the Plenum of the Constitutional Court of the Republic of Azerbaijan considers necessary to note the below-mentioned.

During consideration of the request of Nasimi district court, first of all, the attention should be paid to the wide legal analysis of the meaning of judgment, rulings and particular rulings of civil legal proceedings within Criminal Procedure Code, and also the norms of Article 265 of CPC and Article 82 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” which are based on identical essence that is the execution of judgment but however establishing various actions of court, judge and judicial execution officers.

Civil process is the process carried out by courts of law and directed on protection of the rights of various persons via procedure established by the legislation. In civil proceedings the procedural action of each participant of civil process is estimated as result of realisation of procedural rights and duties.

The Civil Procedure Code is an important and basic source of the legislation on civil justice. It along with definition of the general rules of civil legal proceedings, including principles and the conditions of proceeding of persons participating in case and other participants of civil process, their rights and duties, also regulates the carrying out of civil proceeding by courts of law, adopting of judicial acts, rules of the appeal and their consideration.

Norms of CPC define not only a course of civil legal proceedings, but also the realisation by each participant of civil procedural relations of relevant actions and their possibilities.

Tasks of court proceedings in respect to civil cases and economic disputes consist of endorsement of rights and privileges of any physical person and legal enshrined in the Constitution of the Republic of Azerbaijan, laws and other normative legal acts of the Republic of Azerbaijan. Civil court proceeding contributes to strengthening of legality and public order, education of persons in spirit of strict respect to laws (Article 2 of CPC).

The case should be commenced in court upon petition of physical person or legal entity for protection or endorsement of his rights and interests protected by law (Article 5.1 of CPC).

Justice in respect of civil cases and economical disputes should be under the sole competence of courts and shall be carried out by courts via the procedure provided in law (Article 6 of CPC).

For consideration in court in a civil procedural procedure of any question the interested person, first of all, addressing to court of the first instance with the statement of claim or the statement of the corresponding form, specifies the requirement or the request. The court (judge) checks whether the points specified in claim fall within its competence. If the resolution of issue concerns forms of judicial protection which the judge carries out the judge shall adopt the ruling on acceptance of the corresponding claim to the legal proceeding, and from this moment, as a rule, the civil case and judicial proceeding on the given case start.

The consideration of a case (the claim or any other application) in essence is carried out by courts of the first instance accordingly on the basis and within requirements of the claim or the request addressed to court. Civil legal proceedings in court of the first instance stop after realisation of judicial proceedings. These proceedings, as a rule, finish by adopting a decision after a legal investigation in essence, or a ruling on discontinuance of the proceedings. However during proceedings there can be adopted also other kinds of judicial acts – judicial rulings or particular decisions.

Judicial ruling is the judicial act which does not resolve the case in essence, however it gives the authority to such powers as admission of a claim by court or the judge, shelving the claim, suspension of proceedings, abatement of a suit, and also the use of other powers specified in the CPC.

Particular ruling of court is such kind of the judicial act which works as the procedural means expressing the reaction of court on infringement of the legislation by any person during a legal investigation (the claim or any other application). Adopting of particular decision basically founded on that the court cannot stay as indifferent witness to illegal action (inactivity), and infringements of the rules of law revealed during proceedings.

Thus, as it is noted above, CPC from the procedural point of view regulates the filing of claims and other kinds of applications, their acceptance to legal proceedings, consideration of cases, adoption of judicial acts, their appeal and action of courts, persons participating in case and action of other participants of civil process on revision of judicial acts. The set of these procedural actions and also procedural rights and duties of court, the parties and other participants of civil process constitute the essence of civil legal proceedings.

According to Article 129 of the Constitution court decisions should be adopted on behalf of the state and their implementation should be mandatory.

Court renders its acts in the form of resolutions, rulings, decisions and orders. Resolution, ruling, decision and order of courts entered into legal force are obligatory for any and all state authorities, local self-government bodies, their officials, political parties, trade unions, their officials, as well as for physical persons and legal entities and shall be executed in compulsory manner throughout the territory of the Republic of Azerbaijan. Non-execution of court act, as well as any other form of disrespect to court result in liability stipulated by law. (Article 15.1-15.3 of CPC).

Except for the decisions which are subject to immediate execution in civil legal proceedings, all judicial acts adopted by courts of the first instance shall be executed only after coming into force. Unlike the Criminal Procedure Code the CPC does not provide for the possibility of courts of the first instance to hold special judicial proceedings in connection with default of judicial acts.

Along with it, it is necessary to specify that the settlement by court of any legal dispute or a matter is possible through administration of justice. But it demands the strict observance of principles and conditions of civil legal proceedings.

Court, taking as a basis the content of Article 265.5 of CPC, cannot act according to the purposes without taking into consideration the purpose of CPC, relations regulated by it, tasks of civil legal proceedings, the moment of the beginning of civil legal proceedings in court of the first instance and the moment of its end, without executing the positions defining the main principles and conditions of civil legal proceedings.

In general it is necessary to take into consideration that in spite of the fact that Article 265.5 of CPC follows directly right after Articles 265.1-265.4 of CPC; it forms the discrepancy not only with these norms, but also with other norms of CPC.

So, under the title of particular decisions of court in the structure of Article 265 of CPC there have been united 6 articles (parts). Four of these articles define as follows:

265.1 Court shall have the right to issue a particular decision in cases of establishment of breaches of laws and other normative acts in course of activities of a legal entity, state authority, local self-governing body and other organisation, official or a physical person.

265.2 Particular decision shall be sent to relevant legal entities, officials, state authority, local self-governing body and other organisation, physical person. Such persons shall be obliged to notify the court of assumed measures within 1 month.

265.3 In case of failure to inform on assumed measures, it shall be permitted to fine officials in breach in the amount of up to 100 minimal salaries as established by law. Imposition of fine shall not waive an obligation of such an official to inform court on measures undertaken in respect of such special court ruling.

265.4 Where in course of hearing of case court establishes criminal elements in actions of parties and other persons, court shall pass a particular decision and shall notify prosecutor.

As it gets evident from the content of Articles 265.1. – 265.3 of CPC, these articles are the general and lawmaking norms. The given norms define the possibility of adoption by court of the particular decision in case of revealing of infringements of the legislation in this connection a duty of corresponding officials to give to court within one month the information on the assumed measures, otherwise - the possibility of imposing on them of the penalty and that in this case they are not released from granting of the information on the assumed measures on the basis of particular decision.

And Article 265.4 of CPC, acting as a special norm, in comparison with Article 265.1 of the same Code, provides that if by a legal investigation the court will find out the crime signs in actions of the parties or other persons it passes the particular decision and informs hereof the public prosecutor.

It is necessary to especially note that Articles 265.1. - 265.4 of CPC not only entirely correspond to theories of a civil procedural law and to provisions of CPC, but also to Article 265.4 of CPC in proportion to the norms of articles defining the instituting of criminal prosecution, and regulate exactly the civil procedural relations not affecting on the criminal-procedure relations.

In case of available definitions of the general rules of realisation of criminal prosecution, including definition of the reasons and conditions of instituting of criminal proceeding, and also a procedure for data vetting concerning a crime and other articles in the criminal-procedure legislation, it is necessary to stop on Articles 265.5 - 265.6 of CPC providing other rules of instituting of criminal proceeding on the basis of particular decision of court, on the other hand, the beginning of criminal prosecution by public prosecutor practically under the control of a court.

So, unlike the content and construction of Articles 265.1 and 265.4 of CPC, the legislator has defined Articles 265.5 and 265.6 of the same Code in the below-mentioned manner:

265.5 Where an effective court resolution has not been executed, court shall issue a

particular decision on initiation of a criminal case with respect thereto and shall notify prosecutor.

265.6 Where no elements required for commencement of a criminal case have been

discovered by prosecutor, the latter shall have the right to refuse to commence a criminal

case under the particular decision of the court. Prosecutor, passing a motivated decision with respect thereto, shall send such a decision to the court issuing a particular decision. Where court disagrees with decision of prosecutor, and for the purpose of taking the required impact measures, court shall have the right to notify a higher prosecutor on illegality and improper motivation of decision of a lower prosecutor.

The sense of these articles is that if after sending of judgment which come into force to execution it is not executed within a month the court in this connection shall adopt particular decision on initiation of criminal case and not only does not inform the public prosecutor but also in case of disagreement of the public prosecutor with particular decision for the purpose of carrying out of necessary measures can attract attention of the higher public prosecutor to illegality or groundlessness of the decision of inferior public prosecutor.

Such construction of Articles 265.5 and 265.6 of CPC obviously has a lack in connection with following:

1) particular decision can be adopted by court only during legal (dispute) investigation; 2) particular decision concerning initiation of criminal case does not correspond to purposes of such judicial acts; 3) initiation of criminal case by court or persistence of court to resolve the given case harms to such main principles of justice, as impartiality of judges by a legal investigation and a principle of competitiveness of the parties at legal proceedings.

It is necessary to consider that, according to Articles 265.1 and 265.4 of CPC the application of particular decision is possible only through examination of dispute (case). According to the requirement of other articles of CPC (Articles 5.1-5.3, 13.2, 149-151, 285, 286, 275-277, 305 and 306), judicial examination via procedure civil proceedings shall be conducted only on the basis of a claim (claim proceedings) or corresponding statement (imperative proceedings, special claim proceedings, special proceedings).

On the other hand, it is necessary also to bear in mind that such questions as execution of judgments and initiation of criminal case by court (in other words the beginning of criminal prosecution), cannot be a subject of a civil-procedural law and CPC. The procedure of execution of judgments and criminal prosecution are defined accordingly in the Law of the Republic of Azerbaijan “On execution of judicial decisions” and in Criminal Procedure Code.

According to Article 127.2 of the Constitution, during examination of legal cases the judges must be impartial, fair, they should provide juridical equality of parties, act based on facts and according to the law.

According to Article 3 of the Law of the Republic of Azerbaijan «On execution of judicial decisions” (duties of courts) the activity of the courts of the Republic of Azerbaijan is directed exclusively on realisation of justice and realisation of judicial control in cases and procedure established by the legislation. Courts at administration of justice shall protect the rights and freedoms of the person and the citizen fixed in the Constitution of the Republic of Azerbaijan, irrespective of patterns of ownership, the rights and legitimate interests of all enterprises, institutions and organisations, political parties, public associations, other legal bodies from any encroachments and infringements of laws, carry out other duties provided by the Constitution of the Republic of Azerbaijan and the present Law. Putting on courts of other duties is inadmissible.

According to Article 125.1 of the Constitution Judicial power of the Republic of Azerbaijan can only be exercised by courts through a fair trial. This provision underlines that justice realisation is the basic function of judicial authority.

The impartiality principle makes a basis of concepts of justice and fair trial. The confidence of people of impartiality of justice follows from their relation to judicial system on the basis of their belief which they should feel.

Impartiality usually acts as absence of originally arisen erroneous opinion or the conclusion concerning certain person. Impartiality presence can be checked up on the basis of the subjective relation reflecting personal belief of the judge on any concrete case, and also on the basis of the objective relation defining the presence of sufficient guarantees to except any doubts in this sense.

Subjective impartiality is supposed until the contrary will be proved. And at revealing of objective impartiality the outward demonstrations are also important. Therefore the judges should remain impartial not only formally but also actually to be perceived by a society as impartial. Impartiality of the judge can be prejudiced at demonstration by him expressly or indirectly of support of interests of one of the parties participating in dispute.

According to Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in which there is enshrined the right to the fair trial, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The European Court of Human Rights in the decisions in connection with the right of fair trial regularly shows that it attaches special importance to outward demonstrations of impartiality of court and substantiates its position by escalating interest of a society towards fair realisation of legal proceedings. European Court, according to requirements of Article 6 of the European Convention, urges to consider always importance of the coordinated work of judicial system, gives a wide explanation concerning importance of maintenance of impartiality of court (Pyersak vs Belgium, 1 October, 1982, point 30; Haushildt vs Denmark, 24 May, 1984, point 47; Fey vs Austria, 24 February, 1993, point 30; Remli vs France, 30 March, 1996; Ferrantelli and Santanselo vs Italy, 7 August, 1996; Obershlik vs Austria (№1), 23 May, 1991; De Haan vs Netherlands, 26 August, 1997; Vettshtayn vs Switzerland, 21 December, 2000).

Having examined Article 265.5 of CPC it becomes clear that in case of default of the judgment which has entered into force the norm of this article creates a legal basis for adoption by court of particular decision concerning initiation of criminal case according to this fact. And this along with the content of Article 265.6 of CPC would be regarded as insisting on fulfillment of the procedural actions inherent to the party of charge in criminal trial, that is the undertaking of functions of charge for obligatory prosecution of the person who have committed the acts provided by the criminal law.

The adoption during civil proceedings of particular decision concerning initiation of criminal case can be perceived as decision-making within the limits of other kind of the criminal legal proceedings, being alien to it by the nature, and instead of the bodies of the preliminary investigation which have started the criminal legal proceedings. Initiation of criminal case by means of adoption of particular decision, the informing of public prosecutor concerning that and insisting of the judge about carrying out of criminal prosecution by him can be regarded also as realization by court of functions of charge.

At the same time it should be taken into account that Article 265.6 of CPC, interfering with the procedure of initiation of criminal case and criminal prosecution which are set in Articles 39, 40, 210, 212 of Criminal Procedure Code, establishes that in a case of non-revealing of circumstances excluding initiation of criminal case, this can bring to determination by particular decision of court of the wrongfulness of the public prosecutor in refusal in initiation of criminal case. Besides, Article 256.5 does not correspond with provisions of Article 449 of Criminal Procedure Code concerning appeal in court of procedural actions or decisions of the body which is carrying out the criminal procedure (including the decision of the public prosecutor on refusal of initiation of criminal case) and its consideration in court. Because the court instead of realisation of judicial control in criminal procedure according to provisions Article 265.6 of CPC in case of disagreement with decision of prosecutor, and for the purpose of taking the required impact measures, becomes a party in the eyes of higher prosecutor when it challenges the decision of a lower prosecutor.

All above mentioned cases promote the collision of provisions of articles 265.5 and 265.6 of CPC with a principle of impartial consideration of case, blackening a reality of this principle, create the conditions for its infringement and prejudice even the purpose of fair justice.

Undoubtedly if the court as a result of legal investigation will find out crime signs in actions of persons of participants of civil process it should inform about it to the public prosecutor. However the information should not raise the doubts in impartiality of the judge and should not put harm to existing belief to court, as to the body which is delivering a justice. In this sense, information of court can be accompanied not by initiation of criminal case as it is provided in Article 265.4 of CPC but just simple rendering of particular decision, revealing the presence of signs of a crime in actions of the parties or other persons. Such settlement looks more successful than in the provisions specified in Articles 265.5 and 265.6 of CPC.

It is necessary to consider that Article 46 of Criminal Procedure Code defines features of initiation of process on criminal prosecution in connection with initiation of criminal case. According to this article, there shall be proper reason and grounds for the start of the criminal proceedings relating to a public or semi-public prosecution. The reason for starting criminal proceedings may be an application from an individual, information from a legal entity (or official) or the media, or information directly obtained by the preliminary investigator, investigator or prosecutor, concerning an offence committed or in preparation. The grounds for starting criminal proceedings shall be sufficient evidence to indicate the ingredients of the offence. If there are grounds to suppose that there are no circumstances indicating the absence of a criminal act or precluding criminal prosecution, the preliminary investigator, investigator or prosecutor shall immediately start the criminal proceedings in accordance with his powers. Except in circumstances which preclude criminal prosecution, the court president shall draw the attention of the prosecutor to the fact that the ingredients of a criminal offence have been established during the hearing and the prosecutor shall immediately open the criminal case connected with it. In this case, if the prosecutor decides against initiating criminal proceedings and the president comes to the conclusion that the decision is illegal and

groundless, he may require the prosecutor to take the necessary measures (Articles 46.1 - 46.4 of Criminal Procedure Code).

As it gets evident, the norm of Article 265.4 of CPC does not contradict to the requirements of Articles 46.1 and 16.4 of Criminal Procedure Code as opposed to Articles 265.5 and 265.6 of CPC.

It is necessary to bear in mind that the adoption of particular decisions is possible only in one case - during legal investigation in court. According to stated in CPC legal proceedings rules, the judicial acts adopted during of proceeding of court of the first instance can be attached to proceedings. CPC does not provide implementation of judicial session or any other executive procedure in connection with default of judicial acts which entered into force after the closure of a trial.

The adjournment or postponement of execution of decision, modification of method and procedure of execution of resolution on the statement of the persons participating in case, suspension of execution carried out on the basis of report of the judicial execution officer who is responsible for the case in point are regulated by the legislator according to some provisions of Article 231of CPC. However in this article the provisions connected with default of judicial acts are not defined.

Regulation of all these facts and also problems of execution of judicial acts by the Law of the Republic of Azerbaijan “On execution of judicial decisions” shows that the legislator unlike previous CPC considers the regulation of the issues connected with execution of judicial acts by current CPC as inexpedient.

The fact strengthening such position consists also that in Article 82 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” in case of default of the executive document for the disrespectful reason that leads to the bringing to criminal liability, unlike Articles 265.5 and 265.6 of CPC which absolutely stipulate otherwise.

So, according to Article 82.1 of the aforementioned law in case of default at a stated time for the unreasonable reason the court order providing execution of certain actions or avoidance of some actions from the debtor, the law enforcement officer with the purpose to bring of the debtor to administrative responsibility according to rules established by the legislation of the Republic of Azerbaijan, makes the report on an administrative offence and jointly with other materials of case directs to corresponding court. At the same time, the law enforcement officer set the new term to the debtor for execution of court order. Article 82.3 continuing provisions of this law establishes that if the court order once again will not be executed for the unreasonable reason in that case the law enforcement officer for bringing of the person, obliged to execute the judgment in an order established by the legislation of the Republic of Azerbaijan to a criminal liability, directs to corresponding body a representation certified by the head of structure of law enforcement officers.

By the legislator in the content of Article 82 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” has been used the notion of administrative prejudice. After administrative responsibility in case of continuation by the obliged person of illegal behaviour possibility of its bringing to a criminal liability, on the basis of submission of the head of structure of law enforcement officers in corresponding body according to the order, established by the legislation of the Republic of Azerbaijan is provided.

As it gets evident from article, in case of default by the obliged person of the judicial act, he is attracted at first in administrative responsibility if this does not give necessary results the Criminal Procedure Code provides for the usage of the mechanisms established in the legislation to attract him to criminal responsibility. This mechanism is directed on more rational maintenance of fundamental laws and freedom of the person. Realisation of criminal prosecution, and also carried out in its structure of initiation of criminal case by the public prosecutor and enforcement authorities and discharge from this point in question of the courts which are implementing justice, corresponds to the requirements provided by Article 7 of the Constitution on the organisation of the government in the Republic of Azerbaijan on the basis of a principle of division of the authorities and also a principle of impartiality of judges by the examination of legal proceedings reflected in Article 127.2 of the Constitution.

It is necessary to note that according to Article 7 of Law of the Republic of Azerbaijan “On normative legal acts” in case of contradiction between normative legal acts of the same force, normative legal act of the latest date shall prevail. This provision has special value in law enforcement practice of courts. The CPC has came into force on 1 June, 2000 and the Law of the Republic of Azerbaijan “On execution of judicial decisions” has came into force on 8 March, 2002. Taking into account the contradiction between Articles 265.5 and 265.6 of CPC and Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions”, then according to Article 7 of the Law of the Republic of Azerbaijan “On normative legal acts” the Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” shall be applied.

In view of all aforesaid, Plenum of the Constitutional Court considers that as provisions of Articles 265.5 and 265.6 of CPC harms to the established in Article 127.2 of the Constitution of the Republic of Azerbaijan a principle of impartiality of judges and contradicts to the contents of Article 82.3 of the Law of the Republic of Azerbaijan «On execution of judicial decisions” according to requirements of Article 7 of the Law of the Republic of Azerbaijan “On normative legal acts” the Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” which came into force later should be applied.

Plenum of the Constitutional Court considers also important to pay special attention on the below-mentioned.

According to Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” if the executive document without a good reason is not executed again, the judicial execution officer in order to bring the person, obliged to execute the judgment via the procedure established by the legislation of the Republic of Azerbaijan, to a criminal liability shall direct to corresponding body a submission certified by the head of structure of judicial execution officers. However, neither in the Law, nor in the Decree of the President of the Republic of Azerbaijan concerning its application does not reveal what body means under “corresponding body”.

In this connection it is necessary to take into account neither civil nor criminal procedural legislation of the Republic of Azerbaijan provides for possibility of consideration by a court of the submission representation certified by the head of the organisation responsible for execution of judicial decisions. In the criminal-procedural legislation among the subjects adopting the decision on initiation of criminal case there have been indicted neither court nor the judge (Articles 46, 209 and 210 of Criminal Procedure Code).

It is necessary to note that in the legislation of the Republic of Azerbaijan it is established that ensuring of execution of judicial acts is a duty of the corresponding organisations of the Ministry of Justice of the Republic of Azerbaijan.

According to Article 306 of the Criminal Code, malicious default of decision, verdict, definition or the decision of a court, entered in validity, as well as impending to their execution lead to criminal liability. According to the Law of the Republic of Azerbaijan “On approval, coming into force of the Criminal Procedure Code of the Republic of Azerbaijan and the questions of legal settlement connected with it”, and also the fourth paragraph of point 3 of the Decree of the President of the Republic of Azerbaijan of 25 August 2000 “On application of the Criminal Procedure Code of the Republic of Azerbaijan adopted by this Law” preliminary investigation on cases on crimes provided by Article 306 of the Criminal Code of the Republic of Azerbaijan is conducted by the Ministry of Justice of the Republic of Azerbaijan.

According to Article 205.1 of Criminal Procedure Code, information provided by a legal entity (or official) concerning an offence committed or planned, which is deemed to constitute grounds for instituting criminal proceedings, shall be in the form of a letter, a confirmed telegram, telephone message, radio message, telex or other approved form of communication.

In view of norms of the current legislation, Plenum of the Constitutional Court considers that on application of Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions”: 1) in the capacity of “corresponding body” acts the body conducting preliminary investigation on cases on crimes, provided by Article 306 of the Criminal Code of the Republic of Azerbaijan; 2) according to provisions of Article 205.1 of Criminal Procedure Code “the representation certified by the head of the organisation of law enforcement officers” should be accepted as a kind of the submission of officials concerning the committed or imminent crime.

In view of that such application of Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” excludes participation of the judges who are carrying out justice, in the actions spent on initiation of criminal case out of court does not put any harm of their impartiality.

Taking into account the above mentioned and being guided by Article 130.6 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. In view of provisions of Articles 265.5 and 265.6 of CPC harms to the established in Article 127.2 of the Constitution of the Republic of Azerbaijan a principle of impartiality of judges and contradicts to the contents of Article 82.3 of the Law of the Republic of Azerbaijan «On execution of judicial decisions” according to requirements of Article 7 of the Law of the Republic of Azerbaijan “On normative legal acts” the Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions” which came into force later should be applied.

2. When applying Article 82.3 of the Law of the Republic of Azerbaijan “On execution of judicial decisions”: 1) in the capacity of “corresponding body” there acts the body conducting preliminary investigation on cases on crimes, provided by Article 306 of the Criminal Code of the Republic of Azerbaijan; 2) according to provisions of Article 205.1 of Criminal Procedure Code “the submission certified by the head of the organisation of judicial execution officers” should imply a kind of submission of officials concerning the committed or imminent crime.

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

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

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