**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of some provisions of Articles 293.1 and 297.0.4 of the Criminal Procedure Code of the Republic of Azerbaijan*

# 12 January, 2011 Baku city

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova, Fikret Babayev, Sudaba Hasanova, Rafael Gvaladze, Isa Najafov (Reporter-Judge) and Kamran Shafiyev;

attended by the Court Clerk I. Ismayilov,

the legal representative of the subject interested in special constitutional proceedings: Ilgar Jafarov, senior adviser of Department for Administrative and Military Legislation of Milli Majlis of the Republic of Azerbaijan and Vugar Hasanov, Judge of Binaqadi district court of Baku city;

the expert: Firuza Abbasova, Ph.d. in law, Associate Professor, head of the Criminal Procedure Board of the Law Faculty of Baku State University,

the specialist: Muzaffar Aghazade, Chief of Staff of the Court of Appeal of Sumqayit city,

based on Article 130.6 of the Constitution of the Republic of Azerbaijan has examined in open court session via special constitutional proceeding the constitutional case on request of Binaqadi District Court of Baku city of 20 September 2010 concerning interpretation of Articles 293.1 and 297.0 4 of the Criminal Procedure Code of the Republic of Azerbaijan;

having heard the report of Judge I.Najafov, the reports of the lawful representatives of the subjects interested in special constitutional proceedings, opinions of expert and specialist, the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Binaqadi district court of Baku city addressed to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as Constitutional Court) regarding interpretation of provisions of Article 293.1 “an obvious offence which does not pose a major public threat” and Article 297.0.4 “the person who committed an offence under criminal law” of the Criminal Procedure Code of the Republic of Azerbaijan (hereinafter referred to as CPC) from the point of view of Articles 25 and 71 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as Constitution), and also Article 6 of the European Convention on Protection of Human Rights and Freedoms.

In the request it is specified that during consideration of the case concerning Sh. Rustamov on the basis of Article 132 of the Criminal Code of the Republic of Azerbaijan (hereinafter referred to as CC) on materials of the simplified pre-trial procedure, arose uncertainty from the point of view of application of the provisions “an obvious offence which does not pose a major public threat” and “the person who committed an offence under criminal law” of norms of the criminal procedure legislation. So, in these provisions the characteristics indicating detection of offenses, considered as the simplified pre-trial procedure are indistinctly provided, and also whether has the person who has made deed, the corresponding procedural status.

Plenum of the Constitutional Court in connection with the questions brought up in the request considers necessary to note the following.

The circumstances, causing necessity of interpretation of the normative legal act, are enshrined in Article 46 of the Law of the Republic of Azerbaijan “On normative legal acts”. According to this article, interpretation is the determination of its content, meanings and purposes, clarification of the terms used in the legislation.

Providing and protection of the rights and freedoms of the person and the citizen, security of person and the safety, accepted in democratic society, the constitutional state as the supreme universal values is a main objective and a purpose of the constitutional activity of government bodies.

For the purpose of protection of the state and public interests, and also legitimate interests of the person against acts contradicting the law, criminal procedure legislation established whether the act reflecting signs of a crime, a crime is, whether is accused by the person guilty of commission of crime, and also processes of law of criminal prosecution and protection of the person suspected and accused of commission of acts, provided by the criminal law.

The purposes of criminal proceedings are the following: to defend individuals, society and the state against criminal attempts; to defend individuals against abuse of power in connection with the commission of a real or possible offence; to detect offences as early as possible, to investigate all the circumstances thoroughly, completely and objectively; to prosecute and to incriminate those who have committed offences; to conduct judicial proceedings in order to punish persons found guilty of committing offences and to acquit those who are not guilty (Article 8 of the Criminal Procedure Code).

In view of the fact that according to the criminal procedure legislation criminal prosecution is assigned to the prosecutor, the interrogator, the investigator, and also the injured person and the special accuser as the charge parties collecting, checkuping and an evaluation of evidences, making and execution of the relevant procedural decisions concerning the suspect and the accused person, and also protection in court of the brought charge with submission of proofs make the content of their criminal procedure activity.

From this point of view, preliminary investigation (inquest and preliminary investigation), defined in the Criminal Procedure Code as the pre-trial stage of criminal legal proceedings is a component of the procedural legal mechanism directed on detection of a crime by investigative actions and other methods of collecting, checking and an evaluation of evidences, exposure and punishment of the accused person, restoration of the broken public relations.

Such types of preliminary investigation on criminal cases, as inquiry and preliminary investigation were determined by the criminal procedure legislation. Inquest also, in turn, was subdivided into two independent branches realized in the form of legal proceedings of urgent investigative actions on criminal cases, demanding obligatory preliminary investigation, and the pre-trial simplified proceeding on some obvious offence which does not pose a major public threat (Article 214.1, 214.1.1, 214.1.2 of the CPC).

It should be noted that the basic purpose of the simplified pre-trial proceeding on the obvious offence which does not pose a major public threat, consists of the fastest implementation of these measures in cases when commission of crime in obvious circumstances and on the basis of initial proofs the person who made a deed provided in the criminal law is known. And it finally, serves to increase of efficiency of activity of bodies of criminal prosecution, saving of their opportunities and funds from the procedural point of view.

In a Preamble of the Recommendation N. R (87) 18 of the committee of ministers to member states concerning the simplification of criminal justice of 17 September 1987 emphasized need of application of the various simplified procedures concerning minor crimes.

Along with it, legal bases and rules of the simplified proceeding on the crimes which does not pose a major public threat (minor crimes), were defined in the criminal procedure legislation of a number of the foreign states, including the states of the CIS (Articles 393-397-6 of the Criminal Procedure Code of France, Articles 417-420 of the Criminal Procedure Code of Germany, Article 513(1) of the Criminal Procedure Code of Moldova, Articles 190-1-190-4 of the Criminal Procedure Code of Kazakhstan, etc.)

In the relevant articles of CPC the legislator concretized a circle of obvious crimes on which inquest in the form of the simplified pre-trial proceeding is conducted and procedural rules of implementation of such proceeding are regulated.

So, according to Article 214.4 of the Criminal Procedure Code a preliminary investigation in the form of simplified pre-trial proceedings is conducted in respect of obvious offences covered by Articles 127.1, 128-132, 174-176, 177.1, 186.1, 187.1, 187.2, 196.1, 197.1 and 201.1 of the Criminal Code of the Republic of Azerbaijan, which do not pose a major public threat. Inquest in the form of the simplified pre-trial proceeding on the crimes which do not constitute a major public threat is carried out according to the provisions provided by Articles 293-297 of this Code (Article 214.4, 214.5 of the CPC).

Articles of the Criminal Code (except for Articles 174 and 196.1), specified in Article 214.4 of this Code, were specified also in Article 37.3 of the CPC providing a semi-public criminal prosecution.

At the same time it should be noted that in a number of articles of the Criminal Code listed in Article 37.3 of the CPC, along with the crimes which are not constituting major public threat, specified in Article 214.4 of the CPC, the other criminal actions relating to such classification, and specifically Articles 134, 142.1, 156.1, 157.1, 157.2, 158.1, 158.2, 163.1, 178.1, 179.1, 184.1, 190.1 of the CC are included.

As evident from provisions of these articles the legislator, separating the crimes which are not constituting a major public threat which inquest was carried out in the form of the simplified pre-trial proceeding, from crimes of other categories, it was limited to that concretized their circle in Article 214.4 of the CPC and as the criterion of distinction gave preference to the fact of evidence of such crimes. Along with it, the legislator in Article 15.2 of the CC specified why the above crimes do not constitute a major public threat and disclosed their contents.

In view of the fact that the special concept of obvious crimes is not given in the CPC, the definition of signs of such crimes by the system and logical analysis of a legal procedure is theoretically possible and necessary practically.

In the modern legislation depending on content of primary information on committed act, crimes subdivide into two groups: 1) obvious crimes when guilty according to primary data it is known, and they are made in obvious circumstances; 2) unobvious crimes in which according to primary data on the offender there are no such data, and they are made in covert circumstances.

The criminal and legal qualification of obvious crimes and initiation, inquest and investigation, submit of criminal proceedings case to court and legal proceedings on it are characterized by various legislative approaches of criminal case, depending on character of a crime and degree of public threat.

It is necessary to consider that according to the CPC the form of the simplified pre-trial proceeding of investigation as kind of preliminary investigation have identical signs with preliminary investigation and execute according to the general procedural rules. Following to the general procedural rules when conducting of given proceeding serves the fastest and timely disclosure of a crime, exposure of perpetrators and their fair punishment by means of the correct application of the criminal law and, as a result, to execution of the main objectives of proceeding of a criminal charge.

Along with it, exist also the procedural order distinguishing inquest in the form of simplified pre-trial proceeding from preliminary investigation. These rules were defined in Articles 293-297 of the CPC. So, short term of the proceeding which is conducted in this type of inquest was provided (Article 295.1 of the CPC). The simplified proceeding is raised on the basis of written the application-complaint or the protocol made about admit of the oral complaint of the injured person, his lawful representative or the representative, with the indication of data on the committed crime, commission of act provided in the criminal law, from the particular person, the proofs confirming commission of this act (Articles 293.2, 293.3.3. 293.3.4 and 294.1.2 of the CPC). In the final protocol by results of this proceeding have to be provided involvement of the person as accused, and charge (Articles 295 and 296 CPC).

On the basis of the analysis of articles of CPC specified in connection with simplified proceeding, it is possible to come to a conclusion that as opposed to criminal case the proof of the obvious crimes not constituting to major public threat listed in Article 214.4 of the CPC, can be conducted without execution of all necessary investigative actions and it is considered sufficient for a make a decision on matter in judicial review.

Thus, from Article 293 of the CPC regulating rules of filing of complaint on obvious crimes, not constituting major public threat, becomes obvious that data on the person are attached to the data specified in the protocol made the act provided by the criminal law, on that also that his participation in the act commission is proved, what testimony, the documents, by what other proofs approves circumstances of commission of crime and a request for criminal prosecution of the person committed a crime. From this point of view, commission of criminal action, time, a place and methods of its commission, the caused damage and, the main thing, knowledge of aggrieved person of the person who has committed a crime as guilty even before preliminary investigation (together with set of the corresponding proofs), is accepted by the legislator as an obvious crime.

At the same time it is necessary to consider that in Article 139 of the CPC the circumstances which are subject to prove by proofs during proceeding on criminal prosecution are specified. The facts and circumstances of commission of criminal incident, connection of the suspect or the accused person with criminal incident, crime signs in the criminal action provided by the criminal law, guilt of the person in act commission, etc. enter into their range.

Not coincidentally, the legislator, proceeding from problems of criminal legal proceedings, along with a provided in the CPC of a duty of the aggrieved person to show the proofs confirming commission of act provided by the criminal law by the particular person, determined powers of the investigator by implementation of urgent investigative actions for the purpose of ensuring comprehensive, full and objective carrying out of judicial review (Article 295.2, 295.3 and 295.4 of the CPC).

It should be especially noted, that also in this type of preliminary investigation the proofs collected on criminal prosecution, are analyzed for the purpose of full, comprehensive and objective checkup and their reliability is defined by a way of comparison (Articles 138.1 and 144 of the CPC). Only set of the possible proofs, allowing come to a final and reliable conclusion on criminal prosecution, are accepted as sufficiency of proofs from the point of view of requirements of the criminal procedure legislation (Article 146 CPC).

The person (the investigator, the interrogator or the prosecutor who is carrying out the procedural management over preliminary investigation), carrying-out inquest during the simplified pre-trial proceeding concerning the person who has made act provided in the criminal law, should not be limited to the evidence produced by the affected person, on the contrary, it is obliged to estimate other evidence this and obtained during proceeding according to CPC requirements. From this point of view, estimating all proofs collected in connection with some obvious crimes (for example, Articles 128, 132 of the CPC), it is impossible to exclude, circumstance that owing to violation earlier existing between the affected person and the person who has made act provided in the criminal law, mutual trusts, the affected person can be on a “hostile territory”.

Considering the above, Plenum of the Constitutional Court considers that provision of Article 293.1 of the CPC “the obvious crime which is not constituting major public threat” should be comprehended as commission of crimes specified in Article 214.4 of this Code in obvious circumstances, particular person, on the basis of set of primary proofs (evidences).

Due to the request concerning interpretation of provision of Article 297.0.4 of the CPC “the person who committed an offence under criminal law”, Plenum of the Constitutional Court notes the following.

According to Article 46.1 of the CPC there should be proper reason and grounds for the start of the criminal proceedings related to a public or semi-public prosecution.

When the preliminary investigator, interrogator or prosecutor receives information concerning the preparation or commission of an offence or directly discovers such an offence, he should act to protect and store the evidence and shall immediately open the preliminary investigation or investigation within his powers, in accordance with this Code (Article 38.1 of the CPC).

It should be noted that the legislator, excluded some circumstances, initiations of legal proceedings by carrying out primary checkup and it became dependent on existence of enough of the bases, and also forbade prior to criminal case carrying out other investigative actions except examination the scene of the incident (Articles 207.1.2 and 207.4 of the CPC). At the same time, the investigator on the obvious crimes which do not constitute major public threat, can begin the simplified proceeding without initiation of legal proceedings (Articles 45.3 and 294.1.2 of the CPC). According to Article 207.1.2 of the CPC, the preliminary inspection made in connection with collecting enough of the bases for initiation of legal proceedings, is not applied concerning information, on obvious crimes. Such circumstance, in the presence of signs of a crime provides implementation of the simplified pre-trial proceeding not upon but concerning the person who has committed a crime.

However, the analysis of the provisions of CPC regulating carrying out of simplified pre-trial proceeding on obvious crimes, not constituting major public threat, indicates that unlike the person possessing the corresponding status during preliminary investigation (suspected or accused), in the simplified proceeding the procedural status of the person who has made act provided in the criminal law is specified not specifically.

In this regard, it is necessary to emphasize that regulation of procedural rules of the simplified pre-trial proceeding on the crimes which are not constituting major public threat, has to be carried out according to the basic constitutional principles of the criminal legal proceedings, guaranteeing protection of the person against the charge brought against him.

In the Constitution are fixed a number of the principles reflecting the nature and essence of the democratic state and providing guarantees of the rights and freedoms of the person and the citizen in criminal legal proceedings (Articles 25, 28, 32, 33, 60, 61, 63, 65, 66, 67, 68, 125 and 127 of the Constitution). In view of the fact that providing of basic rights of the accused person, as well as other participants of criminal trial, has essential value, the possibility of effective implementation of these rights has to be carried to whole criminal legal proceedings and to its separate stages.

It is necessary to consider that during the simplified pre-trial proceeding the ensuring of rights of the person who has made act provided by the criminal law, proceeds from existence of the charge brought against him, adoption of the relevant procedural decisions directed on the proof of his guilt, and, especially, from carrying out urgent investigative actions. At the same time there is a need to consider not only his formal procedural condition on criminal prosecution, but also actual position. The similar legal position is stated in the decision of Plenum of the Constitutional Court of 17 June 2010.

Otherwise, such situation, creating conditions for violation of procedural laws of persons, would lead to denial of requirements of Article 63 of the Constitution and Article 21 of the CPC (if suspicions which emerge during the process of proving the charge cannot be removed by other evidence, they shall be interpreted in favour of the suspect or accused (Article 145.3 of the CPC)). So, everyone has the right to the presumption of innocence. Every accused of a crime shall be presumed innocent so long as his guilt has not been proven according to law and the respective court judgment has not become effective. A person may not be declared guilty if there are well-grounded suspicions regarding his guilt (parts I and II of Article 63 of the Constitution).

The procedural document reflecting results of inquest on obvious crimes, not constituting major public threat is the final record of the results of simplified pre-trial proceedings (Article 296 of the CPC). This procedural document specifying the person who made act provided in the criminal law, place, time, motives, results and other important circumstances including the proofs confirming guilt of the person, made act, - the basis for consideration of the case in court (Article 297.0.2 of the CPC). In view of the fact that the specified document provided the indication of commission of criminal action on the basis of cumulative evidence by particular person, in the simplified pre-trial proceeding the person who has made act provided in the criminal law, has the status of the accused person. Along with it, the prosecutor, using the powers provided in Articles 24.5.13 and 294.0.4 of the CPC, at identification of circumstances provided in Article 39 of the CPC and excluding criminal prosecution the act provided in the criminal law, that is accused makes the decision on the termination of criminal prosecution concerning the person made. From this point of view, the provision provided in Article 297.0.4 of the CPC “the person who committed an offence under criminal law” means the concept of accused person.

According to the above mentioned Plenum of the Constitutional Court comes to conclusion that:

– provision of Article 293.1 of the CPC “an obvious offence which does not pose a major public threat” should be comprehended as commission of any crimes specified in Article 214.4 of given Code, in obvious circumstances, on the basis of set of primary proofs (evidences) by particular person;

– provision of Article 297.0.4 of the CPC of the Republic of Azerbaijan “the person who committed an offence under criminal law” within the simplified pre-trial proceeding means the accused person who committed one of crimes specified in Article 214.4 of the mentioned Code.

Being guided by Article 130.6 of the Constitution of the Republic of Azerbaijan and Articles 60, 63, 65-67 and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Provision of Article 293.1 of the CPC “an obvious offence which does not pose a major public threat” shall be comprehended as commission of any crimes specified in Article 214.4 of given Code in obvious circumstances on the basis of set of primary proofs (evidences) by particular person.

2. Provision of Article 297.0.4 of the CPC of the Republic of Azerbaijan “the person who committed an offence under criminal law” within the simplified pre-trial proceeding means the accused person who committed one of crimes specified in Article 214.4 of the mentioned Code.

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

4. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

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