**ON BEHALF OF AZERBAIJAN REPUBLIC**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF AZERBAIJAN REPUBLIC**

*On interpretation of articles 28.2, 28.3, 29.3 of the Law of Azerbaijan Republic and articles 98.1, 99 of the Criminal Code of Azerbaijan Republic “On Psychiatry Aid”*

**15 April 2011 Baku city**

The plenum of the Constitutional Court of Azerbaijan Republic composed of Farkhad Abdullayev (chairman), Sona Salmanova, Fikrat Babayev, Sudaba Hasanova, Jeyhun Garajayev (reporter judge), Rafael Gvaladze, İsa Najafov and Kamran Shafiyev,

with the participation of the Secretary Ismail Ismayilov,

legal representatives of the interested parties – Chairman of the Court of Sabunchu district of Baku city Ilgar Abbasov, chief advisor of the department of administrative and military legislation of Milli Majlis of Azerbaijan Republic Fuad Mammadov and Gurban Mammadov, the representative of the plaintiff Shujaet Hamid gizi Khalilova,

experts- chief of the department of the Criminal Law and Criminology of the Law Faculty of Baku State University, doctor of the law science, professor Firudin Samandarov, expert of the chief psychiatrist of the Ministry of the Health of Azerbaijan Republic, chief of the department of the psychiatry of Azerbaijan Medical University, doctor of medical science and professor Garay Garaybayli

in accordance with article 130 para V and VI of the Constitution of Azerbaijan Republic via procedure of special constitutional proceedings has examined in open judicial session the constitutional case on the appeal of the Court of Sabunchu district of Baku city and complaint of Sh.Khalilova.

Having heard the report of Judge J.Garajaev, reports of legal representatives of interested parties and expert, having considered materials of the case, Plenum of Constitutional Court of Azerbaijan Republic

**DETERMINED AS FOLLOWS:**

The Court of Sabunchu district of Baku city appealed to the Constitutional Court of Azerbaijan Republic on interpretation of articles 28.2, 28.3 and 29.3 of the Law dated June 12, 2001 (hereinafter referred as Law “on Psychiatry aid”) of Azerbaijan Republic “on Psychiatry aid” from the point of view of articles 98.1 and 99 of the Criminal Code of Azerbaijan Republic ( hereinafter referred as Criminal Code).

At the same time, the complaint of citizen Sh. Khalilova on the claim of verify of conformity of articles 28.2 and 29.3 of the Law “on Psychiatry aid” to the Constitution of Azerbaijan Republic (hereinafter referred as Constitution) and supported interstate agreements and restore of broken rights accepted to the procedure of the Consitutional Court.

It also denoted in the appeal, that in accordance with the decision dated April 8, 2009 of the Court of Binagadi district of Baku city, Sh. Khalilova liberated from the criminal responsibility and punishment as she procreated the crime action denoted in the article 132 of the Criminal Code in slow- witted case, the criminal prosecution on her dropped and her place to the general psychiatry hospital for binding treatment have been judged. In accordance with the decision dated August 14, 2009 of the Crime Boad of Baku Appellate Jurisdiction, the judgment kept unmodified and by the decision dated November 24, 2009 of the Supreme Court of Azerbaijan Republic, the appeal issued from the judgment of Appellate Jurisdiction not provided. After medical inspection, according to the reference dated December 30, 2008 of the Court Psychiatrist Expert Centre of the Ministry of Health of Azerbaijan republic, Sh.Khalilova placed to the general psychiatry hospital of the Republic Psychiatry Hospiyal # 1 from November 24, 2009 by the aim of binding treatment with “ the diagnosis of chronicle delirious”.

After repeated psychical inspection of Sh. Khalilova in May 29, 2010, doctor consultant commission of Republic Psychiatry Hospital # 1 came into conclusion that, she has to continue her binding treatment at general psychiatry hospital.

In accordance with articles 296–300 of the Civil Remedial Code of Azerbaijan Republic (hereinafter referred as – CRC), appealing to the Court of Sabunchu district of Baku city in July 9, 2010, the represenatative of Sh. Kjalilova denoted that the reference dated May 29, 2010 of doctor psychiatrist Commission of the Republic Psychiatry Hospital # 1 on continue of the binding treatment of Sh. Khalilova in general psychiatry hospital according to the article 97.2 of the Criminal Code is baseless. By the decision dated June 25, 2010 of the Court of Sabunchu district, by providing the application of the chief doctor of the hospital, it was decided to continue the binding treatment of Sh.khalilova in general psychiatry hospital.Appeal issued from the judgment not provided by the decision dated August 5, 2010 of the Crime Board of Baku Appellate Jurisdiction.

It also denoted at the appeal and complaint that, the psychical inspection of Sh. Khalilova carried out by “ doctor consultant commission” implemented by the administration of cure institution, instead of “ doctor psychiatrist commission” implied at article 28.3 of the Law “on Psychiatry aid”. The chairman of the same commission is directly the chief doctor of the cure institution. But the Collegiate organ named “doctor consultant commission” has not been implied at the legislation of Azerbaijan Republic.

Except, it also denoted at the complaint that, in accordance with demands of the article 28.2 of the Law “ on Pshychiatry aid”, during six month the same person has to be inspected at doctor psychiatrist commission not less than once by the aim of solution of the problem of lengthening of the term of hospital. In the case of the last of treatment more than six month, the psychiatry inspection of the person carried out not less than once during six month.It also denoted in the article 29.3 of the same Law, that the patient that medical binding treatment has been applied by the court judgment, taken out from the Psychiatry Hospital by the Court Judgment on liquidation of appointed binding treatment. In opinion of the plaintiff, mentioned articles of the Law “on Psychiatry Aid” not correspond to the article 28 para.II of the Constitution, para “e” of the para 1 of the article 5 of Europe Convention “on defence of the Human Rights and the Main Liberty” (hereinafter HRML) and article 99 of the Criminal code and make condition for the break of the human rights and liberty.

So, in accordance with the article 99 of the Criminal Code, during appointment of the punishment or restore of the execution of the punishment after the treatment of the same person undergone to the mental diseases after procreating the crime, one day in binding treatment at Psychiatry Hospital are accounted one day imprison. In the opinon of plaintiff, after the end of the six month of imprison implied at the article 132 of the Criminal Code,binding hospital teratment applied on her has to be immediatly liquidate and after, in the case of necessity, her cure must carried out by the rule of civil procedure. Basing to this opinion, Sh. Khalilova consider that,instead of six month implied at the sacnction of the article 132 of the Criminal Code, she is illegally keeping at the psychiatry hospital more than a month and a year by force.

Except mentioned, the Court of Sabunchu district and plaintiff consider that, there exist non- conformity amongst the article 29.3 of the Law “on Psychiatry Aid” and Civil Remedial Legislation. Chapter XXXVI named “ procedure on the place of the person to the psychiatry hospital by force” of CRC, not imply the apply of the medical binding measures on the person, but her place to the psychiatry hospital by force. There are great differences amongst these two procedure from the point of view of procedure and legal result.The apply of medical binding on the person not implied by the judgment of the Court that is Civil procedure rule. The reason is that, “ the medical binding measures” are implemented by the rule of the criminal procedure, but “ non- volunteer hospital” are implemented by the rule of civil procedure rule.

So, in general it is requested to clarify the below mentioned questions in appeal and complaint:

* Conformity of articles 28.2, 28.3 and 29.3 of the Law “ Psychiatry Aid” to the article 28 of the Consitution and para “e” of the para 1 of the article 5 of HRLC;
* Co-ordination of the term of punishment implied at the sanction of the corresponding article of the Criminal Code with the term of keep of person at psychiatry hospital by force;
* Equity of the lengthen of binding treatment and non-volunteer hospital on the base of the represenatation of doctor psychiatrist commission;
* Objective law of having doctor depending on the administration of the psychiatry cure institution in the membership of doctor psychiatrist commission (or doctor consultant commission);
* Objective law of the chief doctor of the psychiatry hospital become the chairman of the doctor consultant or doctor psychiatrist commission of the same institution;
* Objective law of the form of additional free doctor psychiatrist expert commission by the rule of the Court;
* Differences amongst status of “doctor psychiatrist commission” and “ doctor consultant commission”

The Plenum of the Constitutional Court consider it necessary to comment the followings on discussed problems.

Imprison of the person by the aim of physical treatment is the quite actual problems in the field of human and civil right and libertry. So, keep of human at psychiatry hospital by force or non-voluntarily and their treatment is one of the element of the problem of the degree of limiting the right of human that is necessary in the field of the law of constitution. That’s way the superiority of the Constitution and international standarts on human rights has to be directly take into consideration on the solution of this problem.

According to their nature, human rights are realized with different aspects. Negative directions exist at the legislation for the maintenance of personal and social right. For the maintenanace of social rights, the “affirmative” responsibilities put forwards on the state. But any inter group rights are maintain differently. By the aim of maintenance of the right to live in Azerbaijan or the right to live out of danger (not expose to torture), inalienability of this right in constitutional level are denoted and responsibility on the break of rights commented in other normativ acts are implied. No norm on the limit of inalienability rights of individiual exist in the legislation. In other case, the right of liberty of the human defined by article 28 of the Constitution could be limited on the base of the law.

International acts, that are article 5 of HRLC or articles 28, 29, 32, 71 of the Constitution define the limit of the human rights on bases of law. But there exist some necessary terms of the limit: implementation of the limit on the base of the law, proportionality to the aim, degree of apply (implying the size and term) and etc. By the aim of maintain the political and national security or protection of rights of other person, the right of every person could be limit on the base of the legislation.By defining rules of binding treatment of people suffering from mental diseases , the legislative mainly imply the political security, protection of the safety of other people and prevention of damages of person suffering from mental diseases to themselves. The aim of the binding treatment are treatment of the person and its social rehabilitation.

Three types of psychiatry aid are differentiated at the legislation of Azerbaijan Republic: volunteer, non-volunteer and binding. In accordance with the article 5.1 of the Law “on Psychiatry Aid”, the person take psychical aid in the case of volunteer apply. In accordance with article 11.0.1 of the same Law, in the case, the character of the mental diseases demand the implementation of the inspection, treatment, keep of the person and control over it at psychiatry hospital, non –voluntarily treatment of it could be carried out at psychiatry hospital. Binding medical measures on the person are appointed in the case of the crime that is considered politically dangerous by him.

Bases of the binding treatment are determined by articles 21, 93-99 of the Criminal Code, but the remedial rule are determined by articles 468-487 of Criminal – remedial code of Azerbaijan Republic (hereinafter CRC). So, in accordance with articles 468 and 479 of CRC, procedure on the apply of binding medical measures on people procreating the crime in slow-witted case and people suffering from mental diseases after procreating the crime are carried out on the base of general rules of this Code, by implying specifications mentioned by articles 468-478 and 479 of this Code.

Bases of non-voluntarily hospital are reflected at articles 11, 26, 27, 28 and 29 of the Law “ on Psychiatry Aid”, by the Remedial rules are reflected at article 335-338-1.

As it seen, together with divide of Psychiatry aid to three types, the legislative also defined different remedial rules of their implementation. But there exist certain similiar cases amongst the same remedial rules.They are consist of that, the binding medical measures applied to people procreating the crime in the slow-witted case that is not politically dangerous, as a matter of fact are similiar process with the formation of the treatment carried out by non-voluntarily rule.

In accordance withe tha article 21 of the Criminal Code, the person that was in slow-witted case during procreation of the politically dangerous action (activity or inactivity), that could not control and unperceiving the factual character and political danger of its behaviour at the result of chronical mental diseases , provisional break of of psychical activity, imbecility or other mental diseases not involving to the criminal responsibility. Binding medical measures implied by the Criminal Code from court are applied on the person preocreating the action that is politically dangerous in slow-witted case. Binding medical measures implied by the Criminal Code from the court are applied on the person procreating the crime in quick-witted condition, but was delivered to mental diseases till sentence and at the result of it deprived from the possibility of perceive of the factual caharacter and political danger or management of the same action.

Except, it commented at articles 93.1.1 and 93.1.2 of the Criminal Code, that, the binding medical measures could be applied by the Court, to people procreating the action implied at the Special paragraraph of this Code in slow-witted condition (activity or inactivity) and people strcuk by mental diseases , excluding the appointment of the crime after its procerating and its execution.

It is denoted at the commented articles of the Criminal Code that, three forms of legal results of criminal responsibilities connected with the slowness have been determined. The second, is procreating of the crime by the person in quick-witted condition, but delivering of it to mental diseases till sentence by court. The third is delivering of the person to mental diseases after the appointment of the punishment on procreating crime.

In above mentioned second and third cases, deliver of the person to the slow-witted case after the procreation of the crime are denoted. In such cases, the court has to regularly control, if the binding treatment on defendant deliver efficient results or not, legthen of such kind of treatment or its cease. In the case, the binding treatment of the person was succefull and he bacame healthy, the court appoint the punishment to the person by reforming its court examination, or in accordance with the Criminal Legislation, the court take out the term that the defendant was in binding treatment from the term of the punishment appointed to him on the account of day by date , in the case, the term of the binding treatment of the person, that the punishment has been appointed is less than the term of the punishment he has to be imprisoned, and define the final punishment term of the defendant.

So, in accordance with the article 99 of the Criminal Code, during appointment of the punishment or restore of the execution of the punishment after the treatment of the same person undergone to the mental diseases after procreating the crime, one day in binding treatment at Psychiatry Hospital are accounted one day imprison.

The Plenum of the Constitutional Court consider it necessary to mention that, the person strucking to mental diseases and excluding the appointment of the punishment and its execution after procreating the crime could fall to the scope of article 99 of the Criminal Code.

In other case, the term of the psychiatry treatment could not be limited by terms implied at the sanction on the procreated crime, even the term of psychiatry treatment has not been linked with the term mentioned at the sanction. So, in the case the long-term imprison (15 year) have been implied at the sanction on the crime by any person in slow-witted case, but the same person undergo the treatment early than this term, the person immediatly taken out from Psychiatry Treatment institution without taking into consideration the term of punishment.

At the experiment of foreign countries, substituion of the term of the treatment with the term of the crime are implied (one day of treatment is equated one imprison day). For example, it denoted at the article 87 of the Criminal Code of Estonia Republic, article 102 of the Criminal Code of Moldovian Republic and Swiss Criminal Code that, the term of the treatment of the person that the punishment has been appointed are included to the term of imprison. But the main indications for the apply of these norms are quick-witted condition of person during procreation of the crime and carrying of criminal responsibility. In accordance with articles 61-67 of Germany Criminal Code, in the case the term of the punishment led in partial and complete psychiatry institution, the same term included to the term of execution of the punishment.

In accordance with the comments, the Plenum of the Constituional Court consider that, in the case of apply binding medical measures on person procreating the crime in slow-witted case, the term of the treatment of the same person at psychiatry institution could not be limited by terms implied at the sanction on procreated crime. By the aim of taking the person undergoing a treatment, the main thing is complete recover of the patient or possibility of continue of the treatment at out of clinic.

The Plenum of the Constitutional Court also comment that, despite of determination of the term of psychiatry treatment at the legislation of Azerbaijan Republic from objective causes, the lengthening term of the treatment have been sufficiently regulated at the article 98.2 of the Criminal Code. According to the same article, the person that binding medical measures appointed about, has to be controllled from doctor psychiatrist commission no less than once during six month by the aim of solution of liquidation or modification of these measures. In the case, there is not any bases for liquidation or modification of binding medical measures, the adminsitration of the institution implementing the binding treatmengt present his reference on lengthening of the binding treatment to the court. The initial lengthening of the binding treatment , are implemented after six month of commencment of cure, after it, the lengthening of the binding treatment are implemented every year.

As it seen, by implementing the reference of the doctor psychiatrist the legislative referred the solution of the problem to the authority of the court. That’s way it will be incorrect to link this proiblem with articles 28.2 and 28.3 of the Law “on Psychiatry Aid”, as the mentioned article determine the lengthen of the term of non-voluntarily hospital.

According to the article 98.1 of the Criminal Code, the lengthening, modification and cancel of the apply of binding medical measures carried out by the court with the application of the administration of the medical institution implementing the binding treatmenton by the reference of doctor psychiatrist commission.This article of the Criminal Code conform with rules of liqudation to the binding treatment implied at the article 29.3 of the Law “ on Psychiatry Aid”.The canceal (liquidation of the cure) of the binding medical measures referred to the autority of the court by these two norms.

Everybody has the right to restore his breaking rights by courts. In para VII of the article 71 of the Constitution, the solution of problems connected with the break of human and civils liberty and rights intrusted to the court. It aslo denoted at the Law “ on Psychiatry aid”, that binding medical measures could be applied on the decision of the court, as such kind of measures connected with the limit of the liberty. It has to be implied that, in accordance with the legislation of Azerbaijan Republic, binding medical measures are implemented by the court on law. This demand of the Legislation has to conform with the prinicipals of “ the right of liberty could be limited only by arrest and imprison” implied at the para II of the article 28 of the Constitution.

In the para. 6 of “ principles of improvement of the defence of person suffering from mental diseases and psychiatry aid to them” # 46/119, dated December 17, 1991 of the UNO General Assembly it recoomended to countries, to make efficient ways to provide the right of person suffering from mental diseases to appeal the higher court bodies by the help of his represenatative.

It denoted at recommendation # 8181 dated October 8, 1977 “ on the case of mental disease” of the Council of European Parliament, at the same time recommendation # R (83) 2 dated February 22, 1983 “ on the defence of rights of person hospital by force and suffering from mental diseases ”, recommendation # R (99) 4 dated February 23, 1999 “ on Principles of legal defence of aged slow-witted persons” and recommendation # R (2004) 10 dated Februrary 24, 2004 “ on protection of personality of psychicall ill persons and defence of there rights” of Ministers Committee of the European Council that, the possibilities has to be created for person suffering from menatal disease to provide its civil and social rights. Connected with this probelem, the possibilities have to be created at the court process, to the repsresentative of persons suffering from mental disease or their own to provide their legal rights. In the case of necessity, the courts have to draw additional free experts and specialists into court process.

Even in accordance with the former legislation, during investigation of problems on person suffering from menatal diseases, courts used the references of alternative expert-psychiatrist presented by free experts. In accordnace with the decision dated April 26, 1984 of the Plenum of Supreme Court of SSR on court experiments connceted with the apply, modification and liquidation of the binding medical measures, refereneces of expert psychiatrist has to be widely and exactly valuated by the court together with all materials relating to the problem.

It denoted at the “ Regulation of the Court Psychiatrist Examination centre” (hereinafter referred as Regulation of the Court Psychiatrist Examination centre ) certified by the decision # 125, dated August 6, 2002 of the Ministry of the Cabinet of Azerbaijan Republic, that the director of the Centre has to make measures on maintain of the participation of the expert-psychiatrist at the court meeting, examination and court actions. In the case of necessity, courts has to use possibilities of psychiatrist-experts of this Centre.

The lengthen of the binding and non –voluntarily hospital are directly connected with the isolate from liberty. That’s way, only free doctor psychiatrists, that are professional and has the authority by the law could state with such presenatations before courts. But even the reference of the doctor psychiatrist would not be the lead documents for courts. In the case of suspect of unjustice of such references, courts determine the implementation of repeated free examinations. It denoted at the article 323.7 of CRC that, the court possess the right to make a decision on the appointment of examination by its own initiative. By article 331.3 of CRC it directly define that, the court has the right to appoint the repeated or additional examination by its own inititative. It means, that courts could appoint the repeated and additional examinations in the case, it is not sure of the reference of doctor psychiatrist.

In the case of necessity, the person suffering from mental disease could state before court. It was recommended at the Reports on result of monitoring conducted in Azerbaijan on December 8-12, 2008 of the Committee of (the) European Council against Tortures, that, during the hospital of person suffering from mental disease (or non-volunatrily) the possibility has to be created for persons suffering from mental disease to state before judge. The direct state of the person suffering from mental disease before the court,could be the affirmative experiment for fair decision.

By implying the comments, the Plenum of the Constitutional Court denote that, though the imply of the recommendation of expert-pshychiatrist during accept of the court decision, the reference can’t be binding for the court.

As the problem connected with the term of keep of person at the psychiatry institution by force or non-volunatrily is actual, causes of keep of persons at the same institutions is the necessary elements of the problem. In accordance with the article 11 of the Law “ on Psychiatry aid”, non-voluntarily treatment could be determined by following bases:

* Being of person dangerous for himself and (or) surrounding;
* Inability of the person at the result of mental diseases , that is not possessing the ability of freely provide his life need;
* Deteriorate of the psychical case of the person, in the case of not showing psychiatry aid;

Though, bases of the apply of the binding medical measures are not implied at the article 12 of the Law “ on Psychiatry Aid”, it denoted that these measures connected with the limit of the liberty are defined by the law and implemented at the specialized psychiatry instistutions. Implementation of the binding medical measures at the specialized psychiatry instutitions are not the absolute (imperative) directions. In accordance with the article 95 of the Criminal Code, in addition to the binding treatment at the specialized psychiatry hospital, the court could appoint binding medical measures as binding out patient’s clinic observation and psychiatry treatment or binding treatment in general psychiatry hospital. It is denoted at the “regulation on rules of the apply of binding or other binding medical measures on persons in mental diseases and procreated politically dangerours act” certified by the Ministry of Healthy of Azerbaijan Republic, “that the main aim on the apply of binding and other medical measures on persons in severe mental diseases procreating politically dangerous act consist of the treatment of the denoted person and improvement of his psychical case, at the same time prevention of the crime by the same person”. So, we can come into conclusion that, the aim of the binding medical measures are not the punishment of the person but their treatment and rehabiitlation.

In general, bases of binding and non –voluntarily elements on the led of the psychiatry cure is not differentiated. One main and two additional causes of the involve of the person in mental disease are differentiated at the recommendations of the UNO and European Council. The main cause for determination of the binding treatment is danger by person suffering from mental disease to himself and others. Severely worsen of the person suffering from mental diseases in the case of not receiving the cure and possibility of the treatment of the person suffering from mental diseases only in the hospital are referred to the additional causes.

Three main terms of the binding treatments of persons suffering from mental diseases have been denoted in one of the works (Decision dated December 24, 1979 on the work *Vinderverp* against *Niderland)*on para. “e” of the article 5 of HRLC of European Courts on Human Rights: having scientifically based medical diagnosis; being dangerous of the person suffering from mental diseases to himself and surroundings; keep of the person suffering from menatl disease at the hospital till the end of it’s cure. It also denoted at the decision on this work, that, the medical control of the person suffering from mental disease has to be constantly conducted and be under the control of the court. It denoted at the decision dated March 4, 2010 on the work of Shukaturov against Russia that, it is illegal to keep the person at the Psychiatry Hospital without the decision of the local court and the compensation has to be paid to the victimed.

The legislative experiment of foreign countries (England, USA, Russia, Germany, Swiss, South African Republic, Estonia, Moldova) denote that, the limit of the psychiatry aid is not concretely defined and depend on the end of the cure of the person, at the same time not making the danger to himself. Even in the case the mental diseases worsen the general case of the person and his cure has to be conducted in the hospital, the person could be involved to the binding treatment. So, the analyses of the international experiment on discussed problem denote that, type of the binding and non-volunatrily psychiatry aid observed by the limit of the liberty have to be elected by the legal bases ( danger by person to himself and surroindings and other cases) and appointed by the decision of the court.

It has to be noted that, the problem of the maintain of the human rights in the field of the psychiatry connected with the existed experiment of the apply and lengthening of the binding medical measures. While looking through the problem of lengthening of the term of keeping Sh. Khalilova at the Psychiatry hospital, the reference of the “ doctor consultant commission” taken as basic, instead of the refernce of the “ doctor psychiatrist commission” implied at the article 28.3 of the Law “ on Psychiatry Aid”.

In accordance with the para. 2 of the article 2 of the Regulation of the Court Psychiatry Examination Center, according to the Law of Azerbaijan Republic “ on Psychiatry Aid”, the Central Court-Psychiatry Examination Comission takes it activity in the content of the Centre, control and implement organizational-methodical guide to the activity of the court-psychiatry activity.At the same time, determination of the contents of commissions organized by the aim of conduct of court- psychiatry examinations by Regulation referred to the authority of the director of the Centre.

“Regulation on doctor consultant commission (DCC) of the cure and Prophylaxis institutions displaying Psychiatry aid” certified by the Ministry of Healthy of Azerbaijan Republic has been accepted. In accordance with the same Regulation, the doctor- consultant commission are organizaed in all treatment and Prophylaxis institutions ( in the psychiatry Hospital, psychoneurology clinics, clinical departments, clinics of the higher medical educational institutions). DCC mainly consist of the Chief doctor and doctor of treatment. In reality, these commissions solve clinical – expert problems, the diagnosis of the patient and prescription, in the case of necessity send patients to the specialized cure institutions for consulatation and treatment and solve other problems. In mentioned regulations, no authorty has been issued to DCC to appeal the court on the binding treatment and lengthening of the term of non-voluntarily hospital. In accordance with the Legislation of Azerbaijan Republic this law is in the authority of the doctor-psychiatrist commission.

But, though the determination of the formation of doctor-psychiatrist commission by the aim of conduct of court-psychiatrist experiments at the Regulation of the Court Psychiatry Experiment Centre, rules of their organization and activity not bimplied.

In accordance with the experiments of Germany, Estonia and Swiss, the binding medical meaasures are applied by the chief doctor of the Psychiatry hospital, but the reference of other doctor-psychiatrist commission certifying this case are demanded. Slovak experiment display that, the person has to be examined by two free doctor-psychiatrist. In accordance with the article 31 of the Act “ on the defence of the person suffering from mental diseases ” of Croat, while making a decison the court has to take the reference of the doctor-psychiatrist that is not the employeer of the psychiatry clinic, that the person suffering from menatl diseases treated and not having connection with this institution.

In accordnace with the England experiment, the problem of lengthening of the term of the binding treatment are solved in the rule of the court by separate presentation of references of the treatment doctor, chief doctor of the medical institute that the parient treated and tribunals on problems of psychical health. In the majority of European countries, specialized central organization exist in the field of the psychiatry: Represenatative on the right of psychical patients in Austrian, Psychiatry State controller in Belgian, free council on consider Psychical Healthy problems and special observation commission take their activity in Nideraland, Swiss, France and Potuguese. Members of these organizations are elected for their professionalism, impartiality and other personal qualities.

In accordnace with the mentioned, the Pllenum of the Consututional Court come to the following results in connection with the problems raised at the appeal of the court of Sabunchu district of Baku city and compalint of Sh. Khalilova:

* Article 28.2, 28.3 and 29.3 of the Law “ Psychiatry Aid” conform with the article 28 of the Constituion of Azerbaijan Republic and para “e” of the para 1 of the article 5 of the HRLC;
* The concept of “ doctor psychiatristy commission” mentioned at the article 98.1 of the Criminal Code of Azerbaijan Republic implying not the doctor consultant commission of the medical institute implying the binding treatment, but imply the independent doctor psychiatrist commission presenting the reference;
* While looking the problem on modification, liquidation and legthen of the apply of binding medical measures, the law court posses the right to appoint the additional and repeated expert by its own initiative according demands of articles 323.7 and 331.3 of Criminal remedial Code of Azerbaijan Republic;
* In accordance with the article 94 and 98 of the Criminal Code and article 486 of CRC the binding medical measures could be liquidated and modified by the court only at the result of cure and improve of psychial case of the person not depending from the term;
* The procedure of the “ place of the person to psychiatry hospital by force” impled at the chapter XXXVI of CRC has to be understood as a rule carried out on the base of “ non-voluntarily psychiatry aid” implied at the article 11 of the Law “on psychiatry Aid”;
* By taking into consideration of the existed experiment in the field of modification,liquidation and lengthening of the apply of binding medical measures, it has to be recommended to the Ministry of Cabinet of Azerbaijan Republic that the formation and activity rule of doctor psychiatrist commission issuing the reference to the apply of commented measures to be improved by normative rule;

Being guided by Article 130, para V and VI of the Constitution of Azerbaijan Republic and Articles 52, 60, 62, 63, 65-67, and 69 of the Law of Azerbaijan Republic “on Constitutional Court”, the Plenum of Constitutional Court:

**DECIDED:**

1. Article 28.2, 28.3 and 29.3 of the Law dated June 12, 2001 of Azerbaijan Republic conform with the article 28 of the Constituion of Azerbaijan Republic and para “e” of the para 1 of the article 5 of the Europe Convention “on defence of human rights and the liberty”
2. The concept of “ doctor psychiatristy commission” mentioned at the article 98.1 of the Criminal Code of Azerbaijan Republic implying not the doctor consultant commission of the medical institute but independent doctor psychiatrist commission presenting the reference.
3. While looking the problem on modification, liquidation and legthening of the apply of froced medical measures, the law court posses the right to appoint the additional and repeated expert by its own initiative according demands of articles 323.7 and 331.3 of Criminal remedial Code of Azerbaijan Republic.
4. In accordance with articles 94 and 98 of the Criminal Code of Azerbaijan Republic, at the same time article 486 of the Criminal Remedial Code of Azerbaijan Republic, binding medical measures could be liguidated and modified by the court only at the result of the treatment of the person or improvement of its psychical case not depending of the term.
5. The procedure of “place of the person to psychiatry hospital” implied at the chapter XXXVI of the Civil Remedial Code of Azerbaijan Republic, has to be undersood as rules carried out on bases of “ non-volunatrily psychiatry aid” implied at the article 11 of teh Law dated June 12, 2001 of Azerbaijan Republic “on Psychiatry aid”.
6. By taking into consideration of the existed experiment in the field of modification, liquidation and lengthening of the apply of binding medical measures, it has to be recommended to the Ministry of Cabinet of Azerbaijan Republic that the formation and activity rule of doctor psychiatrist commission issuing the reference to the apply of commented measures to be improved by normative rule
7. The decision is subject to publication in the “Azerbaijan”, “Respublika”, “Khalq gazeti”, “Bakinski rabochiy” newspapers and “Bulletin of Constitutional Court of Azerbaijan Republic”.
8. The decision comes into force from the date of its publication.
9. The decision is final and cannot be cancelled, modified or interpreted by any body or official.