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Interpretations of The Code of Administrative Offenses by Constitutional Court: Azerbaijan

On 19 December 2019 Azerbaijan's Constitutional Court ("CC") adopted a decision on Interpretations of Articles 38.1 and 430.4 of the Code of Administrative Offenses of the Republic of Azerbaijan ("Code").

The matter of interpretations of articles 38.1 and 430.4 was raised by Sheki Appeal Court of the Republic of Azerbaijan based on the administrative case between entrepreneur and former Financial Market of Supervisory Authority ("FIMSA").

The dispute between entrepreneur and FIMSA was raised from the penalty imposed against entrepreneur by FIMSA due to the administrative offence committed by him.

The case is that, entrepreneur signed a sale-purchase agreement with a company operating in the Republic of Turkey and transferred the certain amount of money to the account of the mentioned company several times. However entrepreneur did not submit the documents (customs declaration, entry order, etc.) for purchase (import) of relevant goods to the bank within 270 days as per legislation or the transferred money was not returned him within the period of 270 days since the documents were not submitted). Thus, neither first nor second action was done by entrepreneur and he was fined by FIMSA based on Article 430.4 of the Code (Administrative liability for non-return of paid foreign currency when goods are not imported, no work is performed or services are provided in exchange for advance paid currency).

Subsequently, this decision was appealed by entrepreneur to Balakan District Court with a claim that the first sentence of the article 38.1. of the Code (Administrative penalties may be imposed not later than **3 months** from the date of committing an administrative offense) must not be applied to this case, since it should be interpreted as one of the actions classified in the second sentence where administrative penalties may be imposed not later than **1 year** from the date of committing an administrative offense.

Entrepreneur's claim was satisfied by the decision of Balakan District Court, however, FIMSA appealed this decision to the Sheki Appeal Court. Since the differences between these 2 sentences was the subject of a dispute, Sheki Appeal Court applied to the CC for the interpretation of 38.1 and 430.4. articles.

CC issued a decision that the fact of committing an offense under article 430.4 of the Code should be calculated from the next day of the offense was committed, when the goods are not imported, the works are not done or the services are not provided as well as the charge is not paid. In this case, in accordance with Article 38.1 of the Code, administrative penalties may be imposed not later than 3 months after committing an administrative offense.

This decision brought a clarification to these articles and avoid any further disputes might be arisen between the parties in the future.

Салалар

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