I. The different concepts of the legal norms

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the legal norm in the legal system of your country?

In the Republic of Azerbaijan, the legal sources consist of normative legal acts.

1. In our country the legal sources include, first of all, laws. Law is the normative legal act having supreme legal force adopted by the highest representative body of the state. Laws are adopted, in accordance with the Constitution, by the Parliament– Milli Majlis of the Republic of Azerbaijan.

In Azerbaijan, the laws are divided by their legal significance as follows:

• Constitution of the Republic of Azerbaijan (according to the Article 156 of the Constitution, constitutional laws adopted by Milli Majlis are considered as an integral part of the Constitution, they have the same legal force as the Constitution and in this regard they are not included into legal system as separate categories of law);

• Laws adopted by Referendum;

• Laws adopted by Milli Majlis on issues envisaged in the Article 94, Part I of the Constitution of the Republic of Azerbaijan.

2. Among the acts as the legal sources having the force of law the decrees of the President of the Republic of Azerbaijan have a special importance. The presidential decrees that have normative nature and serve for the regulation of social relations are the sources of law.

International treaties, which the Republic of Azerbaijan is a party to, are considered an integral part of the legislative system and in accordance with the Article 148 of the Constitution of the Republic of Azerbaijan serve as the legal source. Interconnection between Constitution and international treaties, which are the integral part of the legislative system of the Republic, from the point of view of legal force is determined respectively by the Articles 12 and 151 of the Constitution of the Republic of Azerbaijan.

2. How is the principle of the legal norm interpreted in your country? Are there different concepts of the legal norm: formal, substantive or other?

Officially announced (published) legal norm has the nature of state coercion, i.e. its implementation is mandatory for all citizens, officials, state bodies and public organizations. The most important norms are fixed by law. However, along with the laws, there are also other regulations (presidential decrees, government resolutions, etc.).

Legal norms have always general nature, i.e., they cover all similar cases and provide for permanent use. The norms are applied regarding unspecified number of legal entities who can be, in presence and in future, the participants of the relations regulated by these norms. Legal norm can be classified according to various signs. Depending of the features contained in the particular norms, they can be considered as:

- Empowering norms. For instance, in Article 26 of the Constitution of the Republic of Azerbaijan it is determined that every person shall be authorized to defend his/her human rights and freedoms by accepted means. The State shall ensure the protection of human rights and freedoms.

- Norms of coercion defined in Chapter IV of the Constitution of the Republic of Azerbaijan.

- Prohibitive norms. For example, under Article 6 of the Constitution of the Republic of Azerbaijan, no part of the Azerbaijan people, either an individual, a social group or an organization shall have the right to usurp the authority of the Azerbaijan people to exercise the power.

There are two types of legal norms as regards the degree of instruction:

1. Discretionary norms (such norms provide for the possibility of an alternative behavior of the entity of law). For example, legal norms that stipulate the human and citizen rights and freedoms and which are enshrined in Chapter III of the Constitution of the Republic of Azerbaijan.

2. Mandatory norms (such norms govern the common norms of conduct and do not allow for an alternative behavior). For example, all the norms having prohibitive character (Articles 6 and 155 of the Constitution), as well as the most coercive norms (set out in Chapter IV of the Constitution). Classification of legal norms can be carried out and by other criteria as well.

3. Are there specific fields of law in which your Court ensures the respect for the rule of law (e.g. criminal law, electoral law, etc.)?

Decisions of the Constitutional Court of the Republic of Azerbaijan, and in particular the legal positions reflected in them can be used for the improvement of legislative and enforcement practice. The legal positions of Constitutional Court contain not only statements of constitutionality or derogation from its norms but also other important provisions for the improvement of norms of criminal, civil, electoral and other legislations.

The legal positions set out in the decisions are very topical in the period of continuous updating of branch laws and proclamation of ideas of respect of human rights.

The most commonly considered cases by the Court are the cases on verification of constitutionality of the normative legal acts. In accordance with the Constitution of the Republic of Azerbaijan and the Law of the Republic of Azerbaijan “On Constitutional Court”, the acts or their separate provisions, recognized by the Court as unconstitutional shall become invalid, inconsistent with the Constitution of the Republic of Azerbaijan. It should be taken into account the fact that the decision on verification of constitutionality of normative-legal acts has a specific manner, i.e. it cancels or sets the limits of effect of the specific provisions of the normative-legal act.

With procedural branches of law the constitutional judicial procedural law have a common source of law – the Constitution of the Republic of Azerbaijan, a number of general principles of justice, as well as the proximity of the procedural form. The

differences lie in the fact that they regulate the activity of different types of the courts (ordinary, constitutional jurisdiction) and have the different objects of examination. Constitutional Court, unlike other courts, considers the issues of law, but not of fact.

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

The Constitutional Court due to its activity is responsible to ensure that its decisions in the social reality provide for constitutional order – a legal stability and clarity and when adopting a decision it should take into account the social reality and always assess the consequences caused by its decision. The Court in the context of particular case evaluates the conformity of the challenged legal norms with the Constitution as a whole. This requirement follows from the task of the Constitutional Court to implement the principle of supremacy of the Constitution and thus to ensure the constitutional order. However, in a particular case only arguments that justify the conformity or non-conformity of the challenged legal norms with the legal norms of the Constitution are important.

In order to avoid a situation in which the constitutional examination leads to the violation of the principle of separation of powers, the Constitutional Court in its decisions avoids to formulate the legal norms, or determine how they should be formulated by legislator. Thus, there is a mutual respect – the legislator takes into account the conclusion given as a result of constitutional examination and the Constitutional Court respects the freedom of action of the legislator.

In its decisions, the Constitutional Court of the Republic of Azerbaijan has repeatedly mentioned that the law must meet certain criteria of certainty, clarity and unambiguity.

Thus, by setting a community of legal regulation, the Constitutional Court formulates a position based on which the acting legislation should be amended. At that, the normativity of the decision of the Constitutional Court restricts the freedom of the legislator's discretion at changing the legal regulation. The constitutional-legal meaning of the legal norm identified by the Constitutional Court is important not only for the legislator, but also for the law enforcer and cannot be rejected or overcome in the legislative and enforcement practices. Therefore, it can be concluded that taking an active part in the unity and coherence of existing law, the Constitutional Court occupies a key place in the legal system and receives a specific embodiment due to the special status of the constitutional review body.

In the case-law of the Constitutional Court of the Republic of Azerbaijan a number values deriving from Constitution but not formally enshrined in it having a fundamental impact on the corresponding social relations, including such as justice and legal certainty, stability, sustainability of public relationships, maintaining the balance of public interests of the State, private interests and others were substantiated.

By this way, the Constitutional Court elaborated the common criteria for law certainty, clear and unequivocal legal norm from the constitutional principle of equality

of all before the law and court. This is substantiated by the fact that the equality of all before the law can be ensured only in caes of uniform understanding and interpretation of the norms by all enforcers.

General legal criteria of certainty of legal norms as a constitutional requirement for the legislator, was formulated by the Constitutional Court's decision of August 6, 2002, where there was noted: "...Certainty, clarity, unambiguity of the legal norms as the general legal conditions proceed from the constitutional principle of equality of all before law and the courts. Such equality can be ensured by enforcers only on the basis of assumption of the uniform interpretation and understanding of the norm. The uncertainty of content of the legal norm, in contrary can bring to unrestricted understanding and arbitrariness when applying the law, violation of equality before law and court as well as the violation of the principle of the rule of law".

Observation of this principle suppresses the ambiguous understanding and, therefore, unlawful use of the legal norms, entailing a violation of the rights and legal interests of citizens. By providing the principle of the legal certainty in the rule-making there are created the conditions for consistency and predictability in the law enforcement practice, ensuring human rights and freedoms. Moreover, the requirement of certainty is extended not only on legislation but also on the final decisions of the courts.

Thus, in the decision of June 13, 2008, the Court noted that the doctrine of a constitutional law recognizes the principle of legal certainty as one of the basic elements of rule of law that was reflected in a preamble of the Constitution of the Republic of Azerbaijan. The principle of legal certainty, along with other requirements, provides for clarity and definiteness concerning existing legal situation and the judicial acts adopted on behalf of the Republic of Azerbaijan should not contain the provisions in the most general sense.

In its decision of June 6, 2014 the Court indicated that the existence of the possibility to challenge court decisions that entered into force for an indefinite (long) time is contrary to the principle of "*res judicata"*, which is an integral part of the principle of legal certainty, prevents the administration of justice within a reasonable time, and also violates the stability and consistency of the court's final acts and thus undermines the public confidence in the justice system.

At present, the principle of legal certainty should include not only the formal aspect, aimed at precision, clarity, accuracy, consistency of normative acts, but also the assuming a long-term, predictable perspective legal act, its reasonable stability that promotes the formation of trust to the state and its bodies.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

The Constitution of Azerbaijan has been amended by the changes as a result of which there significantly increased the number of entities enabled to apply to Constitutional Court. Thus, by this right were also vested the ordinary courts, which obtained the right to apply to Constitutional Court on interpretation of the Constitution

and laws of the Republic of Azerbaijan. Courts very often apply to Constitutional Court with an inquiry for interpretation of provisions of law relating to concrete cases that are in their examination. Taking into account that the ordinary court seeks for the interpretation of a norm in relation with a particular case by suspending the proceedings on it the Constitutional Court, in fact, makes the relevant legal impact on the final resolution of a case.

Examination of cases on the basis of inquiry of courts is a significant trend in Constitutional Court, providing its interaction in the sphere of the constitutional legal proceedings with other courts belonging to judicial system.

Establishment of the institute of inquiry of courts is historically conditioned, objective and logical. There was formed the new understanding of the law, and also it understood that in the context of rapidly developing social relations the inconsistency of the law can emerge and the legal norm may be summarized as unclear and sometimes ambiguous.

In the decision of the Plenum of Constitutional Court of the Republic of Azerbaijan "On the interpretation of Article188 of the Criminal Code" of March 30, 2015, District Court of Astara city, having applied to the Constitutional Court indicated that in its examination there is a criminal case under Article 188 of Criminal Code in connection with the illegal seizure of land belonging to the forest fund. Responsibility for this action is provided by the legislation on administrative offenses. The District Court held that in order to eliminate the uncertainty in judicial practice in bringing a person to criminal or administrative responsibility it is necessary to interpret the relevant legal provisions.

The Plenum of Constitutional Court noted that the commission of offenses under Criminal Code infringes the rights of use, possession and disposal of all categories of land. The object of administrative offense is the public relations arising in the field of protection and efficient use of only forestland. However, this forest fund is a part of a single land fund, which means that both norms, in fact, protect from encroachment of forestland. Besides, coincidence of the objective sided of these actions leads to uncertainty in the classification and creates the difficulties in law enforcement.

The Plenum of Constitutional Court noted that the legislator should give the precise definitions and unequal formulations of the legal norms providing for liability for the same wrongful action. Otherwise, it may complicate the protection of rights and freedoms, the predictability of actions of law enforcer and bring into question the prior knowledge of the person concerning the consequences of his/her wrongful action. This circumstance can lead to groundless attraction a person to criminal liability or, on the contrary, to the impunity of the guilty person. At the same time, it can create the conditions for the double attraction to responsibility of the person liable for the same offense.

As a result, the Constitutional Court recommended to Parliament to improve the relevant articles from of the point of view of the principles of legal certainty and proportionality. Before adoption of the new norms to law it was recommended that when imposing the enforcement officials administrative or criminal liability, to take into

account the degree of social danger of the offense, the severity of the damage caused to the owner, the environment and so forth.

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

According to Article 148 of the Constitution of the Republic of Azerbaijan the international treaties, to which the Republic of Azerbaijan is a party, are an integral part of the legal system.

The interrelation of the Constitution and the international treaties that are a component of legislative system of the Republic of Azerbaijan, from the point of view of a legal force, is determined respectively by Articles 12 and 151 of the Constitution of the Republic of Azerbaijan.

In the legal system of the Republic of Azerbaijan a central position in this field belongs to the rate of the ratio of international and domestic law. According to Article 10 of the Constitution of the Republic of Azerbaijan, the Republic of Azerbaijan conducts its relations with other States based on the principles recognized by the universally acknowledged rules of international law.

When disputes, contra lotions have arisen between normative-legal Acts included in Legislation system of the Republic of Azerbaijan (excepting the Constitution of the Republic Azerbaijan and the Acts, Passed via referendum) and International Treaties, of which the Republic Azerbaijan is a party, the latter ones shall be applied (Article 151 of the Constitution).

Thus, it is obvious that the generally recognized principles and norms and international treaties of the Republic of Azerbaijan in accordance with the Constitution constitute the part of the legal norms of the Republic of Azerbaijan, legal activities for the implementation of legal norms, legal doctrines.

Atribution of the treaty to the system of sources national legislation shows that the discretionary form of regulation enabling the parties of legal relations to identify by themselves the ways to achieve the assigned tasks, establish rights and obligations through the treaty, the agreement instead of hard imperative, leaving no option for choices has gained more and more prevalence.

It is impossible to overestimate of the importance of the process of implementation of since it includes not only the process of testing the regulatory norms of international law but it also comes down to the most main – actual implementation of international obligations at the domestic level. The extent of its implementation depends not only the state’s status as a stable international partner but also the degree of security and protection of the rights and legitimate interests of people, the development and improvement of the system of substantive and procedural law.

The legislator in Article 2 of the Law of the Republic of Azerbaijan "On Constitutional Court” indicates the international agreements which the Republic of Azerbaijan is a party to as one of the legal basis for the court’s activity. Thus, the Constitutional Court regularly refers to the international instruments.

When assessing the constitutionality of the challenged legal acts there are cases where the provisions of the international treaties have a significant impact on the resolution of the constitutional-legal dispute, acting as a criterion for determining the constitutionality of a legal act and the final content of the legal position of the Court. This is explained due to Articles 148 and 151 of the Constitution which proclaim their priority over national legislation.

The second and most frequent case of referring of the Constitutional Court to the international documents is the interpretation of the legislation and examination of individual complaints. In these cases the reference to them signify the additional argument of the legal positions of Constitutional Court, without being at the same time a direct basis of a conclusion but promoting its achievement.

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crisis)?

Taking into account the predictable changes in the economy of Azerbaijan on September 26, 2016 was held a referendum, connected with modifications to the Basic Law.

The purpose of modification of the Constitution of the Republic of Azerbaijan was a creation of new sources of funding for social policy – guarantee of administrative and judicial protection of individual's rights, the right to dignity, an obligation of the state to compensate the damage caused by illegal action against a citizen, the definition of relations between the state and business, social role prescribed to business.

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

The global fight against terrorism must be based on respect for human rights and the legitimacy. For this, there should be developed such national counter-terrorism strategy, which can prevent the acts of terrorism, prosecute those who are responsible for such criminal acts, promote and protect human rights and principles of the rule of law.

This strategy should include measures of elimination of conditions promoting the spread of terrorism, such as contempt of the law and violations of human rights, ethnic, national and religious discrimination, political exclusion and socio-economic marginalization; to encourage the active participation and leadership of civil society; to condemn the human rights violations, prohibit them in national law, promptly investigate and prosecute those who responsible for that, as well as to conduct preventive work; and to give attention to prevention of the rights of victims of human rights violations, for example, in terms of restitution and compensation.

In connection with above-mentioned, a number of amendments and additions were made to the legislation of the Republic of Azerbaijan.

In accordance with the Decree of the President of the Republic of Azerbaijan there was approved the National Action Plan covering the years 2017-2019 on fight against legalization of money and other property obtained by criminal means and financing of terrorism.

There were made also amendments to the Criminal Code of the Republic of Azerbaijan providing for tougher sanctions for committing of grave and especially grave crimes, such as tougher penalties for terrorist acts.

The penalty for planning, preparation, or outbreak of a war of aggression (Article 100.1 of the Criminal Code), was tightened from 8-10 years to 8-12 years of imprisonment.

Punishments for criminal acts provided for in Articles 103 (Genocide), 105 (destruction of the population) and 277 (attempt on the life of a statesman or public figure (a terrorist act)) of the Criminal Code of the Republic of Azerbaijan, provide from 12 to 20 years or life imprisonment, instead of previously used imprisonment for the periods ranging from 10 to 15 years or life imprisonment.

The punishment for commission of illegal acts provided by Articles 115.4 (deliberate murder of prisoners of war and other persons protected by international humanitarian law), 214.2 (terrorism committed by a group of persons by prior conspiracy, an organized group or criminal association (criminal organization); iteratively, the use of firearms and objects used as weapons; negligently resulted in death or other serious consequences) and 287 (an attempt upon the life of a person who administer the justice or preliminary investigations) of the Criminal Code, tightened from a penalty of deprivation of liberty for a period of 12 to 15 years till sanctions providing from 14 to 20 years of imprisonment.

By the Decree of the President of the Republic of Azerbaijan amendments were introduced to the Code of Administrative Offences of Azerbaijan.

In accordance with the amendments to this Code there has been added Article 598.0.7 with the following content:

“598.0.7. “for failing to freeze or failure to execute the resolution of financial monitoring authority to freeze the assets in accordance with the law “On combating the legalization of money or other property acquired by criminal means and the financing of terrorism” of assets of persons against whom there should be applied the sanctions in the fight against financing of terrorism by the participants of monitoring and others who are involved in the monitoring of individuals and legal entities under the control or subordination of these individuals, including individuals and entities acting on behalf of or on the instructions of these individuals”.

For violation of the requirements of Article 598 of the Code (for violation of the legislation on combating the legalization of money or other property acquired by criminal means and the financing of terrorism) officials are fined ranging from 800 to 1,500 manats, legal entities – from 8000 to 15000 manats.

The Law “On citizenship” of the Republic of Azerbaijan was amended with the provision concerning participation of citizen of the Republic of Azerbaijan in terrorist

activities or actions aimed at changing of the constitutional structure of the state, as well as in religious extremist activities or passing military training abroad under the pretext of religious education is the basis for the loss of Azerbaijan citizenship by them.

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

International legal norm and norm of domestic law are the norms of different legal systems that can interact but do not collide with each other. Constitutional fixation in the Republic of Azerbaijan of the primacy of international law over national law requires more active and consistent harmonization of national law with international and European laws.

It should be noted that the Constitution of the Republic of Azerbaijan, which, like many other constitutions recognizes the primacy of international law over domestic law, contains a provision, according to which the Republic of Azerbaijan recognizes and guarantees the human and citizen rights and freedoms according to the universally recognized principles and norms of international law.

When disputes, contra lotions have arisen between normative-legal Acts included in Legislation system of the Azerbaijan Republic (excepting the Constitution of the Azerbaijan Republic and the Acts, Passed via referendum) and International Treaties, of which the Azerbaijan Republic is a party, the latter ones shall be applied (Article 151 of the Constitution).

It is obvious that the generally recognized principles and the norms and international treaties of the Republic of Azerbaijan in accordance with the Constitution are part of the legal norms of the Republic of Azerbaijan, legal activities for the implementation of the legal norms, legal doctrines.

At proclamation of primacy of an international law, it is necessary to talk about the right of the review body constitutional proceeding to give opinions on the conformity of international agreements with the Constitution before their ratification and at the same time about conformity of the laws to the generally recognized principles and norms of international law and international treaties.

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

The Constitutional Court of the Republic of Azerbaijan is the supreme body of constitutional control, independently exercising judicial authority through constitutional proceedings and exercising its powers in order to protect the constitutional order, human

and citizen fundamental rights and freedoms, to ensure the supremacy and direct effect of the Constitution on the whole territory of the Republic of Azerbaijan.

A clear definition of the powers of the Constitutional Court by the Constitution shows the special significance of the judicial authority for a full-fledged existence of a democratic constitutional state, to which there has been given a significant role in ensuring of the political stability, and also shows the interest of the authorities, including the legislature, in the existence of independent, having special features, body of constitutional supervision.

According to the Constitution of the Republic of Azerbaijan, the Constitutional Court by the requests of the President of the Republic of Azerbaijan, Milli Majlis of the Republic of Azerbaijan, Supreme Court of the Republic of Azerbaijan, Prosecutor's Office of the Republic of Azerbaijan, Ali Majlis of Nakhchivan Autonomous Republic adopts decisions within the framework of its powers.

These powers of the Constitutional Court of the Republic of Azerbaijan states about the possibility of a significant impact on resolutions of the most senior government officials, to the extent of their abolition by recognizing them as unconstitutional, which in itself speaks of the high status of the Constitutional Court of the Republic of Azerbaijan. In this regard it should be noted that the above-mentioned bodies themselves have no legal possibility to directly influence on decision of the Constitutional Court of the Republic of Azerbaijan.

It should also be noted that in accordance with Article 130.3 of the Constitution of the Republic of Azerbaijan, the Constitutional Court has the authority to examine the disputes related to the separation of powers between the legislative and executive branches. In addition, according to Article 130.7 of the Constitution of the Republic of Azerbaijan the Constitutional Court of the Republic of Azerbaijan based on the request of the Commissioner for Human Rights (Ombudsman) examines the legislative acts in force, normative acts of the executive or of municipalities, or court decisions that violate the rights and freedoms of individuals.

Empowerment of the Constitutional Court by such authority confirms the special status of the Constitutional Court; it creates the possibility of a significant interference in existing national legislation in order to eliminate the unconstitutional provisions.

One of the most important powers of the Constitutional Court of the Republic of Azerbaijan is the examination of cases on the complaints on violation of constitutional rights and freedoms of individuals. In this regard, it should be noted that at first sight one can conclude that similar cases are examined also by other courts. However, the status and power of decisions of the Constitutional Court of the Republic of Azerbaijan, the range of the issues, opportunities for immediate exclusion from the legal field of the Republic of Azerbaijan of unconstitutional laws, etc., testify to the wrongfulness of such opinion.

The whole practice of the Constitutional Court of the Republic of Azerbaijan on examination of cases on the complaints of individuals demonstrates the need for the existence of an independent body of constitutional control, which is often the only state structure where the rights and freedoms of individuals were protected.

It would also be noted that the Constitutional Court of the Republic of Azerbaijan does not only defend the rights of individual citizens but also taking into consideration the elimination by the Court of unconstitutional provisions from the legislation of the country, the protection of fundamental rights and freedoms of all citizens are carried out.

The powers of the Constitutional Court of the Republic of Azerbaijan on verification of conformity with the Constitution of the Republic of Azerbaijan, of normative acts of the governmental bodies of the Republic of Azerbaijan certainly talk about the importance of the work of the Constitutional Court on ensuring of the coordinated functioning and interaction of bodies of state power.

Of course, one of the most important power of the Constitutional Court is the verification of constitutionality of the law applied or to be applied in a particular case on complaints on violation of constitutional rights and freedoms of citizens and at the request of the courts, which, by taking into account the fact that the consideration of such complaints occupies the most important place in the Constitutional Court of the Republic of Azerbaijan, and also the fact that it is sometimes only in the Constitutional Court where is carried out the proper protection of fundamental rights and freedoms of citizens that previously had not been done by any other authorities.

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

In accordance with Article 130.9 of the Constitution the Constitutional Court of the Republic of Azerbaijan shall determine issues of jurisdiction. Decisions of the Constitutional Court of the Republic of Azerbaijan are binding on the whole territory of the Republic of Azerbaijan.

On the basis of Article 63 of the Law of the Republic of Azerbaijan "On Constitutional Court" the decision of the Plenum of Constitutional Court is the written document adopted at the sessions of Plenum of Constitutional Court and contains the conclusions of Constitutional Court obtained as a result of examination of the constitutional case on merits.

Decision of the Plenum of Constitutional Court shall be final and cannot be cancelled, changed or officially interpreted by any body or official person.

In Azerbaijan, the relationship between the Constitutional Court and other courts are formed from their relations, which can be divided into institutional, procedural and functional.

Ordinary courts on their initiative and also according to the petition of the parties of the considered dispute or conflict can suspend the proceedings till pronouncement of final decision and send the prejudicial request to the Constitutional Court.

As for challenging of judicial acts on the basis of submission of the individual complaint to Constitutional Court of the Republic of Azerbaijan these judicial acts shall not be executed in connection with the relevant decision of Constitutional Court and are subject to new consideration according to the procedural legislation.

Legislation of the Republic of Azerbaijan determines the decisions of the Constitutional Court as acts having normative character. This provision from the point of recognition of the decisions of the Court as the source of law has a great and unquestionable importance.

The case-law created by the decisions of the Constitutional Court has normative and regulatory significance. In this context, they are the norms with a higher legal force, which apply to similar circumstances of the constitutional-legal relations.

On this basis, in the course of its future activity the legislative and law enforcement bodies (including the courts) must be guided by the decisions of the Constitutional Court and the provisions following from these decisions.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).

When administering the constitutional justice the Court has an impact on the formation of a new legal system, the development of legislation, directly affects the process of norm making. This happens by developing in the final acts of the Constitutional Court's legal positions that reflects the new understanding of the law, determines the orientation of legal policy, the contours of constitutional and legal transformations in all spheres of society.

The concept of "legal position of the Constitutional Court" is a relatively young for the legislation, and for the national legal doctrine as a whole. Positive law is rather conservative, so the establishment of new institutions, categories, concepts are often faced with a very restrained and controversial attitude. Regarding the legal position there are also indicated some problems, such as those associated with their qualification as one of the sources of law. After all, the Basic Law consolidates the division of state powers into legislative, executive and judicial branches as one of the fundamental principles of formation and functioning of the legal state.

However, the realization of principle is impossible without cooperation of powers, the establishment of appropriate legal guarantees, checks and balances to ensure a harmonious balance.

Manifestation of interaction and mutual influence of its branches is that, on the one hand, the legislator can influence the Constitutional Court through the establishment of its jurisdiction, the constitutional order of selection of judges and their term of office. On the other hand, by carrying out the interpretation of legislation, the Court gives them a new meaning, without which the text of the law cannot be considered as complete.

The legal positions of Court have a number of fundamental features. Firstly, they are universal, being applied not only to the concrete case, which became the subject of consideration in the Constitutional Court, but also to the similar cases in the legal practice. Positions cannot be canceled or changed by anyone. In the case of similar cases, the legal positions of the Court have certain repetitiveness. In this sense, the legal position of the Court is "the once discovered", universal legal solution, which is used in

resolution of a group of similar cases. Thus, an important feature of the legal positions is a multiplicity of repetition of the position expressed by the Court at once relating with the understanding and interpretation of the law in the process of consideration of complaints on violation of rights and freedoms.

Legal positions of the Constitutional Court turn into important source due to examination by ordinary courts of individual cases. One can state the fact of formation of the new legal system – "judiciary law" outstripping in its development the legislative process. The judicial law takes into account more quickly the changing legal reality as the Court in practice faces issues which the legislator has not settled yet. The Constitutional Court does not create new norms, but removes them from the existing legal system. Thus, the judicial law-making does not replace the parliamentary law-making.

In cases when interpreting any provision of law the Constitutional Court determines the non-conformity of the legal norms with the Constitution or with any other act having a higher power or comes to conclusion concerning "defectiveness" of norm, the Court not being a legislative body and not having a legislative initiative gives the corresponding recommendations to the Parliament of the Republic. In these cases, legal positions of the Constitutional Court are the material criteria for the legal regulation and set the known parameters being a kind of model of the legal norms. After all, if the court restricts itself to elimination of unconstitutional norms there will happen nonsense – a body whose task is to ensure the legal certainty of law can create a gap.

Regarding the application by Constitutional Court of the principle of *non bis in idem* it should be noted that on March 4, 2013 the Court adopted a decision on the request of the Nasimi District Court of Baku city on interpretation of point 3 of the note part of Article 177 of the Criminal Code of the Republic of Azerbaijan from the point of view of Articles 63, 64 and 71 of the Constitution of the Republic of Azerbaijan and also Article 6 of the European Convention On Protection of Human Rights and Freedoms and Article 4 of the Protocol No. 7 of the Convention.

In the request it is specified that V. Atakishiyev on the 24th January and on the 6th March, 2011 committed the crimes of an illegal seizure of car without the theft purpose.

On the basis of a sentence of Surakhani district court of the 25th October, 2011 for this criminal action V. Atakishiyev was found guilty under Article 185.2.2 of the Criminal Code and sentenced on punishment in the form of imprisonment for a period of 3 years.

Further it was known that V. Atakishiyev made theft also on 14th February, 2011. This criminal case is now on proceeding of Nasimi district court.

As it was evident from the request, the public prosecutor being guided by a sentence of Surakhani district court of the 25th October, 2011 and point 3 of the note part of Article 177 of the Criminal Code asked to pronounce a sentence about V. Atakishiyev's recognition guilty under Article 177.2.2 of the Criminal Code (repeatedly committed act).

The counsel for the defence of accused having disagreed with a position of the public prosecutor specified that the considering of this act as multiplicity is inadmissible because criminal action made by V. Atakishiyev on the 24th January, 2011 was already

recognized as multiplicity in a sentence of Surakhani district court of the 25th October, 2011 and he was found guilty under Article 185.2.2 of the Criminal Code and condemned.

At the same time the criminal-legal institutes directed at protection of persons, society and state and also at prevention of crimes, with unconditional observance of the constitutional guarantees of the person in the specified area of the general (public) legal relations, have to be based on the principles of harmony of justice and criminal liability to values protected by criminal legislation.

From this point of view when interpreting point 3 of the note part of Article 177 of the Criminal Code it is necessary to act from the general principles of legal responsibility following from the constitutional norms and composing a basis for relationship between state and individual. These principles set the limits of powers of the legislator in the course of criminal and legal regulation and also constitutional and legal guarantees of the person who was brought to criminal responsibility.

The institute of multiplicity of crimes in the criminal legislation is regarded as a circumstance strengthening or aggravating the responsibility. Commission by the person of a crime repeatedly as a rule indicates his/her stable criminal tendency, the disregard of warning made by court and it finally indicates his/her being highly dangerous for society. From this point of view the legislation provides for repeatedly committed crimes the more heavy punishment.

At the same time in spite of the fact that the criminal legislation provides for more heavy punishment which is imposed for repeatedly committed crimes according to the principle of justice of the criminal law, the punishment and other measures of criminal and legal character applied to the person who committed a crime should be fair, that it should correspond to character and degree of public danger of a crime, circumstances of its commission and the identity of the guilty person. When applying the punishment the principles of legality, equality before law, responsibility for fault, justice and humanity have to be surely taken into account.

Plenum of the Constitutional Court noted that inadmissibility of repeatedly criminal prosecution of everyone for the same crime which is a component of the principle of justice of the criminal legislation follows from Article 64 of the Constitution.

According to the meaning of this constitutional norm expressing the generally accepted principle of *non bis in idem,* condemnation of the person repeatedly for a crime which was committed earlier and for which he/she was condemned is forbidden. It means that the person cannot be repeatedly brought to criminal responsibility and punished for the same crime. From the point of view of the constitutional and legal nature this right cannot be limited and in fact is directed both to the legislator and to law-enforcement bodies who bring guilty to criminal responsibility and impose to him/her the types and punishment limits.

The Court in this decision came to conclusion that the commission by the person condemned for crimes provided by of point 3 of the note part of Article 177 of the

Criminal Code of any of crimes specified in Articles 177-185 of this Code before passing a sentence does not create the multiplicity of these crimes.

As for the application of *nulla bis in idem* principle it would be useful to bring as an example the following decision.

On June 21, 2010, the Constitutional Court of the Republic of Azerbaijan adopted the decision "On interpretation of some provisions of Articles 228.1, 229.1, 230, 231 and 232.1 of Criminal Code of the Republic of Azerbaijan".

In its inquiry the Prosecutor General of the Republic of Azerbaijan asked the Constitutional Court of the Republic of Azerbaijan to give interpretation of Articles 229.1, 230, 231 and 232.1 of the Criminal Code of the Republic of Azerbaijan from the point of view of extension on them of provision of the same Code "the smooth-bore hunting weapon and ammunition for it" specified in Article 228.1.

In inquiry it is indicated that Article 228.1 of the Criminal Code provides for criminal liability for illegal purchase, transfer, selling, storage, transportation or carrying of fire-arms, accessories for it, supplies (except for the smooth-bore hunting weapon and ammunition to it), explosives or explosive devices.

This Code establishes criminal liability for illegal manufacturing of fire-arms, supplies for it, ammunition, explosives, and also repair of firearms (Article 229.1), the negligent storage of the fire-arms which have created the conditions for its use by another person, entailed to heavy consequences (Article 230), inadequate execution of duties by a person to whom the protection of fire-arms ammunition, explosives or other explosives was assigned, and what have entailed the plunder or destruction or other heavy consequences (Article 231), plunder or extortion of fire-arms, accessories to it, supplies or explosives (Article 232.1).

In inquiry it is noted that as it gets evident from specified articles of the Code, only the disposition of Article 228.1 excludes the criminal liability for transfer, selling, storage, transportation or carrying of smooth-bore hunting weapon and ammunition for it. However in dispositions of Articles 229.1, 230, 231 and 232.1 of this Code such exception is not provided.

According to Article 71.8 of the Constitution no one shall be liable for an act which did not constitute an offence at the time when it was committed. If, after the commission of an offence, a new law abolishes or diminishes the liability for such an offence, the new law shall be applied.

European Court of Human Rights noted that the specified norm is not confined to prohibiting the retroactive application of criminal law to the disadvantage of an accused, it also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined in law (the decision of 9 October 2008 on case of Moiseyev v. Russia, §233).

The Court decided that according to Article 228.1 of the Criminal Code of the Republic of Azerbaijan the illegal purchase, transfer, selling, storage, transportation or carrying of smooth-bore hunting weapon and ammunition for it, exclude the criminal liability provided in this Article. Negligent storage and also inadequate execution of

duties on protection of the weapon and ammunition for it as well as illegal production of the smooth-bore fire hunting weapon, accessories and ammunition for it, plunder or the extortion of the smooth-bore fire hunting weapon specified in Article 228.1 of the Criminal Code of the Republic of Azerbaijan, form the components of crimes provided respectively in Articles 230, 231, 229.1 and 232.1 of the Criminal Code of the Republic of Azerbaijan.

On April 10, 2012 the Constitutional Court of the Republic of Azerbaijan examined the case "On interpretation of Article 264 of the Criminal Code of the Republic of Azerbaijan".

Nasimi district court of Baku city having applied to the Constitutional Court of the Republic of Azerbaijan indicated that according to the pending case a person accused by Articles 263.1 and 264 of the Criminal Code of the Republic of Azerbaijan E.Gafarov when driving a car violated the requirements of Article 50 of the Law of the Republic of Azerbaijan "On road traffic", the rules of road traffic and vehicle operation, committed a run down on Sh. Dadashova and injured her health with less heavy harm. After that, E.Gafarov in spite of the fact that he took the victim to hospital, where she was rendered a medical care, and brought her to home he did not return to the place of a road accident and did not report about this accident to relevant authorities of executive power.

In the submitted inquiry it is indicated that in connection with this case there is a diversity of approaches between prosecution and defence as to application of the provision provided by Article 264 of the Criminal Code: "Leaving of a place of road and transport incident by a person who operated a vehicle and broke the rules of traffic or operation of vehicles…". Due to the failure to comply with requirements of Article 37.4 of the Law "On road traffic" that is "to return to the place of commission of accident and to report concerning the accident to the relevant authority of executive power" the investigative authorities brought a charge against accused person in accordance with Article 263 and Article 264 of Criminal Code. But the party of defense having not agreed with this approach argued that the defendant did not leave the place of a road accident, on the contrary, right after incident with intention to save life of the hit pedestrian put her in the car and took to hospital.

Thus, the court having come to a conclusion concerning the uncertainty of the contents of Article 264 of the Criminal Code, for the purpose of the correct, objective and comprehensive investigation of the arisen circumstance, asked to give interpretation regarding the situation containing in this article "leaving by the person of a place of a road accident" though the position of provisions of the Constitution of the Republic of Azerbaijan.

The specified provisions of the Law "On Road Traffic" match with international legal acts which the Republic of Azerbaijan is the party to. Thus, on April 29, 1997 the Republic of Azerbaijan without any reservations, joined the International Convention "On Road Traffic" signed in Vienna on November 8, 1968. The parties agreeing about adoption of this Convention wishing to facilitate the international traffic and to increase safety on roads by adoption of the uniform traffic regulation, assumed certain obligations.

Article 31 of this Convention establishes the rules of behavior of the driver during a road accident. According to it, the driver or any other involved in a road accident alongside with obligations for providing the subsequent traffic safety and rendering an emergency medical service to victims, should bear also the duty to remain on a place before arrival of police, not to destroy the traces which can be useful to establishment of responsibility for commission of a road accident.

In the decision of Constitutional Court it was indicated that even if the duties specified in the Law "On Road Traffic" are directed on immediate prevention of burdening of consequences of the happened incident and identification of the objective truth connected with incident the non-compliance with them cannot bring to emergence of responsibility. Proceeding from this position the legislator pre-conditioned the bringing to responsibility of persons guilty in violation of the traffic rules only as it provided by the legislation of the Republic of Azerbaijan (Article 81 of the Law "On Road Traffic"). In this sense because of emergence of responsibility brings to criminal legal consequences, it should be exactly and clearly specified in the law, according to the principle of legal definiteness, the commission of what kind of action (inaction), including not execution exactly of what kind of duty, becomes the reason of it.

The Constitutional Court decided that according to the essence of the Article 264 of Criminal Code, a person committing road accident is obliged to remain at the accident scene and by any means to inform the victim (party) on his/her identity. At observance of this obligation, the leaving of a place of a road accident for any reason by a person driving the vehicle including for delivery of a victim to medical institution cannot be regarded as leaving of the scene of accident.

13. Do you have the case-law relating to respect for the rule of law by private actors exercising public functions?

The Constitutional Court of the Republic of Azerbaijan based on inquiry of Surakhani district court of Baku city adopted the decision on June 29, 2007 on interpretation of Article 1179.2 of the Civil Code of the Republic of Azerbaijan and Articles 15 and 18.1 of the Law of the Republic of Azerbaijan "On Notary". Citizen M.Askerova, basing on Article 1179.2 of the Civil Code of the Republic of Azerbaijan, applied to Yeni-Surakhani district municipality for certifying of her testament. In its response Yeni-Surakhani district municipality informed that certifying of testament is a competence of state notarys office and not of municipality. Because of the refused of Yeni-Surakhani district municipality to certify the testament, M.Askerova via procedure indicated in the civil procedure legislation lodged a complaint to Surakhani district court for resolution and actions rendered by officials of local self-government bodies. During the court examination, M.Askerova assessed the above-mentioned as the contradiction to human rights and freedoms and asked the court to apply to Constitutional Court for the interpretation of Articles 15 and 18.1 of the Law of the Republic of Azerbaijan "On Notary".

Surakhani district court submitted the inquiry to Constitutional Court and asked for interpretation of Articles 15 and 18.1 of the Law "On Notary".

In the decision of Constitutional Court it was noted that based on the relevant positions of Constitution, in Article 1 of the Law of the Republic of Azerbaijan "On status of municipalities" it is specified that the local self-government in the Republic of Azerbaijan is such system of the organization of activity of citizens which allows them to independently and freely decide the issues of local value within the limits of the law and to carry out according to an Article 144.2 of the Constitution of the Republic of Azerbaijan part of the state work in the name of interests of local population.

Transfer of some concrete powers to institutions of local government by legislative and executive authorities is not also excluded in the international documents.

For example, in Article 4.1 of the European Charter of local self-government of October 15, 1985, it is indicated that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, the given position does not exclude transfer to institutions of local government according to the law of separate concrete powers. According to item 2 of given article, local authorities within the limits of the law have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. According to Article 4.3 of the Charter, the public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. Allocation of responsibility to another authority weigh up the extent and nature of the task and requirements of efficiency and economy. Also, in conformity with the Article 15 of the Law "On Notary" a notarial activity through the state via the procedure established by the given law shall be executed by state notaries working in the state notary's offices; and in the settlements where there are no notary's offices - by corresponding executive authorities, persons equal according to the Civil Code of the Republic of Azerbaijan to the notaries and competent officials of consulates of the Republic of Azerbaijan. Besides in Article 18 of the Law it is specified that testaments shall be certified by the relevant executive authorities in settlements, where there are no notaries.

Constitutional Court decided that in spite of the fact that Articles 15 and 18.1 do not provide for the procedure of certifying of testaments by municipalities, this does not exclude the powers of institutions of local government to certify the testaments in places of absence of the notary, provided for by Article 1179.2 of the Civil Code of the Republic of Azerbaijan. Also, according to items 1 and 12 of paragraph I of Article 94 of the Constitution of the Republic of Azerbaijan, it was also recommended to recommend to Milli Majlis of the Republic of Azerbaijan to set the rules of implementation by institutions of local government of powers concerning certification of testament in places of absence of the notary, stipulated by Article 1179.2 of the Civil Code of the Republic of Azerbaijan.

The Constitutional Court of the Republic of Azerbaijan based on request of Supreme Court of the Republic of Azerbaijan adopted decision of June 11, 2002 concerning Articles 67 and 423 of the Civil Procedure Code of the Republic of Azerbaijan. Taking into account the difficulties available in judicial practice as to the access of persons participating in civil proceedings to the court of cassation, in its petition the Supreme Court of the Republic of Azerbaijan asked to verify the conformity of Articles 67 and 423 of the Civil Procedure Code stating that "the complaint may be

submitted by person who participates in examination of a case with advocate" with Articles 60 and 71.2 of the Constitution of the Republic of Azerbaijan.

In the petition it was indicated that according to Article 67 of the Civil Procedure Code in courts of cassation instance, upon lodging the additional cassation complaints with courts of cassation instance against the acts of court concerning the re-examination of a case based on the newly revealed circumstances, the persons-parties in this case shall be enabled to take part in this re-examination only if accompanied by an advocate. And according to Article 423 of the same Code the additional cassation complaint may be submitted by person participating in case with advocate.

Article 12.1 of Constitution envisages that the highest priority objective of the state is to ensure the rights and freedoms of a person and citizen.

In accordance with Article 71.2 of Constitution no one may restrict the implementation of rights and freedoms of a human being and citizen.

According to Articles 424 and 433 of this Code the Plenum of Supreme Court shall examine the cases relating exceptionally to the legal matters as well as the court acts, which had entered into legal force, on the basis of newly revealed circumstances. In this connection with the view to ensure the qualified and thorough protection of the rights of persons taking part in proceedings, in Article 67 of the Civil Procedure Code it is stipulated that in courts of this instance the persons in proceedings shall take part in proceedings only if accompanied by an advocate. These provisions of the Civil Procedure Code are in correspondence to the requirements of Article 61 of the Constitution. According to paragraph I of the same Article everyone shall have the right to get the qualified legal assistance.

Effective restoration of the rights by independent court on the basis of fair trial is enshrined in a number of international instruments including Article 14 of International Covenant on Civil and Political Rights, Articles 7, 8, 10 of the Universal Declaration of Human Rights and Article 6 of the European Convention on Human Rights.

For instance, according to Article 8 of the Universal Declaration of Human Rights "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him/her by the Constitution or law".

In Article 20 of the Law of the Republic of Azerbaijan "On Advocacy", which based on these norms of the Constitution, it is stipulated that legal assistance shall be rendered to persons accused with commission of a criminal offence and other low-income persons seeking the legal assistance in court without any restrictions thereto at the governmental expense.

In civil procedure legislation the free participation of an advocate is not excluded. For instance, according to Article 121.2 of the Civil Procedure Code where legal assistance to a party, in whose favor the resolution was delivered, had been provided for free of charge, the expenses shall be covered by another party for the benefit of legal counsel office.

Legal protection and legal assistance as a part of the right to a fair trial is openly and definitely maintained by the international bodies of justice

As it was mentioned, the right to a fair trial is envisaged in Article 6 of the European Convention on Human Rights. In its judgment of 9 October, 1979 on case of

Airey vs Ireland, the European Court on Human Rights noted that "…despite the absence of a similar clause for civil litigation, Article 6.1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case".

Constitutional Court decided to recognize the provision of Articles 67 and 423 "the complaint may be submitted by person who participates in examination of a case with advocate" of the Civil Procedure Code as conforming to Articles 60 and 71.2 of the Constitution of the Republic of Azerbaijan. When applying the provisions of Articles 67 and 423 "the complaint may be submitted by person who participates in examination of a case with advocate" there should be ensured the requirements envisaged in the Constitution of the Republic of Azerbaijan on the right to equality (Article 25), right to legal protection (Article 60) and right to legal assistance (Article 61) as well as the requirement of Article 20 on implementation of the right of low-income persons to legal assistance at the governmental expenses of Law of the Republic of Azerbaijan "On Advocacy". In decision it was recommended to the Cabinet of Ministers of the Republic of Azerbaijan to fix the amount and procedure of the payment at the governmental expenses for legal assistance in court proceedings.

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

Azerbaijan ratified a number of the relevant international documents, including the Convention of the Council of Europe on Mutual Assistance in Criminal Matters, the Convention of the Council of Europe on Extradition, the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Convention of the UN on Transnational Organized Crime, and also the Conventions of the Council of Europe on Civil and Criminal Law Convention on Corruption. In 2004 Azerbaijan joined to Group of States Against Corruption of the Council of Europe (GRECO) and signed the Convention of the UN Against Corruption.

The legislation of strategy of fight against corruption in Azerbaijan began to develop since 1994, it includes the laws and other regulations. The President's decree "On Strengthening of Fight Against Corruption and Strengthening of Law and Order" of 1994 that contained a special instruction to the authorities on identification of the facts of bribery. Besides, within the Ministry of Internal Affairs the specialized Department of fight against organized crime and corruption was founded.

On June, 2000 the President of Republic has signed the decree "On Strengthening of Fight Against Corruption in the Republic of Azerbaijan".

According to President's decree there was developed the special state program of fight against corruption providing a number of the practical actions directed at corruption control.

Besides, at the beginning of 2004 the Law "On Fight Against Corruption" drafted with the purpose of strengthening of capabilities and powers of state bodies on identification and suppression of corruption offenses, elimination of their negative consequences, providing guarantees of social justice, human rights and freedoms, creating favorable conditions for economic development, to providing law and order, transparency and efficiency of activities state and regional authorities and officials, was adopted. The law gives definition to corruption, the violators committing corruption crimes are provide the responsibility of government employees, and individuals and legal entities for corruption. According to this law, the Commission on Fight Against Corruption at the Executive council of civil service is responsible for preventive functions.

The decree of the President of the Republic of Azerbaijan on implementation of the Law "On Fighting Corruption" contains the regulations on forming of department on fight against corruption at the Prosecutor General's Office.

It should be noted that at the initiative of the Head of State the State Agency for Public Service and Social Innovations (ASAN) under the President of the Republic of Azerbaijan was established. The agency established with the purpose to increase the transparency of activities of state agencies, rendering services to citizens at high-quality level.

"ASAN" Service is a new approach that serves, first of all, for ensuring of satisfaction of citizens with the work of government employees. This introduction in public administration of the idea of "satisfaction of clients", widespread in the private sector. It serves as a push for transition of the relations between government employees and citizens to qualitatively new stage.

In the "ASAN" service centers 9 state bodies - Ministry of Justice, Ministry of Internal Affairs, Ministry of Taxes, State Committee of Property issues, State Customs Committee, State Migration Service, State Committee of Land and Cartography, State Social Protection Fund, Ministry of Labor and Social Protection, National Archive Department are the renders of 25 legal services.

As a result of the Referendum of initiated by the President of Republic and held on September, 26, 2016 the important amendments have been made to Articles 68.4 and 146 of the Constitution of the Republic of Azerbaijan. According to the above-stated amendments: "The government, together with civil servants, shall bear civil liability for damage caused to human rights and freedoms as a result of unlawful actions or inactions of public servants, and the violation of their guarantees" (Article 68.4). "The municipalities and municipal servants are responsible for damage caused to human rights and freedoms in the result of the offences or inactivity of municipal servants and their non-provision" (Article 146).

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

As a result of a Referendum held on August 24, 2002 the list of subjects having rights to apply to Constitutional Court considerably extended. Thus, the individuals and legal entities also were granted with this right.

According to Article 130 of the Constitution everyone who claims to be the victim of a violation of his or her rights or freedoms by a decision of the legislative, executive and judiciary or by one of the municipal acts may appeal, in accordance with the procedure provided for by law, to the Constitutional Court of the Republic of Azerbaijan with the view of the restoration of his or her violated human rights and freedoms.

According to Article 34.1 of the Law of the Republic of Azerbaijan "On Constitutional Court" any person who alleges that his/her rights and freedoms have been violated by the normative legal act of the Legislative and Executive, act of municipality and courts may submit complaint to Constitutional Court in order to restore his/her human rights and freedoms. Individual complaints can be examined by Constitutional Court in following cases: if the normative legal act which should have been applied was not applied by a court; if normative legal act which should not have been applied was applied by a court; if normative legal act was not properly interpreted by a court. Complaints can be submitted to Constitutional Court in following cases: after exhaustion of all remedies within six months from the moment of entrance of the decision of the court of last instance (the Supreme Court of the Republic of Azerbaijan) into force; within three months from the moment of violation of complainant's right to apply to court.

The preliminary study of submitted complaints as to their conformity with requirements provided for in Article 34.6 of the Law is implemented by the Staff of the Constitutional Court via the procedure specified in the Internal Charter of Constitutional Court.

In connection with inquiries and requests submitted to Constitutional Court as well as in accordance with Article 36.1 one or several Reporter-Judges are appointed for preparation of session on preliminary study of complaints.

Inquiry, request or complaint shall not be admitted by Constitutional Court in following circumstances:

- if the drawing up of a petition, application or complaint does not meet the requirements of the present Law ;
- if the matter does not fall within the jurisdiction of Constitutional Court;
- if an inquiry, request or complaint was submitted by a body or person who does not have such a right;
- if the collective body, which adopted the decision to submit an inquiry or request to Constitutional Court had no quorum and necessary majority of votes at its session;
- if the documents certifying the exhaustion of the right to challenge the judicial act or violation of the right to apply to court have not been submitted;
- if the Constitutional Court had already adopted a decision on the matter concerned.

In case of withdrawal of inquiry, request and complaint before it is admitted for examination of Constitutional Court the same inquiry, request and complaint are not examined by Constitutional Court.

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

The Constitutional Court of the Republic of Azerbaijan repeatedly considered cases in which the right for access to justice was directly or indirectly affected. Constitutional Court in a number of its decision noted, that among the constitutional provisions directed at protection of human rights and freedoms, the right for legal protection of the rights and freedoms (the right for fair trial) has special value and the non-ensuring of this right, from the point of view of the principle of the rule of law, leads to considerable restriction of the rights and freedoms (decisions of the Plenum of the Constitutional Court of February 1, 2005, December 13, 2005, May 8, 2008, December 30, 2008).

In the decision of July 27, 2000 "On Article 103 of the Land Code of the Republic of Azerbaijan" the Plenum of Constitutional Court noted that the recognition of provisions of Article 103 of the Land Code of the Republic of Azerbaijan as a pre-condition for application of individuals and legal entities first of all to the relevant bodies of Executive power and municipalities contradict to the Constitution. Linking of consideration of land disputes in courts with the decision of appropriate authority of executive power or municipality has to be regarded as restriction of the right of a person for direct appeal to court. The person, whose rights have been violated, has the right to address at his/her own discretion the issue of resolution of land disputes to relevant authorities of executive power, municipalities or directly to court.

In the decision "On complaint lodged by executive power of Narimanov district of Baku concerning verification of conformity of the court decision to Constitution and legislation the Republic of Azerbaijan" the Court specified that premature referral of a case by court of appeal instance (in this case it was the Economic Court) on substantive examination to the economic court of first instance, led to restriction of constitutional right of the claimant for the appeal to cassation instance. The Constitutional Court specified that the right to fair legal proceeding cannot be interpreted in a narrow sense and the right to appeal to the court, being a part of this right, is applied to all stages of legal procedure.

In the decision on verification of conformity of Article 107.4 of the Criminal Procedure Code of the Republic of Azerbaijan to Article 60.1 of the Constitution of the Republic of Azerbaijan, the Court noted that European Convention provides for two groups of guarantees of fair judicial proceedings: organic guarantees – these guarantees are directed at possibility (availability) of judicial proceedings. For this purpose a number of duties are assigned to public authorities: impartiality, open conducting of proceedings; functional guarantees – are aimed at providing the principle of equality. Equality has to be observed at all stages of process. One of necessary conditions of the effective resolution of the tasks set for criminal legal proceedings are objectivity and

impartiality of the persons having power to adopt the decisions, which execution is obligatory in criminal trial. One of important means of ensuring of objectivity and impartiality in criminal trial of the persons participating in criminal legal proceedings is existence in criminal trial of institute of rejection. Reasonable rejection of the judge (composition of the court) in criminal trial or rejection of the judge promotes the adoption of objective and impartial judicial acts and increase the trust of participants of criminal trial and other persons to justice and judicial acts.

According to the legal position formed by the Plenum of Constitutional Court in connection with the right of legal protection the enforcement of the right to judicial protection (the right to fair trial) through various legal procedures at the courts of justice is a key prerequisite of the rule of law. Although this right is not absolute, limitations to it shall be stated in law and shall not inhibit its substance (decision of the Plenum of Constitutional Court of December 13, 2005 on complaint by Kh.I.Qasimov).

As one more example may be given the case "On interpretation of Article 13 of the Administrative Procedural Code of the Republic of Azerbaijan of September 17, 2014". In its inquiry the Court of Appeal of Sheki city, for the purpose of elimination of the uncertainty in court practice, asked the Constitutional Court of the Republic of Azerbaijan for interpretation of Article 13 of Administrative Procedure Code from the point of view of whether the obligation to render assistance to participants of process, in case of replacing wrong types of the claim, falls within jurisdiction of court of appeal instance. The Plenum of Constitutional Court emphasized in the decision that the Constitution, along with providing of human and citizen's rights and freedoms as prime target of the state, also guaranteed their legal protection. The right for legal protection envisaged in Article 60 of the Constitution, being the independent right, at the same time acts as the guarantee of other human and citizen's rights and freedoms enshrined in the Constitution. Everyone can appeal in court the decision and action (or inaction) of state bodies, political parties, labor unions, other public associations and officials.

According to the Civil Procedure Code, the task of legal proceedings on civil and economic disputes is the judicial recognition of legitimate rights and interests of each individual or legal entity. All individuals and legal entities have the right to use legal protection via the procedure established by the legislation for the purpose of protection and ensuring the rights and freedoms and interests protected by the law. The disclaimer of appeal to the court is invalid.

Court noted that adoption of the Law of the Republic of Azerbaijan "On Administrative Procedure" and Administrative Procedure Code is directed at effective protection of the rights and interests of citizens protected by the law, and also at ensuring of more transparency of activities of administrative authorities. One of characteristic features of the administrative and procedural legislation is that the administrative relations (public relations) arise in the field of governmental and local self-government and one of the parties in these relations should necessarily be the executive body, municipality and any subject authorized by the law to adopt the administrative act. Participants of these relations are initially not equal; one of them is the carrier of sovereignty and possesses the powers of authority concerning other party

that is individual or legal entity. Irrespective of the origin of administrative dispute, as a rule, the individual or legal entity becomes the party that took a legal action.

For this reason, for more effective ensuring of protection of legitimate interests of the latter, the legislator established the examination of administrative disputes by specialized courts, such as administrative legal proceedings.

Comparative study of the provisions of Civil Procedure Code and Administrative Procedure Code showed as in Codes there are some general principles of the relevant proceedings. Independence of judges, equality before the law and court, obligation to submit the evidences, the principle of competitiveness, the principles of publicity of judicial review and the principle of dispositivity belong to these principles. At the same time, along with the general principles of both proceedings, the Administrative Procedure Code has specifically different principles.

For instance, if according to Civil Procedure Code, the court considers and uses only those evidences that are submitted by parties, then according to Administrative Procedure Code a court, without being limited to the explanations, statements and proposals of participants of process, the evidences provided by them and other materials containing in case is obliged to research all actual facts of the case which are required for correct solution of a case.

Other feature distinguishing the administrative legal proceedings from civil legal proceedings is the obligation of court to render assistance to participants of process in elimination in claims of formal violations, refining of not clear claim requirements, replacement of wrong types of the claims by more suitable ones, supplement of incomplete actual data, and also in providing of explanations important for determination and assessment of the facts of a case.

According to Article 52 of Administrative Procedure Code that is referred to as “limit of judicial review”, even if the court is not connected with a form of expression of the statement of claim, it has no right to go beyond the claim requirements. This article provides the principle of ‘*ne ultra petita*” and once again underlines the action of the principle of dispositivity in administrative process. This regulation establishes that the court should build the process based on the claim requirement and resolve a dispute without going beyond their limits. In administrative process the court, on one hand, shall be guided by the principle of studying of the facts of a case, and with another – the principle of dispositivity. This principle establishes the limits of the principle of studying of the facts of a case for court.

In Article 82 of Administrative Procedure Code providing the limits of reconsideration of a case according to the appeal complaint it is specified that the court of appeal instance considers the case connected with a dispute, on full merits in essence within the complaint and on the basis of legal issues, as well as the evidences and facts (the actual circumstances). The court of appeal instance also takes into account the submitted and new evidences and facts.

It means that the court of appeal is not connected with the circumstances investigated by the court of first instance and should examine a dispute fully and adopt the decision on the basis of circumstances of the studied case and formulated internal opinion.

Plenum of the Constitutional Court considered that the granting to the courts considering the administrative cases as opposed to the courts of law, of new powers for the purpose of increase of efficiency of legal proceedings in the legislation, ensuring more complete protection of the violated rights and freedoms in reasonable time, including the expansion of the sphere of powers of courts of appeal instance on administrative appeal proceedings, and also the principles of the administrative and procedural legislation should not be necessarily perceived as transition in our country of the institute of appeal, for such kind of cases, to the complete appeal.

As it gets obvious from the analysis of Article 82 of Administrative Procedure Code, this article provides for examination of the case in full and in essence, on the basis of the submitted new evidences (evidentiary facts) and the facts (the actual circumstances), and also it has made a reference to Article 12 of this Code providing for the principle of the research of facts of case. However, Article 13 of the Administrative Procedure Code obliging the court to render assistance to participants of process is not involved.

In view of specified and the fact that the legislator attributes "an obligation of court to render assistance" to Article 48 of Administrative Procedure Code establishing the obligations of court in connection with objective examination of the facts of the case in courts of first instance, it is possible to come to such conclusion that the provision "replacement of wrong types of the claim by the more suitable" of Article 13 of Administrative Procedure Code, should not belong to appeal proceedings.

Thus, since provision "replacement of wrong types of the claim by the more suitable" of Article 13 of Administrative Procedure Code, in fact, can lead to emergence of new claim requirements, and replacement of a subject of claim can lead to the change of a circle of defendants of a claim, it can not be combined with tasks of appeal proceedings and can cause the violation of the rights of defence of other party of process.

At the same time, it should be noted that according to the requirement of Article 11 of Administrative Procedure Code, the administrative legal proceedings are carried out on the basis of the principle of equality of all before the law and court. The replacement of a type of the claim within appeal proceedings can violate the right of participants of process to legal protection envisaged in Article 60 of Constitution and to deprive of them from opportunity to challenge the violated rights in three-stage judicial hierarchy.

17. Has your Court developed case-law on other individual rights related to the rule of law?

The principle of the rule of law, being the general principle of activity of Constitutional Court, is at the same time the principle of the constitutional proceedings. Its sense consists in subordination of the constitutional legal proceedings to the law, recognition by the Constitutional Court of the Republic of Azerbaijan and participants of the constitutional proceedings of a priority of the law. The principle of the rule of law shall be implemented in constitutional process through recognition and ensuring of

supremacy, the highest legal force of the Constitution of Republic of Azerbaijan as Basic Law of the state.

In the decision on conformity of Article 53.8 of the Code on Administrative Offences of the Republic of Azerbaijan with the Constitution and to laws of the Republic of Azerbaijan, the Plenum of the Constitutional Court once again noted that at imposing by legislature of a type of administrative punishment for any administrative offense, the pro-rata rule and balance that are components of the rule of law that reflected in Constitution shall be taken into account.

In the decision of the Plenum of the Constitutional Court of October 21, 2011 "On interpretation of Article 182.2.4 of the Criminal Code of the Republic of Azerbaijan" it was noted that the essence of the principle of legality means the activity of the law-enforcement body, connected with application of the criminal law, should be guided only by law and carried out on the basis of the law. It also means that the recognition of an act as a crime and recognition of the person as guilty in commission of this act and application of punishment concerning him/her is allowed only on the basis of the criminal law.

At the same time the basis for criminal liability of the person who has committed the socially dangerous act, recognition of act as a crime and application with regard to a person of the punishment established only by the criminal law, is one of fixed methods of ensuring of the principle of legality.

According to the legal position of the Plenum of Constitutional Court formulated in the mentioned decision when adopting by legislature of the criminal legal norm it is necessary to pay special attention to observance of such principles of legality as the principle of supremacy, unity, expediency of the law and reality of legality. Execution of the listed principles derives from the principles enshrined in the Constitution, such as equality, compatibility, legal certainty, balance (On interpretation of Articles 18.5, 61.1.1 and 65 of Criminal Code of the Republic of Azerbaijan of March, 18, 2013).

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

In the decision of October 29, 2010 the Plenum of Constitutional Court noted that for the correct interpretation of the legislative norm it is necessary to take into account the principle of proportionality which is a component of the principle of rule of law.

"According to the principle of proportionality the measures providing any interventions to legal status of the natural or legal person, have to be proportional to the lawful purposes which the administrative bodies adhered, and for achievement of this purpose from the point of view of the contents, places, time and a circle of persons whom it covers, should be necessary and suitable.

The principle of proportionality should correspond to the requirement of compliance, need and suitability. According to criterion of the compliance, any measure limiting the rights and freedoms of an individual or the legal person has to correspond to achievement of the purpose provided by administrative body. According to criterion of need, the restrictive measures applied by administrative body in the absence of smaller

restrictive lawful means, have to be the softest and necessary for achievement of purposes. The criterion of suitability provides the non-use, an equilibration of public interests of the administrative measures exceeding any limits proportional to the purposes fixed".

In its decision of March 17, 2016 the Plenum of Constitutional Court referred to the principle of legality of the establishment of taxes and other state charges following from a sense of Article 73 of the Constitution of Azerbaijan.