THE IMPORTANCE OF JUDICIAL (COURT) PRACTICE IN THE
JUDICIAL SYSTEM OF THE AZERBAIJAN REPUBLIC

Abstract. The purpose of the research is to analyze the importance of judicial
practice in the Azerbaijani legal system on the basis of the existing research base.
Research Methods. During the study, methods of analysis, synthesis, induction,
deduction as well as other general scientific methods (systematic, etc.) have been
used in the research methodology.
The empirical basis of the research is consisted of the legislation of the
Republic of Azerbaijan, the practice of law enforcement of higher courts.
The scientific novelty of the research is the investigation of the importance the
decision of the Constitutional Court and the decisions of the Supreme Court as a de
facto source of law in the legal system of the Republic of Azerbaijan.
Conclusion. The results of the research: In the independent Azerbaijan state,
the court is not content with classical law enforcement activities, as in the Soviet era.
Thus, the judicial practice of Azerbaijan is formed in connection with the solution of
specific cases, the application of legal acts, the elimination of gaps, contradictions
and unconstitutionality of legal acts in force. The basis of the formation of judicial
practice is the process of concretization of the applied norm, including various
methods of interpretation. In the legal system of Azerbaijan, the decisions of the
Constitutional Court are precedents, the content of the decisions of the Plenums of
the Supreme Court consists of specific legal provisions. Judicial practice is a factual
auxiliary source of law. Decisions of the higher courts of the Republic of Azerbaijan
refer to the precedents of the European Court of Human Rights.
Keywords: court, practice, Supreme Court of the Republic of Azerbaijan,
Constitutional Court of the Republic of Azerbaijan, precedents of the European Court
of Human Rights.
ЗНАЧЕНИЕ СУДОВОЙ ПРАКТИКИ У ПРАВОВОЙ СИСТЕМЕ АЗЕРБАЙДЖАНСКОЙ РЕСПУБЛИКИ

Анотация. Мета та завданнями дослідження. Метою дослідження є аналіз значущості судової практики у правовій системі Азербайджану на основі існуючої дослідницької бази.

Методи дослідження. У результаті дослідження використовувалися аналіз, синтез, індукція, дедукція, та інші загальнонаукові методи (систематичні та інші).

Наукова новизна дослідження - полягає у вивченні значення рішень (постанов) Конституційного та Верховного суду як фактичного джерела права у правовій системі Азербайджанської Республіки.

Висновок. У незалежній Азербайджанській державі судова влада не задовольняється класичною правоохоронною діяльністю, як за радянських часів. Таким чином, судова практика Азербайджану формується у зв'язку з вирішенням конкретних справ, застосуванням правових актів, усуненням прогалин, протиріч та не конституційності чинних правових актів. У основі формування судової практики лежить процес конкретизації застосовуваної норми, що включає різні способи тлумачення. У правовій системі Азербайджану рішення Конституційного суду є прецедентами, зміст рішень Пленумів Верховного Суду складається із своєрідних конкретних правових положень. Судова практика є, власне, джерелом допоміжного права. Рішення вищих судів Азербайджанської Республіки посилаються на прецеденти Європейського Суду з прав людини.

Ключові слова: суд, практика, Верховний Суд Азербайджанської Республіки, Конституційний Суд Азербайджанської Республіки, прецеденти Європейського Суду з прав людини.

Problem statement. Political and economic reforms that have been ongoing since the end of the 20th century and have expanded in modern times have led to the formation of a new type of legal system in the Republic of Azerbaijan aimed at a market economy. The importance of judicial practice in the legal regulation of public relations is being re-understood.

In modern jurisprudence, the disputes about judicial practice in mechanism of separation of powers in area of law-making are not over. The activity of judicial practice to create general rules of conduct is discussed as an important scientific-theoretical and practical problem in jurisprudence. The activity of judicial practice to create general rules of conduct is discussed as an important scientific-theoretical and
practical problem in jurisprudence.

The Republic of Azerbaijan that was the first democratic Republic in the East in 1918-1920, was part of the Soviet state for nearly 70 years, regained the independence in 1991, now has chosen the path of democratic, legal and secular state establishment.

The Constitution of the Republic of Azerbaijan, that was adopted in 1995 proclaimed human and civil rights and freedoms as the highest value and defined their protection as the duty of the legislative, executive and judicial authorities [1]. The accession of the Republic of Azerbaijan to the Council of Europe (January 25, 2001) and the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (December 25, 2001) demonstrate that rights and freedoms are guaranteed.

In recent years, Azerbaijan has been in the process of fulfilling its international obligations in accordance with the principle of Pacta sunt servanda (contracts must be fulfilled). Some of the measures in the area of protection of human rights and freedoms and in the implementation of international obligations consist of the improvement and modernization of the legal system.

The decree named “Application of the legislation about modernization of the judiciary of the Republic of Azerbaijan” and “Amendments and additions to some legislative acts of the Republic of Azerbaijan” of the President of the Republic of Azerbaijan dated January 19, 2006, is referred to ensuring of human and civil rights and humans and to strengthen the judiciary. The decree recommended that higher courts take into account the case law of the European Court of Human Rights.

In order to ensure the correct and uniform application of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the precedents of the European Court of Human Rights in the administration of justice, the Plenum of the Supreme Court of the Republic of Azerbaijan issued Resolution No. 5 on 30 March 2006. President of the Republic of Azerbaijan “Judicial-legal system. The Republic of Azerbaijan’s President’s decree named “On Deepening reforms of the judicial system» dated April 3, 2019, recommended the Supreme Court of the Republic of Azerbaijan to study and generalize judicial practice, to establish an appropriate mechanism for the formation of a unified judicial practice. In recent years, in connection with the reform of the judicial system Normative amendments to the Law of the Republic of Azerbaijan “On Courts and Judges” and procedural legislation have been adopted and practical experience has been gained.

In 1917-1991, the Soviet judicial system existed in Azerbaijan. At present, the judiciary in Azerbaijan is realised by the Constitutional Court of the Republic of Azerbaijan, the Supreme Court, and the Court of Appeal courts, general and other specialized courts.

It is important to study the content and forms of judicial practice in the modern Azerbaijani legal system, its characteristics, its importance in the uniform and correct
application of legal norms.

**Analysis of the scientific research and publications.** Judicial practice in the Azerbaijani legal system has been studied recently, especially in the context of judicial reform. Thus, the precedents of the European Court of Human Rights and the experience of the Constitutional Court of the Republic of Azerbaijan [2, p.303] the development of the legal system of Azerbaijan in modern times and the role of the Constitutional Court of the Republic of Azerbaijan in this process [3, p.608]. Gaps in the legislation of the Republic of Azerbaijan and their elimination [4, p.22] etc. Such problems have been the subject of scientific research. In the Republic of Azerbaijan, the activity related to the reference of the decision made by another court as a precedent-norm when making a decision on the case under its jurisdiction, application of case law [5, p.26] were studied.

It is shown that there is a practice not only of separate norms, but also by analogy of legal regimes [6, p.53-57] and jurisprudence creates legal norms that later lead to the formation of new relations [7, p.52]. The importance of the statements made by the Constitutional Court to eliminate the gap in the law by setting a precedent [8, p.15], the uniform understanding of the legislation and the establishment of stable judicial practice have been examined [9, p.38-46].

In the area of modern judicial law, the relationship between theory and reality is studied [10, p.164] judicial practice is studied as a source of law [11, p.3), the legal system is quite extensive by analogy of law it is concluded that the jurisprudence is formed [12, p.88-91]. Some authors define jurisprudence and case law as categories that are close but not identical [13, p.293-310), while others define jurisprudence as the embodiment of the doctrinal and legal values of the legal system, the factual nature of human and civil rights and responsibilities. Investigates as a reflection of security, reveals its legal and social sources [14, p. 892). At the same time, theoretical issues of the unity of judicial practice are studied [15, p.25-35] judicial law enforcement activity is studied as a specific type of law enforcement [16, p.199].

**Purpose of the article.** Scientific research studies the close connection of judicial practice with traditions and culture [17, p.258-260] substantiates judicial jurisprudence [18, p. 221) However, recent research have shown that the temporary rejection of the judicial precedent from the continental-European legal order is due to the specific historical features of its development [19, p.88).

Professor of Law of the Polish Academy of Sciences A. Mlinarskaya-Sobachevska examines the form of expression of the results put forward by the law enforcement officer in the law enforcement act and believes that the definition of methods of expression of the results of the interpretation indicates its level of quality [20, p.52-66). At the same time, various methods of interpretation have been studied [21, p.251] and a generalized theoretical-legal concept has been developed [22, p.49).

**Method.** Determining the degree of enforcement of decisions of the highest courts is in the interests not only of the judiciary, but of society as a whole. The study
of this problem allows us to determine the place and role of judicial practice in the hierarchical system of sources of Azerbaijan judicial system, and thus contributes to the efficiency of judicial activity.

Presentation of the main material. Definition, forms and functions of judicial practice: court practice is an important component of the legal system. It was created in connection with the settlement of conflicts in society, the regulation of society through legal norms. There are different approaches to judicial practice in the legal literature. Therefore, the case law is equated with the precedent on the one hand, the decisions of the supreme court ‘s plenums on the other hand, and the mass of court decisions on the third. On the other hand, judicial practice and judicial activity are equated, or court practice is viewed as the results of this activity.

Judicial practice is understood in the legal literature in a broad and narrow sense. Thus, in a broad sense, court practice means a set of judicial acts that came into force as a result of the application of legal norms in the course of justice. Judicial practice in the narrow sense means the provisions developed as a result of the application of the norm to an attitude that is incompletely regulated or not clearly regulated by the relevant law.

Judicial practice is a set of court decisions (first of all, the highest instance) on this or that issue in Romano-Germanic countries. The jurisprudence of the court on any issue is evaluated as the result of its activities or a set of its decisions, reflecting the experience of applying the current legislation [23, p.75-78]. In other words, case law refers to the legal positions defined in the acts of higher courts as a result of the theoretical generalization of individual court decisions based on the identification of typical and recurring similarities that have evolved over disputes and affect the legal relationship that will arise [24, p.89-92]. There is no unified concept of court practice in jurisprudence. Thus, the concept of judicial practice is interpreted as a court precedent in one case, the decisions of the plenums of higher courts in the second case, and any court decision in the third case. However, it should be noted that the narrow meaning of case law is more reasonable. Thus, in this case, the case law is determined by the higher courts and the application of legal provisions is understood as binding. The importance of judicial practice lies in the validity and authority of the provisions it has developed.

Judicial practice acts as a legal tool in identifying and eliminating gaps in law.

The following forms of judicial practice of the Republic of Azerbaijan can be specified: Decisions of the Constitutional Court of the Republic of Azerbaijan; decisions of Plenum of the Supreme Court of the Republic of Azerbaijan; judicial acts on specific cases; generalization.

Judicial practice has a normative effect on the law through its legal, specific and informational functions. The formation and importance of judicial practice is related to its creation of judicial law. Thus, the official recognition of judicial practice is determined by the features, importance and place of its formation in the Azerbaijani legal system.
Judicial practice is currently characterized by the need for uniformity in the interpretation, application and restoration of gaps in existing law during the period of independence.

Judicial practice is not officially recognized as a source of law in Azerbaijan. However, the judicial practice established and generalized in the decisions of the Plenum of the Supreme Court of the Republic of Azerbaijan is the actual source of law.

The legal literature states that there is an inseparable link between theory and jurisprudence, and shows that jurisprudence without theory is culturally poor (Perfecto Andres Ivanes)[25]. There are also speculations about the use of Judicial practice as an innovative teaching tool in the training of judges (Margit)[26].

**Forms of influence of judicial practice on the law-making activity of the state.**

Unlike the creation of parliamentary law, the creation of judicial law requires the emergence of new appropriate forms. One of such forms is the forms created by the Constitutional Court, as well as by the Supreme Court. The legal positions of the Constitutional Court have both theoretical and practical significance. In practical terms, the position of the Constitutional Court leads to the improvement and development of the judicial system as part of its decisions, as well as the strengthening of the rule of law.

The Constitutional Court of the Republic of Azerbaijan resolves disputes over the interpretation of the Constitution and laws, verification of laws and other normative acts, decisions of the Supreme Court, interstate agreements, consideration of individual complaints on people's constitutional rights, division of powers between legislative, executive and judicial authorities (Law of the Republic of Azerbaijan on the Constitutional Court, Article 3)[27]. According to Article 130 of the Constitution of the Azerbaijan Republic, specific norm control is applied in the following two cases in accordance with the Constitutional Court of the Azerbaijan Republic (1995) and the Law of the Constitutional Court of the Azerbaijan Republic (1997): on individual complaints on violation of constitutional rights and freedoms of citizens; on the request of the courts. Decisions of the Constitutional Court of Azerbaijan are binding on the territory of the country.

In general, the the law-making of the court differs from the law-making activity of the legislature and the executive. This difference is as follows: the law-making of the court is not independent, because it depends on the realization of justice, which is the main function of the judiciary; is carried out on the basis of legislative power; mainly interprets the right and eliminates gaps in law; the legal position of courts is not by subjective expression of will, is prepared on the basis of existing principles and norms; judicial norms cannot freely change or repeal the law; the legal position of the courts should not contradict the laws, first of all the constitutional laws [28, p. 374].

According to the principle of separation of powers the courts do not have the
power to create norms. However, in the absence of a specific normative regulation of public relations, the courts may make a decision. In this case, the courts should look for a more correct decision based on the analogy of the law and restore the gap in legislation. In this case, the decision of the court has a norm-creating character in itself. Gaps in the law are usually filled by the Constitutional Court and the Supreme Court of the Republic of Azerbaijan.

"From a universal point of view, judicial jurisprudence must be in harmony with general jurisprudence" [29, p.376]. The impact of the decisions of the European Court on the rule-making activities of the courts is more common in the decisions of the Constitutional Court of the Republic of Azerbaijan.

**Judicial practice as a source of law:**
Although the attitude to judicial practice in the Republic of Azerbaijan has changed dramatically, it is not officially recognized as the source of law as before. The change is in the field of judicial practice expanded and the tendency to recognize it as a source of law increased. Such an increase in the tendency to recognize can undoubtedly lead to an enrichment of the sources of law. Thus, all cases of a specific situation are handled by the legislature cannot be resolved objectively.

The Supreme Court of the Azerbaijan Republic performs the norm-setting function as well as the interpretation of legal norms. According to P.A. Guk, judicial regulation is carried out in the form of precedent form and judicial practice of the highest court [30, p. 49]. It appears that P.A. Guk distinguishes precedent and case law. Thus, according to some authors, although the precedent is the result of Judicial law, these concepts cannot be equated.

**Gaps in the law and judicial practice:**
The content of the judicial practice can be revealed by analyzing the gaps in the Azerbaijani legal system and the problem of their restoration.

The gap in the law is understood in a broad and narrow sense. Thus, in a broad sense, there is a gap in the law as a whole. For example, the lack of the necessary law, etc. In the narrow sense, any gap in the law means any legislation, it is understood that the act (law, etc.) does not regulate this or that situation. In general, law enforcement agencies need to create a rule of law to close the gap. However, because the process of creating a new rule of law takes a long time, analogy is used as an exceptional tool to fill the gap. Thus, the gap in the law is filled by adopting a new norm, it can be completed by applying an analogy. Analogy is a flexible method.

There are two types of analogy in law: the law analogy; analogy of right.

An analogy of a law is a solution of a specific legal case on the basis of a legal norm provided for similar cases. The analogy of the law is used when there is no norm regulating similar relations and cases.

An analogy of right means making a decision on a specific case on the basis of the general meaning and principles of law. This analogy applies when there is a gap in the law, when there is no similar law. In this case, the principle of "ratio legis" (to act in the general sense of the law) is used. For example, analogies of law and legal

However, the main place in the legal system of Azerbaijan is not the court, but law enforcement activities of government agencies. However, in order to close the gap, the courts, especially the Supreme Court of the Republic of Azerbaijan, The Constitutional Court of the Republic of Azerbaijan has a special role. According to Article 15.2 of the Constitutional Law of the Republic of Azerbaijan on normative legal acts (2010), the decision of the Constitutional Court of the Republic of Azerbaijan on the application of the analogy shall enter into force on the day of its publication.

**Specification of legal norms:**

The content of judicial practice is also related to the specification of legal norms. Clarification in the field of law enforcement is carried out as a result of application and interpretation of the norm.

The concretization of law in the legal literature is as follows approach: application of the legal norm to the concrete situation; normative interpretation of the norm by higher courts.

However, specification is only the removal of specific provisions from general norms.

So, the norm is always abstract, applies to different cases and subjects, and is interpreted by the law enforcer when making court decisions. The law-enforcement court logically develops a previously established norm by adding new definitions.

On the other hand, lawmaking cannot be equated with judicial practice. Also, the fact that judicial practice in any way affects the development of law does not mean that the judiciary has become a legislature.

**Decisions of the Supreme Court of the Republic of Azerbaijan:**

Decisions of the Supreme Court of the Republic of Azerbaijan serve as the basis for the generalization of judicial practice. These decisions, on the one hand, reveal the content of the rule of law, interpret the norms and laws, and, on the other hand, determine the direction of judicial practice ("guide instructions") in certain categories of cases. Interpretation of legal norms means explaining and clarifying the meaning of legal norms.

The purpose of the interpretation of the law is the correct, uniform and precise understanding of the norm, which is abstract and general in nature, and the perception of the intention determined by the legislature and intended to be expressed by the symbol of the sign.

A group of authors believe that mistakes in lawmaking are subjective is a negative result due to error (L.A. Morozova, A. B. Lisyutkin, etc.), others consider legal errors as a result of wrongdoing of the legal action itself (V.N. Kartashkin et al.), individual authors understand legal error as a process and result of improper
legal activity of the subject.

One of the forms of elimination of technical, procedural and content errors of lawmaking (authentic interpretation, management interpretation, compulsory interpretation, etc.) is also related to court interpretation.

Decisions of the Supreme Court of the Republic of Azerbaijan are a special, ie descriptive type of legal acts. Article 131 of the Constitution of the Republic of Azerbaijan states that the Supreme Court of the Republic of Azerbaijan shall provide explanations on issues related to the practice of courts.

The Summary of Judicial Practice approved by the Presidium of the Supreme Court of the Republic of Azerbaijan is adopted in a non-procedural form and is not an act in this regard.

Decisions, the content of which consists of legal provisions, constitute the special basis for the establishment, change and termination of a legal relationship.

Decisions of the Supreme Court of the Republic of Azerbaijan specify the provisions of the legislative act. This specification takes the following forms: making additions to the legal act, clarifying the act, interpretation of the legal norm, etc.

In the current legislative system of the Republic of Azerbaijan, contradictions and gaps are more quickly exposed by courts rather than by the legislature. In this context, the judicial practice sets out the status of the legislation, determines the compliance with the rights and legitimate interests and needs of the people as well as its effectiveness.

Serious difficulties arise before courts in the implementation of generally flawed norms, the meaning of which is not entirely clear in the legislation and characterized by gaps and contradictions. One way out of this dilemma is to ensure and understand the uniform application of abstract legal norms and instructions by all courts.

The unity of the judicial system of Azerbaijan is ensured by the decisions of the Plenum of the Supreme Court. These decisions are repeated many times, are intended for an unlimited number of persons, and are addressed to lower courts by creating legal remedies such as norm-interpretation, norm-recommendation and norm-understanding. It should be noted, however, that in many cases more attention has been paid to handling these decisions only in lower courts, and other features have been ignored.

Analysis of the decisions of the Plenum of the Supreme Court of the Republic of Azerbaijan shows that their content consists of various forms of interpretation, clarification and interpretation of the content of existing legal norms. For example, "According to the decision of the Plenum of the Supreme Court of the Republic of Azerbaijan dated February 20, 2020 "On invalidation of some decisions of the Plenum of the Supreme Court of the Republic of Azerbaijan and amendments to some decisions" In paragraph 12 of the Plenum Resolution No. 7 of November 3, 2008, these words “because the claim for compensation for non-pecuniary damage in civil cases is of a property nature” were replaced with the words “compensation for non-
pecuniary damage” [31]. This shows that the decisions of the Supreme Court of the Republic of Azerbaijan specify the norms of abstract substantive law.

Thus, the decisions are based on an analysis of the generalization of the Azerbaijani judicial practice. Such generalizations allow higher courts to determine how local courts apply the law in resolving a particular case.

On March 28, 2016, the Plenum of the Supreme Court of the Republic of Azerbaijan issued Resolution No. 8 on the practice of applying the law by the courts in cases of divorce, the custody of minors after divorce, and the maintenance of child support. The first part of the seventh paragraph of the decision recommends that the courts take into account the fact that in the event of a divorce, the juvenile's mental status, it is in their best interest to be legally protected by the same parent, except in exceptional circumstances, in order to ensure their physical and psychologically healthy development and cohabitation with other siblings [32]. This decision also has a law-determining character.

This decision is also related to the idea in the legal literature that the content of the law enforcement activities of the courts is the clarification and application of the law [33, p.18].

The decisions of the Constitutional Court:

Procedural to ensure the uniformity of case law during the application of the legislation The Supreme Court and the Constitutional Court also resolve many issues arising in the courts in connection with the application of the norms of sectoral legislation. For example, when the Baku Court of Appeal heard a case against Sh. Tahirzadeh's claim for compensation for damage to his health while performing his job function against AMEC Services Limited, in parts 1 and 2 of Article 239 of the Labor Code of the Republic of Azerbaijan, He appealed to the Constitutional Court of the Republic of Azerbaijan, deeming it necessary to interpret the terms “guilty (in whole or in part)” and “due to the fault of the employer”.

The appeal states that in order to ensure the application of the norms provided for in Article 239 of the Labor Code, the Cabinet of Ministers of the Republic of Azerbaijan issued Resolution No. 3 of January 9, 2003, “and the rules, conditions and amount of compensation to other dependents ”in accordance with paragraph 1.1 of the Decision, if the health of the employee is impaired as a result of an industrial accident or occupational disease, or for this reason in this case, according to the act of investigation of the accident, the guilty enterprise, department and organization shall be financially liable for the damage caused to the employee in accordance with the legislation.

The Plenum of the Constitutional Court ruled that material liability for damage to an employee's health or death as a result of violation of labor protection norms provided for in Article 239 of the Labor Code arises only in one case in accordance with Article 191 of this Code - if it is the fault of the employer.

According to the content of Article 239 of the Labor Code of the Republic of Azerbaijan, regardless of the full or partial guilt of the employer, the liability of the
employer to the employee is complete in the presence of the conditions provided for in Article 191 of this Code.

The Constitutional Court, with its official interpretation of Parts 1 and 2 of Article 239 of the Labor Code, by its decision of 15 July 2011[34], provided the basis for ensuring the principle of legal certainty and uniform and correct application of these norms by courts and similar executive authorities.

At present, there is a need to strengthen the unity of judicial practice.

Recently, the legal literature on the unity of judicial practice emphasizes the need to establish the concept of uniformity and unity of judicial practice, as well as to determine the responsibility of judges for violating the principle of unity and uniformity of judicial practice [35, p.32].

So the unity of judicial practice is ensured not only by the norms of the law, but also by the decisions of the Constitutional Court of the Republic of Azerbaijan.

At present, the decision of the Constitutional Court of the Azerbaijan Republic is precisely precedent. For example, The Plenum of the Constitutional Court of the Republic of Azerbaijan considered the constitutional case according to the query of the Cabinet of Ministers of the Republic of Azerbaijan, on interpretation of Article 33.2 of the Law of the Republic of Azerbaijan “About Public Service” in terms of the requirements of Article 2.3 of the Law and made a decision dated June 5, 2018.

The Plenum of the Constitutional Court showed that the provisions reflecting the principle of social and legal protection of public servants, ensuring a decent standard of living for themselves and their families are in accordance with Articles 19, 21-24, 33 and others of the law “About Public Service” provided in the articles.

Referring to the Decision of the Constitutional Court of December 8, 2014 “On Interpretation of Article 33.2 of the Law of the Republic of Azerbaijan “About Public Service”, the Plenum of the Constitutional Court noted that Article 33.2 of this Law encourages him to resign from the civil service[36]. The Plenum emphasized that the legislator puts forward two main conditions in this case: reaching the retirement age of a civil servant; voluntary resignation from the public service.

One of the special types of public service listed in Article 2.3 of the Law About Public Service is public service in the tax authorities. The rules of service in these bodies and the basis of the legal status of officials are regulated by the Regulations. According to Articles 1 and 2 of the Regulations, service in the tax authorities is a special type of civil service. According to Article 27.1 of the Tax Code of the Republic of Azerbaijan, officials of the tax authorities are in the civil service.

The Plenum of the Constitutional Court considered that since service in the tax authority is a special type of public service and the Regulation does not provide a norm regulating the existing public relations, the guarantee provided for in Article 33.2 of the Law on "About Public Service" is tax in terms of requirements of the Constitutional Law on "Normative Legal Acts" should also apply to the officials of the body.

The Constitutional Court's Plenum comes to this decision on the basis of the
decision of the European Constitutional Court of Human Rights against "France in the Pellegrin case" of 8 December 1999, that is, Article 33.2 of the "Public Service Law". According to the retirement age determined by the article, a lump-sum payment of 6 times the pension should be applied to the authorities of the tax offices when leaving the public service with their own consent.

Here, on the one hand, the norm is interpreted, unity is defined, on the other hand, the earlier decision of the Constitutional Court is referred to, and on the third hand, the experience of the European Court of Human Rights is referred to.

The Plenum of the Constitutional Court of the Republic of Azerbaijan commented the part 5 of Article 2 of the Civil Code of the Republic of Azerbaijan in its decision dated April 24, 2019 on the basis of the appeal of the Baku Court of Appeal on the disputes between the courts about claims on compulsory state social insurance premiums.

Based on the Decision of its Plenum “On Interpretation of Articles 78.3, 85.4, 90.3 and 93.1.1 of the Tax Code of the Republic of Azerbaijan” dated January 12, 2011[37], the Constitutional Court also stated that public legal relations imply subordination of the parties. The obligations of individuals arise from the law, not from the contract.

The Plenum of the Constitutional Court considered that except in cases determined in the part 5 pf article 2 of the Civil Code, in all other cases, it prohibits in principle the application of the provisions of civil law to property relations based on the subordination of one party to another, including tax, financial and administrative relations.

Such a ban is due to the fact that the legal regulation methods specific to all areas of private law are significantly different from the regulation methods inherent in public law, including administrative, social security, and tax law. This is due to the payment of compulsory state social insurance excludes the settlement of disputes by administrative courts on the basis of Article 2, paragraph 5 of the Civil Code.

However, the legislator did not completely exclude the application of civil law in public law relations, while expressing the provision "unless otherwise provided by law" in Part 5 of Article 2 of the Civil Code. This is only if there is a direct instruction from the legislator possible. For example, pursuant to Section 2 of Article 78 of the Tax Code, execution of tax obligations is carried out in the sequence provided for in the Civil Code.

Taking all this into account, the Plenum of the Constitutional Court decided that in terms of the requirements of Part 5 of Article 2 of the Civil Code of the Republic of Azerbaijan, unless otherwise provided by law, the provisions of this Code shall not be applied to relations arising in connection with the payment of compulsory state social insurance premiums.

So on the one hand, unity was ensured in the application of legal norms, on the other hand, a precedent was formed with reference to the previous decision.

The Constitutional Court verifies the compliance of legal norms with the Constitution of the Republic of Azerbaijan. This power is also actively used in the
activities of the Constitutional Court, which leads to the formation of a unified judicial practice. In turn, the general normative basis of judicial practice ensures the same application of the law, provided that the judges have the same understanding of the meaning of the applicable norms.

Azerbaijani judicial practice is already a narrow source of law. Thus, judicial acts with normative instructions include the following: a) decisions of the Supreme Court; b) decisions of the Constitutional Court declaring legal acts illegal, c) court decisions on the analogy of law and analogy of right.

Regardless of the recognition of judicial practice as a legal concept, it creates legal norms in reality by reacting to the emergence of new public relations, which later become legal norms [38, p.46-52]. The role of the judiciary in the mechanism of a particular state is determined by many different facts, including historical, socio-economic and political factors.

Although the Constitution of the Republic of Azerbaijan, unlike the Constitutional Court, does not give a general binding force to the explanations of the Supreme Court, it is important for a uniform understanding of the legislation and the formation of a stable judicial practice.

For example, the Plenum of the Supreme Court of the Republic of Azerbaijan in its decision No. 3 of 12 April 2019 on some issues of judicial practice in determining cases of legal significance states that The court does not determine any fact, only the legislation identifies the facts that lead to legal consequences, ie the emergence, change or termination of personal or property rights. The legal significance of the events determined by the court is determined by the substantive law norms. Applications for the determination of a fact of no legal significance The court must refuse to accept the case in accordance with the requirements of Article 153.2.1 of the Criminal Procedure Code, and if such an application is taken by mistake, the proceedings on the case must be terminated in accordance with Article 261.0.1 of the Criminal Procedure Code.

Courts at various levels use the institution of analogy to close gaps in decision-making, while the highest courts, in fact, fill gaps in legislation without direct authority to do so. Also, judicial interpretation of the law by analogy application is also used [39, p. 88-91].

The Constitutional Court of the Republic of Azerbaijan can fill the gaps in several ways: to directly apply the norms of the Constitution in each specific case; to take advantage of the analogy of law and analogy of right; revealing the meaning of the legal norm through interpretation; establishment of a regulation on a certain legal relationship by the legislature before the adoption of the relevant law.

The Constitutional Court closes the gap in the law by setting a precedent used by the courts before the law is adopted. Although Article 130 of the Constitution of the Republic of Azerbaijan ("Constitutional Court of the Republic of Azerbaijan") does not provide for an appeal to the Constitutional Court regarding a gap in the law, such cases are revealed in the course of judicial activity in a particular case.
Taking into account the importance of the official interpretation of a normative legal act in terms of the formation of specific legal practice in the legislation, the Constitutional Court determines the correct application of any norm in practice. As a result of the official statement of the Constitutional Court existing gaps in the field of legal regulation are eliminated.

According to Part X of Article 130 of the Constitution of the Azerbaijan Republic, laws and other acts, or their separate provisions, intergovernmental agreements of the Republic of Azerbaijan are repealed within the period specified in the decision of the Constitutional Court. In this case, the Constitutional Court does not act as a legislator and does not replace it. In other words, the decisions of the Constitutional Court serve as a source of law for a certain period of time.

The main purpose of the Constitutional Court is to identify legal contradictions and gaps. Until the legislature takes into account the decision of the Constitutional Court, the decision of the Court shall be in the normative context. However, the relevant decision by making changes and additions to the legislation will cease to be a source of law.

Legal positions as an explanation of the constitutional meaning of the provisions of laws and other normative acts, such as the generalized opinions of the Constitutional Court of the Republic of Azerbaijan, allow to eliminate the existing uncertainty in specific situations.

In the process of formation and development of the rule of law in modern Azerbaijan, new forms of the legal system are emerging. One of them is the judiciary, a branch of government. The judiciary currently performs not only the function of justice, but also the law-making function with the form of court precedent and judicial practice [40, p. 6-15].

Conclusions. The judicial practice may pre-determine the provisions of the new legislation. Thus, the courts later as the law of the legislature develop new and unregulated legal issues. On the basis of the Azerbaijani legal system, there are legal grounds for the recognition of the binding nature of the normative provisions of judicial practice by the higher courts. Thus, the case law eliminates contradictions and gaps in the current legislation. The basis for the formation of jurisprudence is the process of concretization of the applied norm, including various methods of interpretation. Decisions of the Constitutional Court are precedent in the legal system of Azerbaijan, the content of the decisions of the Plenums of the Supreme Court consists of specific legal provisions. The identity of the judiciary is a prerequisite for the successful administration of justice, which increases public confidence in the judiciary and enhances their prestige.

Stability and legal certainty of judicial practice is a fixed law system, is one of the foundations of the formation and development of the rule of law. In the independent state of Azerbaijan, the judiciary is not content with classical law enforcement activities, as in the Soviet era. Thus, the Azerbaijani judicial practice, along with the solution of specific cases, the application of legal acts is formed in
order to eliminate gaps, contradictions and unconstitutionality of legal acts in the current legislation.

Judicial practice by the courts of the Republic of Azerbaijan it consists of the leading explanations of the Plenum of the Supreme Court, which ensure the correct and uniform application of laws, as well as acts of judicial bodies on the specific application of legal norms in civil, administrative and criminal cases. Judicial practice acts as a de facto auxiliary source of law, reversing gaps in existing legislation and providing a unified approach by courts to the interpretation and application of legal norms.

Decisions of the higher courts of the Republic of Azerbaijan specifically refer to the precedents of the European Court of Human Rights. From this point of view, attention should be paid to the characteristics of the acts of the Constitutional Court of the Republic of Azerbaijan as a special norm.

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