

INTERMEDIATION IN FOREIGN EXCHANGE TRANSACTIONS

On 30 September 2024, the Plenum of the Constitutional Court of the Republic of Azerbaijan considered a request by the Saki District Court seeking to clarify the interpretation of Sub-Section 430.4 of the Code of Administrative Violations of the Republic of Azerbaijan and Sub-Section 4.3.2-1 of the *Rules of Transactions of Residents of Republic of Azerbaijan in Foreign Currency and Non-Residents in National and Foreign Currency*.

The inquiry from the District Court addresses an advance payment made by an Azerbaijani resident entity, representing an entity in the Russian Federation, to another entity operating in Portugal, with the designated delivery destination in Türkiye. The Court sought clarification on whether the administrative liability, as outlined in Sub-Section 430.4 of the Code, applies to situations where the goods, for which an advance payment is made overseas by a resident entity, are not imported into the country.

In its deliberations, the Plenum examines the conditions under which resident entities transact in foreign currencies under the Law, *On Currency Regulation*. The Central Bank of the Republic of Azerbaijan is responsible for the oversight and implementation of legal regulatory on the subject matter.

As specified in Sub-Section 430.4 of the Code, if goods are not imported or services are not provided within the stipulated timeframe (no longer than 180 days) of the advance payment and the paid currency valuables are not refunded, this situation is deemed an administrative violation. The primary criterion establishing liability under this provision is a failure to submit an import customs declaration. In this case, since the resident had no intention of importing the goods into the country, there is no requirement to submit the customs declaration.

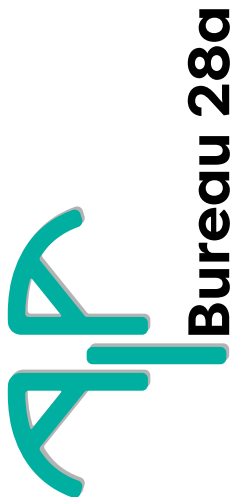
The Plenum did not consider it necessary to adopt a separate Resolution on the appeal in the current situation, considering the presence of an ample legal regulation in the Resolutions of the Plenum, dated 28 February 2020 and 19 December 2019, that apply to the issue at hand.

JURISDICTION OF COURTS

On 9 October 2024, the Plenum of the Supreme Court of the Republic of Azerbaijan adopted Resolution No. 9, which amends Resolution No. 4 of 10 April 2015, *on Jurisdiction of Disputes Arising from Administrative and Civil Legal Relations*.

The Resolution updates the guidelines on administrative and civil jurisdiction, specifying the appropriate courts for various types of disputes:

- the amendment to Sub-Section 6.2 of the Resolution stipulates that disputes involving both the annulment of an administrative act and invalidation and termination of contracts for land allocation should be addressed in an administrative court; however, if the dispute is solely related to the contract, it should be heard in a civil court; and
- the newly introduced Sub-Section 6.3 clarifies that relationships involving the organization, conduct, and documentation of tenders or auctions for state and municipal property, whether leases or ownership, are to be classified as civil-law matters; disputes arising from



such relationships should be adjudicated in civil court proceedings; if there is a challenge to the legality of an administrative act in these cases, the matter may be reviewed by an administrative court.

Special rules have been established regarding the jurisdiction of natural monopoly entities:

- according to revised Section 13, natural monopoly entities are generally not considered administrative bodies, except in specific circumstances outlined in the Resolution.

Updated Section 14 provides the following:

- administrative jurisdiction applies to disputes involving regulatory bodies overseeing natural monopolies, which are to be resolved through administrative court proceedings;
- civil jurisdiction applies to disputes of a civil-law nature with businesses and consumers, which should be adjudicated in civil proceedings in either commercial or courts of general jurisdiction; and
- jurisdiction over claims involving tort and *in rem* rights depends on whether the natural monopoly entity acts in the exercise of public powers assigned to it or as an equal participant in civil transactions; for instance, disputes arising from the exercise of general (public) powers granted by law (such as when designated as an acquiring entity for land for public needs) should be resolved in administrative courts, whereas other disputes should resolve in civil proceedings in civil courts (either commercial or general).

Additionally, courts are encouraged to continue hearing ongoing disputes if conditions of jurisdiction change after the Resolution is adopted, taking into account each case specific circumstances and the extent of prior investigations.

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*Information does not, and is not intended to, constitute legal advice

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