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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

Description of the Constitutional Court of **Azerbaijan**  
as well as précis published in the Bulletin on Constitutional Case-Law

## **Azerbaijan Constitutional Court**

### **Introduction**

The Constitutional Court of the Azerbaijan Republic was formed on 14 July 1998.

The question of the formation of the Court is regulated by Articles 86, 88, 95, 104, 107, 109, 125, 130, and 154 of the Constitution.

#### **I. Basic texts**

- Constitution of the Azerbaijan Republic  
(adopted on 12 November 1995)
- Law on the Constitutional Court  
(adopted on 21 October 1997)
- Civil Procedure Code  
(came into force on 1 July 2000)

#### **II. Composition and Organisation**

##### **1. Composition**

The Constitutional Court consists of 9 judges. According to Articles 95 and 109 of the Constitution, the judges of the Constitutional Court are appointed by the National Assembly (*Milli Medjlis*) upon proposal by the President. The judges are appointed for a period of 10 years. After the expiration of his/her term of office a judge of the Constitutional Court may be re-appointed to the same post only once. The President and Vice-President of the Court are appointed by the President of the Azerbaijan Republic. According to Article 127.1 of the Constitution of the Azerbaijan Republic the judges of the Constitutional Court are independent and subject only to the Constitution and the Law on the Constitutional Court. Judges are irremovable during their term of office and enjoy immunity.

Candidates must be citizens of the Azerbaijan Republic, be at least 30 years of age and have a tertiary qualification and at least 5 years' professional experience in the legal field.

##### **2. Structure**

The Staff of the Constitutional Court is composed of the Constitutional Law Department; the Department for Control in the field of Administrative Law, Criminal Law, Criminal Procedure Law and Correctional Labour Law; the Department for Control in the field of Civil Law, Civil Procedure Law, Labour Law and Social Welfare; the International Law Department; the Department for International Relations and Generalization of Foreign Constitutional Control Practice; the Sector for the Organisation of Court Hearings and Execution of Court Decisions; the Section for the Examination of Complaints and Reception of Citizens; the Sector of Court Executors; the Logistics Department; the Personnel Section; the Library; the Clerks' Unit; the Computer Section; the Press Service; the Printing Unit; and the Xerox Unit.

### III. Powers

According to the Constitution, the following questions fall within the competence of the Court:

- a. the conformity of laws of the Azerbaijan Republic, decrees and orders of the President of the Azerbaijan Republic, decrees of the National Assembly of the Azerbaijan Republic, decrees and orders of the Cabinet of Ministers of the Azerbaijan Republic and normative legal acts of central bodies of executive power with the Constitution of the Azerbaijan Republic;
- b. the conformity of decrees of the President of the Azerbaijan Republic, decrees of the Cabinet of Ministers of the Azerbaijan Republic and normative legal acts of central bodies of executive power with the laws of the Azerbaijan Republic;
- c. the conformity of decrees of the Cabinet of Ministers of the Azerbaijan Republic and normative legal acts of central bodies of executive power with decrees of the President of the Azerbaijan Republic;
- d. in cases provided for by law, the conformity of decisions of the Supreme Court of the Azerbaijan Republic with the Constitution and laws of the Azerbaijan Republic;
- e. the conformity of acts of municipalities with the Constitution of the Azerbaijan Republic, laws of the Azerbaijan Republic, decrees of the President of the Azerbaijan Republic, decrees of the Cabinet of Ministers of the Azerbaijan Republic (and, in the Autonomous Republic of Nakhichevan, also with the Constitution and laws of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan);
- f. the conformity of interstate agreements of the Azerbaijan Republic that have not yet come into force with the Constitution of the Azerbaijan Republic; the conformity of intergovernmental agreements of the Azerbaijan Republic with the Constitution and laws of the Azerbaijan Republic;
- g. the prohibition of political parties or other public unions;
- h. the conformity of the Constitution and laws of the Autonomous Republic of Nakhichevan, decrees of the Parliament (*Ali Mejlis*) of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with the Constitution of the Azerbaijan Republic; the conformity of laws of the Autonomous Republic of Nakhichevan and decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with the laws of the Azerbaijan Republic; the conformity of decrees of the Cabinet of Ministers of the Autonomous Republic of Nakhichevan with decrees of the President of the Azerbaijan Republic and decrees of the Cabinet of Ministers of the Azerbaijan Republic;
- i. the settlement of disputes connected with the distribution of powers between legislative, executive and judicial bodies.

The Court considers constitutional cases based on petitions from the President of the Azerbaijan Republic, the National Assembly of the Azerbaijan Republic, the Cabinet of Ministers of the Azerbaijan Republic, the Supreme Court of the Azerbaijan Republic, the Prosecutor's Office of the Azerbaijan Republic and the Parliament of the Autonomous Republic of Nakhichevan.

According to Article 4 of the Law on the Constitutional Court, citizens of the Azerbaijan Republic may lodge petitions with the Constitutional Court via the Supreme Court. A similar provision is

found in Article 352.2.1. of the Civil Procedure Code, which stipulates that if during trial an individual who is a party to the case considers that a law which is to be implemented or applied infringes his / her constitutional rights and freedoms, then he / she may lodge a petition with a view to verifying the conformity of the law with the Constitution. Such a petition should be lodged with the court which considers the case. The court shall refer it to the Supreme Court which shall consider the possibility of submitting the case to the Constitutional Court.

#### **IV. Nature and effects of decisions**

Six judges constitute a quorum for sessions of the Constitutional Court. Each judge has the right to have a dissenting opinion. Such an opinion is subject to publication together with the decision.

The decision of the Constitutional Court is final and cannot be annulled, changed, or be subject to an official interpretation by any body or official.

## Azerbaijan

### Identification: AZE-2000-1-004

a) Azerbaijan / b) Constitutional Court / c) / d) 14.04.2000 / e) 1/5 / f) / g) *Azerbaijan* (Official Gazette) / h).

*Keywords of the systematic thesaurus:*

- 3.10           **General Principles** – Certainty of the law.  
5.3.6           **Fundamental Rights** – Civil and political rights – Freedom of movement.  
5.4.11          **Fundamental Rights** – Economic, social and cultural rights – Right to housing.

*Keywords of the alphabetical index:*

Residence, right of tenant to accommodate others.

*Headnotes:*

Everyone residing legally on the territory of the Azerbaijan Republic has the right to freedom of movement, to choose their place of residence and to leave the territory of the Azerbaijan Republic (Article 28.3 of the Constitution).

Nobody can be illegally deprived of a dwelling. The state provides for the construction of housing and takes special measures for the realisation of the right to housing (Article 43 of the Constitution).

A tenant has the right to accommodate other persons in his or her place of residence with the consent of his or her family members, without any restrictions.

*Summary:*

The Prosecutor's Office petitioned the Court to examine the conformity of the notion covered by the phrase "in accordance with the established procedure", contained in Article 54.1 of the Housing Code, with Articles 28, 43 and 71 of the Constitution.

Article 54.1 of the Housing Code provides that, in accordance with the established procedure, a tenant has the right to accommodate his or her spouse, children, parents, and other persons in his or her place of residence with the consent of the family members living with him or her. The contents of this provision are not clearly defined and do not indicate by what bodies and acts this procedure is to be established. The failure to indicate the normative act by which such a procedure is to be established allows state legislative and executive bodies to establish the procedure at their own discretion, which can lead to the violation of the constitutional rights of citizens to housing, freedom of movement and choice of a residence.

The uncertainty of the specified provision leads to difficulties in its application by courts, a problem also examined in the explanation contained in item 7 of the Decision on the application of housing legislation by courts of the Republic adopted by the Plenum of the Supreme Court on 16 October 1992. This decision provided that the notion covered by the phrase "in accordance with the established procedure", as a rule, had to be interpreted as meaning that the provision of accommodation was to be regulated in accordance with rules on the registration of passports. At the same time, in cases of an unreasonable refusal to register a passport, a court may recognise the right of a person to accommodate others in his or her place of residence. From this explanation it can be seen that the term "established procedure", as a rule, should be interpreted in this context as meaning that the provision of accommodation was to be regulated in accordance with the rules on the registration of passports.

It should be noted that this decision of the Plenum was adopted in 1992 and the Constitution, which provides for the basic rights and freedoms of citizens, was adopted in 1995.

According to the requirements of Articles 28.3, 43 and 71.1 of the Constitution, the legislator in 1996, having rejected the regulations governing the registration of passports, adopted the Law on registration at the place of residence and accommodation.

Thus, in line with Articles 28, 43 and 71 of the Constitution, the Court emphasised that a tenant has the right to accommodate other persons in his or her place of residence with the consent of his or her family members, without any restrictions, and found the provision “in accordance with the established procedure”, contained in Article 54.1 of the Housing Code, to be null and void.

*Languages:*

Azeri, Russian, English (translation by the Court).

## Identification: AZE-2000-1-003

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 09.03.2000 / **e)** 1/2 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the systematic thesaurus:*

2.3.5           **Sources of Constitutional Law** – Techniques of review – Logical interpretation.  
 4.10.8.1       **Institutions** – Public finances – State assets – Privatisation.  
 5.3.37          **Fundamental Rights** – Civil and political rights – Right to property.  
 5.3.37.4       **Fundamental Rights** – Civil and political rights – Right to property – Privatisation.

*Keywords of the alphabetical index:*

Company, shares / Ownership, types.

*Headnotes:*

Within the limits prescribed by legislation, it is permitted for property to be jointly owned by individuals and legal entities on the basis of a mixed form of ownership (Article 4.2 of the Law on Enterprises).

The combination of these forms of property and their joint functioning is not excluded (Article 13 of the Constitution).

*Summary:*

The Supreme Court sought the interpretation of Article 6.1.2 of the Law on Enterprises, which provides that a company in which the controlling portion of shares belongs to state bodies is a company based on the rules governing state property.

The Constitutional Court defined the concept of a company, revealing its essential elements. According to Article 1 of the Law on Enterprises a company, irrespective of the property rules that apply to it, is an independently managed unit which is a legal entity formed in accordance with the Law on Enterprises, producing and selling its goods, carrying out its work and providing services with the purpose of satisfying public needs and of earning profits. The essential elements of a company are thus its structural and legal form as well as the nature of its ownership.

The ownership of a company determines whether it is subject to the rules governing state, private or municipal property. Its structural and legal form determine who (physical person or legal entity) has the right of possession or use of the company's property, as well as the structural and legal elements regarding the management of the property and the conditions of liability of the company's founders with regard to the obligations of the company.

The above is reflected in Article 6.1 of the Law on Enterprises. This Article stipulates that state-owned companies are based on the rules governing state property and have the state structural and legal form. State companies based on the rules governing state property may be either:

- companies which are owned entirely by the state; or
- companies of which the controlling portion of shares belongs to state bodies.

Under Article 6.1.2 of the Law, where a company is founded on the basis of more than one kind of ownership, the company can take on the structural and legal form of a joint-stock company. The concept of a controlling portion of the shares is set out in the second item of the appendix under number 11 of the Law on Confirmation of the State Program of Privatisation of State Property in the Azerbaijan Republic for the period from 1995 to 1998. This provides that restrictions on privatisation of state property can be established only by allowing for the exercise of the controlling portion of shares or blocking shares (respectively 51% or 25,5% of ordinary shares, with voting rights, in state property) or through the release of "golden shares".

According to the meaning of Article 6.1.2 of the Law on Enterprises, if 51% of the share capital of the company is state-owned, then the company is considered to be subject to the rules governing state property, although this does not exclude the possibility of there being other forms of ownership of shares in the company.

Article 4 of the Law on Enterprises states that there can exist companies of various kinds based on a mixed form of ownership. Article 4.2 of the Law specifies that within the limits prescribed by legislation, property may be jointly owned by individuals and legal entities of Azerbaijan Republic and other states, on the basis of a mixed form of ownership.

Article 13 of the Constitution, which provides for state, private and municipal forms of property, does not exclude the combination of these forms of ownership and their joint functioning. Under Article 15.1 of the Constitution, the development of an economy based on various forms of property in the Azerbaijan Republic aims towards the prosperity of the people. Thus, in Article 6.1.2 of the Law on Enterprises it is underlined that the fact that the controlling portion of the shares in a given company belongs to state bodies does not exclude other forms of ownership of shares in the company.

In connection with the above the Constitutional Court considered that it was also necessary to interpret Article 6.3 of the Law on Enterprises, according to which the property of a state-owned company is the property of the Azerbaijan Republic.

Article 6.1.2 of the Law provides that the property of the companies of which 51% of the share capital is owned by the state and the rest is based on other forms of property is state property. However, similar provisions of the Law do not correspond to the types of property provided for in the Constitution.

The Statute on the Procedure of Transformation of State Companies into Joint-Stock Companies does not provide that the property of such companies belongs in general to the state. According to Article 7.7 of this Statute, the relevant body of the executive is liable for the activity of a joint-stock company founded as a result of the partial privatisation of a state company in proportion to the amount of state-owned share capital in the company. In this case other shareholders are liable for the activities of a company in proportion to the amount of their shares in the established fund.

Thus, where the controlling portion of shares in the company belongs to the state, the property corresponding to the proportion of the share capital owned by the state should be recognised as state property. Other shareholders in such a company have the right to exercise proprietary rights over the property falling within the limits of the shares they own.

Thus, the Constitutional Court decided that according to Article 6.1.2 of the Law on Enterprises, where the controlling portion of the company's shares (at least 51%) belongs to state bodies the company shall be recognised as one subject to the rules governing state property, although this does not exclude the presence in the company of other forms of ownership. The property corresponding to the proportion of state-owned share capital in a company in which the controlling portion of shares belongs to state bodies should be recognised as state property, as stipulated in Article 6.3 of the Law on Enterprises. Other shareholders in a company in which the controlling portion of shares belongs to state bodies are entitled to exercise proprietary rights over the property which falls within the limits of their shares.

*Languages:*

Azeri, Russian, English (translation by the Court)

**Identification: AZE-2000-1-002**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 02.03.2000 / **e)** 1/4 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the systematic thesaurus:*

- 3.4           **General Principles** – Separation of powers.
- 3.9           **General Principles** – Rule of law.
- 3.12          **General Principles** – Legality.
- 4.6.2        **Institutions** – Executive bodies – Powers.
- 4.6.7        **Institutions** – Executive bodies – Relations with the legislative bodies.
- 4.6.9.1.1    **Institutions** – Executive bodies – Territorial administrative decentralisation – Principles – Local self-government.
- 5.3.37       **Fundamental Rights** – Civil and political rights – Right to property.

*Keywords of the alphabetical index:*

Property law / Housing / Public utility, tariff.

*Headnotes:*

State power in the Azerbaijan Republic is organised on the basis of the principle of the separation of powers (Article 7.3 of the Constitution).

This separation is intended to preserve the guarantees of freedom with a view to preventing the replacement of democracy by autocracy. The principle aims to preclude the possibility of one of the branches of power usurping the powers of another.

*Summary:*

The Prosecutor's Office requested the examination of the conformity with the Housing Code, the Law on Privatisation of the Housing Fund and the Civil Code of the Mayor's Order concerning the regulation of tariffs on public utilities.

This Order considerably increased the rates for public utilities in Baku city. The new public utilities rates for dwelling premises (houses) the whole territory of Baku. The same rate is fixed for residential areas covered by the state and public housing fund as for premises (houses) on private property.

In accordance with the Constitution it is the Parliament (*Milli Medjlis*) that adopts general rules on property rights, including the legal regime governing state, private and municipal property, intellectual property and contractual rights.

The Mayor's Order, which sets down the legal regime governing property, thus contradicts the principle of the separation of powers laid down by the Constitution.

The Court therefore found the Order of the Mayor of Baku concerning the regulation of tariffs for public utilities to be null and void, as it contradicted Article 7.3 of the Constitution laying down the principle of the separation of powers.

*Languages:*

Azeri, Russian, English (translation by the Court).



**Identification: AZE-2000-1-001**

a) Azerbaijan / b) Constitutional Court / c) / d) 23.02.2000 / e) 1/3 / f) / g) Azerbaijan (Official Gazette) / h).

*Keywords of the systematic thesaurus:*

- 2.1.1.4 **Sources of Constitutional Law** – Categories – Written rules – International instruments.
- 2.1.1.4.2 **Sources of Constitutional Law** – Categories – Written rules – International instruments – Universal Declaration of Human Rights of 1948.
- 2.1.1.4.7 **Sources of Constitutional Law** – Categories – Written rules – International instruments – International Covenant on Economic, Social and Cultural Rights of 1966.
- 5.2.1.2.2 **Fundamental Rights** – Equality – Scope of application – Employment – In public law.
- 5.4.15 **Fundamental Rights** – Economic, social and cultural rights – Right to just and decent working conditions.

*Keywords of the alphabetical index:*

Right to holiday / Right to rest / Labour law / ILO Convention no. 132.

*Headnotes:*

Persons employed on the basis of a labour contract are guaranteed, in accordance with the law, a working day not exceeding 8 hours, days of rest and holidays including paid holidays not less than once per year and lasting not less than 21 calendar days (Article 37.2 of the Constitution).

A provision which makes the benefit of unused holidays dependent on the grounds for the termination of the employment contract contradicts the principle of equality.

*Summary:*

The Supreme Court requested the Court to examine the compliance with Article 37 of the Constitution of Article 143.1 of the Labour Code providing for unused holidays to be granted to employees at the termination of their contract, except in cases of dismissals under items “a” (cancellation of the employment contract by the employer where the enterprise is to be liquidated) and “g” (cancellation of the employment contract by the employer in cases of failure by the employee to fulfil his or her responsibilities or obligations under the contract) of Article 70 of the Labour Code.

According to Article 143.1 of the Labour Code, upon the termination of the employment contract of an employee who has not used up all his or her holiday entitlements, the unused holiday shall be granted to the employee at his or her request, and the last day of holiday shall be the date of his or her dismissal.

In accordance with Article 37.1 of the Constitution, everyone has the right to rest. The legislator, considering holiday as a kind of rest, provided in Article 113.1 of the Labour Code that holiday from work is the time of rest used by an employee at his or her own discretion, which includes a break from work for the purpose of normal rest, restoration of working capacity, protection and strengthening of health, and lasting not less than the time stipulated by the Code.

The Constitution entitles contractual employees to a holiday, which is a form of the right to rest.

The right of every employee to regular paid holidays is also reflected in Article 24 of the Universal Declaration on Human Rights, Article 7.d of the International Covenant on Economic, Social and Cultural Rights and Article 3 of the International Labour Organisation's Convention concerning Annual Holidays with Pay.

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Nevertheless, contrary to the stated provisions, Article 143.1 of the Labour Code provides that the right to use holidays upon termination of a contract of employment depends on the grounds for the termination of the contract. Such a distinction does not comply with the principle of equality laid down in Article 25 of the Constitution.

The Court held that the restriction of the right of workers to holidays in the above-mentioned cases does not comply with the Constitution; nor does it comply with a number of provisions contained in national labour law and international instruments.

*Languages:*

Azeri, Russian, English (translation by the Court).

## Identification: AZE-1999-3-010

a) Azerbaijan / b) Constitutional Court / c) / d) 29/12/1999 / e) 08/15-17 / f) / g) *Azerbaijan* (Official Gazette) / h) .

*Keywords of the Systematic Thesaurus:*

- 2.1.1.8 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Economic, Social and Cultural Rights of 1966.
- 2.1.1.14 **Sources of Constitutional Law** - Categories - Written rules - Other international sources.
- 5.1.2.3.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons - Prisoners.
- 5.2.4.1.3 **Fundamental Rights** - Civil and political rights - Equality - Scope of application - Social security.
- 5.3.12 **Fundamental Rights** - Economic, social and cultural rights - Right to social security.

*Keywords of the alphabetical index:*

Personality, dignity, free development / Pension, payment, procedure.

*Headnotes:*

The restrictions imposed on pension payments to pensioners in prison provided by the Law on Pension Maintenance of Citizens limit their constitutional rights to social protection and welfare.

*Summary:*

In its petition, the Prosecutor's Office requested verification of the conformity of Article 109 of the Law on Pension Maintenance of Citizens, stating that while serving a prison sentence pensioners shall only get 20% of the fixed pension, with Articles 25, 38 and 71 of the Constitution. Article 38.1 of the Constitution provides that everyone has the right to social protection and Article 71.2 of the Constitution provides that no one may restrict the implementation of the rights and liberties of a human being and citizen.

Payment to citizens of their pension at a rate of 20% for the period of deprivation of freedom limits their right to social maintenance stipulated in the Constitution. Moreover, the challenged provision established in practice an additional kind of punishment not stipulated in the Criminal Code. This punishment, unlike the basic one, also involved the members of the convicted person's family, as it limited their right to social welfare. This contradicted the principle of equality of citizens before the law enshrined in Article 25 of the Constitution.

The Court also referred to Article 22 of the Universal Declaration of Human Rights which states that everyone, as a member of society, has the right to social security and is entitled, through national effort, international co-operation and in accordance with the organisation and resources of each State, to the economic, social and cultural rights indispensable for his or her dignity and the free development of his or her personality. In addition, Article 9 of the International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to social welfare, including social insurance.

The Court declared Article 109.1 of the Law on Pension Maintenance of Citizens null and void as a result of its non-conformity with Articles 25, 38 and 71 of the Constitution and recommended that the *Milli Mejlis* (Parliament) determine the procedure of payment of pensions to persons deprived of their freedom.

*Languages:*

Azeri, English and Russian (translations by the Court).

**Identification: AZE-1999-3-009**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 19/11/1999 / **e)** 06/15-15 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)** .

*Keywords of the Systematic Thesaurus:*

- 3.21           **General Principles** - Prohibition of arbitrariness.  
5.2.4           **Fundamental Rights** - Civil and political rights - Equality.  
5.2.32.1       **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.  
5.3.6           **Fundamental Rights** - Economic, social and cultural rights - Commercial and industrial freedom.

*Keywords of the alphabetical index:*

Credit organisation, deposits / Bank activity.

*Headnotes:*

The partial or complete freezing for a term of up to three months of deposits in credit organisations limits the right of ownership of citizens under the constitution and their right to engage in other economic activity not forbidden by the law.

The provision of Article 45 of the Law on banks and bank activity, creating an opportunity for credit organisations to unilaterally change the terms of contracts concluded with investors, is contrary to the principles of justice and equality.

*Summary:*

The Supreme Court asked for a verification of the conformity of Article 45 of the Law on banks and bank activity with the Constitution.

In accordance with Article 41 of the above-mentioned law, in cases where there had been numerous or regular default by a credit organisation of the requirements established in the present law, the National Bank could make a decision to preserve deposits, if there was hope for improvement in the financial situation. The term of preservation could not exceed 18 months.

Article 45 of the same law provided that where necessary to stabilise the financial situation of a credit organisation, the person carrying out preservation could decide to freeze, completely or partially for a term of about three months, deposits invested in the credit organisation.

In its decision, the Constitutional Court was guided by the following provisions of the Constitution regulating property relations between banks and citizens investors: the principle of the freedom of economic activity, the right of ownership, and the right to be engaged in enterprise or other economic activity not forbidden by law.

Taking into consideration these provisions of the Constitution, an investor has the right to possess, use and dispose of the deposit which belongs to him or her. The freezing of deposits by a credit organisation violated the right of the citizen to use and to dispose of property belonging to him or her, as envisaged in the Constitution.

The Constitutional Court noted that the provision of Article 45 of the Law on banks and bank activity, creating an opportunity for credit organisations to unilaterally change the terms of contract concluded with investors, did not correspond to the principles of justice and equality.

The Constitutional Court declared Article 45 of the Law on banks and bank activity null and void.

*Languages:*

Azeri, English and Russian (translations by the Court).

**Identification: AZE-1999-2-008**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 13/07/1999 / **e)** 1/9 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)** .

*Keywords of the Systematic Thesaurus:*

- 5.2.5.1.1 **Fundamental Rights** - Civil and political rights - Individual liberty - Deprivation of liberty - Arrest.
- 5.2.9.12 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Rules of evidence.
- 5.2.9.23 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Right to counsel.

*Keywords of the alphabetical index:*

Administrative liability / Detention, administrative offence.

*Headnotes:*

Everyone suspected of the commission of an administrative offence shall have the right to enjoy legal assistance from the moment of his/her detention.

*Summary:*

The Supreme Court requested an opinion on the question of the conformity of Articles 256 and 259 of the Administrative Offences Code with Article 61 of the Constitution.

The Constitutional Court of Azerbaijan Republic noted the following:

According to Article 256 of the Administrative Offences Code, a person on whom it is sought to impose administrative liability has the right to the assistance of a lawyer during the consideration of the case.

According to Article 259.1 of this Code, a lawyer can take part in the preparation of a case brought against a person on whom it is sought to impose administrative liability. Article 61.1 of the Constitution provides that every person shall have the right to the assistance of a qualified lawyer. According to Article 61.3 of the Constitution every citizen has the right to a lawyer's advice from the moment of his/her detention, arrest or accusation of a crime by the competent state bodies.

Articles 256 and 259 of the Administrative Offences Code do not provide for the right of a person who has committed an administrative offence to the assistance of lawyer from the moment of detention. This contradicts the above-mentioned provisions of the Constitution. Indeed, the deprivation of the right of any person to the assistance of the lawyer from the moment of detention infringes his/her constitutional rights.

Furthermore, Article 63.4 of the Constitution states that evidence obtained other than in accordance with the law must not be used when administering justice. Depriving a person on whom it is sought to impose administrative liability of the right to the assistance of a qualified lawyer in the preparation of the case can promote the illegal obtaining of evidence by bodies or officials empowered to enforce the administrative detention.

Thus, the Constitutional Court decided that Articles 256 and 259 of the Administrative Offences Code restricting the right of a person who has committed an administrative offence to legal assistance do not meet the requirements of Article 61 of the Constitution.

It was also emphasised that bodies or officials empowered to enforce administrative detention are obliged to place any person detained through administrative procedures in a position to exercise the right to legal assistance from the moment of his/her detention.

*Languages:*

Azeri, English and Russian (translation by the Court).

## **Identification: AZE-1999-2-007**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 12/07/1999 / **e)** 1/10 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the Systematic Thesaurus:*

- 5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
- 5.2.15 **Fundamental Rights** - Civil and political rights - Freedom of the written press.
- 5.2.16 **Fundamental Rights** - Civil and political rights - Rights in respect of the audiovisual media and other means of mass communication.
- 5.2.25 **Fundamental Rights** - Civil and political rights - Right to respect for one's honour and reputation.

*Keywords of the alphabetical index:*

Media, false statement, retraction.

*Headnotes:*

The dissemination by the mass media of information not corresponding to the truth can be challenged directly in court without first approaching the mass media concerned for a retraction.

*Summary:*

The petition submitted by the Supreme Court states that according to Article 33 of the Law on Mass Media, where the mass media refuses to publish or distribute a retraction or response or infringes the established term of one month for the publication or dissemination of a retraction, the individual or legal entity affected can apply to a court for relief within six months of the date of publication of the untrue information.

In this regard the Constitutional Court noted that Article 60.1 of the Constitution provides that judicial protection of the rights and liberties of every citizen is guaranteed. Article 71.2 of the Constitution states that no one may restrict the exercise of the rights and liberties of a human being and citizen.

The settlement by the courts of disputes related to violations of the rights and freedoms of human beings and citizens is provided for by Article 71.7 of the Constitution.

From the above it follows that everyone has the right to apply to the courts for the protection of their rights and freedoms, including honour and dignity.

Moreover, according to Article of 7.1 of the applicable code an individual or legal entity can demand through the courts the retraction of information discrediting honour and dignity if those who disseminated such information refuse to prove the truth of the information. It follows from these provisions that there is no provision under civil legislation for obligatory pre-trial procedures to be conducted towards the settlement of such disputes.

The Constitutional Court considers that individuals and legal entities have the right to apply directly to the courts on the issue of the lack of truth of information disseminated in the press. However, the right of a

person to apply to the courts does not exclude his/her right to approach the mass media directly. As regards the fixed time limitation on actions laid down in Article 33 of the Law on Mass Media, the Constitutional Court notes that, according to legislation, if the court considers that the reasons that caused the plaintiff to exceed this time-limit are valid, it can allow the action despite the expiry of this term.

Thus the provisions of the Law on Mass Media imposing an obligatory pre-trial procedure for the consideration of the dispute i.e. that citizens and organisations can enjoy their right to apply to the courts only after the mass media has refused to publish or to disseminate a retraction, or after the expiration of the term of one month established for the publication or dissemination of a retraction, infringe the rights of individuals and legal entities stipulated in Articles 60.1, 71.1 and 71.7 of the Constitution and shall be considered as null and void. A person who considers that his/her rights have been violated can approach the mass media or turn directly to the courts for the restoration of these rights.

*Languages:*

Azeri, English and Russian (translation by the Court).

## **Identification: AZE-1999-2-006**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 08/07/1999 / **e)** 1/8 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the Systematic Thesaurus:*

- 4.7.8            **Institutions** - Jurisdictional bodies - Administrative courts.
- 5.2.9.1        **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Scope.
- 5.2.9.2        **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.
- 5.2.9.10      **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Double degree of jurisdiction.

*Keywords of the alphabetical index:*

Offence, administrative / Administrative penalty, appeal / Access to courts, administrative penalty, appeal.

*Headnotes:*

Articles of the Administrative Offences Code limiting the right to challenge court decisions in administrative cases violate citizens' constitutional rights of access to the courts and effective remedies.

*Summary:*

In its petition the Prosecutor's Office requested the Court to verify the conformity of Article 275.2 of the Administrative Offences Code with Articles 60, 65 and 71 of the Constitution.

According to these the judicial protection of the rights and freedoms of every person is ensured and everyone may appeal to a court regarding the decisions and activity (or inactivity) of state bodies, political parties, trade unions, other public organisations and officials. To observe and to protect the rights and liberties of a human being and citizen is the responsibility of the bodies of legislative, executive and judicial power. No one may restrict the implementation of rights and freedoms of a human being and citizen. Any disputes related to a violation of the rights and freedoms of a human being and citizen shall be settled in the courts.

The specified Article of the Administrative Offences Code states that the decision of a regional (city) court on imposing an administrative penalty is final and not subject to an appeal under the procedure applicable to administrative offences proceedings.

Article 276.1.1, 276.1.2 and 276.1.3 of the Administrative Offences Code defines the procedure for challenging decisions rendered by bodies vested with the power to adopt decisions in cases concerning administrative offences. This procedure excludes the right of citizens to challenge judicial decisions concerning the imposition of administrative penalties.

The Constitutional Court having examined a petition considered that Articles 275.2, 276.1.1, 276.1.2 and 276.1.3 of the Administrative Offences Code hinder the protection by courts of fundamental rights and freedoms proclaimed by the Constitution and restrict the right of citizens to apply to court.

Thus, Articles 275.2, 276.1.1, 276.1.2 and 276.1.3 of the Administrative Offences Code restricting the right of citizens to challenge court decisions on the imposition of administrative penalties before a higher court contradict Articles 60, 71.1, 71.2, 71.6 and 71.7 of the Constitution.

Taking into account that in accordance with Articles 94.1.1 and 94.1.6 of the Constitution the general rules governing the exercise of the rights and freedoms of a person and citizen specified in the Constitution, state guarantees of these rights and liberties, legal proceedings and the execution of court verdicts are established by the Parliament (*Milli Mejlis*), it should be recommended that the Parliament lay down the procedure for challenging court decisions in cases concerning administrative offences.

*Languages:*

Azeri, English and Russian (translation by the Court).

## Identification: AZE-1999-2-005

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 04/06/1999 / **e)** 1/7 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the Systematic Thesaurus:*

5.1.2.3     **Fundamental Rights** - General questions - Entitlement to rights - Natural persons.  
5.2.4       **Fundamental Rights** - Civil and political rights - Equality.  
5.2.9.1     **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Scope.  
5.2.9.16    **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Adversarial hearings.

*Keywords of the alphabetical index:*

Victim, right to participate in court hearings.

*Headnotes:*

The limitation of a victim's right to take part in court debates does not conform with the principles of justice laid down in the Constitution.

*Summary:*

According to Azeri legislation in force court debates consist of speeches by the public prosecutor, prosecutor, the plaintiff and respondent in civil proceedings or their representatives, counsel for the State, counsel for the defendant or the defendant himself/herself if counsel does not participate in the court session. Thus, the victim is in fact deprived of the right to participate in court debates, except in criminal cases instituted upon the victim's application.

The Supreme Court requested an opinion on the question of the possibility of the victim of a criminal offence participating in court debates.

According to Article 68.1 of the Constitution, the rights of a person who is a victim of crime or an abuse of power are protected by law. The victim has the right to take part in the administration of justice and

demand compensation for losses suffered. In accordance with Article 60.1 of the Constitution, legal protection of the rights and liberties of every citizen is guaranteed.

The equality of citizens before the law and before the courts is reflected in Article 127.4 of the Constitution.

With a view to protecting his/her lawful interests and to reversing the damage caused by crime the victim shall possess the rights in question to the same extent as other participants in criminal proceedings. But according to criminal legislation in force the victim as a party in judicial proceedings is deprived of the possibility of enjoying the above-mentioned rights, except in criminal cases instituted upon an application submitted by the victim himself/herself.

The private interest of the victim consists in the restoration of all of his/her rights that have been violated by a crime, in protection of the honour and dignity of the person, and including compensation for the material, physical and psychological damage caused. At the same time, the Code of Criminal Procedure provides the victim with the right to protect only his/her property interests during court debates, as is the case with a plaintiff in civil proceedings, but in the case of psychological or physical damage he/she actually loses an opportunity to realise the specified right.

The importance of allowing the victim to implement his/her rights in criminal proceedings is connected also with the fact that the law does not require the participation of a prosecutor in all criminal proceedings. At the same time, the realisation of the adversarial principle in criminal procedure should promote the complete and thorough verification of all circumstances of a case.

Thus, the Constitutional Court recognised that the relevant provisions of the Code of the Criminal Procedure, on the basis of which the victim is deprived of the right to participate in court debates, except for the criminal cases instituted upon the victim's application, run contrary to the Constitution. The victim along with others shall have with the right to participate in court debates in criminal cases.

*Languages:*

Azeri, English and Russian (translation by the Court).

## **Identification: AZE-1999-2-004**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 12/05/1999 / **e)** 1/5 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)** .

*Keywords of the Systematic Thesaurus:*

- 2.1.1.7 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Civil and Political Rights of 1966.
- 4.5.2 **Institutions** - Legislative bodies - Powers.
- 5.2.9.2.1 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts - *Habeas corpus*.

*Keywords of the alphabetical index:*

Criminal procedure.

*Headnotes:*

The flaws in criminal legislation concerning penalties applied should be removed by the Parliament (*Milli Mejlis*). When drafting an appropriate normative legal act on this issue the Legislator should take into account the principles of international law instruments.



*Summary:*

The Supreme Court considers the courts' right to examine complaints concerning penalties applied - in particular, detention - to be indisputable and therefore asked the Constitutional Court to give its opinion on the possibility of consideration of such complaints in accordance with the procedure laid down by the Civil Procedure Code of Azerbaijan Republic.

In its decision the Constitutional Court noted that Article 28.1 of the Constitution states that everyone shall have the right to individual liberty. According to Article 28.2 of the Constitution the right to individual liberty may be limited by detention, arrest or imprisonment only in accordance with procedures laid down by law.

Detention as a penalty is regulated by Articles 11, 84 and 89 of the Code of Criminal Procedure. These articles provide that detention can be imposed on a person suspected of committing a crime or, on the basis of a judicial decision only, an accused person or by the prosecutor's authorisation. This emphasises the inadmissibility of arbitrary detention. Having conferred on citizens the right to personal liberty, the legislator has thus also laid down the guarantees of this right, by providing suspected and accused persons with the right to complain of the illegality of and lack of grounds for their detention.

Article 231 of the Code of Criminal Procedure provides that complaints with respect to actions and decisions of the prosecutor shall be lodged with the higher level prosecutor. This rule relates to application of penalties as well. However, the Code of Criminal Procedure does not provide for complaints to courts regarding actions and decisions of the person undertaking an investigation, inspector or prosecutor, including decisions to impose detention.

This is not in conformity with Articles 60 and 71.7 of the Constitution, which guarantee the judicial protection of human rights and freedoms, i.e. the resolution by the courts of disputes connected with violations of rights and freedoms.

The possibility for detained persons to complain to a court is provided by international law instruments. Thus, Article 9.3 of the International Covenant on Civil and Political Rights states:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. [...]"

The Constitutional Court emphasised that the Code of Criminal Procedure lays down a procedure for the lodging of complaints and for their consideration by the higher level prosecutor as regards detention. However, no procedure for lodging complaints with the courts concerning such matters or for the consideration of such complaints by the courts is provided for.

As mentioned above, Article 231 of the Code of Criminal Procedure lays down the special procedure for challenging the prosecutor's actions. On these grounds, complaints regarding detention cannot be considered by courts using the procedures laid down by the relevant articles of the Civil Procedure Code. Furthermore, criminal procedure actions cannot be regulated by rules of civil procedure.

According to Articles 94.1.1 and 94.1.6 of the Constitution it is the Parliament that lays down general rules on the enjoyment of human and civil rights and freedoms, including guarantees of these rights and freedoms and rules relating to legal proceedings and the execution of judicial decisions. Therefore the procedures applicable to the submission and consideration of complaints by courts with respect to detention imposed by the person conducting an inquiry, investigator or prosecutor shall be laid down by the Parliament.

It should be recommended that the Parliament speed up the determination of such procedures. The Parliament should take into account the importance and urgency of this question, the requirements of the Constitution and international law instruments concerning the consideration of such complaints in urgent proceedings, the inadmissibility of entering into discussion concerning the guilt of the detained person during verification by court of the legality and validity of the detention as well as the inadmissibility of the participation of the same judge in the verification of the legality and validity of the detention and in the subsequent consideration of the case.

*Languages:*

Azeri, English and Russian (translations by the Court).

## Identification: AZE-1999-1-003

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 12/03/1999 / **e)** 08/15-4 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

### *Keywords of the Systematic Thesaurus:*

- 2.1.1.8 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Economic, Social and Cultural Rights of 1966.
- 5.1.2.3.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons - Prisoners.
- 5.2.4.2.1 **Fundamental Rights** - Civil and political rights - Equality - Criteria of distinction - Gender.
- 5.2.4.2.7 **Fundamental Rights** - Civil and political rights - Equality - Criteria of distinction - Age.
- 5.2.5.1 **Fundamental Rights** - Civil and political rights - Individual liberty - Deprivation of liberty.
- 5.3.11 **Fundamental Rights** - Economic, social and cultural rights - Right to housing.

### *Keywords of the alphabetical index:*

Prisoner, right to housing.

### *Headnotes:*

The loss of the right to an abode by a person sentenced to deprivation of liberty for more than six months is contrary to the provisions of the Constitution.

Imposing a penalty on persons sentenced to deprivation of liberty for a period of more than six months of the deprivation of their abode, without a right of appeal, should be regarded as causing material, moral and psychological damage to such a person.

### *Summary:*

The Supreme Court requested the verification of the conformity of Article 60.II.8 of the Housing Code, which states that a person sentenced to deprivation of liberty for more than six months loses his/her right to an abode, with Article 11.1 of the International Covenant on Economic, Social and Cultural Rights.

Article 60.II.8 of the Housing Code provides that sentencing a person to deprivation of liberty for a period of more than six months is the ground for deprivation of his/her right to an abode. However, the criminal legislation does not provide for the deprivation of a person's right of abode as a basic or additional measure of punishment. Thus Article 60.II.8 of the Housing Code should be considered as the provision allowing the restriction of human rights and freedoms.

According to Article 60.II.9 of the Housing Code, persons who have not reached 18 years, men of more than 50 years old, women of more than 45 years old who were sentenced to deprivation of freedom with obligation to work or those sentenced to deprivation of freedom for negligent crimes shall remain in possession of their abode until the expiration of the term of punishment.

As has been seen, therefore, the legislators were not consistent and infringed provisions fixed in the Constitution as well as the principle of the equality of rights and freedoms of citizens, having differentiated the citizens according to age and the character of the crimes committed by them. Such differentiation limits the right of citizens to an abode laid down in Article 43 of the Constitution and contradicts the principle of equality of the rights and freedoms of the man and citizen stipulated by Articles 25.I and 25.II of the Constitution.

The Constitutional Court recognised as null and void the provisions of Article 60.II.8 and 60.II.9 of the Housing Code.

### *Languages:*

Azeri, English and Russian (translations by the Court).

## Identification: AZE-1999-1-002

a) Azerbaijan / b) Constitutional Court / c) / d) 16/02/1999 / e) 1/2 / f) / g) *Azerbaijan* (Official Gazette) / h).

*Keywords of the Systematic Thesaurus:*

- 3.4           **General Principles** - Separation of powers.
- 4.5.2       **Institutions** - Legislative bodies - Powers.
- 4.6.9.1     **Institutions** - Executive bodies - Territorial administrative decentralisation - Principles.
- 4.6.9.2.2   **Institutions** - Executive bodies - Territorial administrative decentralisation - Structure - Municipalities.
- 5.2.32.3    **Fundamental Rights** - Civil and political rights - Right to property - Other limitations.

*Keywords of the alphabetical index:*

Places of residence, registration / Property, private and municipal / Residence, right / Apartment, right to purchase.

*Headnotes:*

An order of the Mayor of Baku City providing that only citizens who have completed passport registration procedures in Baku City and thus obtained the right of residence there (*propiska*) before 1990 can purchase apartments contradicts the principle of the separation of powers because the Mayor is not granted the power to engage in legislative activity.

*Summary:*

The Supreme Court asked the Constitutional Court to rule on the conformity of an order of the Mayor of Baku City with the Constitution, the Law on property in the Azerbaijan Republic, the Civil Code, the Law on registration of places of residence and abode, the Statute on improving the structure and activity of bodies of State authority and management in regions, cities, city districts, villages and settlements of Azerbaijan Republic.

The Order of the Mayor provides that only citizens who held valid passports before 1990 can purchase apartments.

Meanwhile according to Article 7.III of the Constitution the State power of the Azerbaijan Republic is organised on the basis of the principle of the separation of powers.

The principle of the separation of powers means that the executive, legislative and judicial authorities may conduct their activities within the framework of their competence. According to Article 81 of the Constitution the legislative power of Azerbaijan Republic is exercised by the Milli Mejlis (Parliament) of Azerbaijan Republic.

According to Article 94.I.12 of the Constitution, general rules on transactions, civil law contracts, representations and ownership rights, including the legal regulation of State, private and municipal property, are laid down by the Milli Mejlis of Azerbaijan Republic.

The basic fields of competence of the Mayor are listed in Article 13 of the Statute "on improving the structure and activity of bodies of State power and management in regions, cities, city districts, villages and settlements of Azerbaijan Republic", authorised by the decree of the President of Azerbaijan Republic N372 of 18 October 1991. In this Article the Mayor is not granted the power to engage in legislative activity.

The Court held that by adopting items 2, 2.1 and 3 of the specified Order the Mayor of Baku City had infringed Articles 7.III, 81, 94.I.12 and 94.I.13 of the Constitution and exercised the competence of the legislative power.

*Languages:*

Azeri, English and Russian (translations by the Court).

**Identification: AZE-1999-1-001**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 12/01/1999 / **e)** 1/6 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the Systematic Thesaurus:*

5.1.2.3.3 **Fundamental Rights** - General questions - Entitlement to rights - Natural persons - Prisoners.  
5.2.32.3 **Fundamental Rights** - Civil and political rights - Right to property - Other limitations.

*Keywords of the alphabetical index:*

Dependants, ownership rights / Penalty, confiscation of property.

*Headnotes:*

Full confiscation of property as provided for by Article 32 of the Criminal Code does not correspond to the purposes of punishment.

Confiscation of all property aggravates the position not only of a convicted person but also of his/her dependents, parents and/or spouse and infringes their ownership rights.

*Summary:*

The Prosecutor's Office asked the Constitutional Court to verify the conformity of Article 32 of the Criminal Code with Article 29.IV of the Constitution.

Article 32 of the Criminal Code prescribes that the confiscation of property consists of the compulsory confiscation in favour of the State of all or part of the property that belongs to the convicted person, without compensation.

According to Article 13.I of the Constitution property is inviolable and protected by the State. Article 29.IV of the Constitution states: "Nobody shall be deprived of his/her property without the decision of a court of law. Total confiscation of property is not permitted. Alienation of property for state or public needs is permitted only if prior fair compensation is given."

At the same time the provisions of Article 29 of the Constitution do not exclude the possibility of partial confiscation of property.

The Court came to the decision that confiscation of property should not be imposed on a convicted person's lawfully obtained property and should not infringe the ownership rights of his/her dependents.

Thus, Article 32 of the Criminal Code and the sanctions provided for in the Special Part of this Code allowing for the confiscation of property as additional punishment should cover only weapons and instruments of crime as well as property obtained by criminal means.

The Court held the provision of Article 32 of the Criminal Code concerning compulsory confiscation without compensation of all property belonging to a convicted person in favour of the State to be contrary to Article 29.IV of the Constitution.

*Languages:*

Azeri, English and Russian (translations by the Court).

**Identification: AZE-1998-3-001**

**a)** Azerbaijan / **b)** Constitutional Court / **c)** / **d)** 29/12/1998 / **e)** 03/15-5 / **f)** / **g)** *Azerbaijan* (Official Gazette) / **h)**.

*Keywords of the Systematic Thesaurus:*

- 2.3.2           **Sources of Constitutional Law** - Techniques of interpretation - Concept of constitutionality dependent on a specified interpretation.
- 5.2.9.12       **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Rules of evidence.
- 5.2.9.19       **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Right not to incriminate one-self.

*Keywords of the alphabetical index:*

Evidence, false / Testimony, refusal / Criminal procedure.

*Headnotes:*

No person can be made criminally responsible for refusing to testify against him or herself or his or her spouse, children, parents or siblings.

No person can be prosecuted for not informing the law enforcement bodies about the crime committed by any relative mentioned in Article 66 of the Constitution.

A person who has knowingly provided false evidence can be held criminally responsible under Article 179 of the Criminal Code.

*Summary:*

The Prosecutor's Office asked the Constitutional Court to interpret Articles 67 and 70 of the Criminal Procedure Code and Articles 179 and 181 of the Criminal Code as to their conformity with Article 66 of the Constitution.

Articles 67 and 70 of the Criminal Procedure Code state that "any person who knows any circumstances regarding a case can be called to testify and he/she is obliged to give evidence he/she possesses and to testify as to the personality of the accused" and "the witness and the victim bear responsibility under Article 181 of the Criminal Code for refusal to testify and responsibility under Article 179 of the Criminal Code for knowingly providing false evidence".

Meanwhile according to Article 66 of the Constitution, nobody can be forced to testify against him or herself or his or her spouse, children, parents or siblings.

The Constitutional Court decided that Articles 67 and 70 of the Criminal Procedure Code and Articles 179, 181, 182 and 186 of Criminal Code should be applied in conformity with Article 66 of the Constitution.

*Languages:*

Azeri (official version), English and Russian (translation by the Court).