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in co-operation with

THE CONSTITUTIONAL COURT OF SLOVENIA

**THIRD CONFERENCE
OF SECRETARIES GENERAL
OF CONSTITUTIONAL COURTS
AND EQUIVALENT BODIES**

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REPORT

by Mr Arif ZEYNALOV

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First of all, I would like to express my gratitude for the invitation to participate in work of the conference devoted to very interesting questions, connected with perfection of activity of the staff of the Constitutional Courts. The actuality of the Conference is especially important and from the point of view of young created Constitutional Courts in the post soviet states.

From the moment of creation in Azerbaijan Republic of the independent state governed by the law, one of the problems which put before is the ensuring of the rights and freedoms of a person. For this reason, the basic purpose of legal reforms carried out in our country consists of finishing of normative-legal base in sphere of ensuring of the rights and freedom of the person to a level adequate to the international standards.

In connection with that the staff of the Constitutional Court in Azerbaijan is created rather recently, our participation at conference will certainly enrich knowledge of this area.

I ask for a permission briefly to stop on history of creation of the Constitutional Court and its staff.

The Constitutional Court has begun the activity in 1998. The basic purpose of Court consists in protection of the rights and freedom of the person and ensuring of leadership of the Constitution. The status of Court, its power and the order of activity are fixed in the Constitution, in the Law «On Constitutional Court», in the Rules of Procedure approved by the Constitutional Court.

According to the Law only 6 subjects (the state bodies) could apply with inquiry and the reference to the Constitutional Court. Presence of such limited circle of the subjects possessing the right of the reference in the Constitutional Court, was the reason of occurrence in practice of the certain problems, absence of an opportunity of rational use of this means of a legal protection especially for protection by citizens of the constitutional rights.

After carrying out of accepted changes in the Constitution of Azerbaijan Republic as a result of the referendum on August, 24th, 2002 the new stage in activity of the Constitutional Court of Azerbaijan Republic has begun. So, have been made changes to Article 130 of the Constitution of Azerbaijan Republic, which had been expanded the list of the subjects possessing the right to apply to the Constitutional Court. Courts have been included in the list of these subjects, and also private persons and Ombudsman.

On January, 8th, 2004 the new Law «On Constitutional Court» has come into force. It would be desirable to note that experts of the Venice Commission of the Council of Europe have drawn the positive conclusion on this law.

According to the new Law legal, organizational and informational maintenance of activity of the Constitutional Court of Azerbaijan Republic carries out by the reorganized Staff of the Constitutional Court.

In its work the Staff of the Constitutional Court is guided by the Constitution, Laws «On Constitutional Court», «On public service», other laws and normative-legal acts of Azerbaijan Republic, the Rules of Procedure of the Constitutional Court and other documents.

The general management of Staff of the Constitutional Court carries out by the Chairman of the Constitutional Court. A direct management carries out by the Head of the Staff, and in his absence by the deputy head of the Staff.

The Staff of the Constitutional Court of Azerbaijan Republic includes following structures: Department of Constitutional Law, Department of Human Rights; Department of Constitutional Review within Administrative, Criminal, Procedural and Reformatory Laws; Department of International Law; Department of Civil Law; Department of Reception of Complaints and Citizens; Sector of Supervision for Execution of Court Decisions; Sector of Systematization of Legislation; Sector of Organization of Court Sessions, Press service,

On behalf of Chairman and the Head of the Staff of the Constitutional Court, the Staff of the Constitutional Court carries out following activity:

- Provides for activity of the Constitutional Court and its Judges;
- Prepares information, conclusions and other information materials necessary for activity of the Constitutional Court;
- Provides the Constitutional Court with secretaries of court session;
- Conducts office-work of the Constitutional Court;
- Organizes and carries out the reception of citizens;
- In accordance with established procedure studies the complaints which have acted in the Constitutional Court;
- Provides registration and storage of documents of the Constitutional Court;
- Carries out assignments of Chairman of the Constitutional Court, the Deputy Chairman, connected with activity of the Constitutional Court, and the assignment of the Reporter-Judge on the case preparing for consideration in the Constitutional Court, and carries out other duties connected with activity of Court.
- Studies and generalizes practice of the Constitutional Court, and also bodies of the constitutional supervision of foreign countries, provides gathering the analytical information in a field of activity of the constitutional justice;
- Carries out the publication of decisions and rulings of the Constitutional Court, and also other materials connected with activity of Court;
- Cooperates with other state bodies carrying out execution of decisions of the Constitutional Court, studies and generalizes their activity in this sphere, and also participates in preparation of the information concerning execution of decisions.

The assignments connected with maintenance of work of judges, direct to structures of the Staff by the Reporter-Judge. At the same time structure of the staff inform the head of the Staff on assignments of the Reporter-Judge.

As it was noted, the important part of activity of the Staff is the maintenance of work of judges, reception of citizens and studying of their complaints, adjustment of relations with the public. Considering a special role of the staff in work with applicants and in activity of Court on consideration of individual applications, it would be desirable to stop in more detail on this question.

In general in Azerbaijan there is a most widely widespread form of the constitutional complaint - institute of the concrete individual complaint. This institute provides that for submission of the complaint to the Constitutional Court there should be a presence of infringements of the rights and freedom of the applicant the challenged act that is each individual complaint should start with a concrete case.

According to Article 130.5 of the Constitution everyone claiming to be the victim of a violation of his/her rights and freedoms by the normative acts of legislative and executive

bodies, municipal and judicial acts set forth in the items 1-7 of the Para III of this Article may appeal, in accordance with the procedure provided for by law, to the Constitutional Court of Azerbaijan Republic with the view of the restoration of violated human rights and freedoms. Similar provision also is expressed in the Law «On Constitutional Court».

The law by the term "everyone" has defined the broad audience of subjects of the constitutional complaint, persons having the right of submission of this complaint. This expression also includes legal and physical persons, citizens, and also foreigners and persons not having citizenship. But it is necessary to consider and that the individual complaint should be submitted only by the person, the rights and freedom of which are presumably broken.

The constitutional complaint can be submitted in case of infringement of the rights and freedom of the person by means of the corresponding act and with the purpose of restoration of the infringed rights and freedom. One of the important features of institute of the individual complaint presented to the Constitutional Court is that the Constitutional Court determines a question on presence or absence of infringement of the rights guaranteed by the law at a high level.

Other basic feature of the constitutional complaint consists that separate persons can appeal against not each act but only acts which list is determined by the legislation.

The list of questions which decision on the basis of the Constitutional complaint concerns to powers of the Constitutional Court is precisely established in the Constitution.

The complaint to the Constitutional Court of Azerbaijan Republic, can be submitted, as a rule after exhaustion of the right of the appeal of the judicial act; in current of six months from coming into force of the decision of court of last instance (the Supreme Court); and at infringement of the right of the reference in court, in current of three months from the moment of infringement of this right. According to this order before to address with the complaint to the Constitutional Court, the person should exhaust all other possible judicial means.

According to the Law, primary studying of the acted complaints carries out the Staff by way of, established by the Rules of Procedure of the Constitutional Court by which it is established, that primary studying of the complaint in the Staff is carried out during of 5 days. After receipt of the complaint in a Department of Reception of Complaints and Citizens correctness of its drawing up according to requirements of the Law «On Constitutional Court» is examined.

Information on primary studying the complaint is prepared in separate structures of the Staff and sign by the executor and deputy head of the Staff. In the given information basically are reflected the contents of the constitutional case and whether the information on that the complaint meets with requirements of the Law. The executor can bring in the information, and other conclusions connected with the complaint as which he considers necessary.

The analysis of the acted complaints shows, that in the majority they move without observance of requirements of articles of the Law «On Constitutional Court». At the same time, the part of applications and complaints goes directly to the Constitutional Court without exhaustion of the right of the appeal of judicial acts and without the reference in courts of the general jurisdiction. In this sense correspondence with applicants which conducts the Staff, serves prevention of artificial increase in volume of work of judges.

After primary studying by the staff, the complaint together with the prepared information is represented to Chairman of the Constitutional Court. Chairman of the Constitutional Court for submitting of the complaint to consideration of Chamber appoints one or several reporter-judges.

According to the Law the complaint, as a rule, within 30 days is placed for consideration Chambers of the Constitutional Court, definition about acceptance or about refusal in acceptance of the complaint in proceedings is accepted. This definition in current of 7 days sends to the applicant.

The staff of the Constitutional Court, alongside with individual complaints, participates also in studying inquiries and the references which have acted in Court. So, the reporter-judge if considers necessary, entrusts structures of the Staff to prepare the conclusion by inquiry and the reference accepted in proceedings. In the terms specified in this assignment, a corresponding department gives to the reporter-judge the proved conclusion on the given question. If the reporter-judge agrees with conclusions reflected in the conclusion he/she uses these conclusions when preparing of the decision.

As evident from the report, employees of structures, including assistants and secretaries of judges do not participate directly in designing decisions for judges of the Constitutional Court.

At the same time I should note that participation in work of Conference creates an opportunity to adopt an operational experience of other Constitutional Courts what positively to be reflected in activity of the staff.

Thank you for attention!