**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Articles 67, 70 of the Criminal Procedure Code and Articles 179, 181 of the Criminal Code of the Republic of Azerbaijan as to their Conformity with Article 66 of the Constitution of the Republic of Azerbaijan*

## 29 December, 1998 Baku city

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Haji­yev (Chairman), Judges: F.Babayev, B.Garibov, R.Gvaladze, E.Mamedov, S.Salmanova, А.Sulta­nov (Reporter Judge),

joined in the proceedings by: the Court Clerk I. Ismayilov;

N.Allahverdiyev, Deputy Prosecutor General of the Republic of Azerbaijan;

legal representatives of the subject interested in special constitutional proceedings: N.Safarov, Head of the Administrative and Military Legislation Department of Milli Majlis;

expert: F.Samandarov, Head of Criminal Law Board of the Law faculty of the Baku State University named after М.E.Rasulzade, doctor of jurisprudence, professor;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via special constitutional proceedings the case by the petition of the General Prosecutor's Office of the Republic of Azerbaijan of 30 November 1998 N 11/111 concerning the interpretation of Articles 67 and 70 of the Criminal Procedure Code of the Republic of Azerbaijan as to their conformity with Article 66 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge А.Sultanov, statements of the representatives of the interested subjects N. Allakhverdiyev and N. Safarov, conclusion of the expert F. Samandarov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In accordance with Article 66 of the Constitution of the Republic of Azerbaijan no one can be forced to testify against himself/herself, his/her wife/husband, children, parents, brother, sister.

Article 67 of the Criminal Procedure Code of the Republic of Azerbaijan prescribes that any person who knows any circumstances on case can be called to testify and he / she is obliged to give evidences he / she possesses and to characterise the personality of the accused.

Article 70 of the Criminal Procedure Code of the Republic of Azerbaijan stipulates that a witness and a victim shall bear responsibility under Article 181 of Criminal Code for refusal to testify and responsibility under Article 179 of Criminal Code for giving of wittingly false evidences.

In its petition the General Prosecutor's Office of the Republic of Azerbaijan asks to clarify the possibility to bring to the criminal responsibility under Articles 179 and 181 of Criminal Code of the Republic of Azerbaijan the persons listed in Article 66 of Constitution of the Republic of Azerbaijan in case of commitment of offences stipulated by mentioned Articles of the Criminal Code.

In connection with the petition, the official texts of the mentioned Articles of the Constitution of the Republic of Azerbaijan, Criminal Procedure Code of the Republic of Azerbaijan and Criminal Code of the Republic of Azerbaijan certified by Milli Majlis of the Republic of Azerbaijan are enclosed to the constitutional case.

From the materials of the case it is evident that:

Article 67 of the Criminal Procedure Code of the Republic of Azerbaijan stipulates a call of any person as the witness to testify who knows any circumstances on criminal case and the duty to give the evidences about circumstances he / she knows; Article 70 of Criminal Procedure Code stipulates the appropriate responsibility under Article 179 and 181 of Criminal Code of the Republic of Azerbaijan for refusal to testify and for giving of wittingly false evidences.

According to Article 66 of the Constitution of the Republic of Azerbaijan nobody can be forced to testify against himself/herself, wife (husband), children, parents, brother, sister.

In connection with these two issues it is necessary to take into account the following:

In accordance with Article 147 of the Constitution of the Republic of Azerbaijan, the Constitution of the Republic of Azerbaijan posseses the highest legal power.

The requirements of Article 66 of Constitution of the Republic of Azerbaijan serve to widen the application of humanistic principles inherent in a democratic society, prevention of disintegration of the related connection in Azerbaijan Republic, what has the great importance from universal and educational points of view for the rights and freedoms of the citizens and also serve for strengthening of family and blood relations.

Articles 67 and 70 of the Criminal Procedure Code of the Republic of Azerbaijan should be applied in conformity with Article 66 of Constitution of the Republic of Azerbaijan.

According to provisions of Article 66 of Constitution of the Republic of Azerbaijan the refusal of the persons listed in above-stated Article to testify or giving of false evidences by virtue of the blood relations during investigation on criminal case, cannot be the reason for bringing them to the responsibility under Articles 179 and 181 of Criminal Code of the Republic of Azerbaijan on the basis of Article 70 of the Criminal Procedure Code of the Republic of Azerbaijan.

At the same time, none of the constitutional provisions forbid a person to give voluntarily evidences concerning relatives. There are no barriers to bringing to the criminal responsibility for deliberate giving of false evidences by persons listed in Article 66 of Constitution of the Republic of Azerbaijan if someone of them gives evidences voluntarily. In connection with Article 66 of the Constitution of the Republic of Azerbaijan, when giving interpretation of Articles 67, 70 of Criminal Procedure Code of the Republic of Azerbaijan and Articles 179 and 181 of Criminal Code of the Republic of Azerbaijan it is necessary to mention Article 82 (non-informing of state crimes) and 180 (non-informing of crimes) of Criminal Code of the Republic of Azerbaijan.

Being interpreted on the basis of the General Prosecutor's Office's petition the issue is directly connected to non-informing of crimes.

Thus, bringing to the criminal responsibility of the persons listed in Article 66 of Constitution of the Republic of Azerbaijan for refusal to testify on crime committed by their close relatives, should be regarded as compulsion to testify.

On the basis of the above stated and being guided by Article 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Articles 67 and 70 of Criminal Procedure Code of the Republic of Azerbaijan, Articles 179, 181, 82 and 186 of Criminal Code of the Republic of Azerbaijan must be applied in conformity with Article 66 of Constitution of the Republic of Azerbaijan.

2. When applying Article 67.2 of Criminal Procedure Code of the Republic of Azerbaijan the requirement of Article 66 of Constitution of the Republic of Azerbaijan concerning prohibition of compulsion to testify against himself/herself, wife (husband), children, parents, brother, sister must be taken into account.

3. Any person refusing to testify against himself/herself, wife (husband), children, parents, brother, sister, if this person was forced to testify and has given the wittingly false evidences, cannot be brought to responsibility under Article 70 of the Criminal Procedure Code of the Republic of Azerbaijan and Articles 179 and 181 of Criminal Code of the Republic of Azerbaijan.

4. The person who cannot be forced to testify can be brought to responsibility under Article 179 of Criminal Code of the Republic of Azerbaijan for giving false testimonies in case when he/she testifies voluntarily.

5. Taking into account the provisions of Article 66 of Constitution of the Republic of Azerbaijan, the person, who cannot be forced to testify, cannot bear responsibility under Articles 82 and 186 of Criminal Code of the Republic of Azerbaijan for non-informing of the crime committed by some of the relatives listed within the above-stated Article of the Constitution of the Republic of Azerbaijan.

6. The decision comes into force from the date of its publication.

7. The decision is subject to publication in "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

8. The decision is final and cannot be cancelled, changed or interpreted by any body or official.