**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 409 of the Customs Code of the Republic of Azerbaijan*

# 17 March, 2000 Baku city

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

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

the legal representatives of the subjects interested in special constitutional proceedings: B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan; N. Bedirov, Senior Adviser of the Economic Legislation Department of Milli Majlis of the Republic of Azerbaijan; G. Muradov, Chief of the Department for Combat Against Smuggling and Infringements of the Customs Rules of the Customs Committee of the Republic of Azerbaijan:

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via the procedure of special constitutional proceedings the case submitted by the petition of the Supreme Court of the Republic of Azerbaijan of December 22, 1999 № 5 - 4/99 concerning the interpretation of Article 409 of the Customs Code of the Republic of Azerbaijan.

Having heard and discussed the report of Judge B.Garibov, statements of B.Asadov, N.Bedirov and G.Muradov, the legal representatives of the subjects interested in special constitutional proceedings, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition, the Supreme Court of the Republic of Azerbaijan seeks the interpretation of Article 409.1 of the Customs Code of the Republic of Azerbaijan that specifies that decision of the customs body of the Republic of Azerbaijan or its officials can be less favourable for the person who submitted the primary complaint.

In connection with the petition, copies of the official texts of Articles 400, 401, 409, 410 of the Customs Code of the Republic of Azerbaijan and Article 9 of the Law of the Republic of Azerbaijan “On the Procedure of Examination of Citizens’ Complaints” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the constitutional case.

The Constitutional Court of the Republic of Azerbaijan considers as expedient to analyse Article 409 of the Customs Code in the light of protection of the citizens’ rights and freedoms envisaged in the Constitution.

The customs legislation of the Republic of Azerbaijan provides for prejudicial procedure of examination of primary complaint and judicial procedure of examination of the secondary complaint.

According to Article 409 of the mentioned Code, the decision of customs body or its officials on the primary complaint shall be rendered in writing. For the person who submitted complaint the decision can be less favourable than the challenged one. The person who submitted complaint shall be notified about adopted decision.

It should be noted, that the physical and legal persons’ right to apply in the form of challenging decisions, activity (inactivity) of the state bodies and their officials is one of the basic institutes attributable to democratic state. The need to provide everyone with the right to apply to the state bodies or officials requiring to restore the violated rights originates from peculiarities of administrative and other legal relations based on an inequality of parties.

Among the basic rights and freedoms of a person and citizen envisaged in Article 57: “Citizens of the Republic of Azerbaijan have the right to appeal personally and also to submit individual and collective written applications to state bodies. Each application should be responded to in an established order and term. Citizens of the Republic of Azerbaijan have the right to criticize activity or work of state bodies, their officials, political parties, trade unions, other public organizations and also activity or work of individuals ...”

The right to apply is also reflected in the Law of the Republic of Azerbaijan “On the Procedure of Examination of Citizens’ Complaints”. In accordance with Article 9 of the Law, the citizen who is not satisfied with the decision adopted on his/her application or complaint has the right to challenge this decision to a body or official, which the body, organisation, enterprise or official who had adopted that decision is subordinated to.

By it’s legal nature the complaint as opposed to other forms of applications and appeals is such a legal means that is aimed at restoration of the violated, disputable subjective rights and interests.

At the same time the complaint promotes the realisation of specific control over activity of state bodies and their officials.

From this point of view, Articles 400, 401 of the Customs Code providing for the procedure of examination of primary complaint by higher level customs body and its officials promote opportune and urgent restoration of the violated rights and legal interests of persons as well as serve for elimination of offences which took place during execution and application of the Customs Code by lower level customs bodies and their officials.

As shown in Article 409 of the Customs Code, the decision adopted on the primary complaint should be mainly aimed at restoration of the violated rights of complainant. However, it is not also excluded that the decision can be less favourable for the person who submitted the complaint.

The indicated provisions promote not only the observance of legislation of the Republic of Azerbaijan in customs field but also create conditions for realisation of control over activity of lower level customs bodies and their officials as to application of the customs legislation.

Inequality of parties, examination of the complaint by customs bodies and their officials in absence of complainant and a possibility to adopt the less favourable decision regarding the person who submitted the complaint in prejudicial procedure do not exclude the erroneous settlement (resolution) of the case. Namely taking into consideration the above stated, the customs legislation does not consider the decision of customs bodies and their officials on primary complaint as final and provides for possibility of their second challenging via judicial procedure.

Legal guarantees of human rights and freedoms, enshrined in Article 60 of the Constitution of the Republic of Azerbaijan, are also reflected in Article 410 of the Customs Code of the Republic of Azerbaijan, according to which the secondary complaints related to realisation of customs control and customs registration, case proceedings on infringements of customs rules and in connection with consideration of cases of the same nature shall be referred to appropriate courts.

Based on the above stated the Constitutional Court of the Republic of Azerbaijan considers that the procedure of examination of the complaints of physical and legal persons provided by Article 409.1 of the Customs Code of the Republic of Azerbaijan does not restrict their constitutional rights and freedoms because the person who is not satisfied with the decision adopted in such procedure has the right for legal protection.

In accordance with Article 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 83, 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. In connection with prejudicial procedure of the examination of complaints provided by the Customs Code of the Republic of Azerbaijan the following must be taken into account:

- being the legal means for restoration of violated rights and interests, the primary complaint promotes also the realisation of control over activity of customs bodies and their officials;

 - provisions of Article 409.1 cannot be considered as restriction of the constitutional rights and freedoms, because Article 410 of the Customs Code provides for the right to apply to court and right for legal protection of persons who are not satisfied with the results of examination of the primary complaint

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

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

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