**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On the interpretation of Articles 26 and 96 of the Criminal Procedure Code of the Republic of Azerbaijan*

July 15, 2011 Baku city

The Plenum of the Constitutional Court of Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova, Fikret Babayev, Sudaba Hasanova, Rovshan Ismayilov, Jeyhun Garajayev (Reporter Judge), Rafael Gvaladze, Isa Najafov and Kamran Shafiyev,

attended by the Court Clerk I.Ismayilov,

legal representatives of interested subjects – Sahibhan Mirzoyev and Jamal Ramazanov, Judges of the Supreme Court of the Republic of Azerbaijan, Fuad Mammadov, Chief Adviser of the Department of Administrative and Military Legislation of the Milli Majlis of the Republic of Azerbaijan,

expert – D.L. Firuza Avvasova, Head of Chair of Criminal Procedure of Faculty of Law of the Baku State University

specialist – Shahin Yusifov, Chairman of Criminal Board of the Supreme Court of the Republic of Azerbaijan

in accordance with Part VI of Article 130 of the Constitution of the Republic of Azerbaijan has examined in open court in the order of a special constitutional court proceedings constitutional case at the request of the Court of Appeal of Baku city.

Having heard the report of Judge Jeyhun Garajayev, reports of interested subjects and specialists, examining and discussing the materials of the case, Plenum of the Constitutional Court of Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Court of Appeal of Baku city has applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as Constitutional Court) in connection with interpretation of Articles 26 and 96 of the Criminal Procedure Code of the Republic of Azerbaijan (hereinafter referred to as CPC).

It is specified in appeal that by a sentence of Garadag disctrict court of Baku city of 14 July 2010 A.Gasanova is recognized guilty of a commission of crime, provided by Articles 177.2.1 and 177.2.2 of the Criminal Code of the Republic of Azerbaijan (hereinafter referred to as CC), and is sentenced to punishment in the form of imprisonment for a period of 5 (five) years. By a judgement of the Hatayi disctrict court of Baku city concerning her conditional early release from punishment of 22 April 2009 according to article 76.6.3 of CC was cancelled, part of the punishment sentenced by Ali-Bayramli city court of 21 August 2007, according to article 67.1 of CC, is united with the present sentence and definitive punishment in the form of imprisonment for a period of 5 (five) years 6 (six) months is kept.

A.Gasanova, having lodged an appeal petition to a sentence in a part, concerning her, asked to reconsider case, but did not challenge questions of proof and qualification of a crime.

The Criminal Board of the Court of Appeal of Baku city (hereinafter referred to as CB of the Court of Appeal of Baku) by its decision of 8 September 2010 leave without change the sentence of Garadakh disctrict court of Baku city of 14 July 2010, and the appeal complaint was not satisfied.

Further, the Criminal Board of the Supreme Court of the Republic of Azerbaijan (hereinafter referred to as CB of the Supreme Court), has come to a conclusion that during the investigation concerning A.Gasanova, serious criminal-procedural infringements have been admitted, and by the decision of 26 January 2011has cancelled decisions of CB of the Court of Appeal of Baku of preliminary consideration of 30 August 2010 and by definitive judicial consideration of 8 September 2010, has returned case to the Court of Appeal of Baku on new consideration in a stage of preliminary consideration.

In abovementioned decision of CB of the Supreme Court it is specified that suspected or accused person who unaware the Azerbaijan alphabet with a Roman type, documents should be presented on Cyrillic alphabet which he can read. So, in the report of interrogation of the accused A.Gasanova, having declared that she freely reads in the Azerbaijan language with a Roman type, but is at a loss in the letter, asked to write her indications on the computer on Cyrillic alphabet. In the given decision also it is noticed that the foreigner who unaware state language of the proceedings of a court and the Azerbaijanian who unaware Azerbaijan alphabet with a Roman type on which proceedings of a court are made, in reality are in identical position. As the foreigner who unaware language of proceedings of a court and the Azerbaijanian who unaware a Latin, is deprived possibility to read, understand proceedings of a court, and thus to be effectively protected from the brought charge. For this reason, in decision of CB of the Supreme Court it is specified that according to Article 26.2.2 of CPC the right of suspected or accused person who not able to read in the Azerbaijan language with a Roman type, to use the help of the expert of reading documents, made on the given alphabet, should be provided in the same order in which the right of the participant of the process which is unaware language is provided, to the aid the interpreter, and absence of this is considered as infringement of the requirement of Article 26 of CPC.

In turn, the Court of Appeal of Baku in the appeal has noticed that there is an uncertainty in connection with application of the norms regulating requirements of CPC concerning of the proceedings of a court.

So, on sense of corresponding norms of CPC, the participant of the process having the right to the help of the interpreter is not a person who unaware the alphabet of proceedings of a court but a person who unaware a language entirely. For this reason, from the point of view of requirements of Article 26 of CPC to identify procedural position of these two persons it would be incorrect. At the same time, to consider the person, not able to write on the Azerbaijan language with a Roman type, illiterate, also it is wrong. Unlike the foreigner who unaware language, the Azerbaijanian who unaware the Roman type, during proceedings speaks and expresses in the native language, can submit petitions concerning corresponding procedural actions in a native language.

Along with it, it has been specified in appeal that the translation function of documents from the Roman type on Cyrillic is not provided by Article 96 of CPC defining the procedural status of expert in criminal trial.

According to opinion of applicant, official interpretation of Articles 26 and 96 of CPC will create soil for formation of uniform judiciary practice in connection with noted questions.

Concerning the question putted in appeal Plenum of the Constitutional Court considers necessary to note the following.

The purpose of the criminal procedure legislation of the Republic of Azerbaijan consists in definition of legal procedures of criminal prosecution and protection of suspected or accused persons, committed a crime. The CPC, defining these procedures, provides presence at the person committed a crime of the equal (balanced) possibilities in the course of bringing to criminal liability. So, in the legislation legal grounds concerning equal possibilities between the charge and protection parties are defined.

In realization of criminal trial language is one of special means. The knowledge of language on which criminal legal proceedings are conducted, creates possibility for suspected or accused persons to protect the positions and interests. The insufficient knowledge of an official language of proceedings of a court creates certain difficulties for the defence party. From this point of view, the language principle on which the criminal legal proceedings are conducted, specified in Article 26 of CPC, should be carried out according to principles of legal equality of everyone before the law and court (Article 11 of CPC), guarantee of the right to legal aid and the right to conduct defence (Article 19 of CPC) and other principles.

The international legal acts in the field of human rights mark knowledge by suspected or accused person language of proceeding as one of considerable and important means for effective realisation of the protection by it. In subparagraphs "a" and «f» point 3 of Article 14 of the International Covenant «On civil and political rights» it is noticed that everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

According to point 2 of Article 5 of the Convention for the protection of human rights and fundamental freedoms (hereinafter referred to as Convention), everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. In the subparagraph "a" of point 3 of Article 6 of the Convention it is underlined that everyone charged with a criminal offence should be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.

The criminal-procedure requirements of the international norms connected with language are provided for full and an effective usage of means of protection by each person accused of a crime.

For realisation of the right to protection in CPC a number of the rights providing direct acquaintance of accused person with documents, available in criminal case materials (Articles 91.5.2, 91.5.3, 91.5.18, 91.5.20-91.5.23 etc. of CPC) are established. Direct (personally) realisation of the given rights depends on knowledge of suspected or accused person of language on which criminal legal proceedings are conducted, and also its abilities to read and get acquainted with the documents in given language. In turn, Article 92.3.4 of CPC has assigned to the body which is carrying out criminal trial, a duty to provide suspected and accused person unaware a language by counsel for the defence, but there are not similar provisions in CPC concerning the persons who are unaware the Azerbaijan alphabet with a Roman type on which proceeding is conducted, or absolutely illiterate persons.

It is necessary to consider that it is inadmissible to identify the procedural status of the persons knowing the Azerbaijan language, but not able read the documents in a Roman type which can to read the documents in Cyrillic, with the persons provided in Article 26.2 of CPC. Article 26 of CPC extends on persons who at all unaware the Azerbaijan language, or know this language partially and do not understand it completely.

Being a symbol of the Republic of Azerbaijan, the Azerbaijan language is one of the basic signs of its independence. Language of the Azerbaijan people one of the primary factors defining its national life.

According to Article 21 of the Constitution, Azerbaijanian language is official language of the Azerbaijan Republic. Azerbaijan Republic provides development of the Azerbaijanian language.

In point 9 of the Decree of the President of the Republic of Azerbaijan «On improvement of application of a state language» N 506 of June 18, 2001 it is offered to provide till 1 August 2001 a convert into the Roman type production of all newspapers, magazines, bulletins, books and other printed matter published in the Azerbaijan language. In the given Decree it is noticed that kinds of responsibility for conducting in the Republic of Azerbaijan of secret or open propagation against a state language, rendering of resistance to the use and development of the Azerbaijan language, attempts of restriction of its rights, preventing to application of a Roman type should be defined.

According to the given Decree in the Code of Administrative Offences of the Republic of Azerbaijan responsibility is provided. According to Article 315.1 of the given Code an administrative penalty is defined for conducting in the Republic of Azerbaijan of propagation against a state language, rendering of resistance to application and development of the Azerbaijan language, attempt of restriction of sphere of its use, and also creation of hindrances to application of the Latin alphabet of the Azerbaijan language.

According to Article 14 of the Law of the Republic of Azerbaijan «On a state language in the Republic of Azerbaijan» of 30 September 2002, the alphabet of a state language of the Republic of Azerbaijan is the Azerbaijan alphabet with a Roman type. In Article 11.4 of the given Law it is noticed that criminal court proceedings of the Republic of Azerbaijan are conducted in a state language. Considering historical development of Azerbaijan, in Article 15.3 of the given Law it is underlined that the Arabian alphabet and Cyrillic, played an important role in the history of the Azerbaijan culture of writing, can be used in special cases (in dictionaries, as the literature index in scientific editions and so forth). Noted unusual cases do not concern an official usage of modern Azerbaijan language with a Roman type.

Considering stated the Plenum of the Constitutional Court considers that in criminal court proceeding strict observance of requirements of Article 21 of the Constitution, Article 26 of CPC, and also corresponding norms of the Law «On a state language in the Republic of Azerbaijan» and the Decree «On improvement of application of a state language» should be provided.

As evident from the appeal, in case of conducting of criminal court proceeding on territory of the Republic of Azerbaijan in a state language, the procedural status of the person knowing the Azerbaijan language, but not able to read the alphabet of a Roman type, it is not covered by concept «the participants of criminal trial who unaware language of conducting of criminal court proceedings» and as the procedural help rendered to the given person is not translation process, in practice the expert is appointed to person but not a translator. Thereby practice of maintenance of participation of the expert in criminal trial for acquaintance with materials on criminal prosecution of persons who not able to read the documents on a Roman type was generated.

Thereupon it is necessary to note that an imperativeness of maintenance of the interpreter or the expert for suspected or accused person, knowing oral Azerbaijan language, but unaware the alphabet with a Roman type is not provided in CPC. It has the objective reasons. In Article 7.0.29 of CPC the expert and the interpreter are specified among other persons participating in criminal proceeding, and in criminal trial their other functions and purpose is defined. So, according to Article 96.1 of CPC the expert is a person who has no personal interest in the proceedings, appointed by the prosecuting authority to assist in investigative and other procedures through his special knowledge and skills in science, technology, the arts and other professional fields, with his consent. For example, a teacher who participates in questioning an under-age victim, suspect, accused or witness shall be considered as a specialist. A specialist may be appointed from the list of persons suggested by the parties to the criminal proceedings. The expert can be appointed from among the persons offered by participants of criminal trial. According to Article 99.1 of CPC, the translator is the person who has no personal interest in the criminal proceedings and is appointed with his consent by the prosecuting authority to translate the case documents as well as all the verbal exchanges held during court hearings and investigative or other procedures. The interpreter may be appointed from the list of interpreters proposed by the parties to the criminal proceedings.

Apparently, on sense of noted norms of CPC, a task of interpreter is translation from one language to another and the expert is rendering assistance to criminal trial realisation, using special knowledge and abilities. In Articles 26.2, 90.7.11, 90.7.12, 91.5.11, 91.5.12, 99.1 and 99.2 of CPC appointment of the interpreter only concerns the person who unaware language on which criminal legal proceedings are conducted is defined. On request of Article 99.2 of the given Code, the interpreter should have fluent knowledge of the language used during the court proceedings and the target language.

Plenum of the Constitutional Court note that in criminal trial the informing of the contents of the documents made in a state language is necessary, for the person knowing oral Azerbaijan language, but unaware the alphabet with a Roman type. At first sight inevitability of conducting the given process on a transliteration is available. The transliteration is a writing of letters of one alphabet letters of other alphabet. There are kinds, principles and transliteration rules in science of language. The transliteration is a process in which words in one alphabet are represented in another alphabet. The philologists possessing special knowledge in science of language can make more authentic transliteration of texts.

For convert from old Cyrillic to the modern Roman type of the Azerbaijan language special knowledge is not required. So, knowledge of experts in a transliteration has already been used at transition of the Azerbaijan language from Cyrillic to the Roman type. Process of transition from Cyrillic to the Roman type of the Azerbaijan language has come to the end and already there are rules of a writing of the Azerbaijan words on Cyrillic by Roman type.

Plenum of the Constitutional Court underlines that to a question on the informing of the contents of the documents made in an official state language, suspected or accused person, not knowing the given alphabet with a Roman type, it is necessary to approach from the point of view of means of effective realization of protection. In criminal justice to the suspected or accused person should have adequate time and facilities for the preparation of his defence. These means include the following: acquaintance with case materials; clearly understand the charges brought against him; to raise any procedural demand etc.

In the decision on case of Kamasinski v. Austria of 19 December 1989 the European Court of Human Rights in connection with infringement of the paragraph 3 (a) of Article 6 of the Convention has declared that the help of the interpreter should be such which will allow accused person to understand in detail, of the nature and cause of the accusation against him and to protect himself, in particular, to put forward the position before court. Nevertheless, the European Court of Human Rights has noted that by granting to applicant a lawyer speaking in language of conducting of justice for the purpose of protection, the state fulfils requirements of the paragraph 3 (a) of Article 6.

More effective help to suspected or accused person, knowing oral Azerbaijan language, but unaware its alphabet with a Roman type can render his lawyer (advocate). A member of Bar of the Republic of Azerbaijan, participating in criminal trial, knowing a state language perfectly, acts in interests of defense.

From this point of view the Plenum of the Constitutional Court considers that the body conducting the criminal proceeding, in interests of justice is obliged to provide counsel for the defence for suspected or accused person who know oral Azerbaijan language, but unaware the alphabet with a Roman type.

According to the legal position generated in the decision of Plenum of the Constitutional Court “On Interpretation of some provisions of Article 92.12 of the Criminal Procedure Code of the Republic of Azerbaijan of 20 May 2011, right to protection along with guarantees of legitimate interests of the person, also is a guarantee of interests of justice, social value. Since legal relationship arisen in connection with maintenance to everyone the rights to obtain the legal assistance, reflect in themselves public interests, they lean against execution of the constitutional obligations assigned in this area on the state. And it, if necessary, demands acceptance by the state of positive measures for protection of the rights of the person. In this sense, necessity of maintenance of the right of the accused person on obtain of the qualified legal assistance serves for full, objective and comprehensive trial of facts of the case and as a result is directed on effective realization of justice.

In the decision on case of Lagerblom v. Sweden of 14 January 2003 the European Court of Human Rights has noted that the authority conducting the criminal proceeding, at own discretion appointing of counsel for the defence for suspected or accused person, should consider concrete circumstances of case.

Plenum of the Constitutional Court considers that, despite knowledge of person of language of conducting of criminal proceeding, deprivation of its access to documents, by their direct perusal, because of unaware of the Azerbaijan alphabet with a Roman type on which procedural documents are made are limits his procedural rights. Procedural position of the persons who do not know the certain drawing of the letter, and the persons who do not know language, should not be estimated equally. But ensuring of the rights of the persons who are not know a Roman type, should not be less than ensuring of the rights of the persons who are not know language of conducting of criminal proceeding. The authority which are conducting criminal trial should provide an counsel for the defence for suspected or accused person being in such situation.

According to the aforesaid, Plenum of the Constitutional Court comes to such conclusion:

- In criminal proceeding strict observance of requirements of abovementioned norms of article 21 of the Constitution, article 26 of CPC, and also the Law «On a state language in the Republic of Azerbaijan» and the Decree «On improvement of application of a state language» should be provided;

- In criminal proceedings suspected or accused person, who know a state language of the Republic of Azerbaijan, but do not know alphabet of this language with a Roman type, for interests of justice should be provided by the defense counselor.

Being guided by part VI of article 130 of the Constitution of the Republic of Azerbaijan, articles 60, 62, 63, 65-67 and 69 Law of the Republic of Azerbaijan «On the Constitutional Court», Plenum of the Constitutional Court of the Republic of Azerbaijan

**D E C I D E D:**

 1. In criminal proceeding strict observance of requirements of abovementioned norms of article 21 of the Constitution, article 26 of CPC, and also the Law «On a state language in the Republic of Azerbaijan» and the Decree «On improvement of application of a state language» should be provided.

2. In criminal proceedings suspected or accused person, who know a state language of the Republic of Azerbaijan, but do not know alphabet of this language with a Roman type, for interests of justice should be provided by the defense counselor.

3. The decision shall come into force from the date of its publication.

4. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.