ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Conformity of Article 32 of the Criminal Code of the Republic of Azerbaijan with*

*Article 29.4 of the Constitution of the Republic of Azerbaijan*

## 12 January, 1999 Baku city

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

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

the legal representative of the subject that submitted a petition: N. Allahverdiyev, Deputy Prosecutor General of the Republic of Azerbaijan; N. Safarov, Head of Military and Administrative Legislation Department of Milli Majlis of the Republic of Azerbaijan;

the legal representative of the respondent party: professor F. Samandarov, Expert, Doctor of Law, Head of Criminal Law Board of Baku State University named after M.E. Rasulzade; V. Nazarov, member of the Supreme Court; N. Nabiyev, Specialist of Legislation Department of the Ministry of Justice of the Republic of Azerbaijan;

being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan has examined the case by the petition of the General Prosecutor’s Office of the Republic of Azerbaijan concerning the conformity of Article 32 of the Criminal Code of the Republic of Azerbaijan with Article 29.4 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge B. Garibov, statements of N. Allahvediyev and N. Safarov, legal representatives of the parties, conclusion of expert F. Samandarov, opinions of specialists V. Nazarov and N. Nabiyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to Article 29.4 of the Constitution of the Republic of Azerbaijan everyone has the right to private property. Property right including right to private property is protected by law.

Article 32 of the Criminal Code of the Republic of Azerbaijan prescribes that confiscation of property consists of compulsory gratuitous withdrawal in favor of the State of all or part of property belonging to condemned person.

In its petition the General Prosecutor’s Office asks for verification of conformity of Article 32 of the Criminal Code of the Republic of Azerbaijan with Article 29.4 of the Constitution of the Republic of Azerbaijan.

In connection with the petition, the official text of Article 32 of the Criminal Code of the Republic of Azerbaijan, the copies of Universal Declaration of Human Rights, Law of the Republic of Azerbaijan “On Return By Way of Amnesty of the Dwelling Houses Confiscated and Withdrawn by Courts of the Republic of Azerbaijan”, the List of property which is not subject to confiscation by the court judgement authorized by Decree of the Presidium of Supreme Council of the Republic of Azerbaijan on 15 September 1980 are enclosed to the case.

The property right is one of the mostly recognized fundamental rights and corner stone of democratic, legal state fixing supreme human values. The universal human value of property right was reflected within range of international documents.

Article 17 of Universal Declaration of Human Rights adopted by UN on 10 December 1948 states: «Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his/her property». The Constitution of the Republic of Azerbaijan recognizes and protects the property right. Among other provisions on fundamental human rights and freedoms reflected in the Constitution of the Republic of Azerbaijan, there are Articles those regulate the property right including the right for private property.

It is envisaged in Article 13.1 of the Constitution of the Republic of Azerbaijan that the property is inviolable and protected by State.

Formerly, the confiscation of property was one of the bases of criminal law. The Criminal Code of the Republic of Azerbaijan adopted on 8 December 1960 provides for confiscation as an additional measure of punishment.

According to criminal legislation the punishment is not only retribution for committed crime but is also aimed at the correction and education of condemned persons as well as the prevention of new crimes.

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

Thus, the confiscation of all property aggravates the status not only of condemned person but also his/her dependents, old parents, wife (husband) and infringes their ownership.

Keeping this in mind and proceeding from principles of justice and humanism, the Supreme Council of the Republic of Azerbaijan adopted on 6 November 1991 the Law “On Return By Way of Amnesty of the Dwelling Houses Confiscated and Withdrawn by Courts of the Republic of Azerbaijan”.

It is necessary to note that in accordance with Article 32.4 of the Criminal Code of the Republic of Azerbaijan the subjects, which are necessary for condemned person and his/her dependents are not subject to confiscation. In such situation the confiscation provided by Article 32.1 of the Criminal Code of the Republic of Azerbaijan has formal character.

Taking into account the above mentioned, the provisions of Article 32 of the Criminal Code of the Republic of Azerbaijan concerning compulsory gratuitous confiscation of all private property of the condemned person in favor of State can not be considered as conforming to Article 29.4 of the Constitution of the Republic of Azerbaijan.

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

However, when imposing confiscation it is necessary to take into account the requirements of provisions of the Constitution of the Republic of Azerbaijan protecting the ownership.

Confiscation of property should not be inverted on condemned person’s property obtained on legal grounds and should not infringe the ownership of his/her dependents.

Otherwise, its application cannot be considered as conforming to principle of presumption of innocence fixed in Article 63 of the Constitution of the Republic of Azerbaijan.

Thus, proceeding from requirements of Article 13 and 29 of the Constitution of the Republic of Azerbaijan, Article 32 of the Criminal Code of the Republic of Azerbaijan and sanctions of Articles of the Special Part of the mentioned Code providing the confiscation of property as additional punishment should cover only the weapons and means of crime as well as the property obtained by criminal way.

On the basis of the above stated and being guided by Article 130.4 and 130.7 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 82, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognize the provision of Article 32 of the Criminal Code of the Republic of Azerbaijan concerning compulsory gratuitous withdrawal of all property belonging to condemned person in favor of State as not conforming to Article 29.4 of the Constitution of the Republic of Azerbaijan.

2. To recognize the provisions of Article 32 of the Criminal Code of the Republic of Azerbaijan concerning compulsory gratuitous withdrawal of all property, which belongs to condemned person in favor of State as null and void from the date this decision comes into force.

3. The confiscation of property as additional punishment provided by Article32 of the Criminal Code of the Republic of Azerbaijan can cover only the weapons and means of crime as well as property obtained by criminal way.

4. The decision comes into force from 1 February 1999.

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

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