### ON BEHALF Of THE REPUBLIC OF AZERBAIJAN

## DECISION

### OF The Constitutional Court

### of THE REPUBLIC OF AZERBAIJAN

*On Determination of the Procedure of Consideration by Courts of Complaints*

*Concerning Application by Person, Making Inquest, Investigator or Prosecutor*

*of Detention as a Measure of Suppression*

# 12 May, 1999 Baku city

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Hajiyev (Chairman), Judges: F.Babayev, B.Garibov, R.Gvaladze (Reporter Judge), 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: Ch.Bashirov, Deputy Chairman of the Supreme Court of the Republic of Azerbaijan and M.Agazade, Judge of the Supreme Court of the Republic of Azerbaijan;

the specialists: Kh.Veliyev and N.Allahverdiyev, Deputies to the Prosecutor General of the Republic of Azerbaijan;

the experts: professor D.Movsumov, Head of Criminal Procedure Board of Baku State University and professor A.Abbasguliyev, Head of Civil Procedure and Environmental Law Board of Baku State University;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the case by the petition of the Supreme Court of the Republic of Azerbaijan of 3 March 1999 N 5-1/99 on interpretation of possibility of consideration in framework of Articles 243-1-243-7 of Civil Procedure Code of the Republic of Azerbaijan of complaints concerning application by person, making inquest, investigator or prosecutor of detention as a measure of suppression.

Having heard and discussed the report of Judge R.Gvaladze, the statements of legal representatives of the interested subjects Ch.Bashirov and M.Agazade, specialists Kh.Veliyev and N.Allahverdiyev, opinions of experts D.Movsumov and A.Abbas­gu­liyev, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Supreme Court of the Republic of Azerbaijan, considering as indisputable the right of courts to examine the complaints concerning the applied measure of suppression – detenti­on, asks to give interpretation on possibility of consideration of such complaints via proce­du­re determined by Articles 243-1-243-7 of the Civil Procedure Code of the Republic of Azerbaijan.

In connection with a petition the copies of official texts of Article 60 and Article 71.7 of the Constitution of the Republic of Azerbaijan, Articles 56, 83, 89 and 231 of the Criminal Procedure Code of the Republic of Azerbaijan certified by Milli Majlis of the Republic of Azerbaijan are enclosed to case.

The Constitutional Court of the Republic of Azerbaijan notes the following:

Article 28.1 of the Constitution of the Republic of Azerbaijan provides that "Everyone shall have the right to freedom". According to para II of the same Article of the Constitution the right for freedom shall be limited by detention, arrest or imprisonment via procedures stipulated by the Law only.

The detention as a measure of suppression is regulated by Articles 11, 84 and 89 of the Criminal Procedure Code of the Republic of Azerbaijan. It is envisaged in these Articles, that the detention as a measure of suppression can be applied regarding the person suspected in commission of crime or, on the basis of judicial decision only, the accused person or by the prosecutor’s authorization. This emphasizes the inadmissibility of arbitrary detention and having conferred the citizens with right to personal immunity, the legislator has set up the guarantees of this right, having provided the suspected and accused person with right to complain of illegality and groundlessness of the detention.

In Article 83.4 and 54 of the Criminal Procedure Code of the Republic of Azerbaijan it is specified, that the person imprisoned before bringing of indictment and the accused person have the right to complain of actions and decisions of the person making inquest, investigator or prosecutor.

In Article 231 of the Criminal Procedure Code of the Republic of Azerbaijan it is provided that the complaint of actions and decisions of the prosecutor shall be lodged with the higher level prosecutor. This rule relates to application of measure of suppression as well. However, the Criminal Procedure Code does not provide for complaining to courts of actions and decisions of the person making investigation, inspector or prosecutor, including application of the detention.

This does not conform to Article 60 and Article 71.7 of the Constitution of the Republic of Azerbaijan, which guarantee the judicial protection of the human rights and freedoms, solving by courts the disputes, connected with violation of rights and freedoms.

The possibility to complain to court of application of the detention is provided by international law documents. Thus, in Article 9.3 of “The International Covenant on Civil and Political Rights” it is noted:

"Everyone arrested or detained on criminal accusation shall be urgently delivered to judge or other official, who possesses under the law with right to carry out judicial authority, and has the right to judicial proceeding during reasonable term or to be released".

Taking into account that according to Article 147.2 of the Constitution of the Republic of Azerbaijan the Constitution of the Republic of Azerbaijan has the direct legal force, Articles 60 and 71.7 of the Constitution of the Republic of Azerbaijan must be applied directly.

It was aforementioned that there was posed a question in petition concerning the possibility for courts to consider the complaints of applied detention as a measure of suppression via procedure stipulated by Articles 243-1-243-7 of the Civil Procedure Code of the Republic of Azerbaijan.

In this regard, it is necessary to keep in mind that in criminal procedure legislation there is provided for procedure of complaining and consideration of the complaints by the higher level prosecutor as to the application of detention. However, the procedure of lodging of complaints with court concerning this matter and procedure of consideration of such complaints by court are not stipulated.

According to the Law of the Republic of Azerbaijan of 7 October, 1992 "On Temporary Preservation of Legal Force of Laws of Former USSR On the Territory of the Republic of Azerbaijan and Procedure of Their Application" the Law of the former USSR of 2 November, 1989 "On the Procedure of Complaining to Courts of Wrongful Actions of Bodies of State Management and Officials Infringing the Rights of Citizens" still keeps the legal force on the territory of the Republic of Azerbaijan. However, the complaints on application of the detention can not be considered in framework of procedure established by the mentioned Law. According to Article 3 of this Law, actions of bodies of state management and officials can not be challenged to court according to the present Law if the laws of USSR and allied Republics stipulate other procedure of their challenging. The same norm is provided by Civil Procedure Code of the Republic of Azerbaijan (Article 243-3)

As it was mentioned above, the Criminal Procedure Code of the Republic of Azerbaijan provides in Article 231 the special procedure of challenging of prosecutor’s actions. On these grounds, the complaint on application of the detention can not be considered by courts via procedure determined by appropriate Articles of the Law of the former USSR and the Civil Procedure Code of the Republic of Azerbaijan. Besides this, the criminal-procedure actions can not be regulated by rules of civil procedure.

According to Article 94.1.1 and 94.1.6 of the Constitution of the Republic of Azerbaijan it is Milli Majlis of the Republic of Azerbaijan who determines general rules on enjoying of human and civil rights and freedoms, state guarantees of these rights and freedoms, legal proceedings and execution of the judicial decisions.

While resolving this question, it is necessary to take into account its importance and urgency, the requirements of the Constitution of the Republic of Azerbaijan and international law documents concerning consideration of the complaints in urgent procedure, inadmissibility to enter into discussion concerning the guiltiness of the detained person during verification by court of legality and validity of application of the detention as well as inadmissibility of participation of the same judge in verification of legality and validity of application of the detention and in subsequent consideration of the case.

On the basis of the above stated and being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80 - 83 and Article 85 of the Law of the Republic of Azerbaijan "On Constitutional Court", the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. According to Article 94.1.1 and 94.1.6 of the Constitution of the Republic of Azerbaijan, the procedure of submission and consideration of complaints by courts on application of detention by person making inquest, investigator or prosecutor as a measure of suppression shall be determined by Milli Majlis of the Republic of Azerbaijan.

To recommend to Milli Majlis of the Republic of Azerbaijan to speed up the determination of this procedure.

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

3. The decision is subject to publication in “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.