# ON BEHALF of THE Republic OF Azerbaijan

**DECISION**

**OF The Constitutional Court**

**of THE Republic OF Azerbaijan**

### *On Participation of a Victim in Criminal Procedure*

## 4 June, 1999 Baku city

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

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

legal representative of the subject interested in special constitutional proceedings: Ch. Bashirov, Deputy Chairman of the Supreme Court of Republic of Azerbaijan, Professor D. Movsoumov, Expert, Doctor of Law, Head of Criminal Procedure Board of Law Faculty of Baku State University named after M.E. Rasulzade;

being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via special constitutional proceedings the petition N 5-1/99 of 29 March 1999, submitted by the Supreme Court of the Republic of Azerbaijan concerning interpretation of issue related to participation of a victim in court debates.

Having heard and discussed the report of Judge F. Babayev, statements of Ch. Bashirov, legal representative of the subject interested in special constitutional proceedings, conclusion of expert D. Movsoumov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 316 of the Criminal Procedure Code of the Republic of Azerbaijan determines the order (procedure) of court debates - independent part of judicial proceedings following after the termination of judicial investigation. According to para I of this Article the court debates consist of speeches of public prosecutor, prosecutor, civil plaintiff, civil respondent or their representatives, public counsel, counsel or defendant himself/herself, if the counsel does not participate in court session. Para II of same Article regulates the right of a victim and his/her representative to participate in court debates on cases concerning crimes stipulated in Article 106.1 of Article 108.1 and 108.2 of Article 121, Article 122 of the Criminal Code of Republic of Azerbaijan. Thus, the victim in fact is deprived of rights to participate in court debates, except for criminal cases instituted upon victim’s application.

The petition contains the request for interpretation of issue concerning the possibility of participation of a victim’s participation in court debates.

In connection with a petition, the official text of Articles 49 and Article 316 of the Criminal Procedure Code of the Republic of Azerbaijan authorized by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to case.

The Constitutional Court of the Republic of Azerbaijan considers the following to be noted:

According to Article 68.1 of the Constitution of Republic of Azerbaijan, rights of the person suffered from crime and also from usurpation of power are protected by law. The victim (suffered person) has the right to take part in administration of justice and demand for compensation of losses. In accordance with Article 60.1 of the Constitution of Republic of Azerbaijan, legal protection of rights and freedoms of every citizen is ensured.

Article 8 of Universal Declaration of Human Rights adopted by UN on 10 December 1948, proclaims: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law".

According to Article 127.4 of the Constitution of the Republic of Azerbaijan the justice shall be administered on the basis of equality of citizens before the law and law court.

Article 49.1 of the Criminal Procedure Code of the Republic of Azerbaijan provides, that a person upon whom moral, physical or property damage was inflicted shall be regarded as victim.

Whereas, with the view to protect his/her legal interests and to remove the damage caused by crime the victim shall possess the appropriate rights on a level with other participants of criminal procedure.

According Article 316.2 of the Criminal Procedure Code of the Republic of Azerbaijan on cases concerning crimes stipulated in Articles 106.1 of Article 108.1 and 108.2 of Article 121, Article 122 of the Criminal Code of the Republic of Azerbaijan the right to participate in court debates is conferred to the victim and his/her representative.

Hence, the victim as a Party in judicial proceedings is deprived of possibility to enjoy the above mentioned, except for criminal cases instituted upon application submitted by the victim himself/herself.

The private interest of the victim consists in restoration of all of his/her rights violated by crime, in protection of honour and dignity of the person, compensation of the caused material, physical and moral damage. At the same time, Article 316.1 of the Criminal Procedure Code of the Republic of Azerbaijan provides the victim with right to protect during court debates only the property interests as the civil plaintiff, but in case of moral and physical damage he/she actually loses an opportunity of realization of the specified right.

The stated position of legislator restricts the rights and freedoms of victim envisaged in Article 68 of the Constitution of Republic of Azerbaijan. The victim, besides those mentioned in Article 105.1 and 105.2 of Criminal Procedure Code of the Republic of Azerbaijan and in other cases, is interested in disclosing of crime, establishment of true, unmasking of an offender and fair punishment for committed offence. Taking into account the victim’s position, he/she (victim) in fact represents a Party resisting the defendant.

The importance of implementation by victim of his/her rights in criminal procedure is connected also with the fact that law does not require obligatory participation of prosecutor in proceedings on all criminal cases. It violates the principles of judicial competition of procedure and equality of the parties in proceedings. The realization of a principle of competition in criminal procedure promotes the complete and thorough verification of all circumstances of case, influences on formation of internal convictions of judges, objective and correct estimation of the collected proofs, on legality and validity of the rendered decision.

The Constitutional Court of the Republic of Azerbaijan comes to conclusion that the provisions of Article 316.2 of the Criminal Procedure Code of the Republic of Azerbaijan do not correspond to Article 60.1, Article 68.1 and Article 127.4 of the Constitution of Republic of Azerbaijan.

Taking into account the above stated and being guided by Article 130.3.1, 130.4 and 130.6 of the Constitution of Republic of Azerbaijan, Articles 66, 75, 76, 78, 81, 83 and 85 of the Law of the Republic of Azerbaijan "On Constitutional Court", the Constitutional Court of Republic of Azerbaijan

**DECIDED:**

1. To recognize the provisions of Article 316.2 of the Criminal Procedure Code of Republic of Azerbaijan, on the basis of which the victim is deprived of the rights on to participate in court debates, except for the criminal cases instituted upon the victim’s application, as null and void in connection of their non-conformity with Articles 60.1, 68.1 and 127.4 of the Constitution of Republic of Azerbaijan.

2. To clarify that alongside with the persons listed in Article 316.1 of the Criminal Procedure Code of Republic of Azerbaijan, the victim shall be conferred with the right to participate in court debates on criminal cases.

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

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

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