# ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Conformity of Article 33 of the Law of the Republic of Azerbaijan "On Mass Media" with Articles 60.1, 71.2 and 71.7 of the Constitution of the Republic of Azerbaijan*

**12 July, 1999 Baku city**

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

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

the legal representatives of the body that submitted the petition: 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;

legal representative of the respondent: N.Safarov, Head of Administrative and Military Legislation Department of Milli Majlis of the Republic of Azerbaijan;

being guided by Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via procedure of constitutional proceedings the case by the petition of the Supreme Court of the Republic of Azerbaijan of 26 May 1999, N 5-2/99 on the conformity of Articles 256 and 259 of the Code of Administrative Delinquences of the Republic of Azerbaijan with Article 61 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge S.Salmanova, the legal representatives of the parties M.Agazade and N.Safarov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to Article 33 of the Law of the Republic of Azerbaijan "On Mass Media" in case of refusal to publish or distribute the refutation or response as well as infringement by mass media of the established monthly term for publication or dissemination of refutation, the citizen or the organization can apply to court during six months from the date of publication of information not corresponding to reality (truth).

The body submitted a petition asks for verification of conformity of these provisions of the Law with Article 46.1, Article 60.1, Article 71.2, 71.7 and Article 147.2 of the Constitution of the Republic of Azerbaijan.

In connection with the petition, the official texts of Article 33 of the Law of the Republic of Azerbaijan "On Mass Media", Article 7 of the Civil Procedure Code of the Republic of Azerbaijan certified by the Administration of the Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

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

Freedom of expression and information, the right to get information, the delivering to public of objective and corresponding to reality information is an integral part of the legal status of mass media. According to this status the use of mass media against private life of citizens, their honour and dignity as well as dissemination by them of information not corresponding to reality are prohibited.

Everyone has the right to require refutation from mass media concerning information not corresponding to reality.

In most cases the demands concerning publication or dissemination of refutation are lodged with the purpose of protection of honour and dignity.

According to Article 46.1 of the Constitution of the Republic of Azerbaijan everyone has the right to defend his/her honour and dignity.

In Article 60.1 of the Constitution of the Republic of Azerbaijan it is envisaged that judicial protection of rights and freedoms of every citizen is ensured.

Article 71.2 of the Constitution of the Republic of Azerbaijan states "No one may restrict implementation of rights and freedoms of a human being and citizen".

The settlement of disputes related to violation of rights and freedoms of a human being and citizen by courts is provided for by Article 71.7 of the Constitution of the Republic of Azerbaijan.

From above-stated follows that everyone has the right to apply to court for protection of his/her rights and freedoms including honour and dignity.

Contrary to these provisions of the Constitution of the Republic of Azerbaijan Article 33 of the Law of the Azerbaijan Republic "On Mass Media" provides for obligatory pretrial procedure of consideration of dispute. So, according to specified Article of Law the citizens and organizations can enjoy their right to apply to court only after refusal of mass media to publish or to disseminate the refutation, or after the expiration of monthly term established for publication or dissemination of refutation. Such order infringes the rights of physical and legal persons stipulated in Article 60.1 and Article 71.1, 71.7 of the Constitution of the Republic of Azerbaijan.

Besides this, the right for protection of honour and dignity was also reflected in the Civil Code of the Republic of Azerbaijan.

According to Article 7.1 of this Code a citizen or an organization can demand via court the refutation of information discrediting honor and dignity if those who disseminated such information will not prove its correspondence to reality. It follows from these provisions that the civil legislation does not provide for obligatory pretrial procedure of settlement of such disputes.

Thus, the provisions of Article 33 of the Law of the Republic of Azerbaijan "On Mass Media" contradict also to requirements of Article 7 of the Civil Code of the Republic of Azerbaijan.

In connection with above stated and also taking into consideration the requirements of Article 147.2 of the Constitution of the Republic of Azerbaijan about direct legal force of the Constitution of the Republic of Azerbaijan, the Constitutional Court of the Republic of Azerbaijan considers that physical and legal persons have the right to apply directly to court on the issue of non correspondence to reality of information disseminated in press. However right of the person to apply to court does not exclude his/her right to apply to mass media.

As regards the six-monthly term of limitation of action provided by Article 33 of the Law of the Republic of Azerbaijan "On Mass Media", the Constitutional Court of the Republic of Azerbaijan notes that according to legislation if the court considers the reasons of missing of term of limitation of actions valid, it can restore this term.

Being guided by Article 130.3.1 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 provisions of Article 33 of the Law of the Republic of Azerbaijan "On Mass Media”, limiting the right of a person for judicial protection, contradicting to Article 60.1, Article 71.2, 71.7 of the Constitution of the Republic of Azerbaijan as null and void.

The person who considers that his/her rights are violated, depending on his/her will can apply to mass media or directly to court for restoration of these rights.

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.