**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Procedure of Consent to Bring to Criminal Responsibility or Arrest of People's Assessors of Courts of the Republic of Azerbaijan*

**28 April, 2000 Baku city**

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

joined in the proceedings by: the Court Clerk V.Zeynalov;

legal representatives of the subjects interested in special constitutional proceedings: N. Allahverdiyev, Deputy Prosecutor General of the Republic of Azerbaijan and R. Teymurov, plenipotentiary representative of the Milli Majlis of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the petition submitted by the Prosecutor’s Office of the Republic of Azerbaijan of 1 March 2000, N 11/88 concerning interpretation of procedure of giving consent for bringing to criminal responsibility or arrest of people's assessors of the Supreme Court and other courts of the Republic of Azerbaijan.

Having heard the report of judge R. Gvaladze, statements of the representatives of the subjects interested in special constitutional proceedings, N.Allahverdiyev and R. Teymurov and having examined the materials of the case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to Article 91.1 of the Law of the Republic of Azerbaijan “On Judicial System” judges and people's assessors of courts of the Republic of Azerbaijan shall not be brought to criminal responsibility or arrested without the consent of the Council of People’s Deputies that elected them. However, in “Transitional Provisions” of the Law of the Republic of Azerbaijan “On Courts and Judges” of 10 June, 1997 the concept “people’s assessor” is neither determined nor mentioned that is from the date of coming into force of this Law the valid legislative acts of the Republic of Azerbaijan on judicial system and status of judges, except provisions on material and social security of those judges, who were elected before its adoption, lose force. In connection with this the Prosecutor’s Office of the Republic of Azerbaijan in its petition asks to give interpretation as to procedure for giving consent for bringing to criminal responsibility or arrest of people’s assessor.

The official texts of Article 91 of the Law of the Republic of Azerbaijan “On Judicial System of the Republic of Azerbaijan”, Articles 7, 18, 175, 193 and 196 of the Civil Procedure Code, Articles 15, 20, 23-4, 332 and 340 of the Criminal Procedure Code of the Republic of Azerbaijan certified by Administration of the Milli Majlis of the Republic of Azerbaijan are enclosed to materials of the case.

The Constitutional Court notes that according to para II of the transitional provisions of the Law of the Republic of Azerbaijan “On Courts and Judges” the Law “On Judicial System of the Republic of Azerbaijan” has lost its force only in the part concerning the judicial system and status of judges, but the provisions concerning the people’s assessor were preserved in force. Therefore, the procedure of bringing to responsibility or arrest of people’s assessors is regulated by the Law “On Judicial System of the Republic of Azerbaijan”. This Law provides for the special procedure of bringing to responsibility and arrest of people’s assessors. For instance, according to Article 91.1 of this Law the judges as well as the people’s assessors of the courts of the Republic of Azerbaijan cannot be brought to criminal responsibility or arrested without consent of the Council of People’s Deputies that elected them. Presence of equal status of people’s assessors and judges is reflected in Article 87 of the Law “On Judicial System of the Republic of Azerbaijan”. In accordance with this article the judges and people’s assessors can be deprived of their powers ahead of time by the decision of higher Council of People’s Deputies. Granting people’s assessors and judges with equal status during the period of implementation of their duties in court is also provided by the procedural legislation.

In accordance with Article 23.4.5 of the Civil Procedure Code of the Republic of Azerbaijan in cases where it is not specially specified the notion “judge” means judges, chairman of court, deputy chairman of court and member of court and people’s assessors.

According to Article 7 of the Civil Procedure Code and Article 15 of the Criminal Procedure Code, when administering justice on criminal and civil cases the judges and people’s assessors shall resolve the cases on the basis of law in accordance with their legal conscience and under conditions excluding any influence on them. Along with chairman people’s assessors sign court decisions and sentences and may declare them (Articles 193, 196 of the Civil Procedure Code, Articles 332, 340 of Criminal Procedure Code). The procedural legislation provides for equal grounds for rejection of judges and people’s assessors (Article 18 of the Civil Procedure Code, Article 20 of the Criminal Procedural Code).

Thus, according to procedural legislation during the execution of duties rights and duties of people’s assessors do not differ from the rights and duties of judges and they enjoy the equal status with judges. In this connection, the immunity of judges and the special procedure of bringing them to criminal responsibility, that is specified in paras I and II of Article 128 of the Constitution of the Republic of Azerbaijan, cover also the present people’s assessors.

It was mentioned above that the procedure of bringing to criminal responsibility of people’s assessors or their arrest is reflected in Article 91 of the Law “On Judicial System of the Republic of Azerbaijan”. After abolition of powers of the Council of People’s Deputies it is the Milli Majlis of the Republic of Azerbaijan that approves the people’s assessors. In this connection, the consent for bringing to criminal responsibility or arrest of people’s assessors shall be given by the Milli Majlis of the Republic of Azerbaijan.

Taking into account the above-mentioned the Constitutional Court of the Republic of Azerbaijan considers that during the period of implementation of their duties, the people’s assessors of courts of the Republic of Azerbaijan cannot be brought to criminal responsibility or arrested without consent of the Milli Majlis of the Republic of Azerbaijan.

Being guided by Article 130.3.9 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80 - 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. During the period of implementation of their duties the people’s assessors of courts of the Republic of Azerbaijan cannot be brought to criminal responsibility or arrested without consent of the Milli Majlis of the Republic of Azerbaijan.

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

3. The decision is subject to publication in the "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.