ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Articles 87.6.14, 89.4.12 and 422.3*

*of the Criminal Procedure Code of the Republic of Azerbaijan*

# 19 March, 2002 Baku city

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

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

the legal representatives of the subjects interested in special constitutional proceedings: M.Agazadeh, Judge of the Supreme Court of the Republic of Azerbaijan and N.Safarov, Head of military and administrative legislation department of the Milli Majlis of the Republic of Azerbaijan;

the expert: R.Iskenderov, Doctor of Legal Science, professor of the Criminal Procedure Board of the Law Faculty of Baku State University;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open judicial session via special constitutional proceedings the petition of the Supreme Court of 6 February, 2002, N 8-1/2002 concerning verification of conformity of Articles 87.6.14, 89.4.12 and 422.3 of the Criminal Procedure Code of the Republic of Azerbaijan with the Constitution of the Republic of Azerbaijan.

Having heard the report of Judge A.Sultanov, the statements of the legal representatives of the subjects interested in special constitutional proceedings, B.Asadov, and N.Sa­farov, opinion of the expert R.Iskendarov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

 In Article 87.6.14 of the Criminal Procedure Code of the Republic of Azerbaijan it is envisaged that the victim shall be enabled to challenge the judgment and other resolutions of a court and on the basis of Article 89.4.12 the civil plaintiff shall be enabled to lodge the appellate or cassation complaint with respect to the part of judgement and other resolution of a court relating to the claim.

 According to Article 422.3 of the Criminal Procedure Code the convicted person or his/her counsel based on the request of the convicted person shall be enabled to lodge a complaint via the procedure of additional cassation.

 In its petition the Supreme Court asks to verify the conformity of Articles 87.6.14, 89.4.12 and 422.3 of the Criminal Procedure Code of the Republic of Azerbaijan with the Constitution of the Republic of Azerbaijan.

The official texts of Articles 87.6.14, 89.4.12 and 422.3 of the Criminal Procedure Code of the Republic of Azerbaijan certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of case.

In connection with the petition, the Constitutional Court notes the following:

Essentially, the petition should be treated from two points of view. Firstly, whether the victim and civil plaintiff, among parties to criminal procedure are enabled to lodge the complaint via the procedure of additional cassation. Another point is their possibility to take part at the examination of a case via the procedure of additional cassation.

As a result of an act provided for by criminal legislation in case of availability of sufficient grounds of imposing of the moral, physical or material damage to a physical person, moral and material damage to a legal person, material damage to a civil plaintiff they shall be recognized as a victim or a civil plaintiff on the basis of the decision adopted by court, prosecutor, investigator or inquisitor.

Enjoying equal rights, a person recognized as a victim and civil plaintiff shall, in the court proceedings as well as in inquisition and investigation, freely implement his/her rights and where necessary the duties provided for by Articles 87.6, 87.7, 89.4 and 89.5 of the Criminal Procedure Code. According to Articles 87.6.14 and 89.4.12 of the Code he/she is enabled to lodge appellate and cassation complaints against the decisions and acts of the mentioned law-enforcement bodies and the judgments and other decisions of a court.

It is necessary to note that in Articles 87.6.17 and 89.4.14 of the Criminal Procedure Code the victim and civil plaintiff shall be enabled, based on their complaints, to take part at the examination of a case via the procedure of cassation, additional cassation or in case where their complaints are challenged by other parties to criminal procedure. However, in Article 422 of the Criminal Procedure Code the right of the victim or civil plaintiff to lodge a complaint via the procedure of additional cassation and in Article 427 of the Criminal Procedure Code their right to take part at examination of a case via the procedure of additional cassation are not provided for.

The guarantee of the right of victim and civil plaintiff to lodge a complaint via the procedure of additional cassation proceeds from the provisions of the Constitution of the Republic of Azerbaijan and the principles of international instruments, which Azerbaijan Republic is a party to.

According to Article 68.1 of the Constitution, “rights of the person suffered from crime and also from usurpation of power are protected by law. The victim shall have the right to take part in administration of justice and demand for compensation of losses”.

Article 25.1 of the Constitution of the Republic of Azerbaijan envisages that everybody shall be equal before law and court.

Article 8 of the Universal Declaration of Human Rights states: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

In Article 2 of International Covenant on Civil and Political Rights it is noted that it is necessary “to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy”.

The Council of Europe’s Recommendations with the respect to victims and UN Declaration adopted on this matter are aimed at more effective protection of such persons from the point of view of law.

In its Recommendation “On the Position of the Victim in the Framework of Criminal Law and Procedure” of 28 June 1985 the Committee of Ministers of the Council of Europe calls up the member States “to promote and encourage research on the efficacy of provisions affecting victims”.

Item 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN General Assembly resolution 40/34 of 29 November 1985 provides that the victims should be treated with compassion and respect for their dignity (the notion "victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of violation of national legislation). They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”

The principle of legal equality that is the constituent part of justice provides for the obligation to create for parties the favorable conditions for presentation of their cases under condition not to leave openly at bay any of them with respect to another. In case where the purpose of a State consists *inter alia* of ensuring of the right to a fair trial any inequality as to the right to apply to any judicial instance provided for by legislation.

According to Article 11 of the Criminal Procedure Code the criminal procedure in Azerbaijan Republic shall be implemented on the basis of the legal equality of everyone before law and in this case notwithstanding with personality no advantage should be given to anyone on the basis of unlawfully adopted decision.

The granting to the convicted person and, based on his/her request, to counsel only of the right to lodge via the procedure of additional cassation and the deprivation of these rights from the victim and civil plaintiff restricts the procedural rights of the victim, who is a party to criminal procedure and the civil plaintiff in comparison with convicted person.

Objective and thorough administration of justice should not be confined to the interests of a convicted person. At this point, the interests of the convicted person as the one exposed to moral, physical and material damage in connection with offence committed should be taken into account as well.

Next interesting point proceeding from the petition lies in possibility of the victim and civil plaintiff to take part at court session, examination of the materials of a case where the case is considered on the basis of their complaints via the procedure of additional cassation or on the basis of newly reveled circumstances as well as where the complaints of other parties to criminal procedure are challenged.

Articles 87.6.16, 89.4.14, 101.5.17 and 101.5.18 of the Criminal Procedure Code provide for the right of the victim, civil plaintiff and their lawful representatives to take part at the consideration of cases via the procedure of additional cassation and examination of materials of a case. However, the procedure of implementation of this right (except for cases on the newly reveled circumstances) has not been reflected in Articles 421-427 of the Criminal Procedure Code.

It is necessary to take into account that the resolution adopted by the Plenum of Supreme Court concerning the case examined via the procedure of additional cassation can also affect the lawful interests of the victim and civil plaintiff.

From the point of view of validity and legality of the resolution of the Plenum of Supreme Court the participation at the case of victim and civil plaintiff as well, the thorough examination based on administration of proceedings on the adversary basis is one of the most important conditions.

The Constitutional Court of the Republic of Azerbaijan considers that the right of the victim and civil plaintiff to lodge a complaint via the procedure of additional cassation and ensuring of their participation at consideration of a case proceeding from the requirements of Constitution should be enshrined in Criminal Procedure Code.

According to Article 94.1.1 and 2, it is Milli Majlis of the Republic of Azerbaijan that shall establish the general rules concerning the implementation of rights and freedoms of a person and citizen specified in Constitution, state guarantees of these rights and freedoms, legal proceedings and execution of court decisions.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 66, 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. Taking into account the requirements of Articles 25, 68 and 127 of the Constitution of the Republic of Azerbaijan, considering the limitations imposed by the provisions of Criminal Procedure Code upon the right of the victim and civil plaintiff to lodge a complaint via the procedure of additional cassation and participation at such proceedings (Articles 87.6.14, 89.4.12, 422) in accordance with Article 94.1 of Constitution to recommend to the Milli Majlis of the Republic of Azerbaijan to introduce the relevant amendments into the Criminal Procedure Code.

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.