**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Articles 410 and 423 of the Criminal Procedure*

*Code of the Republic of Azerbaijan*

**30 September, 2002 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, I.Najafov, E.Mamedov,

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

the legal representatives of the subjects interested in special constitutional proceedings: M.Agazade, Judge of the Supreme Court of the Republic of Azerbaijan and E.Askerov, Employee of the Administration of the Milli Majlis of the Republic of Azerbaijan;

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

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session the petition submitted by the Supreme Court of the Republic of Azerbaijan of 9 September, 2002, N 8-9/2002 concerning interpretation of Articles 410 and 423 of the Criminal Procedure Code of the Republic of Azerbaijan.

Having heard the report of Judge R. Gvaladze, the statements of M. Agazade and E. Askerov, the lawful representatives of the subjects interested in special constitutional proceedings, the opinion of the expert R.Iskenderov, having examined the materials of the case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to the Article 410.1.2 of the Criminal Procedure Code of the Republic of Azerbaijan the cassation complaint and cassation appeal against an acquittal or court decision to discontinue the criminal case, the materials of the simplified pre-trial proceedings or the complaint submitted via the procedure of private prosecution shall be lodged within 6 (six) months after the date of their adoption.

In accordance with the Article 410.1.3 of the Criminal Procedure Code the cassation complaint or cassation appeal shall be lodged within 12 (twelve) months against a conviction, on the grounds of the need to apply the law on a more grave offence or those of excessive leniency of the sentence, or on other grounds which worsen the position of the convicted person, and against a court decision on the application of compulsory reformatory measures.

Article 423.2 of the same Code provides that the submissions, appeals or complaints via the procedure of additional cassation may be submitted within 12 (twelve) months after adoption of the decision by cassation instance.

Taking into account the difficulties which emerge when courts apply the Articles 410 and 423 of the Criminal Procedure Code of the Republic of Azerbaijan the Supreme Court of the Republic of Azerbaijan asks for interpretation of the mentioned provisions.

The official texts of Articles 410, 416, 420, 423 and 427 of the Criminal Procedure Code of the Republic of Azerbaijan certified by Administration of Milli Majlis of the Republic of Azerbaijan have been enclosed to materials of case.

In connection with the petition in question the Constitutional Court notes as follows:

The Constitutional Court in prior decisions repeatedly noted the inadmissibility of restrictions of the constitutional provisions ensuring the citizens’ right to legal protection.

The Constitutional Court considers important to emphasise once again that the right of a citizen to legal protection that is enshrined in the Article 60 of Constitution implies also the right of parties to challenge the judgement to higher judicial instance.

This right is also envisaged in the Article 410 of the Criminal Procedure Code of the Republic of Azerbaijan.

According to the Articles 410.1.2 and 410.1.3 of the Criminal Procedure Code, the victim of the crime and the prosecutor shall have a right to lodge cassation complaint or cassation appeal against conviction because of need to apply the law on a more grave offence or those of excessive leniency of the sentence, or on other grounds which worsen the position of the convicted person.

Fixing in the legislation of the right of the interested persons to lodge a complaint to higher court because of mentioned reasons is based on constitutional guarantees of protection of citizens rights and freedoms.

The complaints (appeals) on court decision shall be lodged within specified procedural time-limits.

The time-limits stipulated in the Criminal Procedure Code serves for fast and effective conducting of criminal procedure. Procedural time-limits is the important procedural guarantee of implementation by parties of their rights. The Criminal Procedure Code set the realistic time-limits for lodging the complaints against actions of investigation authority and courts.

At the same time, taking into account the legal status of the accused person, the legislator may envisage the additional guarantees ensuring the more effective protection of his/her rights.

The time-limits established by Articles 410.1.2 and 410.1.3 of the Criminal Procedure Code are such guarantees in particular.

In accordance with the Article 94.1.6 of Constitution the Milli Majlis establishes the general rules of legal proceedings and execution of court decisions. Being guided by humanism principles, the legislator provided for in Article 410.1.2 of the Criminal Procedure Code that the cassation complaint or cassation appeal on acquittal or court decision to discontinue the criminal case may be lodged during 6 (six) months, and on need to apply the law on a more grave offence or those of excessive leniency of the sentence, or on other grounds which worsen the position of the convicted person or other reasons – during 12 (twelve) months after the date the decision was adopted (Article 410.1.3 of the Criminal Procedure Code).

Cassation complaints or appeals lodged out of specified time-limits have no legal effect.

The cases on complaints and appeals lodged within the time-limits established by the Articles 410.1.2 and 410.1.3 should be examined via the procedure and within the time-limits established by the Articles 418 and 419 of the Code.

Taking into account that the Criminal Procedure Code does not determine the time-limits during which the court of additional cassation may abolish the decision because of reasons worsening the position of the convicted person, the petition poses the question as to the need to give interpretation of the Article 423 of the mentioned Code.

In this connection the Constitutional Court considers necessary to analyse some provisions of the Criminal Procedure Code.

First of all, it should be noted that the provisions of the Criminal Procedure Code are inter alia directed to ensuring the protection of an individual and a citizen from the cases of illegal restriction of their rights and freedoms. At the same time, one should also bear in mind the constitutional provisions stating that the fundamental rights and freedoms may be restricted only in cases specified by the legislation.

The analysis of the provisions regulating the appeal and cassation instances proceedings, certify that the legislator provided for specific reasons for the review of judgements at these stages of proceedings including on the grounds worsening the position of the convicted person.

However, in contrast to appeal proceedings those admits the worsening the position of convicted person without sending the case to the first instance court the court of cassation instance may not worsen the position of convicted person by itself. On the basis of prosecutor’s appeal or victim’s complaint this court instance may only abolish the decision because of reasons worsening the position of convicted person and send the case to the new assize (Articles 416.21, 420.2 and 420.3 of the Criminal Procedure Code).

Just like in the court of cassation instance the proceedings in the court of additional instance is based on principles of independence of judges, their subordination only to the law, collective nature and publicity and other democratic principles of legal proceedings.

At the same time, some specific peculiarities are also attributable to additional cassation.

For instance, in contrast to cassation instance that examines the cases on the basis of complaints and appeals of the parties to proceedings, in the additional cassation there are examined the cases on the basis of submissions, appeals and complaints of persons enlisted in Article 422 of the Criminal Procedure Code and only on the grounds determined by the Article 421 of the same Code.

The procedure and grounds for the review of court decisions by court of cassation instance and additional instance are different as well.

Article 427.4 of the Criminal Procedure Code regulates the reasons for the review of the court decisions by the Supreme Court’s Plenum.

Articles 421 and 427.4 of the mentioned Code do not provide for the right of the Plenum of Supreme Court to abolish the court decisions, which worsen the position of the convicted person. In general, no one of these provisions regulating the grounds and procedure of review of court decisions by the court of additional cassation indicates the possibility of abolishment of the court decision by such a court by the reasons which worsen the position of convicted person.

In essence, the examination of cases in additional cassation means the re-exa­mi­na­tion of a case in the court of cassation instance.

Despite certain specific peculiarities, the additional cassation, being the continuation of cassation proceedings, may not exceed its limits. Therefore, the additional cassation like the cassation instance may not itself take a decision that worsens the position of the convicted person. It could abolish the court decision on the basis of these reasons and refer the case to the new assize. However, Article 427.4 of the Code does not provide for possibility of such solution within the procedure of additional cassation.

It was mentioned above that the legislator provided for the special time-limits for lodging of cassation complaint or appeal against court decision that worsens the position of the convicted person. Such legislator’s viewpoint is reasoned by the fact that the menace of the following condemnation of the acquitted person or worsening of the position of convicted person may not exist indefinably for long time.

Taking into account the above stated and bearing in mind the general principles of Criminal Procedure Code, the legislator fixed the strictly limited time-limits for lodging the complaints or appeals against court decisions that worsens the position of the convicted person only for the court of cassation instance. Lack of such time-limits in additional cassation means that the legislator considers inadmissible the abolishment of court decisions on these reasons via the procedure of additional cassation.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 66, 75, 76, 78, 80, 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. The cassation complaint and cassation appeal against an acquittal or court decision to discontinue the criminal case, the materials of the simplified pre-trial proceedings, a conviction, on the grounds of the need to apply the law on a more grave offence or those of excessive leniency of the sentence, or on other grounds which worsen the position of the convicted person within the time-limits established by the Articles 410.1.2 and 410.1.3 of the Criminal Procedure Code of the Republic of Azerbaijan should be examined via the procedure and within the time-limits provided for in the Articles 418 and 419 of the present Code.
2. The 12 (twelve) months period of time provided for by Article 423 of the Criminal Procedure Code should be applied only in cases indicated in Article 421.1 of the present Code. At the same time, according to the general principles and provisions of Articles 410, 416.21, 420.2, 420.3, 421.1 and 427.4 of the Criminal Procedure Code within the additional cassation instance there can not be adopted a decision that worsens the position of the convicted or acquitted person.
3. The decision comes into force from the date of its publication.
4. The decision is subject to publication in the "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.
5. The decision is final and cannot be cancelled, changed or interpreted by any body or official.