**ON BEHALF OF AZERBAIJAN REPUBLIC**

**D E C I S I O N**

**OF THE CONSTITUTIONAL COURT**

**OF AZERBAIJAN REPUBLIC**

On Interpretation of Article 228 of the Criminal Code of Azerbaijan Republic

29 December, 2003                                                                         Baku city

The Constitutional Court of Azerbaijan Republic, composed of Chairman F.Abdullayev, Judges F.Babayev, B.Garibov, R.Qvaladze, E. Mamedov, I. Najafov, S. Salmanova and A. Sultanov (Reporter Judge),

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

legal representatives of the subject interested in special constitutional proceedings: M. Agazade, Judge of the Supreme Court of Azerbaijan Republic, S. Kerimov, Deputy Head of the Administrative and Military Legislation Department of the Staff of the Milli Majlis of Azerbaijan Republic;

experts: E. Azizov, Professor of Turkology Board of the Philology Faculty of the Baku State University named after М.E. Rasulzade, Doctor of philology; R. Shamsizade, Lecturer of the Criminal Law Board of the Law Faculty, PhD of Law; Ch. Ahmedov, representative of the Institute of Scientific Forensic Examination, Criminalistics and Criminology Problems;

in accordance with the Article 130.4 of the Constitution of Azerbaijan Republic has examined in open judicial session via special constitutional proceedings the case by the petition of the Supreme Court of Azerbaijan Republic of 1 December 2003 N 8-7/03 concerning the interpretation of the provisions of Article 228 of the Criminal Code of Azerbaijan Republic.

Having heard and discussed the report of Judge А.Sultanov, statements of the representatives of the interested subjects M. Agazade and S. Kerimov, conclusion of the experts E. Azizov, R. Shamsizade and Ch. Ahmedov, the Constitutional Court of Azerbaijan Republic

**D E T E R M I N E D A S F O L L O W S:**

Taking into account the difficulties, which emerge when courts apply Article 228 of the Criminal Code, the Supreme Court in its petition asks for interpretation of the mentioned provision.

According to the petition, there are not mentioned the cold steel in the title of the Article 228. At the same time, there is “the cold steel” term used in Article 228.4. Moreover, taking into consideration that there have not been mentioned such a term in the Law of Azerbaijan Republic “On Service and Civil Weapon”, and also Article 228.4 does provide for the belonging of cold steel, pneumatic and other weapon to “the throwing weapon” term.

In connection with this petition, the official texts of the Article 2 of the “On Service and Civil Weapon” of Azerbaijan Republic and Article 228 of the Criminal Code of Azerbaijan Republic certified by Milli Majlis of Azerbaijan Republic are enclosed to the constitutional case.

In connection with a petition, the Constitutional Court of Azerbaijan Republic notes as follows:

The title of the Article 228 of the Criminal Code is “Illegal purchase, transfer, selling, storage, transportation and carrying of fire-arms, accessories to it, supplies, and explosives”.

Article 228.4 that is the component part of this norm provides for criminal liability for illegal purchase, selling or carrying of gas weapon, cold steel, including throwing weapon.

It would be not correct to put a fire-arm and cold-steel on the same level: by their construction, assignment, principle of operation and the mode of use they are considerable different.

The fire-arms differ from the cold-steel not only by the mode of production, assignment and use but also by the degree of danger for society.

As it gets evident from the essence of Article 228 of the Criminal Code, the content of this Article includes the liability for illegal circulation of both fire-arms and cold-steel. In such case, the mentioning only of fire-arms in the title of Article is logically incomprehensible.

From this point of view the Article 229 of Criminal Code, which provides for criminal liability for manufacturing of a weapon is written more clearly as to the technique and logic of legislation. The mentioned Article is titled: “Illegal manufacturing of a weapon” and there is not any vagueness concerning the criminal ability for the illegal manufacturing of a weapon.

Taking into account the above-stated, the Constitutional Court of Azerbaijan Republic considers that the title and the disposition of the Article 228 of Criminal Code should be brought into correspondence.

According to the Article 94.1.17 of the Constitution of Azerbaijan Republic, the Milli Majlis of Azerbaijan Republic establishes general rules concerning interpretation of crime and other violations of law, and establish of responsibility for these acts.

The use of term “the throwing weapon” when applying the term “the cold shooting steel” in the Law “On the Service and Civil Weapon”, which illegal circulation is punished by Criminal Code, creates uncertainty in investigation and judicial practice during application of this article.

It is necessary to note that the correct and definite determination of the provisions of legislative acts including Criminal Code is of significant importance. For instance, the certainty of legal norms, their clarity and distinctness enables the bodies, which apply the law, to correctly determine the committed crime and gives these bodies an opportunity to respect the legality principles in their activity.

From the opinions of experts it gets evident that the term “the throwing weapon” in Article 228.4 of the Criminal Code of Azerbaijan Republic by its linguistic meaning constitutes the sameness with the term “the cold shooting steel” envisaged in Article 2 of the Law “On Service and Civil Weapon”. Both the terms “the throwing weapon” and “the shooting weapon” mean the same concept i.e. as it is indicated in Article 2 that is the weapon, which is directed by the energy of human muscle or mechanical installation and is set to damage the objects from certain distance. The term “the throwing weapon” in Article 228.4 of the Criminal Code can be used as equivalent to the term “the cold shooting steel” in Article 2 of the Law. Since the Law “On Service and Civil Weapon” regulates the specific issues the term “the cold shooting weapon” which is used in this Law is more correct.

Under the term “throwing weapon” in Article 228.4 of the Criminal Code legislator implies the concept of “the cold shooting weapon” mentioned in the Law “On Service and Civil Weapon”, which was adopted before Code.

Taking into account the above-mentioned the Constitutional Court comes to conclusion that under the term “throwing weapon” stipulated by Article 228.4 of the Criminal Code one should bear in mind the term “the cold shooting steel”.

As regards the inclusion of pneumatic weapon into the rank of cold steels weapons the Constitutional Court notes that the concept of pneumatic weapon is enshrined in Article 2 of the Law “On Service and Civil Weapon”.

As it gets evident from the opinions of experts the pneumatic weapon is not related to cold shooting steel.

Criminal responsibility for illegal circulation of pneumatic weapon is not provided in legislation in force.

Being guided by Article 130.4 and 130.6 of the Constitution of Azerbaijan Republic, Articles 65, 66, 75, 76, 78, 80, 81, 83 and 85 of the Law of Azerbaijan Republic “On Constitutional Court”, the Constitutional Court of Azerbaijan Republic

**DECIDED:**

To recommend to the Milli Majlis of Azerbaijan Republic to eliminate the non-conformity between Article 228 and its disposition (Article 228.4) of the Criminal Code of Azerbaijan Republic.

2. The term “the throwing weapon” that is provided for in Article 228.4 of the Criminal Code shall be applied as a mean of the term “the cold shooting steel” envisaged in the Law “On Service and Civil Weapon”.

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 Azerbaijan Republic”.

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

**Chairman                                                                     Farhad Abdullayev**