

**Conference of European Constitutional Courts  
XIIth Congress**

*The relations between the Constitutional Courts  
and the other national courts,  
including the interference in this area  
of the action of the European courts*

**Report of  
the Constitutional Court  
of the Azerbaijani Republic**

# **I. The constitutional court, the other courts and the constitutionality review**

## ***A. The judicial organization of the State***

### **1. The judicial system**

*1. Please give a brief presentation, using diagrams if necessary, of the different courts that exist in your State and the organization of their powers. This concerns the ordinary courts as well as the administrative or other courts, the courts of the Federal State as well as the courts of the federated States.*

According to Article 125 of the Constitution the judicial power in Azerbaijan Republic is implemented by law courts.

Judicial power is implemented through the Constitutional Court, Supreme Court, Economic Court, ordinary and specialized law courts.

Judicial power is implemented via constitutional, civil and criminal legal proceedings and other forms of legislation provided for by law.

In all legal proceedings, except constitutional ones, Prosecutor's Office and lawyers take part.

Judicial system and legal proceedings in Azerbaijan Republic are determined by law.

Use of legal means aimed to change the authority of law courts and establishment of extraordinary law courts, which are not envisaged by the law, are prohibited.

### **2. The Constitutional Court**

*2. What is the place of the Constitutional Court in the judicial organization of the State? If it is part of the judiciary, what is its status within the judiciary?*

Article 1 of the Law "On Constitutional Court" states:

The Constitutional Court shall be the supreme body of constitutional justice on matters attributed to its jurisdiction by the Constitution.

## ***B. The respective jurisdictions of the Constitutional Court and the other courts in the area of constitutionality review***

### **1. Review of laws and other acts**

#### ***§ 1. Type of review***

*3. What acts (of domestic law and international law) are reviewed by the Constitutional Court in relation to the higher standards that are the Constitution, the principles of constitutional value and the provisions of international law?*

Article 130.3 of the Constitution states:

Constitutional Court based on petition of the President of Republic, Milli Majlis (Parliament), Cabinet of Ministers, Supreme Court, Prosecutor's Office, Supreme Assembly of Nakhichevan Autonomous Republic takes decisions regarding the following:

- correspondence of laws, decrees and orders of the President of Republic, decrees of Milli Majlis, decrees and orders of Cabinet of Ministers, normative-legal acts of central bodies of the Executive to Constitution;
- correspondence of decrees of the President of Republic, decrees of Cabinet of Ministers, normative-legal acts of central bodies of the Executive to laws of Azerbaijan Republic;
- correspondence of decrees of Cabinet of Ministers and normative-legal acts of central bodies of the Executive to decrees of the President of Republic;
- in cases envisaged by law, correspondence of decisions of Supreme Court to Constitution and laws of Azerbaijan Republic;
- correspondence of acts of municipalities to Constitution, laws, decrees of the President of Republic, decrees of Cabinet of Ministers (in Nakhichevan Autonomous Republic – also to Constitution and laws of Nakhichevan Autonomous Republic and decrees of Cabinet of Ministers of Nakhichevan Autonomous Republic);
- correspondence of interstate agreements of Azerbaijan Republic, which have not entered into force to Constitution; correspondence of intergovernmental agreements of Azerbaijan Republic to Constitution and laws of Azerbaijan Republic;

*4. Is this competence exclusive? If not, which are the other competent courts in this area? How about the other acts and decisions?*

According to Article 130.6 of the Constitution, the Constitutional Court takes decisions as regards the issues of its competence. Decisions of Constitutional Court are binding throughout the entire territory of Azerbaijan Republic

Article 129 of the Constitution states:

Courts adopt decisions on behalf of the Republic and their execution is obligatory.

*5. Is the review carried out by the Constitutional Court a prior or subsequent review?*

According to Article 130 of the Constitution the review carried out by the Constitutional Court shall be subsequent

*6. Is the review carried out by the Constitutional Court an abstract or a concrete review?*

The review carried out by the Constitutional Court is both an abstract and concrete one.

## **§ 2. Referral to the Constitutional Court**

### **a. Types of referral**

*7. How can the Constitutional Court be accessed (action for annulment, preliminary question, constitutional appeal, etc.)? How many cases have there been for each type of referral?*

According to Article 130.3 of the Constitution, the President of Republic, Milli Majlis, Cabinet of Ministers, Supreme Court, Prosecutor's Office, Supreme Assembly of

Nakhichevan Autonomous Republic are entitled to submit a petition to the Constitutional Court. Only the constitutional appeal is provided for herein.

## **b. Actions for annulment**

*8. Does direct recourse exist to the Constitutional Court against statutes? And against other regulations and acts?*

Procedure of application of citizens to the Constitutional Court is provided for by Article 4 of the Law “On Constitutional Court”. According to the mentioned norm, in case of violation of the individuals' rights and freedoms by normative legal acts in force the citizens may by means of appropriate courts apply to the Supreme Court with a request to refer the case to the Constitutional Court. The procedure of exercising of this right is determined by the Law “On Courts and Judges” as well as the Legislation on Criminal and Civil Procedures.

*9. Who can bring such actions and within what time limit?*

The citizen, in case if he/she alleges that his/her constitutional rights and freedoms have been violated by the normative act applied or to be applied at the examination of a case.

According to Article 30 of the new draft Law of Azerbaijan Republic “On Constitutional Court”, the constitutional complaint can be submitted to Constitutional Court within six (another option - three) months after the decision of the court of last instance came into force.

*10. Can Constitutional Court suspend statutes or other regulations and acts?*

The Constitutional Court cannot suspend laws and other normative-legal acts.

## **c. Preliminary issues – plea of unconstitutionality**

*Who can refer cases to the Constitutional Court?*

11. Which courts can refer cases to the Constitutional Court? If any court can put a preliminary question, does that mean that a broad or a restrictive interpretation is given to the notion of «court»?

Courts of law. Courts of any instance via Plenum of the Supreme Court. Interpretation of laws and Constitution shall be made only on the basis of a petition submitted to the Constitutional Court by subjects provided for in Article 130 of the Constitution.

*12. Are the courts obliged to put the question?*

Courts are not obliged to put questions.

*13. Is it possible to oppose, by a procedure of objection, opposition or recourse, the submission of all or part of a case to the constitutional court by a decision of referral? If so, who can initiate this procedure and how does it proceed? What are the consequences?*

No.

*14. What is the procedure for referral to the constitutional court? What is the role of the parties in drawing up the preliminary question? Can the preliminary question be raised ex officio? In that case, are the discussions on the question reopened?*

The procedure of application to the Constitutional Court is provided for by Article 55 of the Law “On Constitutional Court”, which states that in cases specified by Article 130.3.1-6 and 130.3.8 of the Constitution, petitions to the Constitutional Court shall be in written form.

Petitions shall include the following:

- 1) denomination of the Constitutional Court;
- 2) denomination and address of the body that submitted a petition;
- 3) the title and date of adoption (signing) of the act provided for by Article 130.3.1-6 and 130.3.8 of the Constitution along with denomination of the body that adopted the act and source of its publication;
- 4) articles of the Constitution confirming the right to apply to the Constitutional Court and powers of the Constitutional Court to examine the petition in question;
- 5) the grounds for the request of the body that submitted a petition;
- 6) request of the body that submitted a petition;
- 7) list of documents and materials enclosed to the petition;
- 8) list of persons participating in the session of the Constitutional Court in the capacity of petitioners;
- 9) signature of the head of the body that submitted a petition.

The following documents shall be enclosed to the petition:

- 1) a copy of the normative legal act specified in Article 130.3.1-6 and 130.3.8 of the Constitution;
- 2) document certifying powers of the requesting body’s representative participating in the session of the Constitutional Court;

*15. Do the courts that put the question rule on the constitutionality or unconstitutionality of the regulation at issue?*

No.

### *Screening*

*16. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (nonsuit, quick reply, demurrer, evident unfoundedness, identity or similarity of questions which the constitutional court has already answered)? What is the proportion of cases screened in this way?*

The Law “On Constitutional Court” in force does not regulate the screening procedure, however, Article 35 “Refusal to Accept a Petition, Application or Complaint to Examination” of the new draft Law “On Constitutional Court” provides:

Petition, application or complaint shall be rejected, if:

- 1) it is obviously not within the jurisdiction of the Constitutional Court;
- 2) it does not meet the requirements of the present Law as to its form and contents;
- 3) it is proceeded by the improper person;
- 4) the Constitutional Court has already adopted a decision on the matter risen in a petition, application or complaint;

### *Scope of referral of the constitutional court*

*17. What is the import of the consideration of unconstitutionality given by the court that puts the question (court a quo)? Must the constitutional court take these considerations into account or can it ignore them? Can it raise ex officio or at the request of the parties, the arguments of unconstitutionality not envisaged by the court a quo or is it restricted by the decision of referral? Can the constitutional court review regulations not intended by the preliminary question yet linked thereto?*

In case where court of any instance determines unconstitutionality of a normative act then it shall adopt a proper decision to be submitted to Plenum of the Supreme Court with the view to initiate a petition to the Constitutional Court. Constitutional Court is not bound with the arguments of a petition and not confined to its subject. At the same time the Constitutional Court cannot review the provisions, which are not concerned in a petition but connected with it.

*18. Are all aspects, both in law and in fact, of the action pending before the court a quo referred to the constitutional court?*

All legal aspects presented to the court of law shall be referred to the Constitutional Court and the materials of a case can be attached to the petition.

### *Relevance of the question*

*19. Can the Constitutional Court dismiss the question on the grounds that it is not useful to the settlement of the action brought before the court a quo?*

No.

### *Interpretation of the question*

*20. Can the Constitutional Court reformulate the question in order to make it clearer and to define the constitutional debate better? If so, what use is made of this option?*

Yes.

### *Interpretation of the reviewed regulation*

*21. Must the Constitutional Court adhere to the interpretation of the reviewed regulation given by the court a quo?*

Constitutional Court does not adhere to interpretation of the reviewed regulation given by court a quo.

According to the legislation in force only the Constitutional Court is entitled to give interpretation to the Constitution and legislation.

*Jus superveniens*

22. *What is the impact of a legislative amendment to the challenged regulation subsequent to the decision of referral?*

Article 36 of the new draft Law “On Constitutional Court” states:

The subject, who submitted a petition, application or complaint to the Constitutional Court shall be enabled to recall the petition, application or complaint before the beginning of the session devoted to examination of the matter risen in this petition, application or complaint.

Article 66 of the mentioned draft Law provides that the Constitutional Court shall discontinue the proceedings on a case if any grounds to reject the acceptance of a petition, application or complaint are discovered during the session.

*Parties*

23. *Can the parties before the court a quo or third (individuals, institutions, other courts, etc.) participate (voluntarily or compulsorily) in the procedure before the constitutional court? If so, in what way? How are they informed of the procedure before the constitutional court? Can one intervene before the constitutional court on the mere grounds of being a party before a court deciding on merits in an action similar to the one that led the court a quo to put the preliminary question?*

Courts of law or third parties may voluntarily or compulsorily participate at the sessions of the Constitutional Court.

24. *Is there a counsel for the defense? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

The Law “On Constitutional Court” does not provide participation of a counsel for the defense as well as prosecutor at the constitutional proceedings.

*Points of law in the constitutional proceedings*

25. *Does the withdrawal of suit before the court a quo or the death of a party before the same court subsequent to the decision of referral have an impact on the progress of the constitutional action?*

Article 29 of the Law “On Constitutional Court” states:

Any body which had lodged a petition or application to the Constitutional Court shall have the right to withdraw it before the session on consideration of the mentioned petition or application is held.

**d. The constitutional appeal (for example recours d'amparo, Verfassungsbeschwerde etc.)**

*Object of the constitutional appeal*

26. *What is the object of the constitutional appeal? Against which acts can such an appeal be lodged? Once a constitutional appeal has been referred to it, can the constitutional court examine the fact of the case?*

The Constitutional Court considers only the points of law and not the facts.

*Allowability of the appeal*

27. *Who can refer an appeal to the constitutional court? How?*

In addition to the mentioned subjects entitled to apply to the Constitutional Court according to Article 4 of the Law "On Constitutional Court" in case of violation of the individuals' rights and freedoms by the normative legal acts in force the citizens may by means of relevant courts apply to the Supreme Court with a request to refer the case to the Constitutional Court. The procedure of exercising of this right is determined by the Law "On Courts and Judges" as well as Civil Procedure Code and Criminal Procedure Code. Thus, Article 79 of the Law "On Courts and Judges" provides that the Plenum of the Supreme Court based on the appeals submitted by citizens as to violation of their rights and freedoms by normative acts applied by courts at examination of cases shall, in accordance with Article 130 of the Constitution, submit a petition to the Constitutional Court (in such cases executive proceedings shall be suspended until the decision of the Constitutional Court enters into force).

28. *Is appeal to the constitutional court only possible once all other avenues of appeal have been tried?*

According to the legislation in force, complaints to the Constitutional Court shall be submitted by means of application to the Supreme Court via the relevant courts requesting them to refer a petition to the Constitutional Court. However, the new draft Law "On Constitutional Court" provides for the possibility to submit individual complaints by citizens directly. Thus, according to Article 30 of the new draft Law any person who alleges that his/her fundamental rights guaranteed by the Constitution have been violated at application of normative legal act, he/she may submit a complaint to the Constitutional Court. The constitutional complaint shall be submitted only after exhaustion of ordinary remedies (complaint or application to the court of law) or in case of absence of other remedies.

## *Screening*

*29. Is there a screening procedure which allows the constitutional court to limit the number of cases or to speed up the hearing of those cases (selection of cases, nonsuit, quick reply, demurrer, evident unfoundeness, etc.)? What is the proportion of cases screened in this way?*

After a petition, provided for in Article 130.3.1-6 and 130.3.8 of the Constitution, has been submitted to the Constitutional Court, the Constitutional Court shall within 7 days consider it at its session and adopt a ruling whether to accept it or reject. In cases specified in Article 130.3.1-6 and 130.3.8 of the Constitution, the Constitutional Court shall reject a petition if:

- 1) it is obviously not within the jurisdiction of Constitutional Court;
- 2) it is proceeded by the improper person;
- 3) the Constitutional Court has already adopted a decision on the matter risen in the petition;
- 4) it does not meet the requirements of the Law as to its form and contents;

## *Parties*

*30. Does the plaintiff participate in the procedure before the constitutional court? If so, in what form? What about the other parties? Can or must certain public authorities intervene in the proceedings?*

In accordance with Article 36 of the Law "On Constitutional Court" petitioners and respondents constitute the parties of the Constitutional Court proceedings.

According to Article 130.3 of the Constitution the President of Republic, the Milli Majlis, the Cabinet of Ministers, the Supreme Court, the Prosecutor's Office and the Supreme Assembly of Nakhichevan Autonomous Republic can be petitioners at the Constitutional Court proceedings.

In conformity with Article 130.3 of the Constitution the following subjects may be respondents at the Constitutional Court proceedings:

- 1) a state body which has adopted a normative legal act if a petition is submitted as to non-conformity of the normative legal act with the Constitution and Laws, decrees of the President of Republic, Resolutions of the Cabinet of Ministers;
- 2) the Supreme Court if a petition is submitted on non-conformity of its guidelines with the Constitution and laws of Azerbaijan Republic;
- 3) a local self-government body which has adopted municipal act if a petition is submitted on non-conformity of this act with the Constitution and Laws of Azerbaijan Republic, decrees of the President of Republic, Resolutions of the Cabinet of Ministers (in Nakhichevan Autonomous Republic also the Constitution and Laws of Nakhichevan Autonomous Republic, decrees of the Cabinet of Ministers of Nakhichevan Autonomous Republic);
- 4) an official who has signed the interstate agreement on behalf of Azerbaijan Republic which has not come into force if a petition is submitted as to non-conformity of this agreement with the Constitution;
- 5) an official who has signed intergovernmental agreement on behalf of Azerbaijan Republic if a petition is submitted as to non conformity of this agreement with the Constitution and Laws;
- 6) political parties and other public associations, if a petition has been submitted on the elimination of their activity;

7) legislative, executive or judicial body accused by petitioner in infringement of the distribution of powers.

In the process of the constitutional proceedings the petitioners and respondents may be represented by their legal representatives.

The interested subjects in the constitutional proceedings shall be the bodies referring a petition to the Constitutional Court in cases provided for by the Constitution as well as bodies and persons whose interests are affected by such petitions.

*31. Is there a counsel for the defense? If so, in what form? Is there a counsel for the prosecution with the constitutional court?*

According to the legislation in force, participation of a counsel for the defense as well as for the prosecution in constitutional proceedings is not provided for.

## **2. Settlement of conflicts between courts**

*32. Is it the task of the constitutional court to circumscribe the respective jurisdictions of the other courts? If so, how does it proceed?*

According to the legislation in force, the Constitutional Court shall not circumscribe the respective jurisdictions of the other courts.

# **II. The relations between the constitutional court and the other courts**

## ***A. The organic link***

*33. What are the organic links between the constitutional court and the other national courts (conditions of admission, appointment procedure, etc.)*

All Judges of Azerbaijan Republic shall have equal status, rights and responsibilities at the consideration of cases but have different procedure of appointment, powers and terms of office (Article 92 of the Law “On Courts and Judges”). According to Article 126.1 Judges shall be citizens of Azerbaijan Republic not younger than 30, having voting right, higher juridical education and at least 5-year working experience in the field of law.

The following persons cannot be the judges:

- who possess a dual citizenship
- who have the obligations before other States,
- the priests
- who had been declared by court to be incapable or limited capable on the basis of medical certificate by virtue of their physical or mental shortcomings and unable to perform duties of a judge,
- who have previous convictions
- who had been dismissed from their posts for the activity defaming the rank of a judge.

According to Article 109.9 of the Constitution the proposals concerning appointment of Judges shall be submitted to the Milli Majlis by the President of Republic.

According to Articles 109.9 and 95.10 of Constitution the Judges of the Supreme Court and Economic Court shall be appointed by the Milli Majlis upon proposals of the President of Republic.

## ***B. The procedural link***

*34. Are there procedural links between the constitutional court and the court referring the case to it or against which the appeal was lodged (for example, a Judge - to Judge meeting in order to clarify or refine the question)? If so, what use is made of this option?*

The legislation of Azerbaijan Republic does not provide for the procedural links between the constitutional court and the court referring the case to it or against which the appeal was lodged.

## ***C. The functional link***

### ***§ 1. The review and its effects***

*35. Do the rulings of the constitutional court always constitute a binding precedent for the other courts?*

According to Article 130.6 of the Constitution decisions of the Constitutional Court are obligatory through the entire territory of Azerbaijan Republic. Decisions of the Constitutional Court shall be binding after their adoption.

*36. What are the review methods of the constitutional court (annulment, dismissal, declaration of constitutionality, declaration of unconstitutionality, interpretation reserves, annulment of a judicial decision, establishment of deficiencies, establishment of limited validity, etc)? If necessary, distinguish for the different types of referral (action for annulment, prejudicial question, constitutional appeal).*

The Constitutional Court adopts the decisions on annulment, unconstitutionality and interpretation.

*37. What are the legal effects of the rulings of the constitutional court (ex nunc, ex tunc; erga omnes, inter partes, etc.), individually, on the original action and on all actions before common law courts, on other regulations, administrative acts – statutory or individual – or judicial decisions, etc. (for example, is there a re-examination procedure)? Can the constitutional court limit or sustain the effects in time?*

Article 80 of the Law “On Constitutional Court” states:

According to Article 130.6 of the Constitution, decisions of the Constitutional Court shall have binding force through the entire territory of Azerbaijan Republic.

Decisions of the Constitutional Court, which have entered into legal force, must be executed. Criminal proceedings shall be instituted via the procedure determined by the legislation of Azerbaijan Republic for non-execution of the decisions of the Constitutional Court”.

According to Article 81 of the Law “On Constitutional Court”, resolutions of the Constitutional Court shall enter into legal force during the following periods of time:

- 1) Resolutions adopted in connection with matters specified by Article 130.3.1-6 and 130.3.8 of the Constitution shall enter into force from the time specified in the Resolution itself;
- 2) Resolutions concerning prohibition of political parties and other public associations, separation of powers between the Legislature, Executive and Judiciary as well as the interpretation of the Constitution and laws shall enter into force from the day of their promulgation;
- 3) other Resolutions on matters within the jurisdiction of the Constitutional Court shall come into force from the day of their announcement.

*38. Is the authority of the rulings of the constitutional court always respected? Does it sometimes meet with opposition from institutions or courts? Do the other courts sometimes experience difficulties in the rulings of the constitutional court?*

All decisions of the Constitutional Court are respected by authorities and national courts. In accordance with Article 29 of the Internal Regulations of the Constitutional Court, the Constitutional Court shall on a permanent basis analyse execution of resolutions of the Constitutional Court. The relevant divisions of the Staff of Constitutional Court shall present to the Judges of Constitutional Court the six – month and annual information – analytical reports on execution of the Resolutions of Constitutional Court. Where necessary, the Chairman of Constitutional Court shall issue an instruction to prepare information on execution of one or a number of particular Resolutions of the Constitutional Court. In case of revelation of facts of non – execution or improper execution of the Resolutions of Constitutional Court the Chairman of Constitutional Court shall submit for consideration at the session of Constitutional Court the proposals as to measures, which could facilitate the execution of a Resolution of Constitutional Court.

There have not been arisen the problems connected with implementation of the decisions of Constitutional Court.

## ***§ 2. Interpretation by the constitutional court***

### **a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction**

*39. Does the constitutional court consider itself bound by the interpretations of the challenged act given by the Supreme Court or other courts (theory of living law, for example)? Can the constitutional court, however, give another interpretation?*

On the matters of interpretation of the Constitution the special constitutional proceedings are implemented. The Constitutional Court cannot consider itself bound by the interpretation given by the Supreme Court on account of the fact that only the Constitutional Court is entitled to give interpretation of laws and Constitution in Azerbaijan Republic.

**b. The effects of interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction**

*40. Is the interpretation of the constitutional rules and the legislative rules given by the constitutional court binding on the other courts? What happens in case of non-adherence to the interpretation of the constitutional court?*

According to the Article 130.6 of Constitution the decisions of Constitutional Court are obligatory through the entire territory of Azerbaijan Republic. Decisions of the Constitutional Court are binding after their adoption. The persons who do not implement the decisions of Constitutional Court shall bear criminal responsibility via the procedure determined by the legislation of Azerbaijan Republic.

*41. Can the constitutional court declare that a rule is constitutional only in the exact interpretation given by it? Can this interpretation deviate from that of «living law»? If so, what use is made of this option?*

*42. What are the effects for the other courts of a purely interpretative decision?*

All decisions of the Constitutional Court are binding through the entire territory of Azerbaijan Republic (Article 130 of the Constitution) including decisions on interpretation.

### **III. The interference of the European courts**

***A. The constitutional court and the other courts vis-a-vis the European Convention on Human Rights and the case law of the European Court of Human Rights***

*43. Is the constitutional court bound by the case law of the European Court of Human Rights? If this case law is not binding, does it influence the course of action of the constitutional court?*

Azerbaijan Republic has not yet ratified the European Convention and in this connection the Constitutional Court is not bound by the case law of the European Court of Human Rights. However, at the consideration of cases the Constitutional Court takes into account the legal views of the European Court of Human Rights on the matters considered.

*44. Can the court base its decision on provision of the European Convention and, in doing so, possibly deviate from the action of the constitutional court?*

Although, Azerbaijan Republic has not yet ratified the European Convention on Human Rights, on 3 August, 2001 the Constitutional Court adopted the Decision “On possibility to submit a complaint against judicial acts on civil cases, adopted before 1 September, 2000”. The Constitutional Court determined that the Law “On Confirmation, Entry Into Force of the Civil Procedure Code of Azerbaijan Republic and the Entailing Issues of Legal Regulation” does not provide for consideration of judicial acts adopted before 1 September, 2000 on the

basis of provisions of the Civil Procedure Code, which entered into force on 1 September, 2000.

The Constitutional Court underlined that Article 6 of the European Convention on Human Rights guarantees the right to a fair trial of civil and criminal cases. Hence, the Constitutional Court decided that on the basis of the above mentioned provisions the judicial acts on civil cases may be challenged to the cassation and appeal instances taking into account the procedure and terms provided for by the relevant articles of the Civil Procedure Code (Articles 357-401, 402-431, 432-438).

*45. Must a lawsuit have been brought before the constitutional court before an appeal can be made to the European Court of Human Rights (after having tried all internal avenues of appeal)?*

According to the new draft Law “On Constitutional Court”, the Constitutional Court shall be entitled to consider individual complaints. In this connection, before a complaint is submitted to the European Court of Human Rights it will be considered by the Constitutional Court, which is the last instance of the judicial system of Azerbaijan Republic.

### ***B. The constitutional court and the other courts vis-a-vis the law of the Court of Justice of the European Communities***

*46. Is the constitutional court bound by the case law of the Court of Justice of the European Communities? If this case law is not binding, does it influence the course of action of the constitutional court?*

Azerbaijan Republic has not yet ratified the European Convention and in this connection the Constitutional Court is not bound by the case law of the European Court of Human Rights.

*47. Has the constitutional court already referred, or could it refer, cases to the Court of Justice of the European Communities? What is the role of the constitutional court and the other courts in case of non-application of national regulations that are incompatible with Community law?*

Azerbaijan Republic is not a member of the European Community.

*48. Do national courts have a choice between referring cases to the Constitutional Court and to the Court of Justice of the European Communities?*