

Code of Criminal Procedure of the Azerbaijan Republic

Directorate General I - Legal Affairs

37.1. Depending on the nature and severity of the offence, the criminal prosecution shall be carried out in the form of private, semi-public or public charges in accordance with the provisions of this Code.

37.2. A private criminal prosecution shall take place only on a complaint by the victim concerning offences under Articles 147, 148, 165.1 and 166.1 of this Code and shall be discontinued in the event of a reconciliation between the victim and the accused before the court deliberates.

37.3. A semi-public criminal prosecution shall take place on a complaint by the victim or, in the circumstances provided for in Article 37.5 of this Code, on the initiative of the prosecutor for offences under Articles 127, 128, 129.2, 130.2, 131.1, 132-134, 142.1, 149.1, 150.1, 151, 156-158, 163, 175-177.1, 178.1, 179.1, 184.1, 186.1, 187.1, 190.1, 197 and 201.1 of the Criminal Code of the Azerbaijan Republic.

37.4. A semi-public criminal prosecution may not be discontinued by reason of reconciliation of the victim with the accused.

37.5. Where no complaint is made by the victim, a semi-public criminal prosecution may be begun by the prosecutor only in the following cases:

37.5.1. if the offence committed affects the interests of the state or society;

37.5.2. if the offence was committed by or against a representative of the government or other officials of state institutions;

37.5.3. if the offence was committed against a pregnant woman or an elderly or helpless person;

37.5.4. if the offence was committed by threats and by force or against a person dependent on the person who committed it;

37.5.5. if the offence was committed by or against a person without legal capacity or a person below the age of criminal responsibility.

37.6. A public criminal prosecution shall be brought on offences not covered by Articles 37.2 and 37.3 of this Code.

Article 38. Duties involved in criminal prosecution

38.1. When the preliminary investigator, investigator or prosecutor receives information concerning the preparation or commission of an offence or directly discovers such an offence, he shall act to protect and store the evidence and shall immediately open the preliminary investigation or investigation within his powers, in accordance with this Code.

38.2. If the offence is confirmed, the public prosecutor shall arraign the accused in court and request suitable punishment for him or, where necessary, application of coercive medical or educational measures.

38.3. The prosecuting authority shall take measures to compensate for damage as a result of acts provided for in criminal law.

38.4. The criminal prosecution shall continue until the circumstances which exclude criminal responsibility are elucidated or until the public prosecutor or the victim bringing a private prosecution withdraws the prosecution in accordance with this Code.

Article 39. Circumstances which preclude criminal prosecution

39.1. A criminal prosecution may not start or shall be discontinued (and the criminal case may not be begun or proceedings in the criminal case shall be discontinued) in the following circumstances:

39.1.1. if no criminal act has been committed;

39.1.2. if the act does not have a criminal content;

39.1.3. if the time-limit for prosecution has expired (excluding the circumstances in which the time-limit for prosecution is suspended);

39.1.4. if at the time of the act provided for in criminal law the perpetrator is below the age of criminal responsibility (excluding the circumstances in which coercive educational measures must be applied);

39.1.5. if the person dies after committing the act provided for in criminal law (excluding the circumstances in which it is necessary to acquit the person);

39.1.6. if there is a final court judgment on the same charge or another court decision which has not been annulled and makes it impossible to implement the criminal prosecution;

39.1.7. if there is an extant decision of the preliminary investigator, investigator or prosecutor not to initiate the criminal case on the same charge or to discontinue it;

39.1.8. if the victim has not lodged a complaint (in the case of a private prosecution or if the prosecutor does not act to launch the criminal prosecution in the case of semi-public charges);

39.1.9. if there is a reconciliation between the victim and the accused (only in the case of a private prosecution);

39.1.10. if the person committed the offence unconsciously (excluding circumstances requiring the application of coercive measures of a medical nature to such persons);

39.1.11. if there are grounds under the provisions of criminal law to absolve the suspect of criminal responsibility;

39.1.12. if the person has to be released under an amnesty act.

- 459.1.1. if the legal instrument violates anyone's fundamental rights and freedoms under the Constitution;
 - 459.1.2. if there is a contradiction between the provisions of this legal instrument and those of the Constitution, laws and other legal instruments of the Azerbaijan Republic which take precedence over it;
 - 459.1.3. if any provisions of this legal instrument need official interpretation;
 - 459.1.4. if any provisions of this legal instrument give rise to debate on the division of powers between Parliament, the executive and the judiciary.
- 459.2. In the cases provided for in Article 459.1 of this Code, the examination of the question of whether to make a request to the Constitutional Court of the Azerbaijan Republic shall be conducted in accordance with the rules laid down in Article 458 of this Code.

Article 460. Legal results of decisions by the Constitutional Court of the Azerbaijan Republic

- 460.0. Decisions of the Constitutional Court of the Azerbaijan Republic ruling that a legal instrument has completely or partially lost its legal force or interpreting the Constitution or laws of the Azerbaijan Republic shall constitute definite grounds for the following:
- 460.0.1. giving the relevant judgment or decision on a criminal case, simplified pre-trial proceedings or a complaint with a view to a private prosecution which come under the jurisdiction of the courts of first instance, the court of appeal or the Supreme Court;
 - 460.0.2. setting aside, on additional appeal to the Supreme Court, the judgments or decisions of a court of first instance, the court of appeal or the Supreme Court based on a provision of the legal instrument which has lost its legal force or was not interpreted correctly.

Chapter LIV

PROCEEDINGS ON THE BASIS OF NEWLY DISCOVERED FACTS

Article 461. Grounds for examining court judgments or decisions on the basis of newly discovered facts

- 461.0 The grounds for examining court judgments or decisions on the basis of newly discovered facts shall be as follows:
- 461.0.1. if a final court judgment or decision establishes that an erroneous judgment or decision was adopted as a result of deliberately false evidence given by the victim or a witness, a deliberately false opinion by the expert, deliberately false translation by the interpreter or forgery of material evidence, of records of the investigation and court procedures or of other documents;
 - 461.0.2. if a final court judgment or decision establishes that misuse of powers by the preliminary investigator, investigator, prosecutor or judge during the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution resulted in the adoption of an erroneous judgment or decision;
 - 461.0.3. if together with the self-evident facts and those previously established, facts that were unknown to the court and the parties to the proceedings when the judgment or decision was given indicate that the person convicted is innocent or committed an offence either more or less serious than that of which he was convicted, or that the person who was acquitted, or in respect of whom the criminal case, simplified pre-trial proceedings or proceedings on the complaint with a view to a private prosecution were discontinued, is guilty.

Article 462. Judgments or decisions that may be examined on the basis of newly discovered facts

- 462.0. The following final court judgments or decisions may be examined on the basis of newly discovered facts;
- 462.0.1. a conviction;
 - 462.0.2. an acquittal;

- 462.0.3. a decision to discontinue the criminal case, the simplified pre-trial proceedings or the proceedings on the complaint with a view to a private prosecution;
- 462.0.4. a decision to apply compulsory medical measures;
- 462.0.5. a decision to apply compulsory reformatory measures.

Article 463. Court empowered to examine court judgments or decisions on the basis of newly discovered facts

Only the plenary Supreme Court of the Azerbaijan Republic shall have the right to examine court judgments or decisions on the basis of newly discovered facts.

Article 464. Filing of applications for the examination of court judgments or decisions in connection with newly discovered facts

464.1. Persons who have the right to file a complaint or appeal or submissions with the Supreme Court shall have the right to apply for examination of a court judgment or decision in connection with newly discovered facts.

464.2. An application for the examination of a court judgment or decision in connection with newly discovered facts shall be filed in writing in accordance with Article 412 of this Code and with the procedure for lodging complaints or appeals with the Supreme Court.

464.3. There shall be no time-limit for applying for the examination of a conviction in connection with newly discovered facts in favour of the convicted person.

464.4. An application for re-examination of an acquittal which may result in a worsening of the acquitted person's position, or for re-examination of a conviction which may result in a worsening of the convicted person's position may be filed within 12 (twelve) months of the appropriate facts being established or of the applicant receiving information about the newly discovered facts.

464.5. If re-examination is applied for with a view to acquitting the convicted person, that person's death shall not prevent examination of the court judgment or decision on the basis of newly discovered facts. In that case, the application for examination of the court judgment or decision on the basis of newly discovered facts may be filed by the spouse or other close relative of the dead person.

Article 465. Requirements governing applications for examination of a court judgment or decision on the basis of newly discovered facts

465.1. An application for examination of a court judgment or decision on the basis of newly discovered facts shall indicate the following:

- 465.1.1. the family name, first name, father's name and procedural status of the applicant;
- 465.1.2. the exact title of the disputed judgment or decision (when, by whom and concerning which proceedings the document was issued);
- 465.1.3. a detailed explanation of the grounds and evidence for the necessity of re-examining the court judgment or decision;
- 465.1.4. the reasons for requesting examination of the court judgment or decision;
- 465.1.5. information on compliance with the deadline for the submission of the application and on the proof available.

465.2. A copy of the disputed court judgment or decision as well as the documents (originals or copies) supporting the application shall be attached to the application for re-examination of the court judgment or decision.

465.3. The copies of the application for re-examination of the court judgment or decision and of the documents attached to it shall be in sufficient number to distribute to all those who have the right to lodge a complaint or appeal with the Supreme Court.

Article 466. Preliminary examination of an application for examination of the court judgment or decision on the basis of newly discovered facts

466.1. The President of the Supreme Court of the Azerbaijan Republic shall assign the preliminary examination of the application for examination of the court judgment or decision on the basis of