BETWEEN THE DUTY TO COOPERATE AND THE RIGHT AGAINST SELF-INCRIMINATION: ARTICLE 264 OF THE AZERBAIJANI CRIMINAL CODE

ALS LAW BLOG, OCTOBER 2026

YUSIF GOCAYEV

Summary: Article 264 of the Criminal Code of Azerbaijan (hereinafter – the Code) has been examined more than once for its compatibility with the privilege against self-incrimination, not only in Azerbaijan but also in many other states. This article demonstrates the problems arising from Article 264 of the Code and proposes a balanced approach to this complex issue.

During its existence, art 264 has raised questions concerning both its application and its place in the Criminal Code. In particular, Article 264 creates tension with Article 66 of the Constitution of Azerbaijan (hereinafter – the Constitution), which protects against self-incrimination. Article 264 of the Code criminalizes fleeing the scene of a traffic accident by a driver who has violated traffic or vehicle-operation rules and the accident has resulted in serious consequences, including injury or death.[1]

For this reason, Article 264 was subject to consideration by the Constitutional Court of Azerbaijan in 2004 and 2012. Similar questions concerning the compatibility of criminal liability for leaving the scene of a traffic accident with protection against self-incrimination were also considered by the Constitutional Courts of Germany in 1963 and Russia in 2001. In both cases, the relevant provisions were held constitutional. These decisions illustrate the controversial nature of the issue. The goal of this article is to show that Article 264 of the Code is not in itself unconstitutional, but to examine how it should be applied in light of Article 66 of the Constitution.

In its decision dated 29.01.2004, the Constitutional Court of Azerbaijan (hereinafter – the 2004 Decision) supported the constitutionality of Article 264 of the Code by stating that the privilege against self-incrimination is not absolute and should be balanced against the rights of other individuals and public interests.[2] This reasoning is also consistent with the decision of the European Court of Human Rights (hereinafter – ECtHR) in *O'Halloran and Francis v. UK*. In this case, the ECtHR stated that people who voluntarily own and drive motor vehicles become part of a special regulatory regime and undertake special obligations, one of which is not to leave the scene of a traffic

[1] Criminal Code of the Republic of Azerbaijan, 1999, arts. 263, 263-1 and 264.

[2] "Azərbaycan Respublikasının Cinayət Məcəlləsinin 264-cü maddəsinin Azərbaycan Respublikası Konstitusiyasının 66-cı maddəsinə uyğunluğunun yoxlanılmasına dair", Constitutional Court of the Republic of Azerbaijan, 29 January 2004.

accident.[3] The ECtHR stated that it does not follow from its previous case law that any direct compulsion to provide information concerning an offence will automatically result in a violation of the privilege against self-incrimination.[4] Moreover, the fact that this information may assist the prosecution does not necessarily lead to a violation of the privilege against self-incrimination.[5] The main point is that this information should be limited in its nature, meaning that the essential elements of the offence must still be proved by the prosecution.[6]

It is at this point that a more difficult question arises. In its decision dated 10.04.2012, the Constitutional Court of Azerbaijan (hereinafter – the 2012 Decision), considering the difficulties in the application of Article 264 of the Code in practice and the ambiguity of the term "leaving" ("qaçma"), gave a comprehensive interpretation of this term and of the article as a whole.[7] Among the obligations to assist other injured parties to the accident and to identify oneself, the Constitutional Court, in the 2012 Decision, referring to the 2004 Decision, stated that the driver also has an obligation to give an "initial explanation" ("ilkin izahat") about the accident, which creates a much more problematic issue from the perspective of the privilege against self-incrimination.[8] In support of its decision, the Constitutional Court took the view that the right not to testify against oneself does not automatically apply immediately after every traffic accident. It explained that, "Since the right of a person driving a vehicle not to testify against himself is a criminal-procedural right, it does not arise immediately after a road traffic accident",[9] because a traffic accident by itself is not necessarily considered a criminal incident. For this reason, "In this case, the giving of an explanation (izahat) by those people, including the person driving the vehicle, should be regarded not as giving testimony against oneself, but as the fulfilment of the duties provided for by law".[10] In contrast, in *Zaichenko v. Russia*, the ECtHR adopted the opposite view: the police questioned Zaichenko about the origin of the stolen fuel cans found in his car, and during his explanation he made statements that were later used against him in court.[11]

---

[3] *O'Halloran and Francis v. United Kingdom*, Apps. nos. 15809/02 and 25624/02, ECtHR [GC], 29 June 2007, [2007] ECHR 544.
[4] See, *O'Halloran and Francis v. United Kingdom*.
[5] See, *O'Halloran and Francis v. United Kingdom*.
[6] See, *O'Halloran and Francis v. United Kingdom*.
[7] "Azərbaycan Respublikası Cinayət Məcəlləsinin 264-cü maddəsinin şərh edilməsinə dair", Constitutional Court of the Republic of Azerbaijan, 10 April 2012.
[8] See, 2012 Decision of the Constitutional Court of the Republic of Azerbaijan, 10 April 2012.
[9] See, 2004 Decision of the Constitutional Court of the Republic of Azerbaijan, 29 January 2004.
[10] See, 2004 Decision of the Constitutional Court of the Republic of Azerbaijan, 29 January 2004.
[11] *Aleksandr Zaichenko v. Russia*, App. no. 39660/02, ECtHR, 18 February 2010.

In this decision, the ECtHR held that, for the application of the protection against self-incrimination, what matters is not merely a person's procedural status, but whether law-enforcement authorities suspect that the person committed a criminal offence.[12]

In light of the ECtHR's decision in *Zaichenko v. Russia*, we should more carefully analyse what we mean by an "initial explanation" ("ilkin izahat"), as the privilege against self-incrimination may also apply to people who are not yet subjects of criminal procedural law. Law-enforcement authorities and courts should carefully scrutinise where the line lies between identification and limited regulatory information, on the one hand, and information that may incriminate the person or subsequently be used to establish criminal liability, on the other. To achieve this proper balance, the goal of the state should be the genuine and legitimate aims of protecting public safety and the rights of accident victims, rather than transferring the obligation to investigate the criminal incident and identify the perpetrator, which is the responsibility of law-enforcement authorities, to the perpetrators themselves.[13]

Ultimately, the real difficulty lies not in Article 264 of the Code itself, but in defining the limits of the cooperation that may be demanded from a driver immediately after the accident and thorough application of these limits. Article 264 may require drivers to remain at the scene of a traffic accident, assist injured persons, identify themselves, and provide only limited regulatory information when law-enforcement authorities arrive at the scene. However, this duty should not extend to compelling the driver, particularly when the circumstances of the accident give reason to suspect that the person has committed a criminal offence, to provide extensive explanations that are self-incriminating in nature. Accordingly, Article 264 should be applied in a manner that preserves the legitimate interests of public safety and accident victims while ensuring that the investigative burden remains with law-enforcement authorities.

[12] See, *Aleksandr Zaichenko v. Russia*.

[13] "Cinayət Məcəlləsinin 264-cü maddəsi ilə bağlı mübahisəli məsələlər", Müzəffər Ağazadə, Azərbaycan Vəkili XV, 2018, pp. 18–23.