

ON BEHALF OF AZERBAIJAN REPUBLIC

DECISION

OF THE CONSTITUTIONAL COURT OF AZERBAIJAN REPUBLIC

On Conformity of Article 109 of Law On Pension Maintenance of Citizens with Articles 25, 38 and 71 of the Constitution of Azerbaijan Republic

29 December, 1999

Baku city

The Constitutional Court of the Azerbaijan Republic composed of Kh. Hajiyeu (Chairman), Judges, F. Babayev, B. Garibov, R. Gvaladze, S. Salmanova (Reporter Judge), A. Sultanov, E. Mamedov,

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

the legal representatives of the body that submitted a petition, N. Allahverdiyev, Deputy Prosecutor General of the Azerbaijan Republic,

the legal representative of Respondent, I. Abdoulazizov, Deputy Head of the General Department of the Parliament of the Azerbaijan Republic,

specialists: F. Aliyev, Chief of Social Policy and Welfare of Ministry of Labour and Social Defence of Population; M. Houmbatov, Chief of Headquarters of Judicial Decisions Execution Office of Ministry of Justice; J. Mamedov, Chief of Finance Department of State Fund of Social Defence of Azerbaijan Republic

in accordance with Article 130.3.1 of the Constitution of Azerbaijan Republic has examined in open judicial session via procedure of special constitutional proceedings the case submitted by the petition of the Prosecutor's Office of Azerbaijan Republic of 6 December, 1999, N 05DK99 concerning the conformity of Article 109 of Law On Pension Maintenance of Citizens to Articles 25, 38 and 71 of the Constitution of the Azerbaijan Republic,

having heard and discussed the report of Judge S. Salmanova, the statements of N. Allahverdiyev, the legal representatives of the party who submitted petition, I. Abdoulazizov, legal representative of respondent, the opinions of F. Aliyev, M. Houmbatov and J. Mamedov, the Constitutional Court of the Azerbaijan Republic

DETERMINED AS FOLLOWS:

The Prosecutor's Office of Azerbaijan Republic in its petition asks for verification of conformity of Article 109 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens stating that during serving a sentence in prison the pensioners who are condemned to deprivation of freedom shall get 20 percents of the fixed pension, with Articles 25, 38 and 71 of the Constitution of Azerbaijan Republic.

In connection with the matter in issue, the copies of official texts of Articles 3, 10, 22, 90, 104 and 109 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens certified by the Parliament of the Azerbaijan Republic are enclosed to case.

The Constitutional Court of the Azerbaijan Republic notes the following:

According to Article 109.1 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens if a pensioner is deprived of freedom then he/she shall get 20 percents (increases not included) of the fixed pension during the period of serving a sentence. In accordance with Article 38.1 of the Constitution of Azerbaijan Republic, everyone has the right for social protection.

Under para 3 of the same Article Everyone has the right for social protection on reaching specific age according to legislation, in case of illness, disability, loss of bread-winner in the family, due to unemployment and in other cases envisaged by legislation.

According to the legislation of the Azerbaijan Republic the right of citizens for social welfare is carried out via below-mentioned procedure.

The working citizens, including the persons who are serving a sentence in prisons take part in formation of means directed on payment of labour pensions by paying a certain part of earnings as obligatory insurance in the State Fund of Social Protection.

These pensions are got for long-sentence public and useful work, service, for performance of certain public and useful obligations and according to Article 22 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens are fixed for life. As regards the social pensions according to Article 90 of this Law they are fixed for invalid and not working persons.

According to Article 71.2 of the Constitution of Azerbaijan Republic, no one may restrict implementation of rights and liberties of a human being and citizen.

However the payment to the citizens of pension at a rate of 20 percents for the period of deprivation of freedom limits their right for social maintenance stipulated in the Constitution of Azerbaijan Republic.

It is necessary also to note, that the pensioners condemned to deprivation of freedom, are kept in the corrective-labour institutions at the expense of the state budget.

The Law of Azerbaijan Republic On Pension Maintenance of Citizens does not provide for payment to the pensioners deprived of freedom of part of pension (i.e. 80 percents of pension) for maintenance of persons serving a sentence in corrective-labour institutions.

Besides the above-stated, the Article 109.1 of Law of Azerbaijan Republic On Pension Maintenance of Citizens actually has established an additional kind of punishment not stipulated in the Criminal Code of Azerbaijan Republic. This punishment unlike the basic one involves also the members of the condemned person's family, limiting their right for social welfare. The specified point contradicts to principle of equality of citizens to the Law enshrined in Article 25 of the Constitution of Azerbaijan Republic.

In the Universal Declaration of Human Rights and International Pact On the Economic, Social and Cultural Rights the restriction of the right for social maintenance of the condemned pensioners is not envisaged.

Article 22 of the Universal Declaration of Human Rights states "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

In Article 9 of International Pact "On the Economic, Social and Cultural Rights" it is stipulated, that each person has the right for social welfare, including social insurance.

The Constitutional Court of Azerbaijan Republic considers important to specify that the international practice does not recognize the condemnation of the person as a ground for deprivation of his/her right for social maintenance.

In para d, item 9 "the Social rights" of the Resolution of the Committee of Ministers On Electoral, civil and social rights of prisoners to the member States it is enshrined that if prisoner was enabled to the right for benefits on social maintenance before imprisonment, this right cannot be abolished by fact of imprisonment itself.

As it proceeds from the above-mentioned Article 109.1 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens, providing for payment of 20 percents of pension to the condemned pensioner during deprivation of freedom does not correspond to Articles 25, 38, 71 of the Constitution of Azerbaijan Republic.

At the same time the Constitutional Court of Azerbaijan Republic considers important to note that the legislation does not exclude a possibility of deduction from pensions in the civil-law procedure and in the virtue of court decision.

Article 104 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens provides for deduction of the sum of the paid pension. But in para 2 of this article it is specified, that the penalty imposed on pension in accordance with legislation can not exceed 50 percents of pension. Proceeding from this provision of Law the rules of payment of pensions to the persons condemned to deprivation of freedom should be determined.

Taking into account the above-stated and being guided by Article 130.3.1 of the Constitution of Azerbaijan Republic and Articles 75, 76, 78, 80-83, 85 of the Law of Azerbaijan Republic "On Constitutional Court", the Constitutional Court of Azerbaijan Republic

DECIDED:

1. To recognize Article 109.1 of the Law of Azerbaijan Republic On Pension Maintenance of Citizens of Azerbaijan Republic null and void in connection with their non-conformity with Articles 25, 38, 71 of the Constitution of Azerbaijan Republic.
2. To recommend to Milli Majlis of Azerbaijan Republic to determine the procedure of payment of pensions to the persons condemned to deprivation of freedom.
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 interpreted by any body or official.

The Constitutional Court of Azerbaijan Republic