**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of some provisions of the Law of the Republic of Azerbaijan “On Compulsory State Personal Insurance of Military Personnel”*

**28 January 2014                                                                           Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova, Sudaba Hasanova, Rovshan Ismaylov, Mahir Muradov, Jeyhun Garajayev, Rafael Gvaladze (Reporter-Judge), Isa Najafov and Kamran Shafiyev;

attended by the Court Clerk Elmaddin Huseynov,

representatives of interested parties – Bagir Asadov, Judge of Supreme Court of the Republic of Azerbaijan; Vasif Amiraslanov, Senior Advisor of Department for Economic Legislation of the Milli Mejlis of the Republic of Azerbaijan;

expert – Mubariz Elchiyev, senior lecturer of Civil Procedure and Commercial Law Department of the Baku State University;

specialists – Natig Guseynov, Head of Department of Legal Support and Information of the Office of Prosecutor General of the Republic of Azerbaijan, state counselor of justice of III class, Mahir Abdullaev, Head of Department of Licensing, Applications and Claims of Service of Control of National Insurance of the Ministry of Finance of the Republic of Azerbaijan, Afgan Mirzoyev, Head of Department of Law and Personnel of Business Company of National Insurance of the Republic of Azerbaijan and Ragiba Gurbanov, Judge of the Court of Appeal of Baku city;

in accordance with the Article 130.4 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on request of the Supreme Court of the Republic of Azerbaijan on interpretation of some provisions of the Law of the Republic of Azerbaijan “On State Compulsory Personal Insurance of Military Personnel” from the point of view of part 7 of Article 149 of the Constitution of the Republic of Azerbaijan.

having heard the report of Judge Rafael Gvaladze, the reports of the legal representatives of the subjects interested in special constitutional proceedings and specialists, conclusions of expert, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Supreme Court of the Republic of Azerbaijan (hereinafter referred to as the Supreme Court) in its request to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) specifies that on May 20, 1997 for the purpose of strengthening of social protection of military personnel was adopted the Law of the Republic of Azerbaijan “On Compulsory State Personal Insurance of Military Personnel” (hereinafter referred to as the Law “On State Compulsory Personal Insurance of Military Personnel”), that established the rules and conditions of state compulsory personal insurance of their life and health. According to Article 3 of this Law, the insurer of military personnel is the state owned Insurance Company fulfilling state compulsory personal insurance of the military personnel.

By the Law dated October 20, 2006 “On Introduction of Amendments and Additions to the Law “On State Compulsory Personal Insurance of Military Personnel” the amount of compulsory insurance of the military personnel was raised.

Therefore the number of appeals to insurance body and courts for receipt of insurance payment increased.

Considering such cases some courts, taking as a basis the Article 149 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution) made decisions in connection with satisfaction of claims, while others rejected claims, based on the fact that there is no regulation connected with retroactive effect of the law in this Law.

In view of specified, the Supreme Court asked the Constitutional Court to give interpretation of some provisions of the Law “On State Compulsory Personal Insurance of Military Personnel”.

The Plenum of the Constitutional Court, first of all, considers necessary consistently consider the normative legal acts adopted in the sphere of social protection of the military personnel.

By the Decree of the President of the Republic of Azerbaijan of September 20, 1991, No. 350 “On Establishment of the State-owned Insurance Business Company of the Republic of Azerbaijan” the implementation of all types of compulsory insurance in the Republic of Azerbaijan was entrusted to the State-owned Insurance Business Company.

On December 25, 1991 was adopted the Law of the Republic of Azerbaijan “On Status of Military Personnel”.

According to Article 2.1 of this Law, the citizens of the Republic of Azerbaijan and citizens of other states who are in active duty in the Armed forces of the Republic of Azerbaijan, Border troops of the Republic of Azerbaijan and other armed groups created according to the legislation of the Republic of Azerbaijan and also the persons liable for call-up who are on charges have the status of the military personnel.

According to Article 27 of the same Law, the military personnel is subject to compulsory personal insurance by the state from the date of receipt of the status of the military personnel against possible consequences of the accidents connected with their death, a mutilation (wound, an injury, a contusion), loss of health (injury in connection with a disease) in the period of military service (charges), and also with fulfillment of duties of military service. To the persons who lost working capacity during passing of military service, state guarantees the social security.

By the Decree of the President of the Republic of Azerbaijan of February 8, 1992, No. 563 “On compulsory national personal insurance of the military personnel who is on service in Armed forces and border troops of the Republic of Azerbaijan, persons liable for call-up called on charges in Armed forces of the Republic of Azerbaijan, staff of other army units formed according to the legislation of the Republic of Azerbaijan, command and ordinary personnel of the ministries of a national security and internal affairs of the Republic of Azerbaijan” connected with compulsory insurance of the military personnel by the state, establishment and approval of an order and conditions of insurance of the amount of insurance payments were charged to Cabinet of Ministers of the Republic of Azerbaijan.

By the Resolutions of the Cabinet of Ministers of the Republic of Azerbaijan No. 99-6 of February 15, 1992 and No. 426-20 of August 4, 1992 the control of timely and complete payment of insurance payments was entrusted to the State-owned Insurance Business Company.

On May 20, 1997, with the purpose of strengthening of social protection of the military personnel the Law “On State Compulsory Personal Insurance of Military Personnel” establishing rules and conditions of the national compulsory personal insurance of their life and health was adopted. Due to the adoption of this law and according to Decree of the President of the Republic of Azerbaijan of November 22, 1998, No. 27 and Resolutions of Cabinet Ministers of the Republic of Azerbaijan of June 22, 1998, No. 140, the Decree of the President of the Republic of Azerbaijan of February 8, 1992, No. 563 and Resolutions of the Cabinet of Ministers of the Republic of Azerbaijan No. 99-6 of February 15, 1992 and No. 426-20 of August 4, 1992 lost the force.

According to Article 4 of the Law “On State Compulsory Personal Insurance of Military Personnel”, military personnel is insured in amount of thousand fold sum of minimum wage determined by legislation.

On October 20, 2006 amendments and additions were made to the specified law and in the Article 4 of the Law the insurance sum was determined in amount of eleven thousand AZN.

As it was specified, courts, considering cases in connection with payment of an insurance sum, in certain cases based on part VII of Article 149 of the Constitution, applied the Law “On State Compulsory Personal Insurance of Military Personnel” to the military personnel, who dead or wounded prior the introduction of this Law in force and who did not receive an insurance sum.

Due to the issues raised in request concerning the Article 149 of the Constitution, the Plenum of the Constitutional Court considers important to clear up an issue of force of norms of law by time.

The issue of force of legal norm by time has wide practical value. Very often on its correct decision depends what law should be applied to the specific relations – new or former and how to implement its provisions.

Rather great value of issue confirms also the fact that it is regulated by Article 149 of the Constitution. According to part VII of this article, normative legal acts, improving the legal position of individuals and legal entities, removing or mitigating their legal responsibility can have retroactive fore. Other normative-legal acts do not have retroactive force.

Part VII of the Article 149 of the Constitution, in a general form establishes the following rules: the normative legal act establishes the rules concerning only the future, it has no retroactive force.

For the explanation of this rule it is necessary to divide precisely two provisions provided in part VII of Article 149 of the Constitution and to consistently study them, starting from the second.

The normative-legal acts do not have retroactive force. The essence of this rule is that the court, cannot apply the normative legal act to the facts (relations) which occurred before its entry into force with the purpose to change or cancel the consequence in law created by these facts.

The normative legal act is a dictatorship of the one who accepted it, and it can affect only on future time. It is impossible to demand from the citizen to follow the rule that he does not know. This principle protects stability of the relations between subjects of legal relationship and law and durability of law and order. The opposite would mean the undermining of authority of this normative legal act of those who submit to it.

The new normative legal act commencing on the effective date covers only those events and the facts that occurred after its publication.

In more detailed analysis of the bases of the normative legal acts concerning retroactive effect, first of all, it is necessary to clear up the nature of influence of the legal norm on the public relations by time.

In the theory of the right of norm, according to past, real and future time, is distinguish on three main types of norms of law: retro active norm (governing the relations which have occurred, occur and will happen in the future); urgently existing rule (governing the relations which occur and will happen in the future); perspective acting norm (governing the relations which will happen in the future).

Classification of force of norms of law by time, first of all, allows to see the importance of pressure of legal force of influence of legal norm on the public relations, and on the other hand - to reveal contradictions by time which can arise between norms acting earlier and new ones.

The majority of regulatory legal acts, according to the principle of “let retro non agit”, has no retroactive effect. Such acts are applied only to the relations that arose after their introduction in a legal force. Lack of retroactive legal effect at normative legal act creates a guarantee of an order and legal safety in a system of law. Such restriction, first of all, protects from illegal intervention of legislation and bodies putting regulations into practice in subjective rights of an individual.

In the legislation the principle of legal certainty, i.e. expectation of new legal norm (which is in advance expected, not contradicting values and logic of a system of law), is one of basic elements of constitutional state. Lack of retroactive force regarding legal norm is a component of legal certainty’s principle.

Entering of restriction for use of the retroactive legal effect of the legal norm connected with institute of legal responsibility. Legal responsibility negatively comes to end for subjects of legal relations. Therefore, participants of legal relations shall represent accurately formal legal structure of the relations that are negatively coming to end at the level of the legislation.

In addition to noted, from the point of view of constitutional right in a system of law the application of retroactive effect of the legal norm is not excluded.

Application of retroactive effect of the legal norm concerns earlier existing relations and somewhat has auditing character. As a result of this impact, already settled relations or the facts are reviewed by the new normative legal act.

Article 149.7 of the Constitution provides application of retroactive effect of two types of normative legal acts:

- improving the legal position of individuals and legal entities;

- removing or mitigating their legal responsibility.

In response to the question which is brought up in a request, concerning what implies expression “improving the legal position of individuals and legal entities” provided by the Article 149.7 of the Constitution and whether it in itself covers improvement of financial position of individuals and legal entities, the Plenum of the Constitutional Court, first of all, considers necessary to clear up the concept “legal position”.

The concepts “legal position” and “legal status” of the personality carry identical sense. The word “status” in translation from Latin means someone's situation. In this case is meant the status of the personality, person, citizen.

Legal status is fixed from legal point of view depending on personality’s position in society. Basis of legal status is formed by actual social status that is a real situation of person in existing system of public relations. Law regulates this situation, bringing person in a legislation framework.

There are distinguished the following types of legal status:

- general or constitutional status of a citizen;

- special status of citizens of a certain category;

- individual status, etc.

Legal status has many variations but from practical side, the three above-stated ones represent value.

Under general legal status is meant the status of the person as member of society, citizen of the state. General legal status is established by the Constitution and does not depend on various conditions (changes of position on service, family status, a post, the fulfilled functions), equal and identical for all, has stable and general nature.

The general legal status cannot cover all features, distinctions and nature of legal subjects. Therefore, depending on a labor activity of legal subjects, nature of legal relations that treat also other circumstances, regularly arising and stopping numerous subjective rights and obligations do not covered by general legal status.

The special status reflects features of position of citizens of a certain category (for example: pensioners, students, military personnel, teachers, disabled people, participants of war, etc.). The specified sections and groups can have the additional rights, duties and privileges based on the general constitutional status of the citizen and provided in the current legislation.

The individual status reflects character of the individual (for example: sex, marital status of the person, the fulfilled work and other features). The individual status is set of the individual rights and the citizen's duties. The individual status is dynamic, changes according to the changes happening in human life.

Special, individual and other types of the status cannot contradict to the general (constitutional) status. On the contrary, they have to be based on it as on the initial main status.

The category “legal position (status)” characterizes set of the rights and obligations of any subject. This concept, from the point of view of the law characterizes the available possibilities of the subject and the position taken by him/her in society.

The “legal position (status)” forms a basis of legal principles adjustment of interconnection between various subjects of law (the state is among them).

Thus, the structure of a legal position is formed by the rights that are in dialectic communication among themselves, freedoms, legal obligations and responsibility of the personality.

In the theory of law, expression “the circumstances improving a legal position of individual and legal entities” is meant as removal of restrictions assigned to the rights and freedoms, release of the person from the duties that are earlier assigned to him, providing the rights that were not granted earlier, etc.

The rights, obligations and responsibility of the military personnel are established in the Law of the Republic of Azerbaijan “On Armed Forces of the Republic of Azerbaijan”, the Law “On Status of Military Personnel” and other legal acts. In these legal acts, the special status of the military personnel is established.

According to the specified laws the military personnel has the political rights and freedoms, the rights to personal immunity, work, rest, health protection and compensations of a damage to health, education, change of the duty station, receipt of benefits and other privileges and so forth.

In the relevant articles of the Law “On State Compulsory Personal Insurance of Military Personnel” the one-time increase in an insurance sum does not influence on essence and amount of the rights and freedoms of the military personnel determined by the legislation, these rights and freedoms remain as is. From this point of view, one-time increase in an insurance sum cannot be perceived as the liability reflected in Article 149.7 of the Constitution, “improving legal position” of the military personnel.

Along with it, the Plenum of the Constitutional Court notes that the issue of payment of an insurance sum established by this Law concerning the military personnel, the dead, missing persons who were wounded before entry into force of the Law “On Armed Forces of the Republic of Azerbaijan” of May 20, 1997, but did not receive an insurance sum on these bases yet, shall be solved according to requirements of Articles 12, 16 and 25 of the Constitution.

Thus, according to Article 12.1 of the Constitution the supreme objectives of the State are ensuring of human rights, civil liberties, and an adequate standard of living for the citizens of Azerbaijan.

According to Article 16.1 of the Constitution, the Republic of Azerbaijan ensures the improvement of the well-being of the people and every citizen, their social protection and normal living standard. According to parts I and III of Article 25 everyone is equal before the law and the court, everyone has equal rights and freedoms irrespective of race, ethnicity, religion, sex, origin, property status, social position, convictions, political party, trade union organization and social unity affiliation. Limitations or recognition of rights and freedoms because of race, ethnicity, social status, language, origin, convictions and religion are prohibited. Also in part IV it is noted that no one may be harmed, granted advantages or privileges, or deprived from granting advantages and privileges on the basis of the abovementioned grounds.

The refusal of payment of an insurance sum to the military personnel, dead, missing or who was wounded before entry into force of the Law “Armed Forces of the Republic of Azerbaijan” and who did not receive this amount on these bases, or to their heirs violates the right to equality that is the constitutional principle. Thus, the military personnel enters the same category and possesses the equal status, and based on the Law “On State Compulsory Personal Insurance of Military Personnel” they have identical guarantees for an identical insurance risk. The principle of equality that is the constitutional principle under equal conditions, means finding of legal subjects in equal situation and, that is the most important, forbids application of discrimination to persons from the same category without any objective and reasonable explanation.

The time spent by person at military service, death during military service, missing, getting of wound or group of disability, also demobilized on unfitness for military service does not refute the fact of insurance incident, and it cannot become the basis for refusal of payment of insurance. Otherwise, this circumstance will lead to carrying out of unreasonable differentiation of the social rights of persons, from one category, not corresponding to constitutional purpose on admissible restriction of human and citizen rights and freedoms and violating requirements of the right to equality that is the constitutional principle.

In connection with issue raised in a request, concerning of what whether the lack of the contract on the state compulsory personal insurance of the military personnel between the State-owned Insurance Business Company and Ministry of Defense before adoption of the Law “On State Compulsory Personal Insurance of Military Personnel”, became the basis for refusal in implementation of insurance payment to the military personnel, to whom who died during military service, the missing persons, who got wound or group of disability and demobilized on unfitness for military service, the Plenum of the Constitutional Court notes following.

As it is noted, according to the Law of December 25, 1991 “On Status of the Military Personnel”, the military personnel is subject of compulsory personal insurance by the state from the date of receipt of the status of the serviceman against possible consequences of the accidents connected with their death, a mutilation (wounds, an injury, a contusion), loss of health (damage to health in connection with disease) during military service, and also in connection with accomplishment of obligations of military service (charges), and also with fulfillment of duties of military service.

According to requirements of the legislation, the state compulsory personal insurance of the military personnel fulfilled based on the insurance contract. The contract of the state compulsory personal insurance of the military personnel is signed between the insurer for benefit of the third party, that is, insured (receiving benefit) persons, and in this contract are reflected the information concerning insured (receiving benefit) persons, an obligation and responsibility of the insurer, a payment procedure of an insurance payment to the insured person, and also a payment procedure of insurance premiums by insurer.

Having signed the contract with relevant organ of the executive authority the insurer, undertakes the liability in case of the insurance incident provided in the insurance contract to pay insured person(receiving benefit) the insurance payment established by the legislation. Even if this liability of the insurer follows from the contract of the civil law, paying an insurance payment in the relations with insured person (receiving benefit) it, acts on behalf of the state, fulfills the obligation of the state following from the Constitution to pay compensation to these persons for the done harm of their life or to health, and also fulfills public function.

Undertaking by the insurer on itself of this function, does not exempt the insurer from an obligation to fulfill contract obligations, and the state - from an obligation to provide financing of these expenses.

Finally, the lack of the contract in case of implementation of the state obligatory personal life insurance and health of the military personnel and the persons equated to them cannot change an essence (nature) of the rights and obligations existing between the state and the person who get damage of life or of health during military service.

According to Article 7.3 of the Constitution the state power in the Republic of Azerbaijan is based on the principle of separation of powers.

The principle of separation of powers means implementation of different in fact authoritative functions by free, independent branches of the power. The purpose of the principle of separation of powers is assignment prevention by one branch of the power of authority of another.

According to Article 94.1.16 of the Constitution establishment of the general rules concerning social security belongs to powers of Milli Majlis of the Republic of Azerbaijan.

In this connection, the Plenum of the Constitutional Court considers that it shall be recommended to Milli Majlis of the Republic of Azerbaijan to establish an order and conditions of payment of an insurance sum to the military personnel, who dead, missing, who were wounded before entry into force of the Law on May 20, 1997 “On Armed Forces of the Republic of Azerbaijan”, but did not get this amount yet.

By regulating an order and conditions of this mechanism, the legislator, can choose various payment methods of an insurance sum, however the amount of payment of an insurance sum established by the legislation in 2006 cannot be cancelled or reduced and this amount shall be observed certainly.

Otherwise, the principle of observance of trust of citizens to the law that implies reasonable stability of legal regulation and inadmissibility of entering of unreasonable changes into system of the existing norms of law can be broken.

Answering the question which is raised in a request whether the Law “On Armed Forces of the Republic of Azerbaijan” is applied to the persons who already get an insurance sum before introduction in force of the Law, the Plenum of the Constitutional Court notes that in this situation the provisions of part VII of Article 149 of the Constitution should not applied to these relations.

The Plenum once again notes that according to requirements of the legislation, the insurance relations are fulfill by the conclusion of the insurance contract between the parties.

According to requirements of the legislation and terms of the contract, the insurance contract loses force in case of the expiration of its term, or in case of event of an insured event and in connection therewith, in case of payment of an insurance payment by the insurer to the insurant. Payment of insurance payment is made in the order established by the legislation existing at that time. From this point of view, repeated payments of insurance payment to persons who get a single insurance payment and the insurance contract was terminated on this basis, would contradict to requirements of the legislation.

In connection with the issues that are raised in request, the Plenum of the Constitutional Court comes to the following conclusions:

Increase in a single insurance sum in the relevant articles of the Law “On State Compulsory Personal Insurance of Military Personnel” does not influence on an essence and amount of the rights and freedoms of the military personnel established by the legislation, these rights and freedoms remain such as is. From this point of view, increase in a single insurance sum cannot be perceived as a circumstance “improving legal position” of the military personnel stipulated in part VII of Article 149 of the Constitution;

According to requirements of the Articles 12, 16 and 25 of the Constitution to the to the military personnel who dead, missing or were wounded before entry into force of the Law of May 20, 1997 “On Armed Forces of the Republic of Azerbaijan”, but did not get this amount yet, the insurance sum, stipulated by the legislation shall be paid. Based on point 16 of part I of Article 94 of the Constitution it shall be recommended to Milli Majlis of the Republic of Azerbaijan to establish in short terms of an order and conditions of payment of this amount;

Repeated payment of an insurance payment to persons who received it and on this basis the insurance contract was terminated is inadmissible from the point of view of requirements of the legislation.

Being guided by the Article 130.4 of the Constitution of the Republic of Azerbaijan and Articles 60, 62, 63, 65-67 and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Increase in a single insurance sum in the relevant articles of the Law of the Republic of Azerbaijan “On State Compulsory Personal Insurance of Military Personnel” does not influence the essence and amount of rights and freedoms of military personnel established by legislation, these rights and freedoms remain such as is. From this point of view, increase in a single insurance sum cannot be perceived as a circumstance “improving legal position” of military personnel stipulated in part VII of the Article 149 of the Constitution of the Republic of Azerbaijan.

2. According to requirements of the Articles 12, 16 and 25 of the Constitution of the Republic of Azerbaijan the persons who were deceased, missing and/or wounded before entry into force of the Law of the Republic of Azerbaijan dated May 20, 1997 “On Armed Forces of the Republic of Azerbaijan”, and who did not get this amount yet, shall be paid accordingly the insurance sum, stipulated by the legislation. Based on point 16 of part I of the Article 94 of the Constitution it shall be recommended to Milli Majlis of the Republic of Azerbaijan to establish in short term the order and conditions for payment of this amount.

3. Repeated payment of insurance payment to persons who received it and on this basis of it the insurance contract was terminated is inadmissible from point of view of requirements of legislation.

4. The decision shall come into force from the date of its publication.

5. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

6. The decision is final, and may not be cancelled, changed or officially interpreted by any institution or official.