**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

##### OF THE PLENUM OF CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On interpretation of the provision “those who have the higher legal education” stipulated in Article 126 of the Constitution of the Republic of Azerbaijan and in some normative legal acts*

# 30 June, 2014 Baku city

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

attended by the Court Clerk Faraid Aliyev,

the legal representatives of the subjects interested in special constitutional proceedings: Asad Mirzaliyev, Eldar Askerov, senior adviser of Department for Administrative and Military Legislation of Milli Majlis of the Republic of Azerbaijan;

experts: LLD. Amir Aliyev, Dean of Law Faculty of Baku State University;

specialists: Subhi Kazimov, Head of Legal examination and licensing Department of Ministry of Education of the Republic of Azerbaijan, Subhan Aghakishiyev, lead adviser of Department of social-normative acts of Chief Administration of legislation of the Ministry of Justice of the Republic of Azerbaijan ;

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 concerning interpretation of the provision “those who have the higher legal education” stipulated in Article 126 of the Constitution of the Republic of Azerbaijan and in some normative legal acts.

having heard the report of Judge Kamran Shafiyev, the reports of the legal representatives of the subjects interested in special constitutional proceedings, specialists and experts, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

The Supreme Court of Republic of Azerbaijan (hereinafter referred to as the Supreme Court) by a request to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court), asks to give interpretation of the provision “those who have higher legal education” stipulated in Article 126 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution), Article 93 of the Law of the Republic of Azerbaijan “On Courts and Judges” (hereinafter referred to as the Law “On Courts and Judges”), Article 29 of the Law of the Republic of Azerbaijan “On Public Prosecution Office” (hereinafter referred to as the Law “On Public Prosecution Office”), Article 3 of the Law of the Republic of Azerbaijan “On Notary Office” (hereinafter referred to as the Law “On Notary Office”), Article 8 of the Law of the Republic of Azerbaijan “On Advocates and Advocacy” (hereinafter referred to as the Law “On Advocates and Advocacy”), item 20 of the Provision “On Service in Internal Affairs Bodies of the Republic of Azerbaijan” (hereinafter referred to as the Provision “On Service in Internal Affairs Bodies of the Republic of Azerbaijan”) adopted by the Law of the Republic of Azerbaijan of 29 June, 2001 and other normative legal acts.

In request it is noted that in 1990-2008 the admission of students was carried out to the Baku State University with a specialization in “International law”. The specialty “Legal Science” was assigned to those who graduated on this specialty till 2000. By the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 082 of May 17, 1999 “On introduction of additions and amendments into the Resolution of the Cabinet of Ministers No. 4 of January 9, 1997 “On the list of the fields and specialties of the higher and secondary vocational education” the field and the specialty “International law” (code – HS 200100) were added. After that, the inscription of field of education of “Legal Science” in the documents on education of graduates of those who graduated with specialty “International law” was suspended.

In “The list of specialties (programs) on a grade of a bachelor degree of the higher education” approved by the Resolution of the Cabinet of Ministers No. 8 of January 12, 2009 there are provided neither specialty, nor the field of education named as “International law”. In practice the graduates who graduated in “International law” are not admitted to the demanded positions.

According to a conclusion of the Supreme Court, for elimination of the specified contradiction by clarifying whether the specialty “International law” is included into “the higher legal education”, there was a need of interpretation of the provision “those who have the higher legal education” provided in the Constitution and laws.

In connection with the inquiry the Plenum of the Constitutional Court considers necessary to note the following.

According to Article 42 of the Constitution every citizen has the right to education.

The right to education includes not only opportunity to get the free compulsory general secondary education, but also to satisfy natural inquiries in creativity, acquisition of new knowledge, increase of experience in various areas.

Taking into account that the right for education according to its legal nature is the social right, its ensuring is one of the special purposes of the state and serves for guaranteeing of increase of welfare of each citizen, his/her social protection and a worthy standard of living. So, according to Article 16.2 of the Constitution the state of Azerbaijan promote the development of culture, education, public health, science, the arts, and protect the nature and the historical, material and spiritual heritage of the people.

In the Republic of Azerbaijan the basic principles of a state policy in the field of ensuring of the right for education and the general conditions of educational activity are regulated by the Law of the Republic of Azerbaijan acting till September 8, 2009 “On education” of October 7, 1992 and the Law of the Republic of Azerbaijan “On education” of June 19, 2009 (hereinafter referred to as the Law “On Education”).

It should be noted that according to the basic principles of a state policy in the field of education both laws established a large powers of the state in regulation of this sphere.

In Article 30 (that is invalid nowadays) of the Law of the Republic of Azerbaijan “On education” among the powers of the Cabinet of Ministers there are established by the legislation the public authority to define the strategy in the Republic of Azerbaijan on management of education system and the power to approve the list of specialties for professional vocational institutions.

According to this the Resolution No. 4 of January 9, 1997 “On the list of the fields and specialties of the higher and secondary vocational education” was adopted by the Cabinet of Ministers. In point 2.13 of this Resolution the specialty “Legal Science” is specified as the field of the higher legal education.

According to this by the Resolution of the Cabinet of Ministers No. 082 of May 17, 1999 “On introduction of additions and amendments into the Cabinet of Ministers Resolution No. 4 of January 9, 1997 “On the list of the fields and specialties of the higher and secondary vocational education” the “International law” was added as the field and specialty of the higher legal education.

According to Article 22 of the Law “On Education” highly specialized experts and scientific-pedagogic staff are trained in the higher education level taking into account the demands of the society and labor market.

The training of specialists and scientific-pedagogic staff is carried out in three levels at the higher educational institutions of the Republic of Azerbaijan: bachelor degree (except for medical education), master’s degree (except for medical education) and doctorate. The baccalaureate level of education carries out a wide range of specialists with higher education on educational programs of various majors, based on general secondary education and secondary vocational-professional education. The Bachelor’s degree is a completed higher education.

In point 1.2 of the Resolution of the Cabinet of Ministers of April 23, 2010 “On the statement of State standard and the program of a degree of the higher education” it is noted that the purpose of the higher education consists in preparation at a degree of the higher education of highly qualified specialists and scientific and pedagogical cadres on various specialties (specializations) taking into account the demands of the society and labor market.

In education system the higher legal education takes a special place. In the field of the higher legal education, there is a certain uniform state standard, which according to inquiries of modern society provides that lawyers shall possess comprehensive political, social, legal, cultural knowledge.

The higher legal education is a set of knowledge in the sphere of the state, law and management, which provide the bases professional legal activity. The higher legal education is a system of legal knowledge, views and belief received by the person as a result of training and education in the sphere of legal science that allowing him/her be engaged in professional legal activity. It should be noted that the higher legal education reflects in itself also specialization in various spheres of law. Thus, it is necessary to consider that a main objective of carrying out of specialization is the acquisition in the course of education according to professional training programs of knowledge, comprehensions and the abilities providing for possibility to implement the professional activity. At the same time, the determination of specialization in the field of higher legal education indicating that persons who got in higher education according to the approved training programs, should not harm to getting higher legal education because this can harm the essence of the right to education enshrined in the Constitution.

Plenum of the Constitutional Court notes that any legal issue in particular an issue of implementation of the rights enshrined in the Constitution should be regulated in the legislation in such a way that this would not damage the constitutionally significant values and observe the balance between public and private interests.

It should be noted that public authorities, within their powers, are free in implementation of state regulation of education. However such regulation is possible only in that case and a form if the determination of the relevant fields of the higher education is based on objective circumstances, justified itself, served constitutionally to the significant purposes, and was proportional to the legal means used for achievement of these purposes.

Along with it, as a result of the comparative analysis of the subjects taught on the specialties “Legal Science” and “International law”, the following was established:

- The subjects taught on the specialties “Legal Science” and “International law” are identical. So, according to Curricula of both specialties, relating to block of “humanitarian and social subjects”, such humanitarian and social subjects as “History of Azerbaijan”, “Azerbaijani language”, “Foreign language”, “Logic”, “Informatics”, “Worldwide policy”, “Philosophy”, “Economy”, “Cultural studies”, “The political science and sociology” and etc., were taught on identical number of hours.

- The general vocational training on both specialties corresponds to each other. So, the number of class periods in such subjects as “The theory of state and law”, “The history of state and law of foreign countries”, “A constitutional law of Azerbaijan”, “A comparative constitutional law”, “History of political and legal doctrines”, “History of state and law of Azerbaijan”, “The financial law”, “The international public law”, “The international private law” and etc., not strongly differ on both specialties. The subjects “International Public Law” and “International Private Law” in specialty “International law” were taught more widely.

- The subjects: “Civil law”, “Criminal law”, “Civil procedure”, “Administrative law”, “Labour law” and etc. for the students trained on specialties as "International law", and "Legal Science", were taught during two semesters. The only distinction in teaching of the above subjects that for students of the specialty “International law” is that they were taught in the form of comparison with legal systems of other states (for example, for the specialty “Legal Science” the subject “Civil law”, and for the specialty “International law” the “Comparative civil law” was taught). At the same time, for the graduates of the specialty “International law” there was taught not only the legislation of the Republic of Azerbaijan but also the legislation of the foreign states.

As regards the difference in the number of class periods on subjects it should be noted, for example, that for the subject “Comparative Civil Law” within the teaching on specialty “International law” there were allocated 160 hours, and for the subject “Civil law” within the teaching on specialty “Legal Science” - were allocated 210 hours. While with the teaching on extramural department of the Faculty of Law there were allocated only 70 hours for the subject “Civil law”.

It is necessary to take into account that for the graduates who have received degree of the bachelor in the International law, there are no restrictions in magistracy education on criminal law, civil law, labor law and other specialties.

It should be noted that, despite the lack of a big difference between numbers of hours and teaching of the same subjects, the specialty “International law” is not referred to “the higher legal education”.

Plenum of the Constitutional Court notes that the constitutional principle of legal equality, guaranteeing elimination of various approaches at implementation of the rights and freedoms in the sphere of the higher education, including the sphere of the higher legal education, demands not to distinguish the higher legal education by any criteria of specialization. Otherwise, unequal application of the requirements established by the state as regards the education of persons who are on an identical legal status, can serve as the reason of violations of social justice and equality.

The right for education is directly connected with a number of constitutional rights and freedoms, including the right for work and the right for administration of the state, and acts as an important condition of their implementation. According to Article 35 of the Constitution, everyone has the right to freely choose an activity, profession, occupation and place of work on the basis of his abilities. Article 55 of the Constitution granted to citizens of the Republic of Azerbaijan the right for administration of the state.

One of important conditions of occupation by some kinds of activity is the availability for the person of the higher legal education. For example, for occupation by the kinds of activity specified in the Law “On Courts and Judges”, in the Law “On Public Prosecution Office”, in the Law “On Notary Office” in the Law “On Advocates and Advocacy”), in the Provision “On Service in Internal Affairs Bodies of the Republic of Azerbaijan”, the availability of the higher legal education for the person is established as a pre-condition.

Thus, the non-recognition as “the higher legal education” of the education of the persons which have graduated in the “International law” leads to restriction of their right on a choice of a kind of activity by profession and place of work and to that the possibility to implement their rights enshrined in Articles 35 and 55 of the Constitution.

In view of above-specified, the provision “those who have higher legal education” stipulated in Article 126 of the Constitution, in Article 93 of the Law “On Courts and Judges”, in Article 29 of the Law “On Public Prosecution Office”, in Article 3 of the Law “On Notary Office”, in Article 8 of the Law “On Advocates and Advocacy”, in item 20 of the Provision “On Service in Internal Affairs Bodies of the Republic of Azerbaijan” and other normative legal acts implies, on an equal basis with the specialty “Legal Science”, also the higher education for the specialty “International law”.

Being guided by part IV of Article 130 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. The provision “those who have higher legal education” stipulated in Article 126 of the Constitution, in Article 93 of the Law “On Courts and Judges”, in Article 29 of the Law “On Public Prosecution Office”, in Article 3 of the Law “On Notary Office”, in Article 8 of the Law “On Advocates and Advocacy”, in item 20 of the Provision “On Service in Internal Affairs Bodies of the Republic of Azerbaijan” and other normative legal acts implies, on an equal basis with the specialty “Legal Science”, also the higher education for the specialty “International law”.

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

3. 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”.

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