**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On verification of conformity of some provisions of the Law of the Republic of Azerbaijan “On social security of children who have lost their parents and were deprived of parental care” with Article 25.1 of the Constitution on complaint of Javidan Gafarov*

**25 January 2017 Baku city**

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

attended by the Court Clerk Elmassin Huseynov,

applicant – Javidan Gafarov and his representative Turgay Huseynov;

representative or respondent body – Magomed Bazigov, Senior Advisor of the Department for Social Legislation of Milli Majlis of the Republic of Azerbaijan;

specialists – Rasim Huseynov, Deputy Head of Legal Department of the Ministry of Education of the Republic of Azerbaijan; Fuad Nasirov, Head of Legal and Personnel Department of the State Fund of Social Protection at the Ministry of Labour and Social Protection of the Population of the Republic of Azerbaijan,

expert – Mais Aliyev, Professor of Labour and Ecological Board of Law Faculty of the Baku State University,

in accordance with the Article 130.5 of the Constitution of the Republic of Azerbaijan and Article 34.5 of the Law of the Republic of Azerbaijan “On Constitutional Court” examined in open judicial session via special constitutional proceedings the case on verification of conformity of some provisions of the Law of the Republic of Azerbaijan “On social security of children who have lost their parents and were deprived of parental care” with Article 25.1 of the Constitution on complaint of Javidan Gafarov.

having heard the report of Judge Rovshan Ismaylov, the reports of the applicants and representative of respondent body and specialist, and opinion of expert, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Javidan Gafarov having applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) asks for verification of conformity of some provisions of the Law of the Republic of Azerbaijan “On social security of children who have lost their parents and were deprived of parental care” with Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution).

Apparently from the complaint, the applicant is 21 years old and he five-year student of the Medical University of Azerbaijan on a paid basis. J. Gafarov's father has died on May 19, 2016, and mother is a disabled person of 1st group. The applicant has addressed to the administration of the Medical University of Azerbaijan with the purpose of application of the privileges provided by the law, having referred to lack of an opportunity to pay for education due to the above-mentioned reasons. Thus, according to Article 5.1 of the Law, children who have lost their parents and are deprived of parental care, studying at state higher educational institutions of all types at the master level of scientific organization established by relevant authority of executive power and also in municipal and private highest and secondary special educational institutions, as well as persons referred to them, shall be eligible for full state support until graduation from the relevant educational institution.

In the response letter to J. Gafarov it has been explained that, being the state higher educational institution, the Medical University of Azerbaijan is not authorized to exempt students from payment of education fee without legal justification. At the same time in the letter it has been noted that with the purpose to clarify this matter the address to the Ministry of Education of the Republic of Azerbaijan was sent.

In turn, the Ministry of Education of the Republic of Azerbaijan has specified in the letter that according to the Law, under the children who lost their parents and were deprived of parental care or persons equated to them (one parent is deceased, and another one is a disabled person of 1st and 2nd groups) are understood children aged up to 18 years. From this point of view, the guarantees for education specified in Article 5 of the Law do not extend to persons who lost both parents and were deprived of parental care during having higher education (students of the II-VI courses at the age of 19-23 years).

In the complaint it was specified that, as per the Law, these provisions govern the relations connected with social security of children. According to value of the Article 1 of the Law of the Republic “On Rights of Child” (hereinafter referred to as the Law “On Rights of Child”), child is a person who did not reach 18 years (maturity) and do not have full capability.

However, the content of the Articles 1 and 5 of this Law read that also the persons that are not considered any more as children could use such privileges, i.e. persons aged up to 23 years who lost both parents being aged up to 18 years, and also deprived of care of both parents and students in presentia in highest and secondary special educational institutions at master level in scientific organizations established by appropriate authority of executive power shall also be covered by this provision. However, these persons receive these privileges in case of loss of parents and deprivation of parental care aged up to 18 years.

According to the applicant the main objective of the Law consists in providing the state ensuring of social protection of the children who have lost parents and were deprived of parental care, and also the persons referred to them up to 23 years. That is, accepting a factor of deprivation of parental care as a basis, the state provides them with the state social protection. As a condition of use of social support is taking into account the deprivation of parental care only to persons aged up to 18 years, and providing a continuity of the right for education of other persons at the age of 18-23 years that have appeared in a similar situation is not provided.

According to J. Gafarov, these provisions of the Law violate his rights provided by Articles 25 and 42 of the Constitution.

Considering contents of the complaint, the Plenum of the Constitutional Court notes that a subject of this constitutional case is verification of conformity of Articles 1 and 5 of the Law concerning part I of Article 25 and Article 42 of the Constitution in that part where are not provided the rights of persons after 18 years who deprived of parental care, studying in presentia in the state higher educational institutions, for a possibility of use of the privileges listed in these norms.

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

According to Article 42 of the Constitution, every citizen has the right for education. The state guarantees free obligatory secondary education. The system of education is under the state control. The state guarantees continuation of education for most gifted persons irrespective of their financial position. The state establishes minimum educational standards.

This right has also found the reflection in a number of international legal documents on human rights. According to Article 12.2 of the Constitution, the rights and liberties of a person and citizen listed in the present Constitution are implemented in accordance with international treaties wherein the Republic of Azerbaijan is one of the parties and also experience of the appropriate international bodies.

Thus, in Article 13 of the International Covenant “On Economic, Social and Cultural Rights” (hereinafter referred to as the International Covenant) is specified the following:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

According to Article 2 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The right for education is the social right that is an important condition for development of the identity of the person and realization of some other rights and freedoms listed in the Constitution. Implementation of the right for education gives the chance to bring benefit to society, having created conditions for active and effective participation in public life.

Importance of this right has also been noted in the CESCR General Comment No. 13: The Right to Education (Art. 13) adopted on December 8, 1999.

According to this position education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Increasingly, education is recognized as one of the best financial investments States can make.

The European Court of Human Rights (hereinafter referred to as the European Court) in this regard has noted that, unlike some other public services, education is the right which is directly protected by the Convention, and this fact should not be missed. Education is one of the most important public services in a modern State which not only directly benefits those using it but also serves broader societal functions The court has noted that "in democratic society the right for education is necessary for maintenance of human rights and plays the main role" (decision of June 21, 2011 on case of Ponomaryovi v. Bulgaria, § 33).

As it is indicated in the 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 (decision of the Plenum of Constitutional Court on case of June 30, 2014 “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”).

On the other hand, it is necessary to consider that, apparently from the content of part IV of Article 42 of the Constitution, the state guarantees continuation of education for most gifted persons irrespective of their financial position.

Thus, based on contents of the relevant provisions of the Constitution, it should be noted that the right to the higher education is covered by the Constitution.

As for the content of this right, it should be noted the necessity of existence of the corresponding education system realizing it. The right to the higher education also provides equal availability of higher educational institutions according to abilities of citizens. This restriction, that is selection according to abilities, proceeds from the nature, the purpose and tasks of the higher education. The requirement of equal availability is based on Article 25 of the Constitution forbidding restriction of the rights and freedoms of the person and citizen.

Thus, the volume of the tasks of the state connected with getting of free education considerably differs depending on education level. So, unlike obtaining the right for free compulsory general secondary education, the state guarantees continuation of education for most gifted persons irrespective of their financial position (part IV of Article 42 of the Constitution). It follows from that the various education levels in human life have different value, and also from financial opportunities of the state. Such constitutional regulation proceeds from necessity of creation of balance between interests of society in general and the person separately.

Thus, considering the existing of requirements of society for various spheres, the state undertakes a task of preparation of the corresponding number of experts.

It, in turn, should not limit unreasonably the right to education at the expense of means of the persons wishing to finance independently the higher education. The right for education can be carried out on a condition of having higher education of high-quality, providing it by necessary material, technical and human resources within the requirements established by state.

Thus, Article 42 of the Constitution does not provide the right of every citizen for getting of free higher education.

As it was noted, the right to the higher education is also provided in a certain volume in the International Covenant. According to the point “c” of part 2 of Article 13 of the International Covenant the higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education. In the General Comments of Committee, concerning given provision it is noted that According to the Article 13 (2) (c), higher education is not to be “generally available”, but only available “on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience. From the point of view of requirements of part 1 of Article 2 and Article 13.2 (c) of the International Covenant, the right to the higher education has to be gradually exercised depending on financial opportunities of the state. According to Committee the requirement that “an adequate fellowship system shall be established” provided in the Article 13.2 (e) of the International Covenant should be read with the Covenant’s non-discrimination and equality provisions; the fellowship system should enhance equality of educational access for individuals from disadvantaged groups.

Unlike the International Covenant, in the Convention the liberal point of view of the right for education is emphasized. It in the first sentence of the Article 2 of the Protocol No. 1 to the Convention expresses as the negative right. Along with it, the European Court marked that the word “respect” in Article 2 of Protocol No. 1 means more than “acknowledge” or “take into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (decision of Grand Chamber of March 18, 2011 on case of “Lautsi and others v. Italy”, § 61).

As it is indicated in the decision of Grand Chamber of May 27, 2014 on case of “Velyo Velev v. Bulgaria” Article 2 of Protocol No. 1 cannot be interpreted as imposing a duty on the Contracting State to set up or subsidize particular educational establishments, any State doing so will be under an obligation to afford effective access to them. Put differently, access to educational institutions existing at a given time is an inherent part of the right set out in the first sentence of Article 2 of Protocol No. 1. This provision applies to primary, secondary and higher levels of education.

The European Court in a number of decisions has noted that, in spite of its importance, the right for education is not absolute, but may be subject to limitations; these are permitted by implication since the right of access “by its very nature calls for regulation by the State (decisions of Grand Chamber on case of Catan and others v. Moldova and Russia dated October 19, 2012§ 140 and on case of Tarantino and others v. Italy of April 2, 2013 § 44).

It was unanimously accepted that regulation of institutes of education can differ on time and place according to needs and resources of society, and also various lines of education levels. Similar regulation cannot affect the main content of the right for education and contradict other rights provided with the Convention. Therefore, the Convention means fair balance between protection of common interests of society and respect for fundamental human rights (decision of the European Court of July 23, 1968 on case “Relating to certain aspects of the laws on the use of languages in education in Belgium”).

As it was noted, in spite of the fact that the right of every citizen for free general higher education is not provided in the Article 42 of the Constitution, in case of consideration of this article together with the principle of the social state following from the Constitution it leads to the fact that in the legislation the certain measures promoting equal opportunities of formation of economic availability of the higher education are reflected.

The Plenum of Constitutional Court in this connection noted that the principle of social state provides for ensuring the fair social system as the legal commitment of the state. This principle proceeds from the Preamble of the Constitution that declares the adequate standards of living for everybody in accordance with the fair economical and social norms. Namely the effective social state policy ensures the establishment of peace and prosperity within society. Without disclosing the concept of the social state the Constitution envisages the development of economy based on the different types of ownership, and serves for the increasing the welfare of people. In order to recognize the state as the social one the Constitution contains the outlines and duties of social policy that is subject to the attention of state. Thus, according to the provisions of the Constitution, state undertook the commitment to set up the civil society, social security of a human being by state in the conditions of market economy as well as to respect the principle of social justice by means of policy implemented in the field of social and economic rights (decisions of the Plenum of Constitutional Court of November 29, 2002 on interpretation of Article 144.2 of the Labour Code of the Republic of Azerbaijan and of October 21, 2016 on verification of conformity of Article 965.2.2 of the Civil Code of the Republic of Azerbaijan with Articles 25.4, 35.6 and parts I, III of Article 149 of the Constitution of the Republic of Azerbaijan).

The Plenum of Constitutional Court considers noteworthy positions in practice of bodies of the constitutional justice of foreign countries concerning availability of the higher education in the social state. Thus, in the decision of the Federal Constitutional Court of Germany of May 8, 2013 it has been noted that the principle of the welfare state do, however, require the legislature to ensure the existence of equal educational opportunities in the context of access to higher education; it must regulate the range of options and access according to appropriate criteria that even the disadvantaged can reasonably be expected to satisfy. This does not mean that all hardships connected to charging tuition have to be compensated completely by accompanying social measures. The Constitution does not require the compensation of every social inequality, especially economic ones, including those that may originate from the familial, social or individual background of persons seeking an education. Nevertheless, the legislature must not entirely ignore these circumstances insofar as they lead to unequal educational opportunities.

At the same time, it should be noted that from the point of view of provisions of Articles 94 and 95 of the Constitution, definition of bases of maintenance of the tasks connected with the social state belongs to discretion of the legislator. In this area, legislator having broad freedom of a discretion works within financial opportunities of the state.

Such approach corresponds to the positions reflected in a number of decisions of the Plenum of the Constitutional Court concerning social rights. Thus, in difference from personal, economic and in a sense the political and cultural rights rational realization of social rights is connected with financial possibilities of the state which can provide these rights. At the same time, it is necessary to consider that in case of implementation of the social rights the importance is represented not a legal discretion, but approach of the legislator to the principles of rendering of social services, an economic situation of the state, availability of need of a government assistance or support for society or its part. In this connection the legislator, regulating these rights, has broad freedom of a discretion (decisions of the Plenum of Constitutional Court “On conformity of Article 8.1 and 8.3 of the Law of the Republic of Azerbaijan “On Labour Pensions” with the Constitution of the Republic of Azerbaijan” of December 1, 2010 and on verification of conformity of Article 37.3.4 of the Law “On Labor Pensions” with the Constitution of the Republic of Azerbaijan of November 14, 2014).

Thus, the freedom of a discretion specified by the legislator is not boundless and is limited to the requirements stated in the Constitution, including, the principle of equality described in Article 25.1 of the Constitution.

Proceeding from the above, the Plenum of the Constitutional Court notes the following.

A number of the provisions expanding access to higher education are listed in the legislation on education of the Republic of Azerbaijan. Thus, according to Articles 38.3 and 38.7 of the Law of the Republic of Azerbaijan “On Education” (hereinafter referred to as the Law “On Education”) an educational institution may only use its income for development of education and social protection of learners and educators. State provides long-term and individual loans to support development of educational institutions and for eligible students to cover their tuitions and other related costs, as well as grants for scientific-research activities, financing of doctoral programs, studying the international experience and other purposes. The procedures and conditions for receiving educational loans and grants are defined and regulated under relevant legislative acts. The state grants for education and scientific-research may not be used to finance other activities of an educational institution.

Formation of system of material support for creation to children and youth from needy families of equal opportunities for education and expansion of financial mechanisms, including systems of the student's credits for the purpose of improvement of opportunities to education is provided in points 5.9 and 5.14 of “National Strategy for the development of education in the Republic of Azerbaijan” approved by Order No. 13 of President of the Republic of Azerbaijan dated 24 October 2013.

Regarding Article 5.1 of Law within the freedom of a discretion the legislator has defined a possibility of full state providing of children who have lost parents and were deprived of parental care, studying in the state educational institutions of all types, and also in municipal and private highest and average special educational institutions and also the persons referred to them before the termination of this educational institution and at the level of a magistracy of the scientific organization established by appropriate authority of executive power. In the 12th paragraph of the Article 1 of the Law it is specified that the persons considered as children who lost their parents and are deprived of parental care are persons at the age of until 23 that study full-time in academic, special and professional schools and institutions as well as high-schools who lost both of their parents or were deprived of care on behalf of both parents until they reached the age of 18.

Apparently, three groups of persons can use the corresponding privilege:

- the children who have lost parents;

- the children deprived of parental care;

- the persons at the age of until 23 that are studying full-time in academic, special and professional schools and institutions as well as high-schools established by appropriate authority of executive power.

By these articles as an exception of the general rule concerning necessity of the state support proceeding from Article 17 of the Constitution, to the children deprived of a possibility of maintenance from parents for this reason for persons in need in social protection that is to the persons who have not reached 18 years old and not having full capacity (Article 1 of the Law of the Republic of Azerbaijan “On Rights of Children” and Article 49.1 of the Family Code of the Republic of Azerbaijan), the legislator extends action of the Law also to the persons who have reached 18 years old.

Thereby, these persons have an opportunity of use of the appropriate measures of social support up to 23 years therefore, the uniform general approach by definition of bases of social protection of citizens is provided (the similar age limit has been also set in Laws of the Republic of Azerbaijan “On social benefits” and “On Labour Pensions”).

Considering saving of the former status of the persons deprived of a possibility of maintenance from parents and also absence at the persons getting an internal education, opportunities to work for the objective reason without damage to their education and complexity of material security of as a result of it, realization of legal regulation in this direction carries the purpose of rendering of additional social support to them and is aimed at providing their interests.

However the fact that J. Gafarov cannot use the privileges provided in the Law can lead to violation of the principle of equality. According to the legal position formed by the Plenum of the Constitutional Court, concerning the content of the principle of equality, the identical treatment concerning the persons who are in the same or similar situation is required. The different treatment to these persons is possible only if for this purpose there is an objective and reasonable ground (decision of the Plenum of the Constitutional Court of February 25, 2014 according to complaint of O. Gerekmezli).

It should be noted that for an assessment of whether the challenged norm corresponds to the Article 25.1 of the Constitution, it is important to find out what persons are in similar situation by equal or certain criteria whether the challenged norm provides equal or various treatment concerning such persons, and also existence of an objective and reasonable ground on the similar treatment.

In the decision of Grand Chamber of the European Court of July 7, 2011 on case of Stummer v. Austria was noted that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. “No objective and reasonable justification” means that the distinction in issue does not pursue a “legitimate aim” or that there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realized” (§87).

European Court also indicates that the Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see Burden, cited above, § 60). The scope of this margin will vary according to the circumstances, the subject-matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation” (decision of Grand Chamber of March 16, 2010 on case of Carson and others v. the United Kingdom, §61).

Considering the above, the Plenum of the Constitutional Court considers what for examination of the issue which is brought up in the complaint concerning part I of Article 25 of the Constitution it is necessary to determine what persons are in similar situation by equal or certain criteria.

At the same time, it is necessary to consider that two groups of people never are absolutely identical, that is there cannot be a full equality by various criteria of comparison. Thus, at the choice of criteria for comparison among the numerous features relating to the compared persons (situations) those which answer a question whether the corresponding situations only in the context of disputable cases are equal have to be chosen.

It should be noted that the persons referred to the children who have lost parents and were deprived of parental care acquire the corresponding privileges stated in the Law as it is specified, for two important reasons (criteria).

As evident from circumstances of the constitutional case, the applicant J. Gafarov meet both criteria. So, he is deprived of a possibility of maintenance from parents and gets an education in presentia. And also, as he studies in presentia, he cannot be engaged in work without damage to education. Thus, the applicants and persons referred to category of children who lost parents and were deprived of parental care, specified in the Article 5 of the Law are in similar situation.

The only difference between them is that one lost parental care aged up to 18 years, and another - after 18 years. But for distinction of the corresponding rights of both persons this feature cannot be a reasonable ground in the context of two above-mentioned criteria.

Thus, this legal situation contradicts with part I of the Article 25 of the Constitution.

The Plenum of the Constitutional Court notes that in this case there is no need for recognition of the 12thparagraph of Article 1 of the Law as invalid. So, recognition of the 12thparagraph of Article 1 of the Law as invalid can lead to weakening of social protection of other persons protected by the Law.

At the same time, it is necessary to consider broad freedom of discretion of the legislator on this matter. As it was already noted, in Article 38.3 of the Law of the Republic of Azerbaijan “On Education” the legislator has defined that an educational institution may only use its income for the development of education and the social protection of learners and educators.

At use of this norm, it is also necessary to consider that according to sense of paragraph 1.2 of the Decree of the President of the Republic of Azerbaijan on application of the Law of the Republic of Azerbaijan as of December 29, 2015 “On Public Legal Entities”, the state higher educational institutions are public legal entities. According to Article 2.2 of the Law of the Republic of Azerbaijan “On Public Legal Entities”, public legal entity is the organization that is not the public or municipal authority, engaged in the activity carrying nation-wide and public value, created on behalf of the state and municipality or by the public legal entity.

Along with it, some tax exemptions are provided in the tax law for the purpose of effective implementation of the tasks facing the state higher educational institutions in the field of education.

According to the above, and also considering established by the Plenum of the Constitutional Court with application of Article 38.3 of the Law “On Education” that the possibility of elimination of inequality is not excluded to some extent, the Plenum of the Constitutional Court does not consider the challenged provision of the law as invalid.

However, this circumstance demands improvement by the legislator of legal adjustment of an appropriate issue according to part I of Article 25 of the Constitution.

According to the above, the Plenum of the Constitutional Court comes to such conclusion:

- Non covering by a concept of 12th paragraph of Article 1 of the Law of the Republic of Azerbaijan “On social security of children who have lost their parents and were deprived of parental care” of persons deprived of maintenance of parents after 18 years, who study at state higher educational institutions does not correspond with part I of the Article 25 of the Constitution of the Republic of Azerbaijan and in this connection it is necessary to recommend to the Milli Majlis of the Republic of Azerbaijan to coordinate this norm with legal position reflected in a descriptive and motivation part of the present Decision;

- Until the resolution in a legislative order of an issue specified in point 1 of a resolutory part of the present Decision, based on the requirement of part I of the Article 25 of the Constitution in case the persons studying at a paid basis in presentia in the state higher educational institutions lose parental support after 18 years for the reasons specified in the 12thparagraph of Article 1 of the Law “On social security of children who have lost their parents and were deprived of parental care”, repayment of their payment during education (up to 23 years age) has to be provided according to Article 38.3 of the Law “On Education”.

Being guided by the parts V and IX of Article 130 of the Constitution of the Republic of Azerbaijan and Articles 34.5, 52, 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. Non covering by a concept of 12th paragraph of the Article 1 of the Law of the Republic of Azerbaijan “On social security of children who have lost their parents and were deprived of parental care” of persons deprived of maintenance of parents after 18 years who study at state higher educational institutions does not correspond with part I of the Article 25 of the Constitution of the Republic of Azerbaijan and in this connection it is necessary to recommend to the Milli Majlis of the Republic of Azerbaijan to coordinate this norm with legal position reflected in a descriptive and motivation part of this Decision.

2. Until the resolution in a legislative order of the issue specified in point 1 of a resolutory part of the present Decision, based on the requirement of part I of Article 25 of the Constitution in case the persons studying at a paid basis in presentia in the state higher educational institutions lose parental support after 18 years for the reasons specified in the 12th paragraph of Article 1 of the Law “On social security of children who have lost their parents and were deprived of parental care”, repayment of their payment during education (up to 23 years age) has to be provided according to Article 38.3 of the Law “On Education”.

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

4. 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”.

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