ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

# OF THE CONSTITUTIONAL COURT

# OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 50 of the Correctional- Labour Code of the Republic of Azerbaijan in connection with Articles 25, 35, 38 and 71 of the Constitution of the Republic of Azerbaijan*

#### 20 April, 2000 Baku city

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

joined in the proceedings by: the Court Clerk I. Ismayilov;

the legal representatives of the interested subjects: N. Allahverdiyev, Deputy Prosecutor General of the Republic of Azerbaijan and S. Mamedov, employee of the Milli Majlis of the Republic of Azerbaijan;

the specialists: M. Humbatov, Chief of Headquarters of the Central Department of the Execution of Judicial Decisions of the Ministry of Justice of the Republic of Azerbaijan; F. Aliyev, Head of the Social Policy and Welfare Department of the Ministry of Labour and Social Security of the Population of the Republic of Azerbaijan; R. Gadirov, Deputy Chief of Financial Department of the State Fund of Social Security of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session the petition submitted by the General Prosecutor’s Office of the Republic of Azerbaijan of 11 February, 2000 N 11/52 on interpretation of Article 50 of the Correctional - Labour Code of the Republic of Azerbaijan in connection with Articles 25, 35, 38 and 71 of the Constitution of the Republic of Azerbaijan.

Having heard the report of Judge E. Mamedov, the statements of the lawful representatives of the subjects interested in the special constitutional case management N. Allahverdiyev and S. Mamedov, opinions of the specialists M. Humbatov, F. Aliyev and R. Gadirov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition the General Prosecutor’s Office of the Republic of Azerbaijan in connection with Articles 25, 35, 38 and 71 of the Constitution of the Republic of Azerbaijan asks for interpretation concerning the possibility of covering the persons, who were released from the confinement institutions before 7 February 1997, by the provisions of Article 50 of the Correctional - Labour Code of the Republic of Azerbaijan that provides for inclusion of the work time of the convicted persons during serving the sentence in correctional institutions into their total seniority.

In connection with a petition the official texts of the Article 50 of the Correctional - Labour Code of the Republic of Azerbaijan and Article 42 of the Law “On Normative Legal Acts” certified by the Administration of Milli Majlis are attached to the materials of case.

In connection with a petition in question the Constitutional Court of the Republic of Azerbaijan notes as follows:

Up to 7 February 1997 Article 50.5 of the Correctional - Labour Code of the Republic of Azerbaijan stipulated that during serving the sentence by means of deprivation of liberty the work time of the convicted persons shall not be included into their seniority, with the exception of cases specified by the legislation.

In fact, this circumstance actually became as the additional type of punishment that is not provided for by the legislation. The non-inclusion of the work time of the convicted persons into their seniority during serving the sentence in confinement institutions contradicts to the right to equality of everybody before law and court (Article 25.1 of the Constitution of the Republic of Azerbaijan); right of everyone to work in safe and healthy conditions; to get remuneration for his/her work without any discrimination, not less than minimum wages rate established by the state (Article 35.6 of the Constitution of the Republic of Azerbaijan); right of everyone to social security (Article 38.1 of the Constitution of the Republic of Azerbaijan); the established interdiction of restriction of realisation of the rights and freedoms both of the human and citizen and state guarantee of observance of these principles (Article 71.2 of the Constitution of the Republic of Azerbaijan).

It is not casual that on 7 February 1997 the Milli Majlis of the Republic of Azerbaijan adopted the Law of the Republic of Azerbaijan “On Modifications and Additions to the Correctional - Labour Code of the Republic of Azerbaijan”. Alongside with other modifications, this law gave a new wording to Article 50 of the Correctional - Labour Code. According to the present wording of this article, during serving the sentence in confinement institutions the work time of the convicted persons shall be included into their total seniority, from the date of entry into force of this law. The calculation of the work time is conducted by the administration of confinement institution on the totals of the calendar year. Based on the motion of administration of confinement institution and on the basis of court decision, the certain period of work hours can be deducted from the seniority of convicted persons who did not regularly carry out his/her labour duties or deviated from work.

As a result of modification of the correctional - labour legislation there has been foreseen the inclusion of a work time of the convicted persons, during serving the sentence, into their total seniority. Thus, there have been ensured the above-stated provisions of the Constitution of the Republic of Azerbaijan, requirements of the Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, European Penitentiary Rules.

On the basis of Article 42 of the Law of the Republic of Azerbaijan “On Normative Legal Acts”, the issue concerning the retroactive force of the normative and legal act shall be regulated by Article 149 of the Constitution of the Republic of Azerbaijan.

According to the Article 149.7 of the Constitutions of the Republic of Azerbaijan the normative legal acts improving the legal situation of the physical and legal persons, eliminating or softening their legal responsibility shall have the retroactive force. Other normative legal acts shall have no retroactive force.

The Constitutional Court of the Republic of Azerbaijan considers that as a result of modifications, which were made on 7 February 1997 to the correctional - labour legislation, the provisions providing for inclusion of a work time of the convicted persons during serving the sentence, into their common seniority, should, on the basis of the Article 149.7 of the Constitutions of the Republic of Azerbaijan, have the retroactive force because they improve the legal situation of the convicted persons.

The retroactive force of Article 50.5 of the Correctional - Labour Code of the Republic of Azerbaijan will create certain legal consequences. One of them is the guarantee of the right to social security, including the right to pension of the persons serving the sentence by means of deprivation of freedom. The Constitutional Court of the Republic of Azerbaijan especially notes that the issues, which cause such legal consequences, should be solved according to the requirements of the legislation of the Republic of Azerbaijan.

On the basis of above-stated and being guided by Article 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 81, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. The provision of Article 50.5 of the Correctional - Labour Code of the Republic of Azerbaijan providing for inclusion of a work time of the convicted persons during serving the sentence into their total seniority should cover also the persons released from places of deprivation of freedom before 7 February, 1997.

2. Taking into account para 1 of the given decision, to recommend to the Cabinet of Ministers of the Republic of Azerbaijan to resolve the issues those cause legal consequences for persons who had been released before 7 February, 1997 from confinement institutions in accordance with the requirements of the legislation of the Republic of Azerbaijan.

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

4. The decision is subject to publication in the "Azerbaijan" newspaper and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

5. The decision is final and cannot be cancelled, changed or interpreted by any body or official