ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

### DECISION

## OF THE CONSTITUTIONAL COURT

## OF THE REPUBLIC OF AZERBAIJAN

#### *On Interpretation of Article 6.1.3 of the Law of the Republic of Azerbaijan*

#### *“On State Tax Service”*

# 8 September, 2000 Baku city

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

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

the representative of the body possessing the right to apply to the Constitutional Court: R.Agayev, Head of Department on the Inquiry and Investigation of Tax Delinquencies of Central Administrative Board of the Ministry of Taxes of the Republic of Azerbaijan;

representative of the interested subject: Z.Geyushov, employee of the Milli Majlis of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan via procedure of the special constitutional proceeding has examined in open judicial session the case submitted by the petition of the Cabinet of Ministers of the Republic of Azerbaijan of July 19, 2000, N 18/15-83 on interpretation of Article 6.1.3 of the Law of the Republic of Azerbaijan “On State Tax Service”.

Having heard and discussed the report of Judge R.Gvaladze, statements of the representatives of the interested subjects R.Agayev and Z.Geyushov and having examined the materials of the case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 6.1.3 of the Law of the Republic of Azerbaijan “On State Tax Service” provides that for extraction of the income as a result of realization of the activity requesting special permission (license), the official warning of the sum of the incomes of this activity without such permission are fulfilled, in double size at it’s second assumption within two years from the official warning and in threefold size of the sum after that at the second assumption of the same within one year.

Taking into account that in practice when applying this norm of the law some disputes take place, the Cabinet of Ministers of the Republic of Azerbaijan asks for interpretation of this norm.

In connection with the petition, copies of the official texts of Articles 6.1.3 and 9 of the Law of the Republic of Azerbaijan «On State Tax Service», Article 12 of the Law of the Republic of Azerbaijan “On Enterprise Activity”, Article 24 of the Law of the Republic of Azerbaijan “On Enterprises” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the constitutional case.

The Constitutional Court of the Republic of Azerbaijan notes that the question raised in petition is directly connected to enterprise activity and other economic activities not prohibited by the legislation. Free business activity is one of the basic conditions of formation and development of the economy. In connection with this number of norms of the Constitution of the Republic of Azerbaijan contain the guarantees for protection and development of free business activity.

Thus, according to Article 59 of the Constitution everyone may, using his/her possibilities, abilities and property, according to existing legislation, individually or together with other citizens carry out business activity or other kinds of economic activity not prohibited by the law. Article 15.2 of the Constitution of the Republic of Azerbaijan notes that the State of Azerbaijan creates conditions for development of economy, guarantees free business activity.

Article 12.1 of the Law of the Republic of Azerbaijan “On Enterprise Activity” provides that being apart from a form of ownership and organizational - legal forms, the state guarantees protection of rights and legal interests of the businessman carrying out the activity in accordance with the legislation of the Republic of Azerbaijan.

Thus, in Constitution of the Republic of Azerbaijan and in other legislation a special attention is paid to development of business and it’s protection by the state.

Along with it, the legislator fixed also the certain duties for a businessman. Thus, Article 7 of the Law “On Enterprise Activity” provides as a duty of the businessman the reception of a special sanction (license) for activity in the spheres which are the subject to licensing according to the present legislation. Article 6.1.3 of the Law “On State Tax Service” provides the application of the certain financial sanctions for the activity requesting a special sanction (license) without the license. The mentioned Article also indicates that the application of the financial sanctions at a rate of incomes in case of the illegal activity carried out by an enterprises and citizens is also specified in item 1.9 of the present Article. The specified item provides that enterprises and citizens for activity without or with the delayed registration in tax bodies shall be taxed with financial sanctions at a rate of the income received during such activity.

Thus, the sanctions applied in Article 6.1.3 and 6.1.9 of the Law are directed to prevention of illegal actions of physical and legal persons. However, item 9 includes the extra added words “for a deduction of the costs made for receiving this income” the missing of which in item 3 causes the difficulties when applying the present norms in practice.

Thus, it follows from the above-mentioned that in different items of the same article of the Law “On State Tax Service” (Article 6.1.3 and Article 6.1.9) to physical and legal persons for receiving the income from illegal activity the different sanctions are applied, that does not conforms to the principle fixed in Article 149 of the Constitution of the Republic of Azerbaijan according to which the normative legal acts must be based on law and justice (the equal attitude to equal interests). Besides this, the application of sanctions in first case with respect to whole income, and in second case - deducting the expenses, borne with a view to get that income, also contradicts to a right to equality specified by Article 25 of the Constitution of the Republic of Azerbaijan.

The Constitutional Court of the Republic of Azerbaijan considers that the words “profit margin” specified in Article 6.1.3 of the Law of the Republic of Azerbaijan “On State Tax Service” must be realized as the income remaining after the deduction of the charges made for receiving of this income.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 65, 66, 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 words “profit margin” specified in Article 6.1.3 of the Law of the Republic of Azerbaijan “On State Tax Service” must be realized as the income remaining after the deduction of the charges made for receiving of this income.

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

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

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