ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

# *Concerning Article 116.2 of the Labour Code of the Republic of Azerbaijan*

## 29 November, 2000 Baku city

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

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

the legal representatives of the body that submitted a petition: B.Asadov, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representatives of the responding body, I.Abdulazimov, Deputy Head of Department of the Milli Majlis of the Republic of Azerbaijan;

the experts, A-J. Efendiev, head of the Law Department of the Trade Unions Confederation of the Republic of Azerbaijan; M.Aliev, senior lecturer of the Labour and Envioranmental Law Board, candidate of legal sciences and Z.Dadashev, lecturer of the same Board; V.Guliyev, Head of Legal Department of the Ministry of Labour and Social Safety; T.Mammadova, Chief of the Labour Policy Department of the same Ministry,

being guided by Article 130.3.1 of the Constitution of the Republic of Azerbaijan, has examined in open judicial session the case by petition of Supreme Court of the Republic of Azerbaijan of 5 October 2000, N 5 1/2000 on interpretation of Article 116.2 and Article 132.1 of the Labour Code of the Republic of Azerbaijan.

Having heard and discussed the report of Judge A.Sultanov, speeches of legal representatives of the body which submitted the petition B.Asadov, the legal representatives of the responding body I.Abdulazimov, conclusions of experts A-J. Efendiev, M.Aliev, Z.Da­dashev, V.Guliev and T.Mammadova, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

In its petition the Supreme Court of the Republic of Azerbaijan asks for interpretation of Article 116.2 of Labour Code of the Republic of Azerbaijan regarding the granting additional vacation (leave).

The text of Article 116 of the Labour Code, certified by the Administration of Milli Majlis is enclosed to materials of the case.

The Constitutional Court of the Republic of Azerbaijan noted that the right to rest and paid leave provided in Article 37 of the Constitution of the Republic of Azerbaijan.

In accordance with the Labour Code, for normal rest, recovery of ability to work, protection and strengthening of health, the person working on basis of labour contract shall be granted the labour leave via procedure determined by law. Besides of basic leave, depending on nature of labour and seniority, the additional leave is provided as well.

Granting the leave is aimed, on one hand, at recovery of the worker’s health and his ability to work and, on the other hand, is a stimulus for his/her long and productive work. According to Article 116.1 of the Labour Code of the Republic of Azerbaijan depending on the seniority the workers shall be given an additional leave: at work experience from 5 to 10 years – 2 calendar days; from 10 to 15 years – 4 and more than 15 years – 6 calendar days.

However, in accordance with para 2 of this Article the additional leave for the seniority shall be determined from the period spent by the worker at one enterprise.

According to the Labour Code of the Republic of Azerbaijan, the equal basis and procedure of conclusion of Labour contracts, kinds and rules of regulation of the work time, rest time and etc. shall be established for the same categories of workers. In spite of this, Article 116.2 of Labour Code of the Republic of Azerbaijan without any legal motivations grants additional leave only to those workers who had worked at one enterprise during period provided by law. But the worker employed under the same basis, performing the same work at the same conditions as the above-stated workers, but accumulated the seniority not at one but at the several enterprises, shall be deprive of his/her right to get additional leave.

This unequal treatment contradicts to Article 25.2 of the Constitution of the Republic of Azerbaijan, which provides for the right to equality.

From the other hand, the long work at the same enterprise sometimes does not depend on will of workers.

In accordance with labour legislation, in cases of elimination of enterprise reduction of number or staff of workers, dismissal of workers for the reasons of state of health and lose of ability to work, the labour contract shall be cancelled irrespective of the will of worker, what makes him/her continue his/her labour activity at other enterprise.

From the point of view of Article 116.2 of the Labour Code in this case the above-mentioned workers are in unequal position as compared with those ones who accumulated the seniority at one enterprise.

Taking into account the above-stated, the Constitutional Court of the Republic of Azerbaijan comes to conclusion that the provision of Article 116.2 of the Labour Code providing for the right to get additional leave by seniority accumulated at one enterprise contradicts to Articles 25.1 and 149.1 of the Constitution of the Republic of Azerbaijan.

Being guided by Article 130.3 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80-83 and 85 of the Law “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. Provisions of Article 116.2 of the Labour Code of the Republic of Azerbaijan “at one enterprise”, which limit the additional leave by seniority, shall be considered as null and void in connection with their non-conformity with Articles 25.1 and 149.1 of the Constitution of the Republic of Azerbaijan.

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.