**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 106.2 of the Law of the Republic of Azerbaijan*

*“On Courts and Judges”*

**23 January, 2001 Baku city**

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

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

the interested subjects: the representatives of the body entitled to apply with a request to the Constitutional Court - M.Agazade and A.Mirzaliyev, Judges of the Supreme Court of the Republic of Azerbaijan;

the representative of the body whose interests were affected by petition: E. Askerov, officer of Milli Majlis of the Republic of Azerbaijan;

based on Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session the petition of the Supreme Court of the Republic of Azerbaijan of 11 December, 2000, N 5-2000 concerning interpretation of Article 106.2 of the Law of the Republic of Azerbaijan “On Courts and Judges”.

Having heard the report of Judge S.Salmanova, the reports of M.Agazade, A.Mirzaliyev and E.Askerov, the representatives of the interested subjects, considered the materials of constitutional case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 106.2 of the Law of the Republic of Azerbaijan “On Courts and Judges” states that judges shall be additionally paid monthly 15% of the salary for academic degree as well as for every 5 years of judicial seniority.

In connection with the difficulties caused while applying by financial bodies the above mentioned provision of the Law, in its petition the Supreme Court of the Republic of Azerbaijan asks for interpretation of the consideration of the newly appointed judges’ judicial seniority accumulated before this Law entered into force.

The official texts of Articles 100 and 106 of the Law of the Republic of Azerbaijan “On Courts and Judges” certified by Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of the case.

The Constitutional Court of Azerbaijan notes that material security of judges is an integral part of the judicial independence envisaged in the Constitution of the Republic of Azerbaijan. The State and society, which demand from judge’s fairness and competence shall simultaneously take measures to resolve issues, connected with judges’ material security.

The guarantees for judicial independence are enshrined in the Constitution of the Republic of Azerbaijan, Law “On Courts and Judges” and in a number of international instruments.

According to Article 7 of the Constitution of the Republic of Azerbaijan, the judicial power shall be exercised by Courts of the Republic of Azerbaijan on the basis of the principle of separation of powers. According to Article 127 of the Constitution, judges are subordinated only to Constitution and Laws of the Republic of Azerbaijan

In accordance with the provisions laid down in “Basic Principles Concerning the Independence of Judicial Bodies” the legislation shall properly guarantee the term of office of judges, their independence, security, salary and conditions of service.

Article 6.1 of the European Charter on the Statute for Judges provides, that judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behavior within their jurisdiction, thus impairing their independence and impartiality.

According to the Recommendation of the Committee of Ministers of the Council of Europe “On the Independence, Efficiency and Role of Judges” all necessary measures should be taken to ensure the proper exercise of judicial responsibilities by ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities.

According to Article 100 of the Law of the Republic of Azerbaijan “On Courts and Judges” judges are provided with material and social security in accordance with the post held. In this connection, Article 106 of the same Law provides for an additional payment at the rate of 15% of the salary for every 5 years of the judicial seniority, along with the high salary.

While applying this Law some difficulties arose in connection with the additional payment to newly appointed judges for their previous judicial service.

The Constitutional Court of the Republic of Azerbaijan notes that according to Article 149.7 of the Constitution of the Republic of Azerbaijan normative legal acts improving legal status of individuals and legal persons, eliminating and mitigating their legal responsibility have a retroactive effect.

From this point of view, Article 106.2 of the Law of the Republic of Azerbaijan “On Courts and Judges” shall without any restrictions cover the persons who have been working as judges for 5 and more years. Otherwise, the mentioned provision contradicts to the principle, envisaged in Article 149.1 of the Constitution, according to which normative legal acts shall be based on law and justice (equal treatment to equal interests)

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 provisions of Article 106.2 of the Law of the Republic of Azerbaijan “On Courts and Judges” shall cover the persons who were appointed on the basis of this Law, taking into account the judicial seniority accumulated before this Law entered into force.

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.