**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Conformity of para 22 of the Regulations “On Compensation by Enterprises, Institutions and Organizations of Damages to the Workers, Who Got Injuries and Occupational Sickness During Implementation of Their Labour Duties or to the Families of Workers, Who Died for These Reasons” approved by the Resolution N 129 of 24 September 1996 of the Cabinet of Ministers of the Republic of Azerbaijan to the Article 239.3 of the Labour Code of the Republic of Azerbaijan*

**1 March, 2001 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 legal representative of the body that submitted a petition: A.Mirzaliyev, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representative of the responding body: Z.Meybaliyeva, official of the Ca­binet of Ministers of the Republic of Azerbaijan;

the specialists: A.J.Efendiev, Head of the Legal Department of the Trade Unions Confederation of the Republic of Azerbaijan; R.Ildarov, Deputy Chairman of Trade Union Committee of Electric Power Station and Electrical Industry Workers of the Republic of Azerbaijan; M. Ahmedov, Head of the Information and Statistic Department of the State Labour Inspection of the Ministry of Labour and Social Security of Population of the Republic of Azerbaijan;

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 the Supreme Court of the Republic of Azerbaijan of 15 January 2001, N 5-1/2001 on conformity of para 22 of the Regulations “On Compensation by Enterprises, Institutions and Organizations of Damages to the Workers, Who Got Injuries and Sickness During Implementation of Their Labour Duties or to the Families of Workers, Who Died for These Reasons” approved by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan N 129 of 24 September 1996 to the Article 239.3 of the Labour Code of the Republic of Azerbaijan.

Having heard the report of Judge R.Gvaladze, the statements of the representatives of the parties A. Mirzaliyev and Z. Meybaliyeva, opinions of the specialists E. Efendiyev, R. Ildarov and M. Ahmedov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Taking into account the difficulties emerging in the judicial practice, the Supreme Court of the Republic of Azerbaijan asked to examine the conformity of the para 22 of the mentioned Rules approved by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan N 129 of 24 September 1996 to the Article 239 of the Labour Code of the Republic of Azerbaijan.

In connection with the petition in question the official texts of the Article 239 of the Labour Code of the Republic of Azerbaijan and para 22 of the Rules “On Compensation by Enterprises, Institutions and Organizations of Damages to the Workers, Who Got Injuries and Sickness During Implementation of Their Labour Duties or to the Families of Workers, Who Died for These Reasons” (hereinafter referred as “Rules”) approved by the resolution of the Cabinet of Ministers of the Republic of Azerbaijan N 129 of 24 September 1996 certified by the Administration of Milli Majlis are attached to materials of a case.

The Constitutional Court of the Republic of Azerbaijan notes as follows:

According to Article 239.1 of Labour Code the employer, who is guilty (fully or partially) in accident that took place in the plant; or in occupational sickness, shall be obliged to reimburse completely the damage caused in result of injury or frustration of health in other form, as well as the expenses of the authorities of social insurance in connection with treatment, fixing of pension and benefits.

Para 3 of the same article specifies that the procedure, conditions and amount of sums to be paid to the worker, whose health was undermined as a result of manufactory accident or occupational sickness, or to the members of family of the worker, who died for the these reasons, shall be determined by the provisions approved by relevant bodies of executive power.

Para 22 of Rules that were approved by the Resolution N 129 of 24 September 1996 of the Cabinet of Ministers of the Republic of Azerbaijan provides that the average earnings, which are taken for calculation of the amount of monthly and lump sum payments for damage paid in connection with labour injury in the plant, should be modified when the state, self-supporting or other guilty enterprises irrespective of the forms of property totally increase the tariff (official) salaries of workers via the procedure specified in the legislation.

In accordance with Article 16.1 of the Constitution of the Republic of Azerbaijan, Azerbaijan Republic shall ensure the improvement of the well-being of the nation and every citizen, his/her social protection and normal living standard.

Article 25 of the Universal Declaration on Human Rights provides, that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

According to the Article 5 of Convention “On Workmen’s Compensation (Accidents)” of the International Labour Organization, the compensation payable to the injured workman, or his/her dependants, where permanent incapacity or death results from injury, shall be paid in the form of periodical payments; provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilized.

Thus, the provision of para 22 of the Rules stipulating that the average earnings, which are taken for calculation of the amount of monthly and lump sum payments for damage paid in connection with labour injury in the plant, should be modified when the state, self-supporting or other guilty enterprises irrespective of the forms of property totally increase the tariff (official) salaries of workers via the procedure specified in the legislation, corresponds to the Constitution of the Republic of Azerbaijan, other legislative acts as well as the rules of international law and is directed at reinforcement of the social welfare of citizens.

It comes evident from the petition that the issue of reduction of payments in connection with temporary stoppage of production activity on certain enterprises or in connection with reduction of salaries as a result of setback in production has not been resolved via legislative procedure. The setback in production entails the reduction of the predetermined amounts, and this gives rise to resentment of citizens and their complaints to courts with claims for payments of the predetermined amounts. Since the Rules do not specify the procedure of correction of payments in case of the setback in production and reduction of salaries this creates the difficulties for examination of cases by courts.

The Constitutional Court notes that the procedure, conditions and amount of sums to be paid to the worker, whose health was undermined as a result of manufactory accident or occupational sickness, or to the members of family of the worker, who died for the same reasons are determined by the Article 239 of Labour Code of the Republic of Azerbaijan and in Section LX and Article 62 of Civil Code of the Republic of Azerbaijan.

Legislation provides only for increasing of amount of the payments to a victim or in case of his/her death to the members of his/her family (Article 239 of Labour Code, Article 118.3, 1122.4, 1124 of Civil Code).

Neither Constitution nor legislative acts of the Republic of Azerbaijan provide for reduction of payments in connection with temporary stoppage of production activity on certain enterprises or in connection with reduction of salaries as a result of setback in production. Therefore, when examining the disputes connected with payment to be given to persons who were injured or got the occupational sickness the courts should be based on the requirements of legislation.

Being guided by para 1 of Article 130.3 of the Constitution of the Republic of Azerbaijan, Articles 75, 76, 78, 80, 82, 83 and 85 of the Law of the Republic of Azerbaijan “On Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognize para 22 of the Regulations “On Compensation by Enterprises, Institutions and Organizations of Damages to the Workers, Who Got Injuries and Sickness During Implementation of Their Labour Duties or to the Families of Workers, Who Died for These Reasons” approved by the Resolution N 129 of 24 September 1996 of the Cabinet of Ministers of the Republic of Azerbaijan as corresponding to the Article 239.3 of the Labour Code 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.