**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*Concerning Article 132.2 of the Labour Code of the Republic of Azerbaijan, According to Which the Term of Punishments of Persons Convicted to Correctional Labour Without Deprivation of Freedom is not Included into Seniority*

*Which Gives the Right to Leave*

**19 April, 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 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.Abdulazizov, Deputy Head of Department of the Milli Majlis of the Republic of Azerbaijan;

the experts, T.Mammadova, Chief of the Labour Policy Department of the Ministry of Labour and Social Security; M. Gumbatov, Chief of Headquarters of the Central Department of Execution of Court Decisions of Ministry of Justice; R.Shamsizade, Professor of the Criminal Procedure Board of Baku State University,

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 16 March 2001, N 5-2/2001 on interpretation of Article 132.2 of the Labour Code of the Republic of Azerbaijan.

having heard and discussed the report of Judge S.Salmanova, speeches of B.Asadov, legal representatives of the body who submitted the petition, I.Abdulazimov, the legal representatives of the responding body; conclusions of T.Mammadova, M.Gumbatov, R.Shamsizade, experts, 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 132.2 of Labour Code of the Republic of Azerbaijan according to which the term of punishment of persons convicted to correctional labour without deprivation of freedom shall not be included into seniority which gives the right for leave.

The text of Article 132 of the Labour Code, Article 49 of the Criminal Code, Articles 10, 40, 41, 42, 44 and 96 Code on Execution of Punishments of the Republic of Azerbaijan certified by the Administration of Milli Majlis are attached to materials of the case.

The Constitutional Court of the Republic of Azerbaijan noted that in accordance with Article 49 of the Criminal Code of the Republic of Azerbaijan, the correctional works shall be fixed for the period from two months to two years and be served in place of employment of convicted person. An amount of from five to twenty-five percent of the convicted person’s salary shall be deducted for State revenue.

Procedure and conditions of execution and serving the punishments imposed by court are set forth in the Code on Execution of Punishments of the Republic of Azerbaijan. According to Article 40 of this Code, punishment as correctional labour shall be served at principal location of employment of the convicted person.

Persons convicted to correctional labour shall keep the post and place of employment, which they had before conviction (Article 41.1 of the Code on Execution of Punishments of the Republic of Azerbaijan). However, some rights of these persons are limited. Thus, they may be transferred to other post or work only via procedure and based on reasons provided by labour legislation, they should respect the rules regarding the punishment serving, and once being summoned by court executor responsible for this kind of execution should come to court (Article 41.1 and 42.2 of the Code on Execution of Punishments of the Republic of Azerbaijan). One of the conditions of the execution of punishment through correctional labour shall be the deduction of money amount, fixed by court decision, from salary for the State revenue (Article 44.1 of the Code on Execution of Punishments of the Republic of Azerbaijan).

Code on Execution of Punishments of the Republic of Azerbaijan does not provide for any other limitations of rights of persons convicted to correctional labour. At the same time, Article 132.2 of the Labour Code of the Republic of Azerbaijan provides for non-inclusion of the period of punishment served by convicted persons into the seniority, that gives the right for leave, defining this as additional limitation of right.

However, the above stated provision of the Law contradicts to Articles 10 and 44.3 of the Code on Execution of Punishments.

Thus, in accordance with Article 10.2.3 of the above-mentioned Code, during the period of serving the punishment, the convicted persons shall have the right for rest. Therefore, Article 44.3 stipulates that based on the procedure determined by law the persons convicted to correctional labour shall have the right for rest provided by labour legislation. It is necessary to note that, in accordance with Article 96.5 Code on Execution of Punishments, the persons convicted to imprisonment and occupied by labor activity shall have the right for annual paid leave established by labour legislation.

An analysis of above mentioned provisions of the Code on Execution of Punishments show that persons convicted to correctional labour, shall serve the conviction in the place of location of the enterprise where they worked before, based on the same former post or job according to the labour contract concluded with employer. The regulations concerning the working time, rest time, standards of work, as well as the rules procedure and guarantees of remuneration for labour provided by labour legislation are applied to those persons. As opposed to Article 132.2 of the Labour Code of the Republic of Azerbaijan the Code on Execution of Punishments does not contain any limitation of the right for rest, which is envisaged in Article 37 of the Constitution of the Republic of Azerbaijan, as regards the convicted persons.

According to Article 37 of the Constitution of the Republic of Azerbaijan, everybody has the right for rest. The employees, working on the basis of labour contract are assured by daily working day, established by legislation, which shall not exceed 8 hours as well as by days of rest and holidays, paid leaves not less than once per year and lasting not less than 21 calendar days.

The right of citizens for rest is also enshrined in Article 24 of the Universal Declaration on Human Rights and Article 3 of the Convention of the International Labour Organization on paid holidays.

Thus, the provisions of Article 132.2 of the Labour Code of the Republic of Azerbaijan stipulating that the term of serving the punishment by persons convicted to correctional labour without imprisonment shall not be included into seniority, which provides for the right for leave is restricting the right for rest envisaged in Article 37 of the Constitution of the Republic of Azerbaijan. According to Article 71.2 of the Constitution of the Republic of Azerbaijan no one shall restrict implementation of rights and freedoms of a human being and citizen.

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” of the Republic of Azerbaijan, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognize Article 132.2 of the Labour Code of the Republic of Azerbaijan stating that the term of serving the punishment by persons convicted to correctional labour without imprisonment shall not be included into seniority, which provides for the right for leave, as null and void in connection with its non-conformity with Article 37 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.