ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Conformity of Article 106.1 of the Law of the Republic of Azerbaijan*

*“On Provision of Pensions of Citizens” with the Constitution*

*of the Republic of Azerbaijan*

# 22 May, 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 representative of the body that submitted a petition: Sh. Gidayev, Judge of the Supreme Court of the Republic of Azerbaijan;

the legal representative of the respondent: G.Radjabli, Chairman of the Permanent Commission of Social Policy of the Milli Majlis of the Republic of Azerbaijan; I.Abdulazizov, Deputy Head of the General Department of the Milli Majlis of the Republic of Azerbaijan;

the experts: R. Murshudov, Head of the Social Insurance Department of the Ministry of Labour and Social Maintenance of Citizens of the Republic of Azerbaijan; M.Aliyev, candidate of legal sciences, senior lecturer of Labour and Enviromental Board of the Fa-culty of Law of Baku State University;

in accordance with Article 130.3.1 of the Constitution of the Republic of Azerbaijan has examined in open judicial session the petition of the Supreme Court of the Republic of Azerbaijan of 30 April, 2001, N 8-5/2001 on verification of conformity of Article 106.1 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens” with Article 38.3 of the Constitution of the Republic of Azerbaijan.

Having heard and discussed the report of Judge S. Salmanova, the statements of legal representatives of parties, Sh.Gidayev, G.Radjabli and I.Abdulazizov, experts R. Murshudov and M. Aliyev and having examined the materials of constitutional case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

By its petition the Supreme Court of the Republic of Azerbaijan seeks to examine the conformity of Article 106.1 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens”, which stipulates that the extra charged sums of pensions which had not been demanded by pensioner in proper time shall be paid out for past time for the period not exceeding 3 years before application for getting pension, with Articles 38.3 of the Constitution of the Republic of Azerbaijan.

The official texts of Articles 2 and 106 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to the case.

In connection with the petition the Constitutional Court of the Republic of Azerbaijan notes that according to Article 38.3 of the Constitution, everyone has the right to social protection on reaching specific age according to legislation, in case of illness, disability, loss of bread-winner in the family, due to unemployment and in other cases envisaged by legislation.

Issues of provision of pensions of the citizens of the Republic of Azerbaijan as well as the citizens of other states permanently residing in Azerbaijan Republic and stateless persons are regulated by the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens”.

The most important element of the social maintenance is provision of pension. In this regard every citizen as member of society has a constitutional right to social maintenance, which includes the right to get pension in cases and rates determined by Law.

The citizen’s rights in field of provision of pension directly depend on his/her labour or other socially useful activity, its capacity and nature. Therefore Article 2 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens” provides for two forms of state pensions – labour pension and social pension.

The age (old age), disability and long service pensions as well as the pensions paid for the loss of bread-winner are granted for labour or activity, which the legislator considers as socially useful. Those pensions are earned by citizen on basis of preceding labour, service and implementation of other duties which are significant for society.

Social pensions are allotted to disabled unemployed citizens in case when they have no right for labour pension with the view to provide them with minimum livelihood.

The distinctions in legal nature of indicated forms of pensions call forth also the different character of duties of a state regarding those citizens who have obtained the right to get them. However, such distinction does not influence in any way upon the duties of a state regarding the citizens.

According to Article 46.2 of the Constitution of the Republic of Azerbaijan, the dignity of a person is protected by state. Nothing must lead to humiliation of dignity of a human being.

The free person and his/her dignity are the highest value of constitutional legal order. The state must protect and respect the human dignity. According to Article 12.1 of the Constitution of the Republic of Azerbaijan, the highest priority objective of the state is to ensure the rights and freedoms of a person and citizen. In accordance with Article 16.1 of the Constitution of the Republic of Azerbaijan, the state takes care of improvement of prosperity of all people and each citizen, their social protection and proper living conditions.

From this point of view Article 106.1 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens”, stipulating that the extra charged sums of pensions which had not been demanded by pensioner in proper time shall be paid out for past time for the period not exceeding 3 years before application for getting pension restricts the right to social maintenance fixed in Articles 38.3 of the Constitution of the Republic of Azerbaijan.

Article 106.1 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens” does not correspond also to the number of international law instruments.

Article 22 of the Universal Declaration of Human Rights states: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and free development of his personality”.

According to Article 25.1 of the same Declaration, everyone has the right to a standard of living adequate for the health and well-being of himself and 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.

Article 9 of the International Covenant on Economic, Social and Cultural Rights reads as follows: “Parties to the present Covenant recognize the right of everyone to social security, including social insurance”.

According to Article 4 of the same Covenant, Parties recognize that in the enjoyment of those rights provided by the State in conformity with Covenant, the State may subject such rights only to such limitations as determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting of the general welfare in a democratic society.

The payment of the extra charged sums of pensions, which had not been demanded by pensioner in proper time, for the period not exceeding 3 years before application for getting pension restricts also the rights of persons those depend of such pensioner, deprive them of livelihood and put them on an unequal position with persons those depend of other categories of pensioners, that violates the right to equality envisaged in Article 25 of the Constitution of the Republic of Azerbaijan.

Based on the above stated and in accordance with Article 130.3.1 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 the Constitutional Court”, the Constitutional Court of the Republic of Azerbaijan

**DECIDED:**

1. To recognise as null and void Article 106.1 of the Law of the Republic of Azerbaijan “On Provision of Pensions of Citizens” in connection with its non-conformity with Articles 25 and 38 of the Constitution of the Republic of Azerbaijan.

2. The present Decision covers also the legal relations which arouse after its coming into force.

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

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

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