**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

*On Interpretation of Article 109.5 of the Law of the Republic of Azerbaijan*

*“On Courts and Judges”*

# 27 June, 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 representatives of the interested subjects: A.Mirzaliyev, Judge of the Supreme Court of the Republic of Azerbaijan; E.Askerov, employee of the Milli Majlis Administration;

in accordance with Article 130.4 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 8-4/2001 concerning the interpretation of Article 109.5 of the Law of the Republic of Azerbaijan “On Courts and Judges”.

Having heard the report of Judge R.Gvaladze, statements of A.Mirzaliyev and E. Askerov, the representatives of the interested subjects and having examined the materials of the constitutional case, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Article 109.5 of the Law of the Republic of Azerbaijan “On Courts and Judges” states that former judges at the retirement age after expiry of their authority are entitled to pension at the rate of 80 percent of official salary of the last workplace.

The Supreme Court of the Republic of Azerbaijan considers that this provision of the Law is incomprehensible and asks for interpretation of Article 109.5.

The official texts of Articles 109 and 113 of the Law of the Republic of Azerbaijan “On Courts and Judges” certified by the Administration of Milli Majlis of the Republic of Azerbaijan are enclosed to materials of the case.

In connection with the petition, the Constitutional Court of the Republic of Azerbaijan notes that the material and social security of judges are an integral part of the judicial independence.

## Not depending on level of the State development, the attempt to put some pressure upon the court activity is unavoidable. The steadiness of a court to any kind of influence depends not only on judges’ ethics, qualification, reputation and responsibility but also on real social guarantees.

Therefore, Article 7 of the “Basic Principles of the Independence of Judiciary” adopted by the General Assembly of the United Nations provides that all States shall properly guarantee the material security for the effective activity of judiciary.

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 Constitution of the Republic of Azerbaijan (Articles 7, 38, 127) and international legal acts, para 19 of the Law “On Courts and Judges” provides the material and social security of judges. These guarantees are aimed at the ensuring of the real independence and impartiality of judiciary.

At the same time some uncertainty in Article 109.5 restricts the implementation of the mentioned constitutional provisions.

The mentioned Article provides the pension for the former judges at the rate of 80 percent of official salary of the last workplace. This provision does not indicate whether the pension must be paid as of the last workplace in a judge’s capacity or the last workplace in other capacity. Therefore, the Supreme Court of the Republic of Azerbaijan asks for the interpretation of the mentioned provision of the Law.

In connection with the stated the Constitutional Court of the Republic of Azerbaijan notes that according to Article 6.4 of the “European Charter on the Statute for Judges” the judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period are paid a retirement pension, the level of which must be as close as possible to the level of their final salary for functioning as a judge.

Thus, the Charter underlines that the official salary of the last workplace in a judge’s capacity shall be considered at the setting of the pension to a former judge. Other-wise, the former judge retired and worked in another capacity before the pension will be in unequal position with the judge retired from the post of a judge.

In this case the principle of equality fixed in Article 25 of the Constitution of the Republic of Azerbaijan can be infringed.

Moreover, the Law “On Courts and Judges” does not provide any other conditions of payment of the pensions to judges.

Thus, Articles 113.2.1 and 113.2.9 of the mentioned Law provide the basis for the pre-termination of judges’ powers: written application for retirement and the presence of the medical certificate of the medical commission established by the Supreme Court on inability to perform his/her duties in connection with the disease within the period of more than four months.

However, the Law does not indicate the procedure of receiving pensions by the judges reached the pension and willing to retire before the termination of office or unable to perform his/her duties because of disease, disablement or other good reason. Meanwhile, Article 38 of the Constitution of the Republic of Azerbaijan provides that everyone has the right to social security upon reaching the age established by legislation, in case of disease, disability and other cases provided for by legislation.

According to Article 94.1.16 of the Constitution of the Republic of Azerbaijan the ge-neral rules concerning labor relationships and social maintenance are established by the Milli Majlis of the Republic of Azerbaijan.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 64, 66, 75, 76, 78, 80, 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 “official salary of the last workplace” provided for by Article 109.5 of the Law of the Republic of Azerbaijan “On Courts an Judges” shall be realized as the official salary of the last workplace in a judge’s capacity.

2. To recommend to Milli Majlis of the Republic of Azerbaijan to determine the procedure of payment of pensions to judges reached the pension and will to retire before the termination of office and judges unable to perform his/her duties because of disease, disablement and other good reason.

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

4. The decision is a 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.