ON BEHALF OF THE REPUBLIC OF AZERBAIJAN

DECISION

##### OF THE CONSTITUTIONAL COURT

##### OF THE REPUBLIC OF AZERBAIJAN

### *On Interpretation of Provision of Articles 2.1 and 3 of the Law*

### *of the Republic of Azerbaijan “On the Status of Military Servicemen” and*

### *Article 333 of the Criminal Code of the Republic of Azerbaijan*

#### 26 October, 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 proceeding by: the Court Clerk I.Ismayilov;

the legal representatives of the interested subjects: A.Rustamov, Judge of the Supreme Court of the Republic of Azerbaijan; S.Mammadov, employee of the Administration of the Milli Majlis of the Republic of Azerbaijan;

experts: G.Aliyarov, legal assistant of Military Commissioner of the Republic of Azerbaijan; R.Ramazanov, Chief of the Legal Department of the Ministry of Defence of the Republic of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan, in open judicial session via procedure of the special constitutional proceeding has examined the case submitted by the petition of the Supreme Court of the Republic of Azerbaijan of 4 September, 2001, N 8-9/2001 as to interpretation of Article 3 of the Law of the Republic of Azerbaijan “On the Status of Military Servicemen”.

Having heard the report of Judge R. Gvaladze, representatives of the interested subjects, A.Rustamov, S.Mamedov, conclusions of the experts G.Aliyarov and R.Ramazanov, the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

According to Article 3 of the Law “On the Status of Military Servicemen” on the basis of the procedure specified in the legislation of the Republic of Azerbaijan the citizens shall get the status of the military servicemen from the date of call-up to the Armed Forces, entrance to military service in Armed Forces by virtue of their voluntary will or the concluded contract as well as from the date of call-up to musters and entry into military schools.

Article 333 of the Criminal Code of the Republic of Azerbaijan provides for criminal responsibility of military servicemen for voluntary leaving of military unit or non-ap­pe­arance without good reasons to their service post for the fixed date.

In it’s petition the Supreme Court of the Republic of Azerbaijan indicates that as a result of being guided by Article 3 of the Law “On the Status of Military Servicemen” the actions of the persons who deviate from appearance to military call-up stations or performance of military service after passing the medical examination and being recognized as able-bodied for military service are considered as crimes against military service and thus those persons are brought to criminal responsibility in accordance with Article 333 of the Criminal Code. In this connection, the Supreme Court asks to give interpretation of Article 3 of the Law of the Republic of Azerbaijan “On the Status of Military Servicemen”.

In connection with the petition, the official texts of Articles 2 and 3 of the Law of the Republic of Azerbaijan “On the Status of Military Servicemen” and Articles 327, 333 and 334 of the Criminal Code certified by the Administration of the Milli Majlis of the Republic of Azerbaijan are enclosed to the materials of the constitutional case.

The Constitutional Court of the Republic of Azerbaijan notes that Article 3 of the Law “On the Status of Military Servicemen” provides only for acquisition of the status of military serviceman.

Circle of persons who possess the status of military serviceman is determined in Article 2 of the mentioned Law. According to para I of this article the citizens of the Republic of Azerbaijan, the citizens of other states as well as the persons liable for call-ups who perform the military service in Armed Forces of the Republic of Azerbaijan, Frontier Troops of the Republic of Azerbaijan and other military formation established in accordance with the legislation of the Republic of Azerbaijan shall have the status of military serviceman.

Taking into account the provisions of above-mentioned articles the Constitutional Court considers as necessary to examine the signs of crimes provided for in Article 333 of the Criminal Code.

According to Article 3 of the Criminal Code the perpetration of an act (action or inaction) containing all signs of *corpus delicti*, provided for only by Criminal Code shall constitute the grounds for criminal responsibility. The totality of mandatory elements those are the object, subject, objective and subjective sides shall constitute *corpus* of each *delicti*. Absence of one of the indicated elements eliminates the basis for criminal responsibility.

The voluntary leaving of military unit as well as the non-appearance without good reasons to the service post for the fixed date constitute the objective side of the crime provided for in Article 333. In all forms of Armed Forces the military unit is defined as the established economic unit. The territory of a military unit implies the place of caserne, camp or campaign location. The location place of unit implies the place of factual performance of military service duties.

Non-appearance to the service place in time consists in that the military serviceman after having left the military unit (ship) or service place on lawful basis (those are the getting of holiday, official journey, leave etc.) does not appear in the military unit or the place of military service on the fixed date without good reasons.

As it is seen from the letter of Military Commissioner of the Republic of Azerbaijan N 1951 of 18 October 2001, the Republic’s Assembly Point is created by the Resolution of Cabinet of Ministers and is the civil office, which serves for the implementation of the functions of Republic’s Call-up Commission.

Constitutional Court considers that since the Republic’s Assembly Point is not a military unit or service place the voluntary leaving of this point or deviation from military service, after passing the medical examination, by persons called up to military service does not create from objective side the *corpus delicti* specified in Article 333 of the Criminal Code.

The rules on military service are determined by the Constitution of the Republic of Azerbaijan, Laws “On Military Service”, “On the Status of Military Servicemen”, regulation “On Passing of Military Service”, as well as by army statutes and orders.

As its seen from experts’ conclusions the entrance of citizens to military service takes place in accordance with order of Minister of Defence of the Republic of Azerbaijan, on the basis of orders of commanders of military units (chiefs of military schools) concerning the inclusion of their military units (military schools) into the list of military personnel as well as concerning the undertaking for maintenance on full forms of maintenance (those are food, financial, everyday and other kinds of provision).

Thus as it is seen from those conclusions the citizens called up to the fixed-period military service get the status of military serviceman from date of signing the order by the commander of a military unit as to inclusion them into the list of military personnel and undertaking for full maintenance.

Taking into account the above-stated, the Constitutional Court considers that the persons indicated in Article 2.1 of the Law “On the Status of Military Servicemen” carry the criminal responsibility on the basis of Article 333 of the Criminal Code for voluntary leaving of military unit or non-appearance without good reasons to the service post for the fixed date.

Being guided by Article 130.4 of the Constitution of the Republic of Azerbaijan, Articles 65, 66, 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 voluntary leaving the Republic’s Assembly Point or deviation from appearance to military service, after passing the medical examination, by persons indicated in Article 3 of the Law “On the Status of Military Servicemen” does not constitute the crime provided for in Article 333 of the Criminal Code of the Republic of Azerbaijan.

2. Persons who have the status of military serviceman indicated in Article 2.1 of the Law “On Servicemen Status” can be brought to criminal responsibility on the basis of Article 333 of the Criminal Code for voluntary leaving the military unit or service place.

3. The decision comes into force from the date of it’s 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.