**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On Interpretation of Article 144.2 of the Labour Code of the Republic of Azerbaijan*

**29 November, 2002 Baku city**

The Constitutional Court of the Republic of Azerbaijan composed of Kh.Hajiyev (Chairman), Judges: F.Babayev (Reporter Judge), B.Garibov, R.Gvaladze, S.Salmanova, A.Sultanov, I.Najafov, E.Mamedov,

joined in the proceeding by: the Court Clerk I.Ismayilov;

the legal representatives of the subjects interested in special constitutional proceedings: B. Asadov, Judge of the Supreme Court of the Republic of Azerbaijan and I.Abdulazimov, Deputy Chief of the General Department of the Administration of the Milli Majlis of the Republic of Azerbaijan;

the expert: A.Kasimov, Head of the Civil Procedure, Labour and Environmental Law Board of the Baku State University, candidate for Legal Sciences;

the specialists: T.Mammadova, Head of the Labour Policy Department of the Ministry of Labour and Social Security of the Population and A.Efendiyev, Head of the Legal Department of the Confederation of the Trade Unions of Azerbaijan;

in accordance with Article 130.4 of the Constitution of the Republic of Azerbaijan has examined in open court session the petition submitted by the Supreme Court of the Republic of Azerbaijan of 29 October, 2002, N 8/2002 concerning interpretation of Article 144.2 of the Labour Code of the Republic of Azerbaijan.

Having heard the report of Judge F.Babayev, the statements of B.Asadov and I. Abdulazimov, the lawful representatives of the subjects interested in special constitutional proceedings, the opinion of the expert A. Kasumov and specialists T.Mammadova and A. Efendiyev, having examined the materials of the case, 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 this norm to determine whether the provisions of Article 144.2 cover the employers, who have not used the vacations of last years before the entry into force of the mentioned Code.

The text of Articles 68-70, 74, 113, 134, 144 and 317 of the Labour Code 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 notes that the principle of social state provides for ensuring the fair social system as the legal commitment of the state. This principle proceeds from the Preamble of the Constitution of the Republic of Azerbaijan that declares the adequate standards of living for everybody in accordance with the fair economical and social norms. Namely the effective social state policy ensures the establishment of peace and prosperity within society. Without disclosing the concept of the social state the Constitution of the Republic of Azerbaijan envisages the development of economy based on the different types of ownership, and serves for the increasing the welfare of people. In order to recognize the state as the social one the Constitution contains the outlines and duties of social policy that is subject to the attention of state (Articles 35, 38).

Thus, according to the provisions of the Constitution, state undertook the commitment to set up the civil society, social security of a human being by state in the conditions of market economy as well as to respect the principle of social justice by means of policy implemented in the field of social and economic rights.

The transition of state from the planned economy to the market economy, realization of ownership in its different forms, establishment of work conditions, the particular importance of contracts, the increase of significance of the international normative acts related to labour as well as the labour collectives within labour relations and other cases created the conditions for adoption of new Labour Code.

The form and content of the Labour Code proceed from the provisions of the Constitution of the Republic of Azerbaijan. Thus, according to Article 35 of the Constitution of the Republic of Azerbaijan everyone has the right to choose independently, based on his/her abilities, the type of activity, profession, occupation and place of work; nobody may be forced to work.; everyone has the right to work in safe and healthy conditions, to get remuneration for his/her work without any discrimination, not less than minimum wages rate established by the state.

Article 37 of the Constitution indicates that everyone has the right to rest. The persons working based on labour agreements are guaranteed the working day not exceeding the eight hours provided for by legislation. They are also guaranteed the day-offs, the national holidays and at least one paid vacation with duration of at least 21 calendar days.

The provisions connected with the right to work also reflected in a number of international documents that Azerbaijan Republic is a party to.

According to the Article 3 of the Convention (52) “On Paid Annual Leave” of the International Labour Organization adopted in 1936, every person taking a holiday shall receive in respect of the full period of the holiday either his usual remuneration, calculated in a manner which shall be prescribed by national laws or regulations, including the cash equivalent of his remuneration in kind, if any; or the remuneration determined by collective agreement.

According to the Article 3 of the Convention (132) “On Paid Leave” of the International Labour Organization, adopted in 1970 and came into force at 30 June 1973, every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length.

In accordance with the given provisions of the Constitution and international conventions, along with working time, labour contract, labour norms, the rules of remuneration of labour, labour and administrative discipline and other rules the Labour Code established the rest period and granting of leave.

Based on the Article 113 of the Labour Code, the labour leave implies the rest time, being separated from the work, which duration cannot be less than it is indicated in the present Code and that is used by the worker by his/her discretion for the purpose of the normal rest, recovery of working ability, protection and strengthening of health.

It should be noted that the labour leave is also indicated among the types of leaves established by the Law of the Republic of Azerbaijan "On Leaves" adopted in 1994 and attached in 1997 to the Labour Code.

According to this Law, the labour leave is composed of the basic and additional leave. The basic leave in composed of 21 and 30 calendar days and additional leave is composed of 3, 6 and 9 calendar days.

According to the Article 32 of the mentioned Law, with the exception of social leave and leave to the mothers having children, in case of cessation of the labour contract the money compensation shall be paid for unused days of leave. Legislator has sufficiently discretionary power in regulation of social rights and resolution of economic questions.

This provision is based on para 16 of Article 94.2 of the Constitution, providing for the establishment by Milli Majlis of general rules for resolution of the questions of social security and labour relations.

As opposed to the Article 32 of the Law “On Leaves”, the Milli Majlis of the Republic of Azerbaijan using its constitutional right provided in the Article 144.2 of the Labour Code that was adopted in 1999 that irrespective of the reasons of cessation of labour contract, the worker shall be paid the money compensation without any conditions and limitation for unused basic leaves for all years till the day of his/her dismissal.

As it is seen from above norms, the legislator has different approaches to the regulation of money compensation for unused leaves of working years.

Constitutional Court considers that when applying the Article 144.2 of the Labour Code, the Article 149.7 of the Constitution of the Republic of Azerbaijan and Article 317.2 of the Labour Code of the Republic of Azerbaijan should be taken into consideration. Thus, Article 149.7 establishes that the normative legal acts which improve the legal situation of physical and legal persons as well as eliminate and mitigate their legal liability have the retroactive force. Other normative legal acts have no retroactive force.

Article 317.2 of the Labour Code indicates that when applying the given Code it is admissible apply the retroactive force of provisions ensuring the protection of rights and interests of the parties to labour agreement which exclude or facilitate bringing them to responsibility.

From the point of view of Article 149.7 of the Constitution of the Republic of Azerbaijan and Article 317 of the Labour Code, in case of cessation of labour contract, the money compensations for the leaves unused till 1 June 1999 should be regulated by the legislation that was in force in that period and the money compensations of the leaves unused after that date should be regulated by Article 144.2 of the Labour Code in force.

Being guided by Article 130.4 and 130.6 of the Constitution of the Republic of Azerbaijan, Articles 66, 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. In case of cessation of labour contract, the money compensations for the leaves unused till 1 June 1999 should be regulated by the legislation that was in force in that period and the money compensations of the leaves unused after that date should be regulated by Article 144.2 of the Labour Code in force.

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.