

## LEGAL GROUNDS FOR INCLUDING THE TRAINING PERIOD OF MILITARY SERVICEMEN AT CIVIL HIGHER AND SECONDARY SPECIALIZED EDUCATIONAL INSTITUTIONS IN THE CALCULATION OF LONG-TERM SERVICE FOR PENSION PURPOSES

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### Abstract

*The purpose of this article is to investigate the legal foundations and practical significance of including half of the training period undertaken by military servicemen at civilian higher and secondary specialized educational institutions in the calculation of long-term service for the purpose of pension entitlement in the Republic of Azerbaijan. The article employs methods such as the analysis of normative legal acts, a comparative legal approach, and the study of practical application experience. The scientific novelty of the article lies in the fact that, for the first time, the legal grounds for the inclusion of half of the training period spent by military servicemen in civilian higher and secondary specialized educational institutions into their long-term service for pension purposes are systematically analyzed within the context of the Republic of Azerbaijan. Furthermore, new approaches and proposals are put forward regarding the improvement of existing legislation in this field. The approach is substantiated through various legislative acts and assessed from a legal perspective.*

**Keywords:** *law, education, legislation, work experience, military serviceman, pension, pension provision, duration of education.*

### I. Introduction

Pension provision is one of the key directions of a state's social protection policy and serves to ensure a decent standard of living for its citizens. In modern legal systems, the right to a pension is regulated based on the principle of social justice and varies according to different types of professional activity. In particular, the pension provision for military servicemen is regulated within a distinct legal framework, taking into account the specific nature of their service, as well as the demanding and stressful working conditions.

In the Republic of Azerbaijan, the length of service stands out as one of the main criteria in determining the pension rights of military personnel. In this context, the inclusion of the period of training undertaken at civilian higher and secondary specialized educational institutions into the calculation of long-term service is both a theoretically and practically significant issue.

### II. Main body

Pension legal relations, as one of the complex structures of social security law, require the existence of various legal facts for the establishment of such relations. These relations are mainly based on legal events (for example, the death of a person, the occurrence of disability, reaching a certain age, etc.) and legal actions (related to the expression of will by a citizen, such as applying for a pension or waiving the right to a pension) [10].

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Pension legal relations also arise as a result of the combination of legal facts, which possess varying degrees of significance. For example, one legal event may create a fundamental reason necessitating the granting of a pension, while another legal fact may provide grounds for the termination of pension rights. These characteristics increase the complexity of pension law and reveal the necessity of regulating its legal aspects within a broader framework. Thus, the proper application of legal facts and the accurate assessment of the role of each fact ensure the correct implementation of pension rights.

In the modern era, labor legislation and social security law are applied in a complex manner in the field of pension provision. One of the main reasons for this synthesis is the absence of a separate normative framework for social security law. In this regard, the proper application of labor legislation, social security law, and relevant legal acts is of great importance in the regulation of pension rights and social security.

The application of relevant legal acts and the implementation of procedures in the fields of pension legal relations and labor law are essential issues. According to legislation and legal theory, submission of the necessary documents by the employer or the citizen to the district (city) branch of the State Social Protection Fund (SSPF) is a requirement for the establishment of pension-related relations. The submission of these documents triggers the application of relevant legal acts and constitutes the object of procedural relations related to the assignment of pensions.

One such issue is the recognition of the period of training undertaken by military servicemen at civilian higher and secondary specialized educational institutions prior to their admission into the relevant law enforcement bodies as part of their employment history based on normative legal acts. The normative and legal assessment of this matter is carried out on the basis of several normative acts.

First and foremost, the foundation of this right is established by Article 42 of the Constitution of the Republic of Azerbaijan (Right to Education) [1]. This article states that every citizen has the right to education. Another relevant provision is Article 38 of the Constitution of the Republic of Azerbaijan (Right to Social Security), which declares that "Everyone has the right to social security" [1]. Clause III of this article specifies: "Everyone has the right to social security upon reaching the age defined by law, due to illness, disability, loss of a breadwinner, loss of working capacity, unemployment, and in other cases provided by law" [1]. These provisions are based on the general principles of the right, such as social justice, humanism, legality, and the legal guarantee of the rights and freedoms of the individual as enshrined in the law [10].

Through social alimentation, the provision of all types of social security and services by the state or under its mandate, without payment, equivalence, or reciprocal labor, is carried out in a manner that reflects the normal standard of living formed at the appropriate level of social development, and without contractual obligations based on labor activity [10].

Taking the above into account, it can be noted that the inclusion of half of the period during which military servicemen received education at civilian higher or secondary specialized educational institutions prior to their admission to the relevant law enforcement agencies as part of their employment record stems from the state's commitment to the principles of social justice and humanism.

Material legal relations in the field of social security have a property character, as they arise in connection with the provision of certain material benefits to individuals (or families) in the form of pensions, social allowances, and social services [10].

When appointing pensions for persons with special ranks, various periods of service are added to the long-term service, i.e., calendar service, and the privileged part outside the calendar is counted as the preferential part of the employment record. Until 1992, the appointment of pensions for persons with special ranks was regulated by the USSR Council of Ministers Resolution No. 1290 dated December 15, 1990 [11]. After gaining independence, since 1992, the procedure for calculating the length of military service was established by the Resolution No. 631 of the Cabinet of Ministers of the Republic of Azerbaijan dated November 23, 1992, "On the Procedure for Calculating Long-Term Service Time for the Appointment and Payment of Pensions to Officers, Warrant Officers, Midshipmen, Contract Military Servicemen, Personnel of Internal Affairs, Justice, Customs, Migration, Emergency Agencies, and Their Families" [7].

Part 12 of Article 1 of this Resolution states that for the appointment of pensions to officers, warrant officers, midshipmen, contract military servicemen, and personnel of internal affairs, justice, customs, migration, courier communication, emergency, and tax agencies, the following periods are counted as long-term service [7]:

When assigning pensions to officers of the internal affairs and justice bodies, customs, emergency agencies, penitentiary and medical services of the Ministry of Justice, as well as to junior, senior, and chief officers of the Main Department for Preliminary Investigation of Tax Crimes under the State Tax Service of the Ministry of Economy of the Republic of Azerbaijan, in accordance with Article 9.5.1 of the Law of the Republic of Azerbaijan "On Labor Pensions," the time spent by these persons in civilian higher education institutions, as well as in secondary specialized educational institutions with military training units, including evening and correspondence departments of higher education institutions, prior to their actual military service and appointment to ordinary and chief positions in internal affairs bodies, is included in the long-term service period. Within a maximum of five years, one year of training is counted as six months [2].

Clause 13 of Part 1 of the aforementioned Resolution states that if such individuals were admitted directly from civilian higher education institutions to special-purpose higher education institutions to continue their education before completing their studies, the period of education at the civilian higher education institutions shall be included in the long-term service under the same conditions [7]. According to the rules of Resolution No. 230 of the Cabinet of Ministers of the Republic of Azerbaijan dated May 20, 2019, individuals who have not completed a bachelor's degree at secondary specialized educational institutions may apply by petition for both admission and transfer to such institutions [4]. However, the legislation of the Republic of Azerbaijan does not provide for admission from civilian higher education institutions to special-purpose higher education or secondary specialized educational institutions to continue education before the completion of studies.

Both during the Azerbaijan SSR period and in the early years of independence, according to the "Law on Education" adopted in 1992 and the aforementioned resolution of the Cabinet of Ministers, when a student did not complete the full course of study at the university, they were not awarded a diploma but were issued an academic certificate for the subjects mastered during the completed semesters and examination sessions. Upon employment, the knowledge and skills of the individual were determined based on this certificate. In 2007, the issuance of this certificate was discontinued, and based on Article 27.3 of the Law of the Republic of Azerbaijan "On

Education” No. N-833-IIIQ dated June 19, 2009, a certificate of attendance began to be issued to individuals who did not complete any level of education for various reasons [3]. The procedure for issuing this certificate is regulated by Resolution No. 12 of the Cabinet of Ministers of the Republic of Azerbaijan dated January 21, 2010 [6]. According to the Resolution, “individuals who have not completed any level or stage of education for various reasons are issued a certificate of attendance with a protective mark and a grade sheet” [6].

Based on this, individuals who have discontinued their studies at civilian higher education institutions and have applied for admission to special-purpose educational institutions, and have been admitted, may be exempted from retaking the courses successfully completed at the civilian higher education institutions [6].

According to Article 9.5 of the Law No. 54-IIIQ of the Republic of Azerbaijan “On Labor Pensions” dated February 7, 2006, the following military personnel (excluding military personnel stripped of military ranks and conscripted servicemen) have the right to a labor pension based on age as military personnel from the day of their discharge from military service [2]:

- Military personnel who have served 25 calendar years or more in military service before discharge;
- Those discharged from military service due to age, who have a total work experience of 30 calendar years or more on the day of discharge, with at least 15 years of that experience served in military service;
- Those discharged from military service due to illness, health limitations, or staff reductions, who are 48 years old or older on the day of discharge, have a total work experience of 30 calendar years or more, with at least 15 years served in military service;
- Military personnel who have served 15 years or more and participated in the Chernobyl Nuclear Power Plant accident consequence mitigation efforts within the relocation zone.

According to the Resolution No. 175 of the Cabinet of Ministers of the Republic of Azerbaijan dated April 28, 2022 [5], and the subsequent amendment by Resolution No. 424 dated November 21, 2023 [7], concerning the "Procedure for the appointment, calculation, recalculation, conversion from one type to another, and payment of labor pensions," for individuals specified in Article 9.5 of the Law “On Labor Pensions,” when assigning labor pensions for the period after July 1, 2017, additions determined under Article 20.14.1 of the Law are calculated as 3% of the corresponding provision cost for each year of military service (including the preferential part of military service) completed before July 1, 2017, for military service exceeding 20 years. For the period after this date, the additions are calculated as 2% per year (proportionally for incomplete years based on months of service), except for persons serving within the system of the Ministry of Defense of the Republic of Azerbaijan [2].

The “Rules for Calculating the Provision Cost, Military Service Duration, and Submission of Information on the Provision Cost” approved by the Resolution No. 135 of the Cabinet of Ministers of the Republic of Azerbaijan dated August 27, 2007, establish that the information sheets on military service duration and provision cost of military or special rank personnel (Annex No. 1) must be electronically registered in the relevant electronic information system within 15 working days by an authorized person using a strengthened electronic signature. This registration is done upon the emergence

of the right to labor pension or, in the event of the person's death, upon the application of the family member entitled to receive a labor pension due to the loss of the family head. The information is then transmitted to the State Social Protection Fund under the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan [9].

When calculating the 20-year length of service, which is considered as long-term service for pension determination, the military service duration includes up to 5 years-half of the time spent in training at civilian higher education and secondary specialized educational institutions, as stipulated in Part 1 of Resolution No. 631 dated November 23, 1992, of the Cabinet of Ministers of the Republic of Azerbaijan [8].

According to Part II, Clause 8 of the Regulation on the procedure for confirming the length of service for pension assignment, approved by Resolution No. 638 dated November 25, 1992, "On the Entry into Force of the Law of the Republic of Azerbaijan on Pension Provision for Citizens," the full-time education period of persons graduated from higher, secondary specialized, and vocational technical educational institutions, as well as the periods of study in postgraduate, doctoral, and clinical residency programs, and in schools and courses for training, retraining, and qualification upgrading, is confirmed based on diplomas, certificates, attestations, as well as certificates and other documents issued on the basis of archival data [8].

### *III. Conclusion*

Based on the content of the aforementioned normative legal acts, it can be concluded that the period of training attended by military personnel in civilian higher and secondary specialized educational institutions prior to their admission to service in the relevant law enforcement agencies is counted as part of the employment record. Specifically, up to five years of the education period, half of which is added to the long service duration, results in a maximum addition of 2.5 years to the military service employment record. The calculation of half of the training time spent in civilian educational institutions, alongside special educational institutions, as part of the employment record complies with the normative legal acts adopted within the authority of the respective executive bodies, as well as with international agreements ratified or endorsed by the Republic of Azerbaijan concerning labor and socio-economic matters.

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