**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Article 30 of the Civil Procedure Code*

*of the Republic of Azerbaijan*

**28 March 2013                                                                            Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan composed of Farhad Abdullayev (Chairman), Sona Salmanova, Mahir Muradov, Sudaba Hasanova, Rovshan Ismaylov, Jeyhun Garacayev (Reporter-Judge), Rafael Gvaladze, Isa Najafov and Kamran Shafiyev;

attended by the Court Clerk Faraid Aliyev,

representatives of interested parties – Elchin Huseynov, Judge of Administrative-Economic Board of Court of Appeal of Shekicity; Sayyad Kerimov, Deputy Head of the Department of Administrative and Military Legislation of Milli Majlis of the Republic of Azerbaijan,

Expert – Farhad Mehdiyev, Associate Professor of the Department of History of State and Law of Faculty of Law of the Baku State University, Doctor of Philosophy in Law,

in accordance with the Article 130.4 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of Court of Appeal of Sheki city on interpretation of Article 30 of the Civil Procedure Code of the Republic of Azerbaijan,

having heard the report of Judge Jeyhun Garacayev, the reports of the legal representatives of the subjects interested in special constitutional proceedings and expert, examined the materials of the case the Plenum of Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

Having applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court), Court of Appeal of Sheki city asked to give interpretation of Article 30 of the Civil Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the CPC).

In the inquiry it was specified that the claimant V. Huseynov appealed to court with statement of claim against defendants - B. Abbasova, J. Aliyeva, Executive department of the city of Mingachevir, Public Notary Office No. 2 of the city of Mingachevir, the Yevlakh territorial administration of Service of the state real estate register at the State Committee of the Republic of Azerbaijan on Property, asked to recognize the decision on sale and purchase agreement of property, extracts of Service of the state register following the results of the auction held on September 11, 2009 in the Baku city as void.

By the ruling of Mingachevir city court of July 3, 2012 the relevant claims were separated from mentioned civil case and sent to the Administrative Economic Court of Shaki city for consideration, while in other part the civil case’s proceeding was suspended.

By the ruling of the Administrative Economic Court of Shaki city dated October 9, 2012 the case was directed to Administrative Economic Board of the Court of Appeal of Shaki city for solution of issue of judicial jurisdiction of the specified case.

At consideration in the Court of Appeal of Shaki city of issue of judicial jurisdiction on this case there was revealed an uncertainty, from the point of view of judicial jurisdiction, connected with determination of claims.

Thus, according to Article 30 of the CPC in case of incorporation of several interrelated claims some of which are under the jurisdiction of general courts while others under the jurisdiction of economic courts, claims should be considered by general court.

Unlike the CPC, according to Article 2.1 of the Administrative Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the APC) the judicial proceeding of cases on administrative disputes shall be considered by administrative economic courts and administrative economic collegiums, unless other rules of jurisdiction are specified by law. According to Article 31.1 violation of regulations of jurisdiction is prohibited.

Thus, consolidation in a normative order of the claims relating to various judicial jurisdiction and consideration of claims in general court create various contradictory opinions. For this reason, the interested person asked to give interpretation of Article 30 of the CPC from the point of view of a possibility of consideration by general courts of several claims connected with each other relating to general and administrative-economic courts.

In connection with the inquiry, the Plenum of the Constitutional Court considers necessary to note the following.

According to Article 62 of the Constitution of the Republic of Azerbaijan (hereinafter referred to as the Constitution) illegal change of judicial jurisdiction is not allowed. Everyone has the right to have his/her case considered in a court specified by law.

Namely, from this point of view, judicial jurisdiction shall be established precisely by legislation and this regulation shall be clear for the subjects using judicial means. Exact establishment by law of judicial jurisdiction guarantees effective implementation of the right of judicial security of rights and freedoms of everyone.

In this connection, according to legal position formed in the decision of Constitutional Court considering that judicial jurisdiction is one of the conditions guaranteeing procedural ensuring of the rights and legitimate interests of the person at administration of justice and has to be accurately established by the law. Otherwise, there can be an uncertainty concerning in which order of legal procedure the case has to be considered. Such uncertainty can create difficulties in consideration of the case by court in reasonable terms and finally make impossible restoration of the violated rights of the person (decision of Plenum of Constitutional Court of October 6, 2012 on interpretation of Articles 20.1 and 2.02 of the Law of the Republic of Azerbaijan “On Administrative Procedure” and decision of Plenum of Constitutional Court of April 4, 2012 on interpretation of Article 87.2 of the Law of the Republic of Azerbaijan “On execution” and Article 2.1 of the Administrative Procedure Code of the Republic of Azerbaijan).

During implementation of justice, judicial jurisdiction is perceived as one of the main procedural providing of rights and legitimate interests of the person. It requires exact establishment by the law of rules of judicial jurisdiction and their clear understanding. Otherwise, along with origin before court and the parties of uncertainty in a question in what court to consider the case, there can also be difficulties in consideration of the case by courts in reasonable time and the effective recovery of the violated rights of the person become impossible.

Thus, the right of judicial security of rights and freedoms, first of all, provides consideration of the case by courts of relevant jurisdiction established by the law. Establishment of court by the law requires that its jurisdiction on a case in point was preliminary and is clearly caused and did not carry a two-digit sense.

Certainty, clarity and unambiguity of legal norm proceeds from the principle of equality of everyone before law and court. The European Court of Human Rights (hereinafter referred to as the European Court) highlights importance of exact specifying of issue of judicial jurisdiction in the national legal system of the European countries. Thus, the European Court in the decision of September 16, 2010 on the case of “Chernichkin vs. Russia” notes that “inexact determination by the legislator of issues of jurisdiction violates the right of the person to defend himself in court and claims of Article 6 § 1 of the Convention”.

The legislation of the Republic of Azerbaijan forbids violation of judicial jurisdiction. According to Article 15 of the Law of the Republic of Azerbaijan “On Courts and Judges” of June 10, 1997 the diverting of cases from the appropriate jurisdiction of courts provided by the legislation of the Republic of Azerbaijan or undue withdrawal of the cases from the relevant authorized judge is not allowed.

Exact respect for judicial jurisdiction represents a guarantee of comprehensive trial of a dispute in the order of the corresponding legal proceedings. Depending on a legal proceedings type, legal procedure shall be conducted according to special principles and procedural rules. Respect for these principles and procedural rules promotes the fair dispute resolution in a specialized order. For this reason consideration of a dispute as the corresponding judicial jurisdiction from the constitutional point of view has the great importance.

On the other hand, the civil procedure legislation in essence finds possible combination of claim claims that also provided to consider as various legal proceedings and consideration of claims in general court (Article 30 of the CPC). Even if legislator did not specify obligatory basis for combination of claims, as a condition, it finds possible combination of claims in case of their coherence with each other. İt is mean that claims can be considered in general court in case of their coherence with each other and association in one statement of claim.

Such practice exists in many countries relating to the Romano-German legal family. Thus, according to Article 147 of the Civil Procedure Code of Germany it is said that “wherever the claims forming the subject matter of several proceedings pending with a court, whether involving the same or different parties, have legal ties amongst each other, or wherever they could have been asserted in one single complaint, the court may direct that such proceedings be consolidated in order to be heard and decided on at the same time”.

Combination of claim in one proceeding is possible if there is a possibility of a prompt and correct settlement of a dispute on nature, interrelation of claims, availability of general proofs. In this case, one of the main conditions of combination of claims is reference of claims to a matter in issue. A matter in issue, having broader interpretation, than a dispute object, along with its material object also covers nature of the subjective claim. That is combination of claims shall be limited to the relevant judicial jurisdiction on subjective structure of a subject.

Combination of claims is considered expedient for the comprehensive and prompt settlement of a certain dispute. Besides, consideration of the claims connected with each other in general proceeding serves for prevention of adoption of the judgments contradicting to a matter of dispute.

In theory there are various forms of claims’ combination: free, obligatory and limited combination of claims. Free consolidation provides dependence on the claimant, obligatory consolidation - direct specifying in the legislation, and limited consolidation - combination of claims with consent of court.

The civil-procedure legislation provides obligatory combination of the claims connected with each other within one jurisdiction. Thus, according to Article 43.1 of the CPC, where several courts have under their proceeding several interrelated cases, such cases shall for the purpose of fair trial, be considered and settled in joint order.

Where it has been established by judge that there are several identical cases with participation of the same parties, or there are several cases by sole claimant against different respondents or of different claimants to the sole respondent and it has further been established that it is advisable to carry out proceeding on such cases in a combined manner, judge have the right to combine such cases into a single proceeding (Article 169.3 of the CPC).

On the other hand, where a separate hearing of claims is deemed necessary, judge have the right to separate one or more of combined claims into separate proceeding (Article 169.1 of the CPC). Such various procedural rules established in the legislation are provided by combination of close claims for a being or separation and consideration in various proceedings of claims that cannot be considered for various reasons, including within one jurisdiction.

According to claims of Article 37 of the APC, several claims may be combined into a single action by claimant when they are correlated, focused on the same respondent and have the same jurisdiction prescribed by this Code.

By the legislation of a number of the countries (Germany, Austria, Spain), the main condition of combination of claims is that as a result consolidation does not lead to change of jurisdiction. However, in the civil-procedure legislation of the Russian Federation the principle of a possibility of combination of claims a somewhat different. Thus, according to Article 22.4 of the Civil Procedure Code of the Russian Federation, when filing to the court an application containing several interconnected claims, some of which are referred to the competence of a court of general jurisdiction and others to arbitration court, while it is impossible to set the claims apart, the case is subject to the consideration and to the resolution in a court of general jurisdiction.

Provisions of Article 30 of the CPC are similar to the specified norms of the civil- procedure legislation of the Russian Federation.

It should be noted that after the entering of CPC into force the application of Article 30 of this Code did not create uncertainty. Thus, consolidation in one proceeding and consideration in general court of the claims connected with civil and economic disputes was possible. However, by the Law of the Republic of Azerbaijan 143-IVQD of June 10, 2011 “On modification of the Civil Procedure Code of the Republic of Azerbaijan” in Article 30 of the CPC the words “economic court” were replaced by the words “administrative-economic court”. This change was connected with reference of administrative disputes to jurisdiction of economic courts based on APC and change of names of given courts on “administrative-economic court”.

Interpretation of Article 30 of the CPC in a literal sense creates such idea that claims connected with administrative disputes that are considered in administrative economic courts, uniting with civil claims, can be considered in general courts. However, it is necessary to consider that claims, one of which arises from general (public), and other of a civil dispute, cannot be combined in court of the same jurisdiction.

The separation of administrative-economic courts from general courts, consideration and solution of administrative disputes by specialized courts in the order of special procedure and administrative legal procedure are an important step in the direction of more effective implementation of the constitutional requirements connected with human rights institutes and serve for efficiency of administrative judicial protection (decision of Plenum of Constitutional Court dated October 4, 2012 “On interpretation of Article 2 of the Administrative Procedure Code of the Republic of Azerbaijan and Article 25 of the Civil Procedure Code of the Republic of Azerbaijan from the point of view of jurisdiction of procedures on cases on administrative offences”.

The main task facing APC is a protection of the rights, freedoms and legitimate interests of individuals, and also the rights and interests of legal entities against the violations allowed by public authorities, local government bodies, their officials, other subjects in the sphere of public legal relations in case of accomplishment in the order of functions established by the law, in the field of ruling management.

The administrative dispute on the legal nature differs from civil and economic disputes. Administrative legal disputes provide the disputes arising in connection with acceptance, cancellation, change of the administrative act between administrative authority (relevant organs of the executive authority, their local (structural) and other authorities, municipalities, etc.) and individuals and legal entities and also in connection with actions or failure to act of administrative authority. As a rule, administrative disputes are connected with acceptance, refusal of acceptance, execution, non-execution or cancellation, administrative acts, and with recognition of illegality of the administrative act, actions of the actual nature of administrative authority and so forth.

The administrative dispute has the following important signs:

- presence of the special subject in public legal dispute;

- connection of public legal dispute with implementation of management function of the power in the order established by the law.

Unlike administrative disputes, the economic disputes considered in administrative-economic courts by the nature are close to civil disputes. The concepts “economic dispute” it is not specified directly in the legislation what complicates its interpretation. Thus, the civil, administrative disputes and disputes following from other legal relations belong to economic disputes. However, distinctive features of economic disputes, irrespective of what type of legal dispute they relates, is the following:

arise in entrepreneurial and other economic sphere;

relate to activities of the special entrepreneurial subjects participating in execution of work, production, rendering services;

create consequences having property nature.

Generally, economic dispute is meant as the legal dispute arising in the field of business (economic) activities which participants are both business owners, and the state. Economic nature of a dispute reflects content of legal relations and characterizes an essence of relations of the parties of a dispute. This dispute arises between economic subjects and proceeds from free business activity. For this reason, these relations are in essence similar to the civil relations.

Analyzing relatively different features of administrative and economic disputes, the possibility of their consolidation separately with civil disputes, from the point of view of Article 30 of the CPC and consideration in general courts is found. Thus, the economic disputes considered in administrative and economic courts, in essence, can unite with the civil claim requirement in general courts. On features of administrative disputes of the claim that arise from these disputes shall be considered only in administrative and economic courts in the order of administrative legal proceeding.

Process of legal proceedings from the point of view of legal area is based on various special procedural principles. Thus, according to Article 14.2 of the CPC the court examine and use evidence submitted only by parties. According to Article 12.1 of the APC, Court shall be bound to investigate all factual merits that are significant for proper settlement of a dispute, having been not content with explanations, applications and proposals of participants of judicial procedure, the evidence provided by them and other materials available in case. The special procedural principles on legal area from the point of view of feature a dispute serve for comprehensive, fair and objective trial of cases.

For this reason during combination of claims from the point of view of a matter in issue the issue of their jurisdiction shall be resolved. If the claim belongs to a matter in issue, it can be presented and considered judicially. Therefore, in case of availability of various claims within one claim, the issue of their jurisdiction to a matter in issue, and after - a possibility of consolidation shall be considered.

Thus, the Plenum of the Constitutional Court notes that at solution of issue of judicial jurisdiction also the parties of a dispute and a subject of a dispute and character of the relations have to be precisely established. At clarification of a subject of a dispute, it is necessary to pay attention not only to an essence of legal relations and subjective structure of the parties, but also to the causes of a dispute.

In case of the solution of issue of jurisdiction between general and administrative and economic courts as a major factor it is necessary to be guided by an essence and a subject of the challenged legal relations, subjective structure of these relations and the principles of legal area.

Considering the aforementioned, the Plenum of the Constitutional Court comes to conclusion:

- the issue of jurisdiction of claims concerning civil and economic disputes connected with each other shall be solved according to Article 30 of the CPC.

- if a claim has administrative nature in its subject, an essence and the list of subjects, then judicial jurisdiction is established according to Article 2.1 of the APC and combination of civil and (or) economic claims connected with this claim in one proceeding is excluded.

Being guided by the Article 130.4 of the Constitution of the Republic of Azerbaijan and Articles 60, 63, 65-67 and 69 of the Law of the Republic of Azerbaijan “On Constitutional Court”, Plenum of the Constitutional Court of the Republic of Azerbaijan

**DECIDED AS FOLOWS:**

1. The issue of jurisdiction of claims on civil and economic disputes connected with each other shall be solved according to Article 30 of the Civil Procedure Code of the Republic of Azerbaijan.

2. If a claim has administrative nature in its subject, an essence and list of subjects, then judicial jurisdiction is established according to the Article 2.1 of Administrative Procedure Code of the Republic of Azerbaijan and combination of civil and (or) economic claims connected with this claim in one proceeding is excluded.

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

4. The decision shall be published in “Azerbaijan”, “Respublika”, “Xalq Qazeti” and “Bakinskiy Rabochiy” newspapers, and “Bulletin of the Constitutional Court of the Republic of Azerbaijan”.

5. The decision is final, and may not be cancelled, changed or officially interpreted by any institution or official.