**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*On interpretation of Article 2.1 of the Law of the Republic of Azerbaijan “On State Register of Immovable Property” and Articles 2.2. and 2.2.1 of the Administrative Procedure Code of the Republic of Azerbaijan*

**19 May 2014                                                                           Baku city**

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

attended by the Court Clerk Elmaddin Huseynov,

representatives of interested parties – Mirbahaddin Huseynov, Judge of Court of Appeal of Sheki city; Eldar Askerov, Senior Advisor of the Department for Administrative and Military Legislation of Milli Majlis of the Republic of Azerbaijan;

expert – Server Suleymanli, Deputy Dean of Law Faculty, Docent of Civil Law Board of the Baku State University, Doctor of Law;

specialists – Oktay Hasanov, Head of Legal Department of Service of the State Register of Immovable Property at the State Committee on Property Issues of the Republic of Azerbaijan, Elchin Usub, Member of Bar of the Republic of Azerbaijan, expert of the Organization of International Cooperation of Germany;

in accordance with the Article 130.6 of the Constitution of the Republic of Azerbaijan examined in open judicial session via special constitutional proceedings the case on inquiry of the Court of Appeal of Sheki city on interpretation of Article 2.1 of the Law of the Republic of Azerbaijan “On State Register of Immovable Property” and Articles 2.2 and 2.2.1 of the Administrative Procedure Code of the Republic of Azerbaijan concerning what is the extract from the State Register of Immovable Property issued by territorial administrations of Service of the State Register of Immovable Property at the State Committee on Property Issues of the Republic of Azerbaijan: administrative or civil act.

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

**DETERMINED AS FOLLOWS:**

By the decision of Agdash District Court dated July 15, 2013, was satisfied the claim of the claimant of R. Manafova against the defendant R. Manafov “on cancellation of the sale and purchase agreement of immovable property (land plot) and the Extract from the State Register concerning this property”. R. Manafov made the appeal complaint in connection with this decision.

The Court of Appeal of Sheki city having applied to the Constitutional Court of the Republic of Azerbaijan (hereinafter referred to as the Constitutional Court) asks to clear up the following issue: was the Extract from the State Register of Immovable Property issued by territorial administrations of the State Register of Immovable Property Service (hereinafter referred to as the SSRIM) of the State Committee on Property Issues of the Republic of Azerbaijan an administrative or civil-legal act?

In the inquiry it is noted that in case of taking up by court of first instance of the mentioned civil case in proceeding, there were difficulties with establishment of whether the jurisdiction order was observed.

Inquirer specifies that according to the point 31.1.4 “Classification of Administrative Authorities” approved by Resolution of the Cabinet of Ministers of the Republic of Azerbaijan on August 28, 2007, No.136, SSRIM and its territorial administrations considered as administrative authorities. The acts adopted by administrative authorities in the sphere of the public law considered as administrative acts. According to Articles 2.2 and 2.2.1 of the Administrative Procedure Code of the Republic of Azerbaijan (hereinafter referred to as the APC) claims for contest (cancellation or change) of the administrative act adopted by administrative authority concerning the rights and obligations of the person are considered under administrative legal proceeding.

Thus, Court of Appeal of Sheki city asks to clear up the issues of jurisdiction of the claims connected with contest of the Extract from the State Register of Immovable Property, issued by territorial administrations of SSRIM.

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

The Plenum of the Constitutional Court in a number of its decisions noted that the legislation accurately established the provisions connected with jurisdiction, that these regulations are clear on the subjects taking legal action (decisions of the Plenum of the Constitutional Court “On interpretation of Articles 2.0.1 and 2.0.2 of the Law of the Republic of Azerbaijan “On Administrative Proceeding” dated October 6, 2012; “On interpretation of Article 87.2 of the Law of the Republic of Azerbaijan “On Enforcement” and Article 2.1 of the Administrative Procedure Code of the Republic of Azerbaijan” dated April 4, 2012; “On interpretation of Article 30 of the Civil Procedure Code of the Republic of Azerbaijan” dated March 28, 2013; “On interpretation of the provision “consent of relevant organ of the executive authority” provided in Article 22.2 of the Law of the Republic of Azerbaijan “On Freedom of Religion” dated June 13, 2013).

Exact establishment by the law of judicial jurisdiction guarantees the effective implementation of the right to have judicial guarantee of rights and freedoms of everyone. In Article 62 of the Constitution of the Republic of Azerbaijan, it is specified that everyone is entitled to have his/her case considered in a court determined by law.

According to the legal position formed by the Plenum of the Constitutional Court, considering that the judicial jurisdiction is one of the conditions guaranteeing procedure providing the rights and legitimate interests of the person in case of justice implementation it shall be accurately established by the law. Otherwise, there is an uncertainty in an issue of judicial jurisdiction that can lead to difficulties in consideration of case by court in reasonable time and impossibility of recovery of the violated rights of person.

The European Court of Human Rights highlights the importance of the exact indication of issue of judicial jurisdiction in the national legislation of the European countries. Thus, the Court in the decision of September 16, 2010 in the case of “Chernichkin vs. Russia” notes that inexact definition by the legislator of issues of jurisdiction violates the right of the person for protection in court and requirements of Article 6 § 1 of the Convention.

From this point of view, exact and clear detection of judicial jurisdiction prevents the artificial procrastination making by courts at consideration of case.

In connection with the inquiry of the Court of Appeal of Sheki city, the Plenum of the Constitutional Court considers necessary to analyze the disputes considered in administrative court from the point of view of an object and the subject.

Administrative (fulfilling public functions) body acts as a main subject of administrative-legal disputes. As one of the parties of the dispute considered in administrative-procedure order certainly acts the administrative body. The list of administrative bodies is listed in the “Classification of administrative bodies" approved by the resolution of the Cabinet of Ministers of the Republic of Azerbaijan dated August 28, 2007, No. 136. According to this Classification, SSRIM and its territorial administrations are considered as administrative bodies.

In the Law of the Republic of Azerbaijan “On Administrative Proceeding” the concept “administrative act” includes only individual acts. Thus, according to Article 2.0.2 of this Law the administrative act is the decision, the order or the imperious measures of other nature adopted by administrative authority with the purpose of settlement or solution of a certain (specific) issues in the all-legal (public) sphere and generating certain legal consequences for the individual or legal entity (persons) to whom, (which) it is addressed.

As evident from this regulation, the administrative act is characterized by the following signs:

- shall be adopted by administrative authority;

- to regulate the certain (specific) issues concerning the all-legal (public) sphere;

- to generate certain legal consequences for the individual or legal entity (persons) to whom, (which) it is addressed;

- to be a measure of the authority.

The administrative-legal act, on the one hand, regulates the uncertain legal relationship, that is, establishes an order of obligatory rules of conduct for an unrestricted circle of individuals and legal entities, and with another - fulfills the individual legal regulation, that is resolves the specific issues and disputes arising in the public-legal level.

Two basic elements enter into structure of the managerial legal relationship created by the administrative act. The body adopting the act acts as the subject of legal relationship and the person concerning whom the act is adopted acts as an object. Thus, the administrative act is the declaration of will, important for execution, expressed unilaterally by authorized administrative authority that serves for public interests in the common (public) legal sphere.

The Plenum of the Constitutional Court, in the decision “On interpretation of provision “consent of appropriate authority of executive power”, provided in Article 22.2 of the Law of the Republic of Azerbaijan “On Freedom of Religion” of June 13, 2013, stated its position in connection with a concept of the administrative act and revealed by what signs are possesses the administrative act.

In the given decision it is noted that the administrative-legal act, is meant as the act governing the administrative relations or resolving a specific administrative matter (dispute) establishing the new legal status of legal subjects adopted administratively by authority or officials (within management process), adopted for implementation of functions of management and achievement of goals.

In Article 2.1 of the Law of the Republic of Azerbaijan “On State Register of Immovable Property” (hereinafter referred to as the “On State Register of Immovable Property”) it is specified that the state registration of the property rights to immovable property and other corporeal rights is the legal act of recognition and confirmation by the state of origin, restriction (encumbrance), transition and termination of the rights to immovable property according to the Civil Code of the Republic of Azerbaijan.

In Articles 14.3 and 178.1 of the Civil Code of the Republic of Azerbaijan (hereinafter referred to as the Civil Code) it is noted that property rights, which are subject to state registration, unless otherwise is stipulated by legislation, on formation of civil rights, arise from the moment of registration. The right to property of the person arises actually from the moment of registration of property for his name in SSRIM. The extract from the state register of immovable property is the document reflecting this registration and anyway, cannot be regarded as the administrative act.

Thus, even considering that SSRIM is an administrative authority, the conducting of registration recognizing the property right to property and issue of the corresponding extract is imply “the passively legitimized activity”.

At the same time, in Article 141.1 of the Civil Code it is specified that if contents of state registry of immovable property does not correspond with actual legal status of rights on land area or restriction of such rights, the person, whose rights have been violated by introduction of note on non-existing charge, shall be entitled to consent on introduction of changes to state registry of immovable property from the person, whose rights have been affected by such changes.

By implication of the specified regulation, the person whose right is not registered or incorrectly registered, may (having made the legal requirement to SSRIM) achieve the corresponding correction. Execution of this obligation is an indicator expressing passive function carried out by SSRIM.

The solution of an issue of judicial jurisdiction of the disputes connected with purchase and sale and the state registration of immovable property depends only on the legal nature of the imposed claim requirement, on whether it is civil or administrative-legal requirements.

As it was already noted, in case of the solution of judicial jurisdiction in connection with these issues, first of all, it is necessary to assume as a basis the claim requirement provided by the claimant. In case then the claim requirement connected with a specific dispute, the judicial jurisdiction shall be solved after the analysis of an essence of this dispute. Thus, in case of putting up in the claim of two or more independent requirements, it is necessary, having studied the legal nature of each claim requirement, to find out a possibility of their consolidation or separation and consideration as different legal proceedings. If combination of claim requirements is not possible, the court has the right, having adopted determination concerning the lack of powers on consideration of claim requirement, to send this claim requirement to the relevant court, or to recognize the claim as non-possible.

The civil-procedure legislation of the Republic of Azerbaijan in essence recognizes the possibility of association in court of several requirements connected among themselves and their consideration in the one court (Civil Procedure Code of the Republic of Azerbaijan).

The Plenum of the Constitutional Court, in the decision “On interpretation of Article 30 of the Civil Procedure Code of the Republic of Azerbaijan” dated March 28, 2013, in details interpreted a possibility of combination of requirements in one proceeding (in particular the civil requirement with economic or administrative). In this decision, the Court specified that the administrative dispute on its legal nature differs from civil and economic disputes and it was noted that the civil requirements under administrative proceeding in no circumstances can be combined and considered together with the claim requirement.

In Articles 13, 46.3 and 48.1 of the APC is stated the role of courts in the solution of an issue of judicial jurisdiction of claim requirements. According to Article 46.3 of the APC if the claim does not correspond to data stipulated in Article 46.1 of the present Code, the court or the chairperson of judicial structure or the judge appointed as the chairperson of judicial structure (judge-speaker) establishes reasonable time to bringing of claim in compliance with these requirements.

The administrative-economic court authorized to study an issue of a possibility of consideration under administrative procedure of requirements of claim and to inform the claimant concerning its position.

According to Articles 2.1 and 12 of the Law “On State Register of Immovable Property”, and requirements of Article 140 of the Civil Code the registration of immovable property in the register creates a presumption of the property right of the owner to this property. Thus, the relevant administrative authority confirms the civil relation, that is, result of civil action. It in turn, creates a property right presumption for the owner registered the immovable property in SSRIM.

Thus, though registration of immovable property in the State Register of Immovable Property as a result of purchase and sale, is considered one of actions to be taken by administrative authority relating to the common (public) law, nevertheless, by the nature it is expressed more as a result of relations having civil nature.

Taking into consideration the above mentioned, the Plenum of the Constitutional Court comes to the following conclusion:

- the extract from the State Register of Immovable Property issued by territorial administrations of SSRIM according to Article 2.1 of the Law “On State Register of Immovable Property”, connected with the property rights, is not considered as a legal act confirming the rights with respect to immovable property and therefore these cases shall be considered according to civil legal proceeding norm;

- the disputes following from actions or inactions of administrative authority in connection with the extract from the State Register of Immovable Property issued by territorial administrations of SSRIM shall be considered under administrative procedure.

Being guided by the Article 130.6 of the Constitution of the Republic of Azerbaijan and Articles 60, 62, 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:**

1. The extract from the State Register of Immovable Property issued by territorial administrations of the Service of the State Register of Immovable Property according to Article 2.1 of the Law of the Republic of Azerbaijan “On State Register of Immovable Property”, connected with the property rights, shall not be considered as a legal act confirming rights on immovable property and therefore these cases shall be considered according to civil legal proceedings.

2. The disputes following from actions or inactions of administrative authority in connection with the extract from the State Register of Immovable Property issued by territorial administrations of the Service of the State Register of Immovable Property shall be considered in accordance with administrative procedure.

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.