**ON BEHALF OF THE REPUBLIC OF AZERBAIJAN**

**DECISION**

**OF THE PLENUM OF THE CONSTITUTIONAL COURT**

**OF THE REPUBLIC OF AZERBAIJAN**

*Review of the complaint by Hashimov et al concerning conformity of the decision*

*of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan*

*of 10 March 2004 to the Constitution and laws of the Republic of Azerbaijan*

**30 June, 2005 Baku city**

The Plenum of the Constitutional Court of the Republic of Azerbaijan in attendance of:

Judges F.Abdullayev (President Judge), B. Qaribov, R.Qvaladze (Reporting Judge), E.Mammadov, S.Salmanova and A.Sultanov and Court Secretary I.Ismayilov,

in presence of the complainants H.Hashimov, N.Mammadova, A.Abbasova, Q.Mehdiyev, F.Ahmadov, S.Majidov and their representatives F.Aliyev and M.Jabrayilov

based on a complaint lodged by H.Hashimov and other complainants,

has examined in the open session under the special constitutional procedure in accordance with Article 130 Section V of the Constitution of the Republic of Azerbaijan the constitutional case of conformity of the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 10 March 2004 to the Constitution and laws of the Republic of Azerbaijan. The constitutional proceedings were held in absence of a representative of the respondent party.

Having heard a report of Judge Qvaladze and statements from the complainants H.Hashimov, N.Mammadova, A.Abbasova, Q.Mehdiyev, F.Ahmadov, S.Majidov and their representatives F.Aliyev and M.Jabrayilov, studied materials and deliberated the case, the Plenum of the Constitutional Court of the Republic of Azerbaijan

**DETERMINED AS FOLLOWS:**

On 17 April 2001 the Sumqayit City Court ruled to dismiss a suit by Hasan Hashimov et al to annul a privatisation deal brought against Sumqayit Meyve-Terevez (Fruits and Vegetables) Open Joint-Stock Company (henceforth “Sumqayit Meyve-Terevez OJSC”) and the Ministry of Economic Development of the Republic of Azerbaijan.

On 7 August 2002 the Civil Collegium of the Court of Appeals of the Republic of Azerbaijan ruled to:

reverse the above judgement of the Sumqayit City Court;

annul the disputed privatisation deal; and

invalidate a registration certificate issued to Sumqayit Meyve-Terevez OJSC.

On 25 October 2002 the Civil Collegium of the Supreme Court of the Republic of Azerbaijan ruled to:

sustain a cassation complaint by Sumqayit Meyve-Terevez OJSC and the Ministry of Economic Development;

reverse the judgement of the Civil Collegium of the Court of Appeals; and

order retrial of the case by the appellate court.

On 25 February 2003 the Civil Collegium of the Court of Appeals retried the case and ruled to:

reverse the judgement of the first-instance court;

reinstate the parties to the privatisation deal to the status quo ante; and

ordered the staff of Sumqayit Meyve-Terevez OJSC to hold a general (shareholders’) meeting.

Under request of the Sumqayit City Bailiff and Court Supervisor Unit, on 14 April 2003 the Civil Collegium of the Court of Appeals passed a procedural decision to invalidate all documents pertaining to privatisation of Sumqayit Meyve-Terevez Trading Association, including its conversion into Sumqayit Meyve-Terevez OJSC.

Disagreeing with the above judgement and procedural decision, Sumqayit Meyve-Terevez OJSC filed a cassation complaint against them. On 18 June 2003 the Civil Collegium of the Supreme Court ruled to:

sustain the complaint of Sumqayit Meyve-Terevez OJSC;

reverse and rescind the disputed court decisions; and

order retrial of the case by the appellate court.

On 31 October 2003 the Civil Collegium of the Court of Appeals ruled to uphold the judgement of the Sumqayit City Court of 17 April 2001.

On 10 March 2004 the Civil Collegium of the Supreme Court ruled to uphold the judgement of the appellate court of 31 October 2003.

In a complaint lodged with the Constitutional Court, Hashimov et al allege that the decision of the cassation court was unlawful and unsubstantiated and request review of the compliance of the said decision with the Constitution and laws of the Republic of Azerbaijan.

The constitutional complaint is substantiated by reference to the Decree of the President of the Republic of Azerbaijan of 23 December 2000 which approved the Statute of Preferential Sale of Shares of a State Enterprise Converted to Open Joint-Stock Company to the Staff of the Privatised Enterprise. The complaint by Hashimov et al claims that procedures prescribed by the said Statute were violated inasmuch as the staff of the enterprise were not notified about holding of a closed subscription to privatisation vouchers as well as an open voucher and monetary auction and therefore the staff were unable to participate in the closed voucher subscription.

In view of the complainants, the Civil Collegium of the Supreme Court of the Republic of Azerbaijan wanting to affirm that rules on preferences for the staff were not infringed while converting Sumqayit Meyve-Terevez Trading Association into a joint-stock company misinterpreted the above Statute and failed to apply other applicable rules, i.e. Articles 2 and 3 of Appendix 4 to the State Programme of Privatisation of Public Property for 1995 – 1998 and the Law of the Republic of Azerbaijan on Privatisation of Public Property.

Furthermore, the complainants stated in their constitutional complaint that the courts examining their civil case came to a wrong conclusion that the complainants had passed the term of limitations for civil suits and therefore applied Article 82 of the old Civil Code which had been in effect until 1 September 2000. In doing so, Hashimov et al allege, the courts did not take into account that the complainants had had no knowledge of breach of their preferential rights and thus the three-year term of limitations could not apply in this case because once the complainants knew that their rights had been violated they immediately filed a suit against the alleged wrongdoers.

The Plenum of the Constitutional Court has noted the following in relation to the complaint.

The procedure of constitutional review has several specificities arising out of the Law of the Republic of Azerbaijan on the Constitutional Court. Article 34.3 of this Law stipulates that the Constitutional Court may not examine factual evidence in cases prescribed in Article 34.2. Therefore, during review of complaints the Constitutional Court does not examine factual circumstances of the case determined by common courts, does not rule on admissibility and validity of evidence and does not collect new evidence. The constitutional review of complaints in relation to compliance of disputed court decisions to the Constitution and laws of the Republic of Azerbaijan is limited to examination of correctness of application and interpretation of relevant laws and regulations by the courts (Article 34.2 of the Law).

This is a proper frame for review of the complaint by Hashimov et al.

From the circumstances of the case determined by common courts it is seen that Sumqayit Meyve-Terevez OJSC was registered by the Ministry of Justice of the Republic of Azerbaijan and granted a state registration certificate on 5 August 1998. The common courts also determined that subscription to shares of the joint-stock company had been conducted between 12 and 22 August 1998. Information about share subscription had been published in Mulkiyyet (Property) weekly newspaper (the issue of 21-28 July 1998). An enterprise privatisation commission had posted an announcement about share subscription on the bill-board of the enterprise. Some members of the staff had been issued personal notifications.

Based on the above evidence, the courts examining the substance of the case came to a conclusion that conversion of Sumqayit Meyve-Terevez Trading Association into a joint-stock company and subscription to its shares were done in compliance with the law and Hashimov and other complainants knew or should have known that.

Based on factual evidence, the common courts also made determination that the disputed legal relationship between Hashimov et al and Sumqayit Meyve-Terevez OJSC had arisen in 1998. By not suing the other side for more than four years, Hashimov et al passed the term of limitations for civil suits established by the old Civil Code effective up to 1 September 2000 without an excusable reason.

In relation to this conclusion by the common courts, the Constitutional Court considers important to clarify once more law provisions related to the term of limitations, its purpose and significance.

Institution of the term of limitations in civil law aims at disciplining participants of the civil process and encouraging their activity in realising their rights and obligations. The term of limitations necessitates serious reciprocal control of participants in civil legal relations over performance of their respective obligations.

The need for instituting the term of limitations is also explained by the key requirement of fair trial of civil cases seeking to establish objective truth of each case. Passage of unspecified time may impede and sometimes even prevent finding the truth. Evidence can be lost, or it can deteriorate to the state where its validity can be reasonably doubted, which can seriously hinder court’s efforts to examine factual circumstances of the case and, consequently, make the right ruling thereon.

As stated in the decision of the Plenum of the Constitutional Court “Interpretation of Article 373 of the Civil Code of the Republic of Azerbaijan” of 27 December 2001, “significance of the term of limitations for civil suits consists in that it:

firstly, disciplines participants of the civil process, encourages their timely judicial defence of their rights and helps institute contractual and financial discipline;

secondly, serves to remove uncertainty and instability of legal relations; and

thirdly, eliminates reference to very old evidence validity of which is difficult or impossible to establish and, thus, enables courts to decide cases on objective grounds.”

Law does not extend the term of limitations to enforcement measures executed against a party who infringed upon material rights of a specific aggrieved party. However, recourse to enforcement on the initiative of an interested party rather than an aggrieved party is only possible within the term of limitations. Article 73 of the old Civil Code effective up to 1 September 2000 established three years as the term of limitations for actions to defend rights in civil cases. Expiration of the legally mandated term means that the grounds for enforcement against the aggrieving party are not present in general cases (Article 82 of the old Civil Code).

As shown above, the common courts determined that disputed legal relations between the parties had arisen in August 1998 whereas the complainants, for no excusable reason, filed a suit with a court only in October 2001.

Based on:

requirements of Articles 73 and 82 of the old Civil Code, which was effective up to 1 September 2000;

circumstances determined by the common courts that point out that the disputed relations had arisen in August 1998 and that the complainants had known about conversion of Sumqayit Meyve-Terevez Trading Association into a joint-stock company and accompanying share subscription;

the fact that the complainants brought a suit to court only in October 2001;

the Plenum of the Constitutional Court arrives at a conclusion that the ruling of the common courts concerning passage by the complainants of the legally mandated term for bringing the suit to court for no excusable reason is lawful.

In this regard, the Plenum of the Constitutional Court considers that the disputed decision of the cassation court does not contravene Article 60 of the Constitution. The Plenum of the Constitutional Court also comes to the conclusion that confirmation of the passage by the complainants of the term of limitations for no excusable reason disallows consideration of other arguments listed in the constitutional complainant by Hashimov et al.

In consideration of the foregoing and guided by Article 130 Sections V, IX and X of the Constitution of the Republic of Azerbaijan and Articles 52, 62, 63, 65, 66, 67 and 69 of the Law of the Republic of Azerbaijan on the Constitutional Court, the Plenum of the Constitutional Court

**DECIDED:**

1. Due to passage by Hashimov et al of the term of limitations for civil suits for no excusable reason, the decision of the Civil Collegium of the Supreme Court of the Republic of Azerbaijan of 10 March 2004 in the civil action against Sumqayit Meyve-Terevez Open Joint-Stock Company and the Ministry of Economic Development of the Republic of Azerbaijan for annulment of the privatisation deal shall be deemed in compliance of Article 60 of the Constitution of the Republic of Azerbaijan and Articles 73 and 82 of the old Civil Code effective up to 1 September 2000.
2. The Decision shall become effective from the day it is published.
3. The Decision shall be published in the newspapers Azerbaycan, Respublika, Xalq Qazeti and Bakinskiy Rabochiy and in the Bulletin of the Constitutional Court of the Republic of Azerbaijan.
4. The Decision is final and can not be annulled, amended or officially interpreted by whichever person or entity.