

## SOLE SHAREHOLDER AND CEO: RULING OF CONSTITUTIONAL COURT

The Constitutional Court decided to bring clarity to the necessity to formalize a relationship between an entity and its chief executive officer (director) where the latter is also the sole shareholder of the entity.

In its resolution of 19 February 2025, the Constitutional Court interpreted Article 7.2-3.3 of the Labor Code and Articles 49, 91, 91-2.1, 91-2.3 of the Civil Code.

The reason for the review was an appeal by the director of a limited liability company who is its only shareholder. The CEO made a civil law claim for the recovery of wages where no employment was formalized between him and the LLC he controls. It is not clear from the Constitutional Court resolution whether the claim by the CEO against the entity he fully controls is the only claim involved, making the case rather curious.

The Court of the District of Narimanov of the City of Baku hearing the dispute identified the need to resolve the issue of the legal nature of the CEO's relations with the entity and the possibility of recognizing them as employment, despite the absence of an employment agreement. As such, it sent a request to the Constitutional Court.

The Constitutional Court found that, where a CEO and sole shareholder of an entity coincide, an employment agreement cannot be made as if an agreement would lack the second party. It remains unclear why the Court forwent the legal identity of the LLC involved. At any rate, the Court notes that where the sole shareholder and CEO coincide, the relationship is formalized by a corporate resolution or an appropriate internal order.

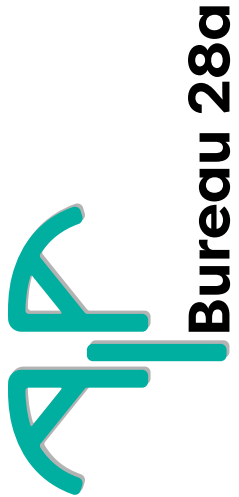
Despite the above, the Constitutional Court emphasizes: the existence of actual employment features – systematic employment, performance of official duties, receipt of remuneration, compliance with internal regulations – requires that such relations be formalized as employment. Even if a person is a sole shareholder, if there is an employment function involved, it is subject to protection under the employment and labor laws. In such cases, making an employment contract is required.

The Plenum of the Constitutional Court ruled:

- to protect the labor and social rights of a CEO of an entity, an employment agreement must be formalized with the CEO who is also the sole shareholder of the entity; and
- where the sole shareholder and CEO of an entity are the same person, the appointment of the person as the CEO can be formalized by an appropriate order without any contractual relations arising.

The full text of the ruling is available at the link: <https://constcourt.gov.az/az/decision/1452>

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