Non-Official Translation

IN THE NAME OF THE REPUBLIC OF ARMENIA
DECISION OF THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA

ON THE CASE OF CONFORMITY OF PART 1 OF ARTICLE 145 OF THE ADMINISTRATIVE PROCEDURE CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION ON THE BASIS OF THE APPLICATION OF "RATINA" LLC

Yerevan 2 March 2021

The Constitutional Court composed of A. Dilanyan (Chairman), V. Grigoryan, A. Tunyan, A. Khachatryan, Y. Khundkaryan, E. Shatiryan, A. Vagharshyan,

with the participation of (in the framework of the written procedure):

Applicant: M. Danielyan and M. Manukyan, representatives of "Ratina" LLC,

Respondent: K. Movsisyan, official representative of the National Assembly of the Republic of Armenia, Head of the Legal Expertise Division of the Legal Expertise Department at the Staff of the National Assembly of the Republic of Armenia,

pursuant to Paragraph 1 of Article 168, Paragraph 8 of Part 1 of Article 169 of the Constitution, as well as Article 22 and Article 69 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of Part 1 of Article 145 of the Administrative Procedure Code of the Republic of Armenia with the Constitution on the basis of the application of "Ratina" LLC.

The Administrative Procedure Code of the Republic of Armenia (hereinafter – the Code) was adopted by the National Assembly on 5 December 2013, signed by the President of the Republic on 28 December 2013 and entered into force on 7 January 2014.

Part 1 of Article 145 of the Code, titled **"Powers of the Court of Appeal",** stipulates:

"1. As a result of the review of the judicial act resolving the case on the merits, the Court of Appeal:

1) rejects the appellate complaint, leaving the judicial act unchanged, and in the case when the Court of Appeal rejects the appellate complaint, however, the judicial act issued by the Administrative Court, correctly resolving the case on the merits, is incompletely or incorrectly reasoned, then the Court of Appeal provides reasoning for the judicial act left unchanged;
2) satisfies the appeal in whole or in part, hence overturning in whole or in part the judicial act of the Administrative Court, sending the overturned part of the case to the Administrative Court for a new examination and defining the scope of the new examination, while leaving the judicial act unchanged in regard to the part which has not been overturned;
3) in whole or in part overturns and changes the act of the Administrative Court by adopting a new judicial act, if the factual circumstances confirmed by the Administrative Court allow making such an act, and if it derives from the interests of the efficiency of justice, and leaves the judicial act unchanged in the challenged and not-overturned part thereof.
4) overturns the judicial act in whole or in part and terminates the proceedings of the case in whole or in part, and leaves the challenged and non-overturned judicial act unchanged."

The above presented article of the Code has not been amended and supplemented.

The case was initiated on the basis of the application of "Ratina" LLC submitted to the Constitutional Court on 9 March 2020.

Having examined the application, the written explanation of the respondent, as well as having analyzed the relevant provisions of the Code and other case-related documents, the Constitutional Court **FOUND:**

1. Applicant's arguments

The applicant notes that in the context of the contested legal regulations, the Court of Appeal, as a result of the review of judicial acts issued in administrative cases, resolving the case on the merits, is not endowed with the power to consider the appeal filed only in regard to the reasoning part of the judicial act of the court of first instance deciding the case on the merits, and as a result of that issuing a decision. That is, in cases where a party to an administrative proceeding considers only the reasoning part or a fragment of the reasoning part of a judicial act deciding the

merits of the case as unfavorable for him/her, he/she is not ensured with the possibility of challenging the part of this judicial act that is unfavorable for him on appeal procedure.

According to the applicant, it follows from the above that the possibility of challenging the unfavorable part of the judicial act that resolves the case on the merits is not accessible for the participant in the administrative proceedings, whose demand, although satisfied by the judicial act of the court of the first instance, which resolves the case on the merits, nevertheless some of the reasoning/motivations in the reasoning part of this judicial act, through their presence or absence are unfavorable for this participant in the proceedings.

Summarizing his standing, the applicant comes to the conclusion that Part 1 of Article 145 of the Code contradicts Part 1 of Article 61, as well as Part 1 of Article 63 of the Constitution insofar as it does not provide for the Administrative Court of Appeal powers to consider and resolve in any way an appeal filed only in regard to the reasoning part of the decision of the court of first instance deciding the case on the merits, and, respectively, it distorts the essence of the fundamental rights enshrined in them, since it contains disproportionate and unjustified restrictions of the basic rights.

2. Respondent's arguments

The respondent states that in the field of administrative proceedings, the right to appeal against judicial acts is intended to ensure the restoration of the violated rights and freedoms of a person by an independent and impartial court. In this process, the court applies both the norms of substantive law and the norms of procedural law, as a result of which a judicial act is issued. Consequently, challenging the legality of that act in accordance with the procedure for judicial appeal can necessarily be on the basis of a violation of both substantive law and procedural law.

According to the respondent, the institution of appeal against judicial acts is a mean of revealing and correcting all those judicial errors that were committed as a result of violation of both substantive law and procedural law, therefore, they entailed an incorrect resolution of the court case, which is nothing more than a passing of an unfavorable judicial act for a person. Consequently, the contested provisions of the Code in no way violate the constitutional rights of a person to judicial protection and a fair trial, since the person has already achieved the desired result - a favorable judicial act has been issued for him/her.

Based on the above-presented, the respondent finds that Part 1 of Article 145 of the Administrative Procedure Code of the Republic of Armenia corresponds to the requirements of the Constitution.

3. Circumstances to be ascertained within the framework of the case

In the framework of the constitutional dispute within this case, the Constitutional Court considers it necessary to address the following questions:

is the Administrative Court of Appeal of the Republic of Armenia (hereinafter also referred to as the Court of Appeal) empowered with the authority to consider and resolve an appeal filed only against the reasoning part of the judicial act of the Administrative Court resolving the case on the merits; if not, then, is the requirement to establish the necessary mechanisms and procedures for the exercise of constitutional rights of a person's to judicial protection a fair trial preserved?

4. Legal positions of the Constitutional Court

4.1. According to Article 75 of the Constitution, when regulating basic rights and freedoms, the laws shall define organizational mechanisms and procedures necessary for effective exercise of these rights and freedoms.

The Constitutional Court, referring to the content of Article 75 of the Constitution in the Decision DCC-1546 of 18 June 2020, stated that "… any legislative regulation, and not just any restriction of a fundamental right or liberty, should aim to and provide for (3) organizational (4) structures and (5) procedures (2) necessary for the (1) effective exercise of all fundamental rights. Only the simultaneous existence of all these conditions in any legislative regulation, especially in a legislative regulation restricting the fundamental right or freedom, can ensure its compliance with the Constitution".

At the same time, according to Part 1 of Article 61 and Part 1 of Article 63 of the Constitution, everyone shall have the right to effective judicial protection of his or her rights and freedoms, as well as to a fair and public hearing of his or her case, within a reasonable time period.

In a number of its decisions (in particular, DCC-652, DCC-665, DCC-673, DCC-690, DCC-719, DCC-758, DCC-765, DCC-780, DCC-873, DCC-936, DCC-1037, DCC-1127, DCC-1190, DCC-1192) the Constitutional Court expressed legal positions on guaranteeing and ensuring the full exercise of the constitutional rights to effective means of judicial protection and access to the court. The Constitutional Court expressed, in particular, the following legal positions:

- "… the restriction of preconditions should not be disproportionate, creating obstacles for individuals to protect their rights. In addition, in the matter of accepting an appeal or cassation complaint for processing, the courts should not have unlimited discretionary freedom, but they should be entitled with the right and duty to accept for processing or reject the complaint on clear grounds provided for by the law and equally perceived by the individuals.

(...)

While addressing the above mentioned problem, the Constitutional Court also considers it important to have appropriate institutional and legislative guarantees aimed to ensuring the systemic integrity and effectiveness of the application of the institution of appealing judicial acts ... ” (09.04.2007, DCC-690),

- “The positive obligation of the State to safeguard the right to judicial remedy both in the legislative and the law-enforcement processes derives from the constitutional right to judicial remedy. This presupposes, on the one hand, the duty of the legislator to enshrine in laws the possibility and mechanisms of full-fledged judicial protection, on the other hand, the duty of the law enforcement bodies to accept for consideration, without exceptions, the appeals of persons addressed to them in a legal manner, in which they request the legal protection from alleged violations of their rights...

It is obvious that this requirement primarily concerns the courts, since it is these bodies that are endowed with the comprehensive powers of legal protection.

...the situation is different at the higher courts, where the requirements for accepting an appeal may be stricter. Nevertheless, in these instances, the acceptance of appeals to proceedings cannot be carried out arbitrarily" (28.11.2007, DCC-719),

- “… no procedural peculiarity or procedure can impede or prevent the possibility of effective exercise of the right to apply to a court, and make senseless the right guaranteed by Article 18 of the Constitution of the Republic of Armenia or serve as an obstacle to its exercise” (22.12.2015, DCC-1249).

The possibility of judicial appeal serves as an important component of the right to judicial protection, on which the Constitutional Court expressed the following positions:

“…the person’s right to judicial review by a higher court, i.e. the judicial appeal is a constitutionally prescribed special institution guaranteeing the judicial (effective) protection of the violated rights and freedoms (Article 20, Part 3 of the Constitution of the Republic of Armenia). During the execution of the right to judicial protection and the administration of fair trial, the judicial appeal is the state’s primary duty, that is, the fulfillment of justice objectives through the certain procedure, including the correction of possible judicial errors.” (08.02.2011, DCC-936)," The Constitutional Court finds that the regulation and implementation of the institution of judicial appeal shall be based on the realization of the following prior legal terms, particularly:

- the fundamental rights and freedoms of a person, as the ultimate value, are protectable in an unreserved manner by the courts in the scopes of both the consideration of the case on the merits and its possible further review;

- the judicial appeal, as a remedy of judicial protection, shall be an effective remedy for restoration of the violated rights and freedoms of the person, following the constitutional principles of justice administration, particularly, the ones under Articles 18 and 19 of the RA Constitution;
- the institution of judicial appeal, without an exception, shall be a remedy for revealing the judicial errors in equal, objective, comprehensive, fair and public trial, within the reasonable timeframes, and for rectifying all those judicial errors which, resulting from the violation of both substantive and procedural norms, consequently led to the wrong adjudication of the judicial case;
- the review of judgments based on the appeal or cassation, as a function of justice administration, may support the implementation of the abovementioned constitutional legal tasks, if carried out by an independent and impartial court. ” (08.02.2011, DCC-936),

- “... no procedural peculiarity can be interpreted as a justification for restricting the right to access a court, guaranteed by the Constitution of the Republic of Armenia...” (10.03.2016, DCC-1257),

- “The aim of the institution to appeal judgments is not only checking the legitimacy of rejecting or satisfying the claim set forth. This institution is the basic and essential legal guarantee, whereby observance of the basic elements of the right to fair trial, in particular, those stipulated by Article 19, Part 1 of the Constitution of the Republic of Armenia and Article 6, Part 1 of the European Convention is ensured by the lower courts. In all cases, when the court of first instance did not observe the mentioned procedural guarantees, having no right of appeal, in fact the citizen is deprived of the opportunity to effective implementation of his/her right to fair trial and effective remedies against the violations of the right to fair trial.” (18.07.2012, DCC-1037).

4.2. In the context of the powers assigned to the Courts of Appeal, the role of the appellate body can be explored from the point of view of the effective protection of the constitutional right to judicial protection, as well as the right to a fair trial as a component of the latter. Thus:

According to Article 172 of the Constitution, “the courts of appeal shall be the court instance reviewing, within the scope of powers prescribed by law, the judicial acts of the courts of first instance”.

According to Part 1 of Article 130 of the Code:

«1. The right to lodge an appeal against the judicial acts resolving the case on the merits, as well as the interim judicial acts of the Administrative Court provided for in Article 131 of this Code shall have:

1) participants in the trial;

2) persons who have not become participants in the trial, in respect of whose rights and obligations a judicial act resolving the case on the merits was issued ".

For the exercise of the above-mentioned right, the Code defines the procedure and terms of filing an appeal, requirements for the form and content of the complaint, as well as the grounds and procedure for accepting, returning, and rejecting the acceptance of the complaint. The legislation also clearly establishes the scope of those powers that can be exercised by an appellate court when revising a judicial act.

Based on the legal positions of the Constitutional Court in respect to the effective judicial protection and the right to a fair trial, the Constitutional Court finds that the wording of the phrase "reviewing, within the scope of powers prescribed by law" stipulated in Article 172 of the Constitution does not constitute grounds for the unconditional assertion that, if the legislation does not establish any powers of the Court of Appeal, then such legal regulation is in accordance with or contrary to the Constitution. In each specific case, the absence within the powers of the Court of Appeal of any alleged power shall be assessed in terms of the need for such power, namely: whether the legislative stipulation of the missing power derives from the essence of constitutional rights to effective judicial protection and a fair trial, or does the absence of such powers distort the essence of these constitutional rights.

The Constitutional Court states that Article 130 of the Code, establishing the scope of persons entitled to appeal against judicial acts of the Administrative Court, does not directly define that these persons can appeal against a judicial act only if its final part is unfavorable for them. That is, Article 130 of the Code does not in itself preclude the exercise of a person's right to appeal in the event that the operative part (part of the operative part) of the judicial act, although it is favorable for the person, but the person does not agree with the reasoning part of the given judicial act.

At the same time, as a result of study of the powers that the Court of Appeal may exercise when reviewing a judicial act that resolves the case on the merits, the Constitutional Court states that the Court of Appeal is not empowered to change the reasoning part of the judicial act without referring to its final part, therefore, taking into account the above presented legal positions, the Constitutional Court considers it necessary to address the issue of the constitutionality of not endowing the Court of Appeal with such power, considering it also in the context of ensuring the

requirement of the reasoned judicial act, as well as in the light of the influence of the reasoning part of the judicial act on the participants to the trial.

The Constitutional Court has expressed legal positions in a number of decisions (in particular, DCC-690, DCC-691, DCC-752, DCC-754, DCC-765, DCC-818, DCC-886, SDO-896, DCC-919) on the reasoning of the judicial act, which is an element of a fair trial. In particular, by the decision DCC-896 of 5 June 2010, the Constitutional Court expressed the following legal position.

> "In connection with the phrase "… or is not motivated", the situation is different. The presence of such a wording in itself implies the presence of an unreasoned judicial act. ... The Constitutional Court considers that the legislation should generally exclude the presence of an unreasoned judicial act, because such an act cannot comply with the fundamental principles of the legal law, cannot guarantee effective judicial protection of human rights, and also cannot ensure the effective restoration of the violated rights"

The European Court of Human Rights has also addressed the issue of the reasoning of the judicial act by expressing the following legal positions.

- Guarantees envisaged in Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms include the obligation of courts to adequately state the reasons on which they are based on **(Case of H. v. Belgium, application no. 8950/80, 30/11/1987),**

- Even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions. **(Case of Suominen v. Finland, application no. 37801/97, 01/07/2003),**

- court or authority in turn must give such reasons as to enable the parties to make effective use of any existing right of appeal. **(Case of Hirvisaari v. Finland, application no. 49684/99, 27/09/2001),**

- the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court . **(Case of Helle v. Finland, application no. 20772/92, 19/12/1997).**

Paragraphs 1 and 2 of Part 4 of Article 126 of the Code, titled "**Content of the judicial act resolving the case on the merits**", stipulate the following:

"The reasoning part of the judgment should contain: 1) facts that are essential for the resolution of the case; 2) facts that are not relevant to the resolution of the case, with a statement of the court's conclusions about the proof of each fact and with an assessment of each piece of evidence that is useful for confirming or denying this fact, presented by the participants in the trial".

It derives from the foregoing that the Administrative Court, when adopting a judgment on the merits of a judicial act, shall refer both to the facts that are significant for the resolution of the case, and to the facts that are not significant for the resolution of the case, presenting a respective conclusion on the confirmation or non-confirmation of this fact. The purpose of the above presented legal regulation, first of all, is to ensure the administering of as clear and definite judicial act as possible, so that the person who applied to the court would have clear replies to all those questions in connection with which he/she applied to the court. The reasoning part of the court's decision deciding the case on the merits of the judicial act is of great importance, since within the framework of this act is presented the analysis that will later become the basis for a specific conclusion.

The Constitutional Court has previously expressed the following legal position on the reasoning part of the judicial act:

"The reasoning part of the decision shall indicate the circumstances of the case established by the court, the evidence on which the conclusions of the court are based on, the arguments for rejecting certain evidence, as well as the laws by which the court was guided when making the decision. The legislator demands from the court to make a lawful and reasoned decision, and for this, the court needs to choose and apply the law correctly, regardless of what position the parties have expressed regarding the norms to be applied. The court is not bounded with the positions of the parties regarding the qualification of the disputed legal relations and the norms applied to them. The procedural obligation of the applicant is to clearly present his/her claims, the underlying facts of his/her claim, substantiating these facts of evidence, and the responsibility of the defendant is to express a clear position regarding each claim of the applicant underlying the claim (claims) of facts, and if there are objections to these facts – the applicant shall present evidence that refutes them. Meanwhile, the task and function of the court is to establish, on the basis of the claims and objections of the persons participating in the case, the facts to be proved that are essential for the resolution of the case, on the basis of the evidence presented by the parties, recognize this or that fact as confirmed or unconfirmed and, then, in accordance with this, determine the nature of the disputed legal relationship and establish the legal norm applicable to it. (06.12.2011, DCC - 1004).

In the above presented context, the Constitutional Court states that from the point of view of the administration of justice, not only the court's conclusion on the satisfaction or rejection of the

applicant's claim is important, but also the legal analysis that, in the light of the facts and circumstances presented, served as the basis for that specific conclusion. This is also the reason that when applying to the court with a specific case, a person is not limited only to the presentation of this or that claim, but he/she notes all the essential facts on which his/her claim is based on. For this very reason, the satisfaction of a person's claim does not mean that his/her problem has been completely resolved, since the legal consequences for him/her entail not only from the actual satisfaction or rejection of his/her claim, but also from the circumstance, which particular justifications underlie such a conclusion. If the dispute filed to the court is resolved in favor of one or another participant in the trial, it cannot yet be unequivocally stated that the analysis presented in the reasoning part of this judicial act will also have positive consequences for this participant in the trial. Finally, it should be taken into consideration that one can come to the same conclusion based on different reasoning's/motivations, therefore, from the point of view of assessing the legal consequences, it is necessary to evaluate not only the conclusion formulated in the final part of the judicial act, but also those reasoning's/motivations that served as the basis for this. The analysis and positions presented in the reasoning part of the judicial act are also important in the aspect that, if they are at place, the formation of the further correct behavior for a person becomes precise, definite and predictable.

Moreover, the significance of the reasoning part of the judicial act of the Administrative Court, which adjudicates the case on the merits, is also expressed through the stipulation of the prejudicial feature of the judiciary act. In particular, a judicial act that resolves a case on its merits, passed in the course of an administrative case, while coming into legal force, among the other things, is endowed with the sign of prejudice, enshrined in Article 30 Part 2 of the Code. According to this legal norm, the facts confirmed by a judicial act that has entered into legal force resolving the case on the merits on a previously considered administrative case do not need to be proven again when considering any case provided for by the same code with the participation of the same parties. That is, from the above indicated regulation it follows that prejudice implies the release, within the certain frameworks, from the obligation to prove in the course of a later proceeding in an administrative case the facts confirmed by a judicial act in an administrative case that has come into legal force resolving the case on the merits, and it also excludes the possibility of refuting these facts in the framework of the future administrative case to be under consideration. Moreover, the Civil Procedure Code of the Republic of Armenia also stipulates the prejudicial character of a judicial act issued in an administrative case, defining in Part 2 of Article 61 that the facts, significant for the resolution of the case, confirmed by the final judicial act of the court on the

previously considered administrative case, which have come into legal force, shall not be proved again when considering another case with the participation of the same persons participating in the case.

The foregoing testifies that the facts confirmed by the judicial act of the Administrative Court, which has entered into legal force resolving the case on the merits, regardless of the resolution of the dispute being considered by the court, may have a predetermining significance when considering further administrative and civil cases engaging the same persons.

From the viewpoint of the significance of the substantiations of the judicial act of the Administrative Court deciding the case on the merits, and their revision, a special attention should be paid to the legal regulation enshrined in Paragraph 1 of Part 1 of Article 145 of the Code, which establishes that as a result of the revision of the judicial act resolving the case on the merits, the Court of Appeal rejects the appellate complaint, leaving the judicial act unchanged, and in the case when the Court of Appeal rejects the appellate complaint, however, the judicial act issued by the Administrative Court, which correctly resolved the case on the merits, yet is not fully or incorrectly substantiated, then the Court of Appeal shall substantiate the judicial act left unchanged.

The above presented legal regulation gives grounds to conclude that for the legislator, it is of particular importance to endow the appellate instance with the competence to refer to the reasoning part of the contested judicial act, which allows the Court of Appeal to substantiate the judicial act according to which the case was resolved on the merits correctly, but the justifications underlying in the basis of resolution are incomplete or incorrect. The foregoing testifies that the legislator does not exclude the cases when the Administrative Court can issue a judicial act that correctly resolves the case on the merits, but with incorrect or incomplete reasoning. However, the legislator, while attaching particular importance to the competence of the higher instance to make the subject of consideration the reasoning part of the contested judicial act, did not manifest a consistent approach and linked this power only with the rejection of the appellate complaint. In other words, the Court of Appeal, while exercising the power established by Point 1 of Part 1 of Article 145 of the Code, has the right to change the reasoning of the contested judicial act only if it rejects the submitted appellate complaint, that is, when it establishes that although the court justly adopted the decision in the case which is unfavorable for the participant in the trial who filed the complaint, however, the given resolution was motivated/reasoned it incorrectly or incompletely.

In fact, under the terms of the existing legal regulation established by Part 1 of Article 145 of the Code, the Court of Appeal is not competent to consider complaints solely in respect to the reasoning part of the contested judicial act. At the same time, a situation arises when the judicial

acts that have received in essence correct decision can sometimes remain incomplete or incorrectly motivated, which does not derive from the essence of justice, does not ensure the effective implementation of a person's rights to judicial protection and a fair trial, since these rights imply not only the possibility of applying to court and resolving the dispute, but also the possibility to receive a correct and fully motivated judicial act.

The Constitutional Court finds that for the implementation and effective exercise of the constitutional right to appeal against the judicial acts, it is necessary to provide for equivalent legislative regulations, which, when interpreted and applied in consonance with the constitutional requirements, will ensure the effective exercise of the right of individuals to appeal and will serve to the true goals of the implementation of this right - restoration of violated rights or compensation harm caused as a result of violation of this right. Consequently, in each specific case, the legislative regulations and interpretations given to them shall be built in the context of the inviolability of the essence of the rights to judicial protection and fair trial enshrined by the Constitution and the requirement to establish the organizational mechanisms and procedures necessary for their exercise, and avoiding such regulations that do not ensure the implementation of the above right or create obstacles for its implementation.

Taking into account the above presented, the Constitutional Court considers that in the context of the disputed legal regulations, when the Court of Appeal is not empowered to consider an appellate complaint filed only in respect to the reasoning part of the judicial act of the Administrative Court deciding the case on the merits, the possibility of effective implementation of the rights to judicial protection and fair judicial trial are not ensured, and the defined legal regulation is not an organizational mechanism necessary for the effective exercise of these rights.

In respect to the issue considered in the given case, the Constitutional Court considers it necessary to implement a legal-comparative analysis, comparing the equivalent legal regulations of the Code and the Civil Procedure Code of the Republic of Armenia. Thus, by Paragraph 2 of Part 1 of Article 380 of the Civil Procedure Code of the Republic of Armenia, entitled "**Powers of the Court of Appeal**", the legislator attributed the Civil Court of Appeal of the Republic of Armenia with the power to satisfy an appellate complaint based on the results of consideration of an appeal filed against a decision, changing the reasoning part of the decision without referring to its final part.

From the analysis of the powers exercised by the Court of Appeal in administrative and civil proceedings based on the result of consideration of an appellate complaint filed against a decision, it becomes clear that in civil proceedings the Court of Appeal is also empowered to consider only the

reasoning part of the disputed judicial act and, while satisfying the complaint, it can change the reasoning part, not referring to the final part of the judicial act, while in the administrative proceedings the Court of Appeal, as noted, is not vested with such authority.

The above presented legal-comparative analysis allows us to assert that in the Civil Procedure Code in force, the legislator, based on considerations of establishing organizational mechanisms and procedures necessary for the effective implementation of a person's rights to judicial protection and a fair trial, endowed the Civil Court of Appeal with the power to change the reasoning part of the contested judicial act without referring to its final part, while there is no such power prescribed by the Code and there is no objective reason to assert that the absence in the Code of a provision regarding the power in question is conditioned with the peculiarities of civil and administrative proceedings.

Summarizing the above presented, the Constitutional Court considers that Part 1 of Article 145 of the Code in respect to the failure to grant the Court of Appeal the power to satisfy the appeal, changing the reasoning part of the contested judicial act without referring to its final part, is problematic from the point of view of Part 1 of Article 61, Part 1 of Article 63 and Article 75 of the Constitution.

Based on the review of the case and governed by Paragraph 1 of Article 168, Paragraph 8 of Part 1 of Article 169, and Article 170 of the Constitution, as well as Articles 63, 64 and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court **DECIDES:**

1. To declare Part 1 of Article 145 of the Administrative Procedure Code of the Republic of Armenia contradicting to Part 1 of Article 61, Part 1 of Article 63 and Article 75 of the Constitution and invalid, insofar as it does not endow the Administrative Court of Appeal of the Republic of Armenia with the power to satisfy the appellate complaint, changing the reasoning part of the decision without referring to its final part.

2. Pursuant to Part 2 of Article 170 of the Constitution this decision is final and shall enter into force upon its promulgation.

President **A. DILANYAN**

March 2, 2021

DCC-1579