



**IN THE NAME OF THE REPUBLIC OF ARMENIA**

**DECISION**

**OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA**

**CASE ON CONFORMITY OF ARTICLE 30,  
PART 1, SUB POINT 5 OF THE LAW ON STATE  
REGISTRATION OF RIGHTS TO THE PROPERTY  
OF THE REPUBLIC OF ARMENIA WITH THE  
CONSTITUTION OF THE REPUBLIC OF ARMENIA  
ON THE BASIS OF THE APPLICATION OF THE  
ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA**

**Yerevan**

**23 April 2014**

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan, M. Topuzyan, A. Khachatryan (Rapporteur), V. Hovhanissyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,

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

official representative of the RA National Assembly, advisor to the Department of Expertise of the RA National Assembly Staff: S. Tevanyan,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 7 of the Constitution of the Republic of Armenia, Articles 25 and 71 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on the conformity of Article 30, Part 1, Sub point 5 of the Law on State Registration of Rights to the Property of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, the substantiations submitted by the Ministry of Justice of the RA, the expert opinion, as well as having studied the Criminal Code of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Law ՀՕ-295 on State Registration of Rights to the Property was adopted by the RA National Assembly on 14 April, 1999, signed by the RA President on 30 April, 1999 and came into force on 6 May 1999.

The Applicant's challenged provision was added in the RA Law on State Registration of Rights to the Property by the Law ՀՕ-247-Ն on Making Amendment in the RA Law on State Registration of Rights to the Property adopted by the National Assembly of the Republic of Armenia on June 23, 2011, signed by the RA President on 19 June, 2011 and come into force on 1 January, 2012.

Sub-point 5, Part 1, Article 30 of the Law prescribes, "1. The competent body, which conducts the state registration, shall decline the state registration of the right, if ...5) the right or individual legal act, which prescribes the restriction, is adopted by the non-competent body or the official or the right or the individual legal act, which prescribes the restriction, is in non-conformity with the provisions of the law or normative legal act which served as grounds for its adoption."

2. The prehistory of the considered case is the following: based on the decision of June 21, 2003, April 12, 2007 and July 18, 2007, on March 10, 2008 the Council of Elders of Idjevan Community held a tender on providing the plots of land for urban construction purposes and Suren Sardaryan was recognized as the winner.

By the Decision N38 adopted on March 10, 2008, the City Mayor of Idjevan announced the final minutes according to which the plot of land of 800 square meters, located on Ohanyan 78 str, Idjevan city was passed to Suren Sardaryan by the right to construction on 99 year period.

On January 23, 2013 Suren Sardaryan applied to the State Committee of Real Estate Cadastre to the RA Government with the request to register the rights concerning the land plot on the basis of Decision

N38 of March 10, 2008 of the City Mayor of Idjevan (hereinafter State Committee of Real Estate Cadastre) which was declined.

Suren Sardaryan applied to the RA Administrative Court with the request to oblige State Committee of Real Estate Cadastre to register his right to public construction concerning the plot of land of 800 square meters, located on Ohanyan 78 str, Idjevan city.

On February 26, 2013 by the decision of the RA Administrative Court the application was taken over.

By the Decision No. ՎՂ/1238/05/13 the RA Administrative Court suspended the proceeding applied to the RA Constitutional Court to decide the issue of conformity of Sub point 5, Part 1, Article 30 of the Law with Articles 1, 5 and 91 of the RA Constitution.

**3.** The Applicant states that neither the challenged law, nor any other law prescribe State Committee of Real Estate Cadastre official's powers, procedure and terms of administration to check and assess the legitimacy of an administrative act adopted by other administrative body.

To substantiate his position the Applicant states that Article 2 of the law prescribes the notion of "State Committee of Real Estate Cadastre" and according to the Decision N442 of June 28, 1999 of the RA Government administration of State Committee of Real Estate Cadastre includes state registration of rights to property, recording of real estate, its assessment and establishment and management of information bank, as well as cadastral mapping.

According to the Applicant, the actions of the officials of the State Committee of Real Estate Cadastre to verify the compliance and confirmation of non-conformity of the individual legal act, which establishes the right or restriction, to the requirements of the law or normative legal act which served as grounds for its adoption do not derive from the requirements of Articles 1, 5 and 91 of the Constitution of the Republic of Armenia.

Correlating legal provisions of Article 35 of the RA Judicial Code with Articles 3 and 65 of the RA Administrative Procedure Code, the Applicant concludes that the legitimacy of the administrative act adopted by the administrative body or its official is subject to assessment solely in accordance with judicial procedure, and as long as individual legal act is not recognized invalid by administrative or judicial procedure,

taking into account the principle of legal certainty every person shall derive from the presumption that the legal act was adopted in the framework of the powers prescribed by the RA Constitution and laws, therefore, from this it shall be concluded that this individual legal act is legitimate, and no person, including the public authority may doubt the validity of the mentioned Act.

The Applicant states that in case of application of Sub point 5 of Part I of Article 30 of the Law, State Committee of Real Estate Cadastre by merits not only challenges the legitimacy of the administrative act adopted by the administrative body or an official, but also confirms its inconformity with the law actually administering powers of the court which State Committee of Real Estate Cadastre is not authorized to in the context of Article 5 of the RA Constitution, as the latter is considered to be an executive body, and deriving from the principle of separation of powers, implementation and application of laws shall be the function of the executive power.

4. The Respondent challenges the Applicant's statements and finds that the provisions of Sub point 5 of Part I of Article 30 of the Law are in conformity with the requirements of the RA Constitution.

To substantiate his position the Respondent states that Article 5 of the Constitution envisages the principle of separation of powers and simultaneously prescribes that State and local self-government bodies and public officials are competent to perform only such acts for which they are authorized by Constitution or the laws. The Applicant's concern, according to which availability of the challenged norm authorizes the administrative body to perform justice and therefore violates the principle of separation of powers, is not justified according to the Respondent, as the interpretations to the Constitution state that: "... resolution of legal issues by other bodies and organizations in the framework of their competence is not considered as a performance of justice."

According to the Respondent, in practice the competent body led by the endowed powers examined the documents submitted for registration and revealed the grounds for declining the registration, and therefore, manifested legitimate behavior. In such a situation the competent body cannot apply to the Administrative Court with the demand to clarify the legitimacy of the act of the local self-government body, therefore,

for avoiding further violation of the RA legislation, the maximum that it is authorized to do, is to deny the performance of relevant actions.

In the Respondent's opinion, in the case of current legal regulations when the competent body by suspending the process of registration, cannot judicially challenge the legitimacy of the legal act adopted by other administrative body and the relevant entity in whose favor the individual legal act prescribing that right, is not interested in challenging its legitimacy by judicial or administrative procedure and obviously faces legislative gap.

According to the Respondent, therefore, absence of relevant structures and insufficient legislative regulations cannot bring to non-constitutionality of the challenged norm.

5. Concerning the issue of constitutionality of the challenged provision, the RA Constitutional Court finds necessary to consider:

- a) in the context of the types of legal acts prescribing right or its restriction and taking into account the necessity of assessment of the constitutionality of the context of the phrase "prescribing right or its restriction,"
- b) in the context of the principle of legitimacy as an element of the rule of law state and taking into account the mandatory nature of performance of the requirements of the legal acts in legal force,
- c) in the context of the presumption of legitimacy of administrative acts which are the element of the principle of legal certainty deriving from the principle of the rule of law state,
- d) in the context of the principle of inadmissibility to perform control by the body not authorized with the functions of non-departmental control over the body with relevant or higher authoritative status,
- e) in the context of the principle of independence and sovereignty of the bodies of local self-government prescribed by the constitutional regulations.

Meanwhile, within the framework of consideration of the context of the types of legal acts prescribing the issue of constitutionality of the challenged provision of the law prescribing right or restriction, the Constitutional Court states the following:

Pursuant to Part 1 of Article 42 of the RA Constitution, the fundamental human and civil rights and freedoms stipulated in the Constitution shall not exclude the other rights and freedoms prescribed by the laws and international treaties.

Pursuant to Part 1 of Article 43 of the RA Constitution, fundamental human and civil rights and freedoms set forth in Articles 23-25, 27, 28-30, 30.1, Part 3 of Article 32 may be temporarily restricted only by law if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as the honor and reputation of others.

Pursuant to Part 2 of Article 43 of the RA Constitution, limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia.

Pursuant to Point 2 of Article 83.5 of the RA Constitution, restrictions on the rights and freedoms of natural and legal persons shall be exclusively prescribed by the laws of the Republic of Armenia.

The study of the above mentioned provisions of the RA Constitutions states that in all cases the right and the restriction of natural and legal persons (except for the cases prescribed by Article 44 of the RA Constitution on temporarily restriction of the right) shall be prescribed either by the Constitution or the law or by an international treaty, but not by other legal act.

On the basis of the above mentioned the RA Constitutional Court states that other normative as well as individual legal acts cannot envisage and prescribe rights or restrictions, Individual legal acts, as law enforcement acts can only be used for enforcement of the restrictions to right.

On the level of legislative regulation these notions shall be clearly and precisely prescribed and shall not distort the contents of legal regulation. The Constitutional Court considers that in the scopes of legal regulation of the challenged law, the subject of regulation is not the definition or restriction of the right but the implementation of the restriction prescribed by the law.

6. In the scopes of the present case, the Constitutional Court considers it necessary also to refer to the logic and guidelines of the current legal regulation of the administrative acts, which implement the right or restrictions in respect to the property and the order and consequences of their appeal.

Therefore, Point "b" of Part 1 of Article 62 of the RA Law "On the

Fundamentals of Administration and Administrative Proceedings" provides: "1. Void is the administrative act, which, in particular, has the following obvious mistakes... the act was adopted by the incompetent administrative body." According to Part 2 of the same article "insignificant administrative act is not legally binding and is not subject to execution or application since its adoption."

Point "a" of Part 1 of Article 63 of the same Law provides that void is the one which does not consider unlawful administrative act, which was adopted in violation of the law, as well as, as a result of the incorrect implementation or misinterpretation of the law. Part 2 of the same Article stipulates that unlawful administrative act can be declared null and void by the administrative body which adopted that law or by a higher authority, as well as in court.

And discussing the administrative complaint submitted against an administrative act, by virtue of Point "a" of Part 1 of Article 76 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings" administrative body that adopted the act, shall be entitled to declare the legislation invalid or void or to adopt a new administrative act.

According to Part 2 of Article 69 of the Code of Administrative Procedure of the Republic of Armenia of December 5, 2013 concerning the suit on recognizing, the complainant may request to declare the administrative act null and void.

By virtue of Point 1 of Part 1 of Article 125 of the Code, the Administrative Court is competent to adopt a judicial act, which decides the case on the merits, on the recognition of the administrative act invalid in whole or partially, and by virtue of Point 4 of the same Part - the presence or absence of the legal relations either on administrative nullity of the act in whole or partially.

From the logic of the above provisions of the Code of Administrative Procedure of the Republic of Armenia and the RA Law "On the Fundamentals of Administration and Administrative Proceedings", it follows that:

- a) the result of unlawful administrative act, including the individual legal act of exercising the right or restriction, is its invalidity or nullity;
- b) in contrast to the invalidity of the administrative act, nullity of the administrative act due to obvious blunders that occur due to

lack of testing and evaluation in accordance with a special procedure on the legality of the administrative act;

- c) the validity of an administrative act, as well as an individual legal act on performing rights or restrictions may be challenged both judicially and extra-judicially, and in the framework of administrative proceedings, judicial authorities and the bodies adopting the act, or the higher administrative authorities are authorized to recognize the administrative act to be invalid or void;
- d) Although Part 2 of Article 69 of the RA Administrative Procedure Code provides the possibility of recognizing the administrative act null and void judicially, but the opportunity by virtue of Article 3 of the Code is available only to those concerned, and the person whose state registration of right is declined is not considered as such;
- e) unlike other unlawful administrative acts, which are not null, null administrative acts are considered to be such by the force of law, which does not oblige the right holder to challenge such administrative acts and as a result to have a decision adopted by competent authorities on confirming the circumstance of non-validity of the administrative act, taking into account the fact that in accordance with the RA Law On Fundamentals of Administration and Administrative Proceedings, performance or implementation of the null administrative act entails liability prescribed by the Law.

Taking as a basis the above mentioned the Constitutional Court states that the challenged provisions of the Law prescribe two separate grounds for refusal of state registration of the rights to property:

- a) an individual legal act prescribing the right or restriction was adopted by the body or official not authorized to adopt it, which is the basis for the recognition of the administrative act null and void;
- b) an individual legal act prescribing the right or restriction does not correspond with the requirements of the law and the normative legal act which served as a basis and therefore serves as grounds for invalidity of the given administrative act.

Simultaneously, the Constitutional Court states that in the process of state registration of property by the State Committee of Real Estate Cadastre checking and assessment of the circumstance of the right

subject to state registration or the restriction performing administrative act which is recognized as null, is not only legitimate but also necessary and binding conditioned with the rights and freedoms of others as well as with the circumstance of non being subject to liability prescribed by law for the implementation or performance of the administrative act recognized as null.

7. Referring to the Applicant's statement on checking and assessing of the grounds of invalidity of the right subject to registration or the administrative act performing restriction by the State Committee of Real Estate Cadastre, the Constitutional Court states that the authorized state body refusing the state registration of the right of property, by the power of the challenged provisions of the law, has not followed the requirements of the administrative act by neglecting the circumstance that no any competent subject has challenged the administrative act enforcing the right subject to state registration, and the latter is in power.

In connection with the above mentioned and taking into account the arguments set forth, the Constitutional Court finds that the denial of the right to state registration on the basis of non-conformity of the law or normative legal act as basis of the administrative act implementing right or restriction of the administrative act may be regarded as legitimate only in the case when the individual legal act performing right or restriction of the state registration is canceled in accordance with judicial or extra judicial order, i.e. the legal force of the administrative act has lost its validity. Otherwise, it occurs that by power of law the State Committee of Real Estate Cadastre has not implemented the requirement of the administrative act in force.

Regarding the motivations underlying this position, the Constitutional Court notes the following:

- a) one of the most important components of the rule of law state enshrined in Article 1 of the Constitution of the Republic of Armenia is the principle of the rule of law, which also implies that the legal acts shall comply with the requirements of legal certainty and shall be implemented in the manner and terms prescribed by law, provided that binding implementation of the requirements of those acts by all subjects of right including the state and local self-government bodies and their officials;

b) the comparative analysis of Article 11.2 and Part 1 of Article 105 of the Constitution state that guaranteeing the local self-governance as well as the bodies of local self-government, in the constitutionally admissible frames, by the means of performance of certain actions directed to independent management and administering the community's property and by means of expression of will, the state simultaneously undertakes relevant obligation stipulated by Article 108.1 of the Constitution to ensure the lawfulness of the activities of local self-government bodies, legal control shall be exercised in conformity with the procedure defined by the law. That is, in the system of local self-governance implementation of the principle of constitutional lawfulness is directed not only to guarantee local self-governance but also preserve legality in that system.

The authority of the RA Constitutional Court prescribed in Point 1 of Article 100 of the RA Constitution to define the conformity of the decisions of the local self-government bodies with the Constitution by the manner prescribed by law is directed towards guaranteeing independence of the local self-government. This power is called to guarantee constitutionality of the rule-making activity of the local self-government bodies and to prevent redundant interference of the state bodies. Moreover, in the case of such legal regulations the issue of lawfulness of the acts of the local self-governance bodies shall be subject to examination exclusively by judicial procedure in the frames of procedures prescribed by the RA Administrative Procedure Code.

8. The Constitutional Court considers necessary to refer to the Applicant's argument that the State Committee of Real Estate Cadastre, not legislatively empowered with extra departmental control functions, supervised over the local self-government body which is structurally beyond its jurisdiction, recognized the administrative act performing right of state registration unlawful.

The RA Law on the Fundamentals of Administration and Administrative Proceeding prescribes possibility of checking and assessment of the legitimacy (but not invalidity) of the administrative act by the judicial or supremacy order and by administrative special procedure. Simultaneously, the local self-government body may act as a body adopting an administrative act implying right to registration or restriction, and, according to

the RA Administrative Procedure Code and the RA Law on the Fundamentals of Administration and Administrative Proceeding, the legitimacy of the acts of the latter, as an administrative body, may be checked and assessed **exceptionally by judicial procedure**. This is the requirement of Article 91 of the RA Constitution likewise. Meanwhile, the challenged provision of the Law prescribes other procedure without definition of the special procedure and without taking into consideration the circumstance that the State Committee of Real Estate Cadastre cannot act as supervisor of the local self-governance body.

Simultaneously, it derives from the systemic analysis of Article 41 of the RA Land Code and Article 5 of the RA Law on Control over Maintenance and Inspection of Lands, as well as from the contents of the Decision No. 1149 on Division of land state departmental competencies of the State Committee of Real Estate Cadastre and marzpets of the Republic of Armenia, that the State Committee of Real Estate Cadastre adjunct to the Government of the Republic of Armenia is authorized with the competence to supervise the maintenance and inspection of lands.

In the framework of the constitutional regulations and implementing the requirements of Article 108.1 of the RA Constitution, by the Chapters 7.1 and 7 of the RA Laws on the Local Self-governance and Self-governance of Yerevan city the State Committee of Real Estate Cadastre is not included in the list of the bodies performing legal control, which presumes necessity of relevant legislative regulation on clarification of the contents and borders of the terms “control” and “inspection” in the RA Law on Control over Maintenance and Inspection of Lands as well as in the system of local self-governance. State inspection, forms, mechanisms and procedure of their implementation over the activity over the local self-governance bodies, which cannot contravene the independence of the local self-governance and its bodies, shall be pivotal.

**9.** Within the framework of this Case the Constitutional Court finds it also necessary to consider the challenged provisions of the law in the scope of the systemically interrelated legal regulations prescribed in Sub point 8 of Part 1 of Article 30 of the RA Law on State Registration of Rights to the Property which served as grounds for declining the state registration of the rights to property, analyzing the respective provisions of other legal acts, particularly those prescribed in the RA Land Code and the RA Civil Code directed to the regulation of the given relations.

In particular, according to Sub point 8, Part 1, Article 30 of the RA Law on State Registration of Rights to the Property, the competent body, which conducts the state registration, shall decline the state registration of the right, if other grounds prescribed by the legislation of the Republic of Armenia are available. In particular, the Constitutional Court states that, for instance, arbitrary altering of the designated and functional purpose of the lands or failure in observance of the requirement of the state registration of rights deriving from deals and etc., may serve as such grounds.

In particular, it derives from the systemic analysis of the provision prescribed in Part 7 of Article 7 of the RA Land Code that not only the acts of the state government and local government bodies may serve as grounds for arbitrary changing the targeting and functional purpose of the lands in accordance with the laws and normative legal acts, but, as well as, by judicial order recognizing the deals regarding the plot of land as invalid and refusing the state registration of the rights regarding the land.

Based on the circumstance that within the laws of the Republic of Armenia various grounds for refusal of state registration of rights to property can be stipulated by different legal acts and taking into account the legal positions stipulated in this Decision, the Constitutional Court finds that, in Sub Point 8 of Part 1 of Article 30 of the Law, the phrase "shall refuse" cannot apply to those grounds for refusal of state registration of rights and restrictions towards property which lead to opportunity for the authorized state body performing of the state registration of the rights to property to check and assess the lawfulness of the individual legal acts implementing the right or restrictions to right, as well as lead to such necessity.

Based on the results of consideration of the Case and being goverled by Article 100(1), Article 102, Parts 1 and 4 of the Constitution of the Republic of Armenia, Articles 63, 64 and 71 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. The provision "individual legal act establishing the right or restriction imposed by the body or official, not authorized to adopt it," enshrined in Sub Point 5 of Part 1 of Article 30 of the RA Law on State Registration of Rights to Property", is in conformity with the

Constitution of the Republic of Armenia in the framework of the legal positions stipulated in the present Decision.

2. To declare the provision of Sub point 5 of Part 1 of Article 30 of the RA Law on State Registration of Rights to Property", "or an individual legal act, which sets the rules or restrictions, does not meet the requirements of the law or regulation which is the basis for its adoption" as far as it applies without recognizing the act as invalid in judicial or extrajudicial manner prescribed by law, contradicting the requirements of Articles 1, 5, 91 and 108.1 of the Constitution of the Republic of Armenia and void.

3. In accordance with Article 102(2) of RA Constitution this decision is final and enters into force from the moment of its announcement.

**Chairman**

**G. Harutyunyan**

**4 February 2014**

**DCC-1137**