



IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

**ON THE CASE ON CONFORMITY OF ARTICLE 95,
PART 1 AND ARTICLE 96, PART 2 OF THE RA
CUSTOMS CODE OF THE REPUBLIC OF ARMENIA
WITH THE CONSTITUTION OF THE REPUBLIC
OF ARMENIA ON THE BASIS OF THE
APPLICATION OF THE CITIZEN
SERGEY GRIGORYAN**

Yerevan

2 December 2014

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

with the participation (involved in the framework of the written procedure) of the Applicant S. Grigoryan,

Involved in the case as a Respondent: official representatives of the RA National Assembly, Head of the Legal Department of the RA National Assembly Staff, H. Sargsyan and Senior Specialist H. Sardaryan, pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Article 95, Part 1 and Article 96, Part 2 of the RA Customs Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Sergey Grigoryan.

The examination of the case was initiated on the basis of the application of the citizen Sergey Grigoryan submitted to the RA Constitutional Court on June 30, 2014.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the Customs Code of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Customs Code was adopted by the RA National Assembly on 06.07.2000, signed by the RA President on 09.08.2000 and came into force on 01.01.2001. Pursuant to the RA Law ՀՕ-224-Ն on Making Amendments and Addenda in the RA Customs Code, which was adopted by the RA National Assembly on 05.12.2012, entered into force on January 6, 2013, the challenged edition of Part 1 of Article 95 of the RA Customs Code was recognized as invalid and Part 2 of Article 96 of the Code was amended.

The RA Constitutional Court admitted to review the case on the constitutionality of the provisions of Part 1 of Article 95 and Part 2 of Article 96 of the Customs Code which were applied towards the Applicant.

The challenged provision of Part 1 of Article 95 of the RA Customs Code prescribed, “Upon written request of the person transporting goods, the Customs Authorities shall within five days period inform the latter about the amount of Customs value and the methods of its determination.”

The challenged Part 2 of Article 96 of the RA Customs Code envisages: “In case Customs Authorities disagree with Customs value declared by the declarant or his method of Customs value determination they shall, on the day of declaration submission, draw up and provide the declarant with a notice of rejection according to the procedure established by superior Customs Authority, substantiating the reason for rejection of the size of Customs value declared by the declarant or method of determination of Customs value and the address of the superior Customs Authority or official to whom the declarant can lodge the appeal.”

2. The procedural background of the case, subject to review, is as follows: on 19.05.2012 citizen Sergey Grigoryan (hereinafter - the Applicant) acquired in Japan an automobile issued in 2004 (hereinafter -

the Property). According to the applicant, the transaction was documented in accordance with the requirements of Paragraph a) of Part I of Article 87 of the Customs Code concerning the form of the invoice. Then the documents justifying the costs incurred by the Applicant in the course of transportation of property and delivery to the customs border of the Republic of Armenia were presented to the customs authorities.

On 20.07.2012, the Applicant applied for customs clearance to the Department of customs registration where, after the submission of documents, according to the Applicant, he learned that the practice of customs authorities to determine the customs value of the property by the method of the transaction price is excluded.

On the same day the applicant appealed to the Chairman of the State Revenue Committee adjunct to the Government of the Republic of Armenia in the manner prescribed in Article 91 of the Customs Code, to submit documents to the property and carrying out under Article 87 of the Customs Code of the Republic of Armenia the calculation of the customs value of the property by the method of determining the customs value at the transaction price and he asked to apply the statutory calculus prescribed by law.

The State Revenue Committee adjunct to the RA Government by the letter No. 23001 / 8-1 of 25.07.2012 dismissed the Applicant's appeal motivating the refusal by the fact that "in the documents reasonable costs of unloading the vehicle at the port of Poti in Georgia and transporting it by you customs border RA are missing".

The Applicant appealed this letter as an administrative act in the RA Administrative Court asking to annul the mentioned administrative act.

By a decision of 15/03/2013, the RA Administrative Court rejected the claim, motivating that the documents submitted by the applicant to customs authorities did not include the documents confirming the costs of loading and unloading of the property, as well as the document on fuel costs.. The conclusion of the Administrative Court was justified by the fact that the Applicant had not submitted a declaration to the customs authorities, therefore such a declaration could not have been rejected by the customs authorities.

The Applicant appealed against the above mentioned decision to the Administrative Court of Appeal of the Republic of Armenia, which upheld the complaint partially by the decision of 24.09.2013, recognized

the letter No. 23001/8-1 of the State Revenue Committee adjuned to the RA Government of 25.07.2012 invalid and obliged the Committee to implement method of the price for transaction prescribed by Article 87 of the RA Customs Code for determination of the customs value of the property.

As a result of consideration of the appeal of the State Revenue Committee adjunct to the RA Government, the RA Court of Cassation, in its decision of 26.12.2013, partially satisfied the appeal and revoked the decision of the RA Administrative Court of Appeal of 24.09.2013, on recognizing the letter No. 23001 / 8-1 of the State Revenue Committee adjunct to the Government of the Republic of Armenia of 25.07.2012 as invalid, and for obliging State Revenue Committee adjunct to the Government of the Republic of Armenia for calculation of the customs value to apply the method of determining the customs value of the property prescribed by Article 87 of the RA Customs Code at the price of the transaction and terminate the administrative case of the requirement to invalidate the letter No. 23001 / 8-1 of the State Revenue Committee adjunct to the RA Government of 25.07.2012 and upheld the decision of the RA Administrative Court.

3. The Applicant states that the applied norms obviously do not meet the requirements of the legal certainty, as a result, his right to property prescribed by Articles 8 and 31 of the Constitution of the Republic of Armenia is violated, the realization of which constantly runs into obstacles due to inability of customs clearance of the property in the manner prescribed by law.

According to the Applicant, the position of the RA Court of Cassation, according to which, in accordance with Part I of Article 95 of the RA Customs Code, the response received from the State Revenue Committee adjunct to the Government of the Republic of Armenia cannot be considered as an administrative act, derives neither from the meaning of the text of the law nor from the meaning given to it by law enforcement practice.

The fact that the response to application, prescribed by Part I of Article 95 of the Customs Code of the Republic of Armenia is an administrative act, according to the Applicant, is proved by the fact that only with the help of such administrative acts it is possible to obtain authorization for customs clearance of the property at the price of the

transaction, as provided by Article 87 of the Customs Code of the Republic of Armenia (the RA Administrative Court of Appeal also addressed this issue in its decision). Besides, according to the Applicant, "the letter of the State Revenue Committee of 20/07/2012 confirms that it was legitimate practice to choose the method of customs clearance, and that the answer to the application sent to the State Revenue Committee, at the same time, was an instruction to the chief of the customs...".

With regard to Article 86, first part of Article 128, Article 134, Part 2 of Article 96, concerning the issue of choosing the method of customs clearance, in the opinion of the Applicant, submission of the declaration of clearance prescribed by these norms is the successive (following) stage for the answer to the application prescribed by Part I of Article 95, and not a prerequisite for selecting the method for determining the transaction value.

Moreover, according to the Applicant, neither the administrative practice, nor the entire text of the Customs Code implies that submission of the declaration is a prerequisite in choosing the method of customs clearance. It is also impossible to imagine in practice, as without the positive response received from the State Revenue Committee adjunct to the Government of the Republic of Armenia, the clearance of the property, prescribed by Article 87 of the Customs Code is not possible.

The Applicant considers that contradictory positions of the courts on this issue may serve further proof of this uncertainty. According to the Applicant, the need for adopting the Law ՀՕ-224-Ն by the National Assembly "On Making Amendments and Addenda to the RA Customs Code" on 12.05.2012, was based on the fact that on the basis of the need to ensure legal certainty, it is required to terminate Part I of Article 95, by which the legislator also argues that its action creates legal uncertainty.

The Applicant also draws attention to the basic principles and standards of legitimacy of restrictions on the right to property, reflected in a number of judgments of the European Court of Human Rights.

4. Objecting to the Applicant's arguments, the Respondent considers that the jointly definition of the regulations of the discussed norms in the Customs Code and their application in the legal relations do not

contradict the principle of legal certainty and do not violate right to property envisaged in the Constitution of the Republic of Armenia.

Based on the analysis of Articles 82, 128, 134 and 96 of the Customs Code of the Republic of Armenia, the Respondent finds that the Code clearly prescribed the specific procedure for determination of customs value of the goods by the method of the transaction price, i.e., the form of submission of the declaration and its acceptance by the customs authority. In this case, the customs value of goods transported across the customs border of the Republic of Armenia declares the person transporting the goods, or the person authorized by him/her, after which the customs authorities decide the issue of assessment of the customs value, calculated by the method of the transaction price.

Based on the analysis of Point 1 of Article 95 of the Customs Code of the Republic of Armenia, the Respondent concludes that the written opinion issued by the customs authorities in no way may be regarded as an administrative act, as well as the administrative act of intervention. The mentioned information is purely of advisory value; the person's right is in no way limited and does not create any obligation for him/her. The person may use this information only for the purposes specified in Article 73 of the Code.

5. Referring to the issue of constitutionality of Part 1 of Article 95 of the code challenged by the Applicant, the Constitutional Court finds it necessary to state that the analysis of the text of Articles 86 and 87, Point "a" of Part 1 of Article 88, Point 5 of Article 95, Point 1 of Article 96, Articles 128-134 in the edition which was in force at the time of the legal relationship with the Applicant, it follows that the carrier of the goods across the customs border had to declare the customs value of goods transported across the customs border, and there were no obstacles for the latter to transfer the value of the goods transported across the customs border by the transaction value method or he/she by himself/herself choose another method of determining the customs value without submitting the application to the customs authorities to provide information about the amount of the customs value and the method of its determination in accordance with the text of Point 1 of Article 95 of the Customs Code of the Republic of Armenia by the previous edition.

Another issue is the possible disagreement of the customs authorities

concerning the customs value declared by the declarant or the method for determining the legal relationship which is regulated and is currently governed by the provisions of Parts 2 and 3 of Article 96 of the RA Customs Code.

Moreover, the fact that the car had never been declared and that the Applicant's application was filed on 20-07-2012 pursuant to Point 1 of Article 95 of the RA Customs Code, applicable at the time of the legal relations, was acknowledged by the Applicant himself, which was also confirmed by the final court decision adopted regarding the Applicant's case, namely the decision of the RA Court of Cassation rendered on 26.12.2013 on the administrative case No. CC /5445/5/12.

Comparing the above mentioned Point 1 of Article 60, Point 6 of Article 32, Part 7 of Article 69 of the RA Law on Constitutional Court, as well as the legal positions expressed by the Constitutional Court in the Procedural Decision PDCC-21 of March 17, 2009 regarding the validity of the requirements of the individual complaint, the Constitutional Court finds the arguments about the unconstitutionality of the text of the challenged by the Applicant Part 1 of Article 95 of the Code in the previous version as obviously ungrounded.

At the same time, analyzing the general constitutional and legal content of the norms prescribed by Parts 1 and 2 of Article 87 of the Customs Code of the RA, systematically interrelated with the challenged norms in the context of the commitments made by the Republic of Armenia by the international legal acts, in particular, the General Agreement on Tariffs and Trade 1994 (VII chapter), the UN Convention on the Simplification and Harmonization of Customs Procedures, 1973 and other documents, the Constitutional Court finds that the regulation on transporting goods and vehicles across the customs border is based on the logics that the method of determining the customs value at the transaction price is a **general rule**, and other methods of determining the customs value are **exceptions to the general rule**.

This approach derives from the reasons of legal certainty, legitimate expectations with regard to customs legal regulations, ensuring the human rights and combating abuses by the law enforcement officials.

Based on the above-mentioned, and in the context of the commitments made by the Republic of Armenia on the international legal acts, the Constitutional Court considers that, in accordance with the general rule determining the customs value when performing the method of

price of the bargain, it is necessary to be guided by the logics that, after making a bargain, data on the presented payment documents are accurate and reliable, if the customs authority has not proven their incorrectness or inaccuracy.

6. In the scope of the present case, the Constitutional Court also refers to the need for a comparative analysis of the challenged articles and other systemically interrelated articles of the RA Customs Code, taking into account the fact of their frequent addenda. By the way, studies show that in the Republic of Armenia in most laws regulating customs and tax relations are subject to addenda. So, for example, from 06.07.1998 till 12.05.2013 in the RA Law on Profit Tax addenda or amendments were made 43 times, from 19.06.1998 till 06.21.2014 152 times in the RA Law on State Duty, and from 08.09.1997 till 21.06.2014 70 times in the RA Law on Value Added Tax, etc. The RA Customs Code, which has become the subject of dispute in the present, was changed and amended by 40 different laws from 26.12.2000 till 21.06.2014.

In this regard, the Constitutional Court finds that the legislation is not a static phenomenon; it may be constantly subjected to dynamic changes improving the economic development in the tune with the ongoing process of international integration, transformation of social relations and a number of other factors. At the same time, the Constitutional Court refers to the stability and harmony of the process of legislative amendments, justification and objective need for amendments in the legislation that provides with the opportunity to the subjects of law to behave in accordance with the changing legal regulations, avoiding manifestations of subjectivity and expansion of discretion by the law enforcement bodies.

In particular within this case the Constitutional Court highlights the importance of guaranteeing clarity and certainty of the legislative norms in the context of amendments and addendum of the disputed provisions on issue of regulation of the declaration on the customs value filed by the declarant, of receiving consulting information from the customs authorities, of cases, grounds and procedure of challenging the acts made by the customs authorities.

In the scope of the present case, the Constitutional Court notes that the previous and current legal regulation of Article 96 of the Customs

Code of the Republic of Armenia from the perspective set up by the Applicant on the above-mentioned article are not significantly different. At the same time, guided by respectively stipulated in provisions of Article 19 and Part 9 of Article 68 of the RA Law on Constitutional Court on the official clarification of the circumstances and assessment of the constitutionality of the other provisions of this Act, interrelated with the challenged provisions in the systemic aspect, the Constitutional Court considers it necessary to address to the issues of coherence and harmony of relationships regulated by Parts 2, 2.1 and 3 of Article 96 of the Code in the current edition. The need of the latter is primarily due to the need to overcoming such situation in law enforcement practice when the basic rule for determining the customs value of the goods prescribed by the law actually becomes an exception, and the exception becomes the basic rule.

Thus, according to Part 2 of Article 96 of the Code "In case Customs Authorities disagree with customs value declared by the declarant or his method of customs value determination they shall, on the day of declaration submission, draw up and provide the declarant with a notice of rejection according to the procedure established by the superior Customs Authority, substantiating the reason for rejection of the size of customs value declared by the declarant or the method of determination of customs value and the address of the superior Customs Authority or official to whom the declarant can lodge the appeal."

Pursuant to the RA Law "On Making Amendments and Addenda to the RA Customs Code" of 05.12.2012 ՀՕ-224-Ն, Article 96 of the Code was supplemented with Part 2.1, which envisages: "The regional, specialized or border customs authorities **before making a final decision**, but not later than within two working days after the submission by the declarant of the documents set forth in Article 87 of this Code, present the declarant in a written form the circumstances hindering adoption of customs value calculated by the method of the transaction value and offer the declarant to submit in written form additional documents and (or) information within five working days, and as a result of the consideration of which within one working day after the submission of the mentioned documents and (or) information **the decision is adopted on rejection of determination of the customs value of the transaction by the value method** or accept the customs value submitted by the declarant. "

Part 3 of Article 96 of the Code envisages, “In case of disagreement of Customs Authorities with the customs value declared by the declarant or with the method of Customs value determination, the declarant, may appeal to **the superior Customs Authority** or to **the court** within ten working days after receiving **rejection notice**. The superior Customs Authority shall be obliged to make a relevant decision within 30 days period and inform the declarant about it. The appeal shall not exempt the declarant from fulfilling his liabilities connected with the subject of appeal within specified timeframes. Apart from this, the fact of appeal provided for in this paragraph shall not serve as a base for imposition of penalties other than those specified in RA Legislation for delays in making Customs payments.”

Touching upon the legal regulation of these provisions, the Constitutional Court of the Republic of Armenia states that based on the comparative analysis of Parts 2, 2.1 and 3 of the challenged Article, the issues of sequence of submitting the declarant with the rejection in the form prescribed by the higher customs body and the notification to the declarant in written form before adoption of the final decision about the circumstances preventing adoption of the customs value calculated by the method of transaction price,, and the relationship of the notions "the conclusion of rejection" and the "final decision" used in the relevant parts of the Article are unclear. Such a situation may cause illegitimate extension of the boundaries of consideration of administrative bodies and violate human rights.

In this regard, the RA Constitutional Court finds that the current regulation of the challenged Article 2.1, namely, notification of the declarant before adoption of a final decision about the circumstances preventing the adoption of the customs value, determined by the method of the transaction price and offering him/her to submit additional documents and (or) information in written form must precede adoption of conclusion on rejection prescribed by Part 2 of the Article.

Regarding the current legislative regulation of the concepts of "**final decision**", "**the decision on rejection of the customs value calculation by the method of the transaction price**" and "**the conclusion on rejection**", it is not clear whether it concerns the same or different acts in form and in substance. In this regard, the Constitutional Court states that in terms of ensuring legal certainty, the concepts used in the leg-

islation shall be clear, specific, and not lead to the varying interpretations and confusion.

The study of the mentioned regulations indicates that prior to making amendments and addendum to the RA Customs Code in 2012, only the concept of “**the conclusion on rejection**” was stipulated by Article 96, and this concept is not mentioned in Part 2.1; the concepts “**final decision**” and “**the decision on rejection of the customs value calculation by the method of the transaction price**” are used. According to the above-mentioned regulations, the mentioned two acts shall be adopted by the regional customs authorities. Simultaneously, Article 96, Part 3 does not provide the opportunity to appeal against the decisions made by regional authorities stipulated by Part 2.1 of the same Article, only providing the opportunity to appeal against the reason for rejection. Vague regulations stipulated by Article 96, Parts 2, 2.1 and 3 of the Code may lead to blockage of the right of declarants to effective legal remedies.

RA Constitutional Court finds that the constitutionally guaranteed right to judicial protection of human rights can not be violated in any way due to such shortcomings and gaps in legislative technique. The Constitutional Court also considers that by the supremacy or judicial order both “*conclusion on rejection*” (possibility of such judicial appeal is provided in Part 3 of the challenged Article of the Code) and “*final decision*” or “**the decision on rejection of the customs value calculation by the method of the transaction price**” which, according to Article 53 of the RA Law on the Fundamentals of Administration and Administrative Proceedings, are considered as administrative acts, shall be appealable. Otherwise, the rights stipulated by Part 1 of Article 18 and Part 1 of Article 19 of the Constitution of the Republic of Armenia will be violated.

At the same time, the Constitutional Court arguments that, guided by the rule of law, the customs authority, in case of disagreement with the declared customs value or the method of its determination shall, in the time limits prescribed by the Code, submit a substantiated conclusion and/or decision **regardless the written or oral request of the declarant** so that the latter could undertake appropriate remedies to protect his/her constitutionally guaranteed rights.

Based on the results of the consideration of the case and being governed by Article 100(1) and Article 102 of the Constitution of the Re-

public of Armenia, Articles 19, 32, 60, 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To dismiss the case on conformity of Part 1 of Article 95 and Part 2 of Article 96 of the Customs Code of the RA with the Constitution of the Republic of Armenia on the basis of the citizen Sergey Grigoryan" in terms of the provisions of Part 1 of Article 95 of the Customs Code of the Republic of Armenia.

2. Part 2 of Article 96 of the Customs Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia in the framework of the legal positions expressed in the present decision of the Constitutional Court.

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

**2 December 2014
DCC-1176**