

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

---

**ON THE CASE APPLIED BY CITIZEN SUSANNA HOVSEPYAN ON CONFORMITY  
OF ARTICLE 8, PARAGRAPH 1 OF ADMINISTRATIVE PROCEDURAL CODE OF  
THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF REPUBLIC OF  
ARMENIA**

Yerevan

February 3, 2009

**The Constitutional Court of the Republic of Armenia** composed of G. Harutyunyan (Presiding Justice), K. Balayan, H. Danielyan (rapporteur), F. Tokhyan, V. Hovhanissyan, Z. Ghukassyan, H. Nazaryan R. Papayan, V. Poghosyan,

*with the participation of*

*the representatives of the Applicant - citizen Susanna Hovsepyan: A.Kiviryan, D.Grigoryan,*  
the Respondent - the National Assembly of the Republic of Armenia: D.Melkonyan, the Advisor of the Speaker of the RA National Assembly

pursuant to Article 100, Point 1, Article 101, Point 6 of the RA Constitution, Articles 25, 38 and 69 of the Law on the Constitutional Court

*examined in a public hearing by a written procedure* the case applied by citizen Susanna Hovsepyan concerning the determination of the issue regarding the conformity Point 1, Article 8 of the Administrative Procedural Code of the Republic of Armenia with the Constitution of Republic of Armenia.

The case was initiated on the basis of the application submitted to the Constitutional Court by the citizen Susanna Hovsepyan on 26.11.2008.

Having heard the report put forward by the rapporteur judge on this case, the written arguments of the Applicant, written explanations of the Respondent Party, having studied Administrative-Procedural Code of the Republic of Armenia and other case papers, the Constitutional Court of the Republic of Armenia

## **FOUND**

1. Administrative-Procedural Code of RA was adopted by the RA National Assembly on November 28, 2007, signed by the President of the Republic of Armenia on December 10, 2007, and came into force on January 1, 2008. Article 8 of Administrative-Procedural Code of the Republic of Armenia, titled “Subject-matter Jurisdiction of Cases” is included in Chapter 3, titled as “Jurisdiction of Cases.” Point 1 of Article envisages:

“1. the Administrative Court has jurisdiction over all cases proceeding from the public legal relations, including:

- 1) disputes, concerning the fulfillment of public or alternative service,
- 2) disputes between administrative bodies which are subject to resolution by superior bodies.
- 3) cases on disputes on termination or suspension of activity of associations, including trade unions which operate or intend to operate in the field of public law,
- 4) cases on the pending orders about the payment, proceed from public legal relations.

2. Pursuant to the judicial acts available in the case, the Applicant, first, had addressed to the Civil Court of Yerevan, presenting four claims:

- to declare unlawful the action of the Mayor of Yerevan on sale of the plot of land by auction;
- to declare partially void the contract on sale and purchase of the plot of land PL 874/5-NI, concluded on 12/30/2005 between the Mayor of Yerevan and D. Avakyan;
- to oblige the mayor of Yerevan to alienate the disputable plot of land in the form direct sale to S. Hovsepyan;
- to declare partially void the registration made on 1/25/2006 by the Territorial division of Nor Nork RA Governmental State Committee of Cadastre of Real Estate on the basis of the contract on the sale and purchase of the land plot LP 874/5-NI as D. Avakyan’s property concluded on 12/30/2005 .

The Civil Court of Yerevan based on Article 92, Point 1 Sub Point 3 of Civil Procedural Code of RA by the Decision of 6/25/2008 returned the statement of claim, motivating that 1, 3 and 4 claims were under the jurisdiction of the RA Administrative Court. In this decision, the Court did

not address to the second claim, and did not render the decision concerning this claim and did not specify which court has jurisdiction to consider the specified claim.

After that, 6/28/2008 S. Hovsepyan addressed to the RA Administrative Court, and presented four above-stated claim demands. By the decision of 07/03/2007, the Administrative Court, unlike Yerevan Civil Court, took into consideration all four claim demands and on the basis of Article 8 of the RA Administrative-Procedural Code accepted the statement of claim for consideration in connection with the three statements, reckoning that, on the basis of the specified claim demands, the case had arisen from public legal relations. As to the abovementioned claim 2, according to the legal positions expressed in the abovementioned decision of the RA Administrative Court, the specified claim demand is “under the jurisdiction of the Civil Court of Yerevan.” As a result of consideration of the complaint brought by the Applicant against the specified decision, the Administrative Court in the decision from 07/18/2008, touching upon the issue of subject of jurisdiction, stated the following legal position: “The relations connected with the contracts on sale and purchase, are regulated by the norms of Civil Law, hence they are civil-legal relations and cannot be examined as the relations proceeding from public legal relations. Participation of administrative body in the specified public legal relations does not mean that they acquire a public-legal character as the Civil Code of the Republic of Armenia gives to the Republic of Armenia and the communities the right on equal grounds enter into relations with citizens and legal entities regulated by the norms of Civil Law. Protection of civil rights, according to jurisdiction of the cases established by the Civil Procedural Code of Republic of Armenia, is carried out by the Courts of Common Jurisdiction, except for the cases, which are under the jurisdiction of Civil Courts.”

In the same decision the Administrative Court, concerning the issue of infringement of the right to possess effective remedies of legal protection, accepted as the basis the provisions of Article 94 of the RA Constitution and Article 8 of Administrative-Procedural Code of the Republic of Armenia which state that: “ In the case of acceptance of the proceeding the issue by the Administrative Court, proceeding from civil-legal or other legal relations, the principle of the subject of jurisdiction of affairs and, thus, the court will abuse its powers and consequently, despite the circumstance of interconnection of the cases, the Administrative Court is not authorized to accept to consideration the issues which are not within its jurisdiction. By the refusal to accept the claim, regarding the incompetence of the Administrative Court, the latter

does not violate the claimant's right of effective remedies of legal protection, as the Constitution of the Republic of Armenia and laws give the right to the claimant to restore the violated rights with the help of civil legal proceedings.”

After that, the Applicant addressed to the Cassation Court, which by the decision of 09/25/2008 returned the cassation complaint, having considered that the grounds for acceptance of the case to the consideration default.

3. On 11/26/2008 the Applicant addressed to the RA Constitutional Court, having considered, that positions of Article 8, Point 1 of the RA Administrative-Procedural Code contradict to Articles 3, 18 and 19 of RA Constitution as during the consideration in different courts the interconnected cases, which are within the jurisdiction of various courts, the right of effective legal protection, envisaged by Article 18, Point 1 of the RA Constitution and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, is not ensured, also the principle of the reasonable terms of consideration of the case and their joint consideration provided in Article 19, Point 1 of the RA Constitution and Article 13 of the European Convention on Protection of Human Rights and Fundamental Freedoms, as well as the principles defined by Article 3 of the RA Constitution, and the constitutional provision of the state's obligation to ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law provided in Point 2 of the mentioned Article of the RA Constitution.

4. The Respondent considers that the presented individual application is obviously groundless, and motivates it by the fact that the citizen, by essence, argues not the positions of corresponding Article of the RA Administrative Code, but the absence of the certain provisions which would enable Administrative Court to accept to consideration the claim which is within the jurisdiction of different courts and is connected with each other under several challenged requirements.

The right of the citizen to submit the application in the Constitutional Court is that the citizen can protect his/her rights, stipulated by the Constitution. Meanwhile, according to the Respondent, Point 1, Article 8 of the RA Administrative-Procedural Code, which establishes subject-matter jurisdiction of cases in the Administrative Court, is not connected directly to

claim presented by the Applicant. In her application, the Applicant does not speak about unconstitutionality of the contents of the challenged norm. Moreover, even in case of recognition of the challenged Article as contradicting the Constitution and in the case of recognition of requirement as void, the Applicant's claim will not be satisfied.

The Respondent finds that the Applicant had formulated the subject of the demand wrongly. In particular, the legal provision, which defines subject jurisdiction of the few interconnected demands, cannot be in Part 1, Article 8 of the Administrative Procedural Code. The challenged provision envisages the common rule of the subject jurisdiction of the Administrative Court, while the exceptions and particular expressions, as well as subject jurisdiction of the few requirements linked with each other shall be defined by other part of the same Article or by another Article. The issue is regulated in this way, for instance, in the RA Civil Procedure Code (RA Civil Procedure Code, Chapter 2

5. Having accepted as the basis the circumstance that the Applicant arises the issue of efficiency of the means of the judicial protection, and acquiring diverse character, however, in the case of the disputes proceeding from relations interconnected with each other, in the context of simultaneous action of different Procedural Codes, the Constitutional Court emphasizes the necessity of the comparative analysis of different procedural codes. The RA Administrative Court in its decision of 07/18/2008 on rejection of the complaint, addressing in the context of efficiency of the means of judicial protection on the violation of principles of terms of case consideration, as well as the issue of occurrence of invalid dragging and red tape, based on the provision of Article 94 of the RA Constitution and Articles 8 of the RA Administrative- Procedural Code, stated that "refusal to accept the claim on the basis of lack of jurisdiction of Administrative Court does not break the right of the claimant to acquire effective remedies of legal protection as by the Constitution and laws of the Republic of Armenia since the claimant is given the right to restore the violated rights with the help of civil legal proceedings."

The Constitutional Court states that the right of the person to consider a case in the court, which has jurisdiction to consider that case, is one of the components of the right to judicial protection. As the RA Civil and Criminal-Procedural Codes and the RA Administrative - Procedural Code establish the rules of the subject-matter jurisdiction of the cases. By Point 1, Article 8 of the RA Administrative-Procedural Code, the RA legislator establishes the general frameworks of the subject matter of jurisdiction of the cases for Administrative Court.

The second paragraph of the challenged Article excludes from the jurisdiction of the Administrative Court the cases, which are within the jurisdiction of other courts.

The Constitutional Court considers that rules of subject jurisdiction of the administrative cases, established by Article 8 of the RA Administrative-Procedural Code, within the limits of their legal regulation, are competent by themselves and consonant with the contents of institute of specialized administrative justice. Simultaneously, considering the legal issue raised by the Applicant corresponding to Point 9, Article 68 of the RA Law on the Constitutional Court, the Constitutional Court considers necessary to turn to the issue of possible omission in the Law and to the question of constitutionality of the legal regulation, stipulated in Chapter 3 (which consists of the unique Article 8) named as “Jurisdiction of cases” of the RA Administrative-Procedural Code.

6. From the analysis of Sub Point 2, Point 2, Article 15 of the former edition of the RA Civil Procedural Code follows that the legislator considers cases which have various administrative-legal and civil-legal character, but are interconnected, as one case which is a subject of consideration in same court and during which procedural opportunity is given to the court to satisfy the basic claim requirement, that is, if the decision is adopted in favor of the claimant, proceeding from administrative-legal and civil-legal relations turn also to the issue of elimination of legal consequences of the basic claim requirement, i.e. in reasonable terms complete decision of the dispute proceeding from civil-legal relations, interconnected with administrative-legal relations, or, on the contrary, from administrative-legal relations interconnected with civil-legal relations. Judiciary practice also looks like that.

Taking into consideration the circumstance, that, neither the RA Civil-Procedural Code, nor Administrative-Procedural Code establish various rules of jurisdiction, particularly, the relations, which, though have administrative-legal and civil-legal character, are interconnected with each other, the Constitutional Court states that with adoption of the RA Administrative - Procedural Code such a situation arises when the right to judicial protection is simultaneously carried out in various judicial bodies and during the protection two different procedural codes operate.

That is, unlike previous legal regulations, in the present legal regulation, the case, which has administrative-legal and civil-legal character, proceeding from the interconnected relations, the legislator already considers it as, at least, two cases, which are the subject of consideration by

different courts and, during it, the procedural opportunity is not given to the corresponding court to satisfy the claim requirement, as while deciding a case in favor of the claimant, proceeding from administrative-legal and civil-legal relations, also to turn to the issue of elimination of legal consequences of the given claim demands, i.e. the decision of the dispute, which proceeds from civil-legal relations, interconnected with administrative-legal relations, or, on the contrary, from administrative the-legal relations interconnected with civil-legal relations.

7. As it has been specified, the RA Administrative-Procedural Code (as well as, other the RA procedural codes) possesses with the rules of subject-matter jurisdiction on cases. However, ignorance of the opportunity of the presence of the interconnected relations and absence of circumstance of consideration the cases proceeding from mentioned legal relations in one court, in practice, negatively affect on effective judicial protection of the right. The mentioned situation is possible to amend, by introducing respective amendments in Article 8 or Chapter 3 of the RA Administrative-Procedural Code, which will provide an opportunity of consideration in one court the cases which have public-legal and civic-legal character; however, proceeding from the relations interconnected with each other, providing priority of the principle of jurisdiction, the requirement which follows from the main legal relations.

Simultaneously, the Constitutional Court states that in the case of ignoring the presence of the interconnected administrative-legal and civic-legal relations, which are this shortage, is available also in the RA Civil Procedural Code and, the solution of the constitutionality of the latter is not under the jurisdiction of the Constitutional Court in the frames of this issue, so it is essential to draw the National Assembly's attention to the necessity of filling in this gap in the code.

8. Article 19 of the RA Constitution and Article 6 of the European Convention of Protection of Human Rights and Fundamental Freedoms establish guarantees and criteria of ensuring the efficiency of the right of the person of judicial protection. These guarantees and criteria are acknowledged to provide full-blooded restoration of the violated rights of the person.

Within the view of the subject of dispute over legal regulation from the point of view of ensuring the efficiency of human right on judicial protection and observance of procedural constitutional and legislative guarantees, the Constitutional Court considers necessary to detail constitutional-legal contents of the formulation "...the right on consideration of the case to restore his/her violated rights" of Article 19 of the RA Constitution.

The comparative analysis of formulations “to restore his/her violated rights” and “his/her case ” in the specified constitutional provision testifies that the concept “consideration of the case ” includes joint consideration of all interconnected claim requirements, which are directed on the decision of one general task, that is, the restoration of the violated rights of a person within the frames of that case.

The aforesaid means that the guarantees stipulated both in Article 19 of the RA Constitution and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms, established by local procedural legislation, should be provided not only in a context and frameworks of consideration of this or that concrete claim demand, but also in the context and frameworks of consideration of the interconnected claim demands of the different character directed on restoration of the given violated right, as the final aim of these claim demands is the full restoration of the same violated rights. Hence, the considerations directed on the restoration of the same violated human rights of the interconnected claim demands as the bases for excitation of the separate disconnected and independent cases can lead to infringement of procedural guarantees of ensuring the effective, thorough, and diverse consideration of the case of a person.

The Constitutional Court considers that for the restoration of the violated rights, proceeding from derivatives of legal relations, i.e. directed on liquidation of legal consequences of the main legal relations, in case of presenting a separate demand to the court, as the Court practically loses the capacity to pass the fair decision concerning the given case; the right of the person to fair consideration is being violated as for the adoption of fair decision the Court is forced to carry out full, objective and all-round studies of the circumstances of the case, and for such study the Court should address to the fundamental legal relations as the acting legal regulation does not allow to make it, as the cases proceeding from this legal relation is under jurisdiction not of that but of another court. The Constitutional Court considers such legal regulation as infringement of consideration by a court as grounds for violation of sensible timeframes of the examination of the case and non-productive means of judicial protection, stipulated by Article 18, Point 1 and Article 19, Point 1 of the RA Constitution.

9. Article 6 of RA Administrative-Procedural Code stipulates the principle of consideration of the circumstances of a case by the Administrative Court. The logic of the latter

is taking into consideration the circumstance that in disputes proceeding from administrative-legal relations, the citizen opposes administrative body; certain favorable conditions should be created for the citizen. The latter assumes that while dealing with the settlement of a dispute proceeding from administrative-legal relations, the citizen should not be burdened by disproportionate obligations.

The Constitutional Court considers that the legal regulations of a subject of dispute not only does not allow providing realization of effective judicial protection, but also burdens the claimant with the disproportionate obligation. The latter is revealed that within the frames of one case, excluding the solution of civil-legal dispute subjected from the administrative legal relations, the present legal regulations obliges the citizen, in the case of the main requirements concerning the availability of a legal act, which predicts the solution of the requirements and is obliged to address to different courts which complicates the protection of his rights.

Besides, such a legal regulation can also overburden the courts.

10. The Constitutional Court states that, concerning the issue of the subject of the examination, a contradictory legal implementing practice occurs. Particularly, the RA Council of the Court Chairpersons' Decision 113, Point 5 of February 11 2008 stipulates that "in the cases when the claim submitted to the court contains a number of demands subject to the jurisdiction of the civil, general instance and administrative courts, then the court which deals with civil cases taking as a ground Points 1 and 3 of Article 92, of the RA Civil Procedural Code (the case is not under the jurisdiction of that court) renders a decision to return the claim where it explains which part of the demand is under its jurisdiction and which one is not.

In the case when the Administrative Court receives a claim, which contains several demands subject to the jurisdiction of civil and administrative courts, the court accepts the claim only the part that is under jurisdiction of the Administrative Court. The acceptance of the rest of the claim is declined based on Article 1, Point 1, of Article 79 of the Administrative Procedural Code. In the decision on rejection of the claim the Court clarifies which demand is under the jurisdiction of the Court."

Nowadays, another practice is used. The RA Council of the Court Chairpersons, as an amendment to the Decision 113 of February 11, 2008 adopted Decision 123 of December 22, 2008, where it is prescribed that "in the cases when a claim, which concerns to different courts,

is presented to a court and which is under jurisdiction (civil, general jurisdiction and administrative court subject-matter jurisdiction) of different courts then the court, which is competent to deal with the main demand, considers the case.

The main requirement is the requirement, on the result of which solution the judicial act predicts the consequence of the solution of the demands.

Proceeding from the results of hearing of the case and being ruled by Article 100, Point 1, Article 102 of the RA Constitution, Articles 63, 64 and 75 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **held:**

1. to declare Chapter 3 of the RA Administrative Procedural Code as far as it excludes the solution of civil-legal dispute proceeding from administrative relations in the frames of one case, contradicting to the requirements of Articles 18 (Paragraph 1) and 19 (Point 1) of the Constitution of the Republic of Armenia and void.

2. Pursuant to Article 102, Point 2, of the RA Constitution this decision is final and is in force from the date of publication.

PRESIDING JUSTICE

G. HARUTYUNYAN

February 03, 2009

CCD - 787