

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

BASED ON THE APPLICATION OF THE “HELSINKI CITIZENS’ ASSEMBLY VANADZOR OFFICE” NON-GOVERNMENTAL ORGANIZATION  
IN THE CASE TO DETERMINE THE CONFORMITY WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA OF THE WORD “ITS” AFTER THE WORD “VIOLATE” IN PARAGRAPH 1(1) OF ARTICLE 3 OF THE ADMINISTRATIVE PROCEDURE CODE OF THE REPUBLIC OF ARMENIA

Yerevan  
7 September 2010

The Constitutional Court of the Republic of Armenia, sitting with the following composition:

G. Harutyunyan (president), K. Balayan, H. Danielyan, F. Tokhyan, M. Topuzyan, V. Hovhannisyan, H. Nazaryan, and V. Poghosyan (reporter),

With the participation of:

K. Tumanyan, agent for the applicant,

D. Melkonyan, official agent for the respondent in the case, the National Assembly of the Republic of Armenia, Advisor to the Speaker of the National Assembly of the Republic of Armenia,

In accordance with Paragraph 1 of Article 100 and Paragraph 1(6) of Article 101 of the Constitution of the Republic of Armenia, and Articles 25, 38, and 69 of the Republic of Armenia Law on the Constitutional Court,

Publicly examined by written procedure the case “To Determine the Conformity with the Constitution of the Republic of Armenia of the Word “its” after the Word “violate” in Paragraph 1(1) of Article 3 of the Administrative Procedure Code of the Republic of Armenia” based on the application by the “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization.

The examination of the case was caused by the application of the “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization received by the Constitutional Court of the Republic of Armenia on 19 March 2010.

Having examined the written report by the Case Reporter, the written explanations of the Applicant and the Respondent, the Administrative Procedure Code of the Republic of Armenia, and the other documents in the case, the Constitution Court of the Republic of Armenia

**FOUND**

1. The Administrative Procedure Code of the Republic of Armenia was adopted by the National Assembly of the Republic of Armenia on 28 November 2007, signed by the President of the Republic of Armenia on 10 December 2007, and entered into force as from 1 January 2008.

Paragraph 1(1) of Article 3 (“Article 3. The Right to Apply to the Administrative Court”) of the Administrative Procedure Code of the Republic of Armenia provides:

“Each natural person or legal entity may apply to the administrative court in accordance with the procedure stipulated by this Code, if it believes that the administrative acts, actions, or inaction of state government and local self-government bodies or their officials:

1) Have violated or may directly violate its rights and freedoms under the Republic of Armenia Constitution, international treaties, laws, and other legal acts, including:

- a. Obstacles posed to the exercise of such rights and freedoms; or
- b. Failure to provide the necessary conditions for the exercise of such rights, which had to have been provided under the Republic of Armenia Constitution, international treaties, laws, or other legal acts.”

2. According to the procedural history of the case being examined, the Community Council of the Town of Vanadzor of the Lori Region of the Republic of Armenia decided on 23 April 2009 (decision number 29) to consent to the transfer to the Electrical Network of Armenia without compensation as ownership the semi-finished substation located at KSH-11 Taron-3 (property of the Community of Vanadzor), as per the Annex, in order to finish and equip the substation and to ensure the uninterrupted supply of electricity to the newly-created district. Under the same decision, the Community Council of Vanadzor decided to propose to the Vanadzor Community Mayor to conclude an appropriate contract of gift.

The “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization, believing that the Vanadzor Community Council did not have the right to make such a decision, applied to court demanding to annul decision number 29 of the Vanadzor Community Council dated 23 April 2009.

The Administrative Court of the Republic of Armenia decided (decision number VD 6/0250/05/09 of 30 June 2009) to reject admissibility of the claim. Rejecting admissibility of the claim, the Administrative Court of the Republic of Armenia, citing Paragraph 1 of Article 3 of the Administrative Procedure Code of the Republic of Armenia, found that “decision 29 dated 23 April 2009 of the Vanadzor Community Council, which is disputed by the application filed, does not in any way relate to the rights and obligations of the Organization; therefore, the Organization does not have due standing under Article 3 of the Code and has no right to file such a claim with the Administrative Court.”

The “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization filed an appeal with the Administrative Court of the Republic of Armenia against decision VD 6/0250/05/09 of 30 June 2009 of the Administrative Court of the Republic of Armenia. The Administrative Court of the Republic of Armenia decided on 20 July 2009 (decision number VD 6-0250/05/09) to reject the appeal by the “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization and to uphold decision VD 6/0250/05/09 of the Administrative Court of the Republic of Armenia dated 30 June 2009. By rejecting the appeal, the Administrative Court of the Republic of Armenia essentially expressed the same legal position as that reflected in decision number VD 6/0250/05/09 of the Administrative Court of the Republic of Armenia dated 30 June 2009.

In its decision dated 23 September 2009, the Cassation Court of the Republic of Armenia reaffirmed the legal position expressed in decision number VD 6-0250/05/09 of the Administrative Court of the Republic of Armenia dated 20 July 2009 and returned the cassation appeal by the “Helsinki Citizens’ Assembly Vanadzor Office” non-governmental organization.

3. The Applicant claims that the word “its” after the word “violate” in Paragraph 1(1) of Article 3 of the Administrative Procedure Code of the Republic of Armenia” contradicts Article 19 of the Constitution of the Republic of Armenia. To substantiate its position, the Applicant has presented the following main arguments:

- The words “its violated rights” used in Article 19 of the Constitution of the Republic of Armenia imply wider access to court for each person, as reflected in the fact that Article 2 of the Civil Procedure Code of the Republic of Armenia stipulates the right of access to court for “interested persons”;

- Unlike courts examining civil cases, in which the principle of adversarial proceedings is to be upheld, the Administrative Court examines cases on an *ex officio* basis, which implies

that the right of access to the Administrative Court should be accessible to a wider circle of persons in order to ensure the effectiveness of judicial oversight of the actions of administrative bodies;

- Under Paragraph 2.1 of its By-Laws, the protection of human rights and freedoms is one of the objectives of the "Helsinki Citizens' Assembly Vanadzor Office" non-governmental organization, and accessing court for the protection of human rights and freedoms is one of the best legal remedies recognized by international documents; and

- Persons and legal entities resident in a community should have the right to challenge decisions of the local self-government bodies in the interests of the residents of the community.

4. The Respondent has objected to the Applicant's arguments, claiming that Articles 18 and 19 of the Constitution of the Republic of Armenia safeguard the right to judicial protection of a person's rights and freedoms. As a safeguard of the protection of subjective rights, it creates a legal precondition for the creation of institutional and procedural structures for the protection of subjective rights. As a cornerstone of the formation and operation of judicial protection mechanisms, it safeguards the protection of subjective rights from actual violation by prescribing everyone's right to seek in court the protection of its rights, rather than the rights of others, which in its opinion have been violated actually, rather than *in abstracto*.

As the Administrative Procedure Code of the Republic of Armenia primarily stipulates the right to file a claim only for natural persons and legal entities the rights and interests of which have been violated, and does not stipulate such a right for every person for the protection of public interests, i.e. does not permit generic and objective control of lawfulness, Paragraph 1 of Article 3 of the Administrative Procedure Code of the Republic of Armenia implies that, in order for a claim to be filed, there must be not only an unlawful decision, action, or inaction of administrative bodies, but also an ensuing violation of the rights of persons.

The Respondent has cited the following position of the European Commission for Democracy through Law ("the Venice Commission") on the subject matter:

"It is essential that everyone have the right to challenge a decision on the basis that it violates his rights. However, if a decision has not directly violated the person's rights, then the possibility to challenge is regulated by the domestic legislation."

5. Having examined the application, the Constitutional Court finds that the Applicant has raised the issue of protection of the right to property belonging to the community by a resident of that community and the issue of access to court for the protection of violated rights of another person. To this end, the constitutionality of the disputed language in the Code should be examined in the context of Article 3 of the Code from the standpoint of effectiveness of judicial protection.

Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 18 of the Constitution of the Republic of Armenia provides:

"Everyone shall be entitled to effective legal remedies to protect his rights and freedoms before judicial as well as other public bodies.

Everyone shall have the right to protect his rights and freedoms by any means not prohibited by the law.

Everyone shall be entitled to receive the support of the Human Rights' Defender for the protection of his rights and freedoms on the grounds and in conformity with the procedure prescribed by the law.

Everyone shall, in conformity with the international treaties of the Republic of Armenia, be entitled to apply to international institutions protecting human rights and freedoms with a request to protect his rights and freedoms."

Paragraph 1 of Article 19 of the Constitution of the Republic of Armenia provides:

“Everyone shall have a right to restore his violated rights, and to reveal the grounds of the charge against him in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent and impartial court within reasonable time.”

In Paragraph 7 of its decision number SDO-747 dated 4 April 2008 on the constitutionality of Article 2 of the Civil Procedure Code of the Republic of Armenia, the Constitutional Court stated the following in relation to the interpretation of the provisions of Paragraph 1 of Article 19 of the Constitution of the Republic of Armenia:

“According to Article 19 of the Constitution of the Republic of Armenia, the need for exercising a person’s right to judicial protection arises in the case when he needs to restore his purportedly violated rights. This provision of the Constitution is based on the logic that, in each case, a person may exercise his right to apply to court only when he has a legal interest in relation to such case. In line with this constitutional provision, Paragraph 1 of the challenged Article 2 of the Civil Procedure Code of the Republic of Armenia stipulates the right to apply to court only for an interested person, i.e. a person whose rights have been purportedly violated.”

Based on Articles 18 and 19 of the Constitution of the Republic of Armenia, Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the legal positions expressed in Paragraph 7 of its decision number SDO-747 dated 4 April 2008 regarding the provisions of Paragraph 1 of Article 19 of the Constitution, the Constitutional Court hereby finds that, consistent with Articles 18 and 19 of the Constitution of the Republic of Armenia and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the legislation of the Republic of Armenia is based on the logic that the effectiveness of the protection of violated rights includes, among others, the right of direct access to court for persons whose rights have been violated. To this end, the Constitutional Court finds groundless the Applicant’s claim that Article 19 of the Constitutional Court of the Republic of Armenia stipulates a wider circle of persons that have the right of access to court.

6. Nonetheless, Articles 18 and 19 of the Constitution of the Republic of Armenia and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms do not preclude the possibility of a person applying to court for the protection of the violated rights of others. In fact, the legislation of the Republic of Armenia stipulates various forms of this possibility: Paragraph 4(3) of Article 103 of the Constitution of the Republic of Armenia, for instance, provides that the prosecution office shall, in the cases and procedure stipulated by law, defend the charges in court. In this case, by virtue of the cited provision, the prosecutor acts to defend not only the public interests, but also the interests of victims of crime.

A similar approach can be found in the domain of constitutional justice: in addition to specific control, there are provisions on abstract control, in the framework of which the entities specified in Paragraphs 1(1), 1(3), and especially 1(8) of Article 101 of the Constitution of the Republic of Armenia may apply to the Constitutional Court for determination of the constitutionality of legal provisions for the protection of the interests of persons that have suffered because of the application of such legal provisions. In particular, Paragraph 1(8) of Article 101 of the Constitution of the Republic of Armenia provides that the Human Rights Defender may apply to the Constitutional Court “for matters of conformity of the normative acts listed in Paragraph 1 of Article 100 of the Constitution with the provisions of Chapter 2 of the Constitution.” Moreover, the right of persons to apply to the Constitutional Court for the protection of the rights of another specific person is also present in the constitutional domain and is exercised in line with Paragraphs 1(7) and 1(8) of Article 101 of the Constitution of the Republic of Armenia.

It is noteworthy that Article 2 of the Civil Procedure Code of the Republic of Armenia stipulates the right of “interested persons” to apply to court. The analysis of the Civil Procedure Code of the Republic of Armenia shows that “interested persons” include first and foremost the persons whose rights have been or may be violated. Furthermore, in a number of cases, the Civil Procedure Code of the Republic of Armenia prescribes the right of an

interested person to apply to court for the protection of the violated rights of another person. Such a right is prescribed, for example, for legal representatives.

The analysis of the aforementioned cases shows that the right to apply to court for another person works in a limited number of cases and is stipulated for situations in which the person whose rights have been or may be violated cannot directly apply to court due to objective reasons (for instance, having no legal capacity or having limited capacity), or, in pursuit of a legitimate aim, the legislature has regulated the protection of violated rights of another person/-s or the public in the context of the public function and the public interests (for instance, in case of crimes or in case of violations of the property right of a community). In all cases, the general rule is that the right to apply to court is reserved for the specific person whose rights have been violated or are under imminent threat of being violated. The exceptional rule is for the right to apply to court for the violated rights of another person, but the legislature has the exclusive authority to define the cases and procedure of the exercise of such right.

The review of the Administrative Procedure Code of the Republic of Armenia shows that the Code, especially its Article 3, has not defined for interested non-governmental organizations the cases and procedure of exercising the right to apply to court for the violated rights of another.

7. Based on Article 19 of the Republic of Armenia Law on the Constitutional Court, the Constitutional Court finds it necessary, without limiting its review to the positions of the Applicant, to examine the challenged provision of the code also in the context of Article 1 of the Constitution of the Republic of Armenia on the establishment of a democratic and lawful state and civil society, given the role that non-governmental organizations play in the life of state and society.

Civil society is a system of autonomous societal mechanisms and relationships independent of the state, which provides conditions for satisfying the private interests and needs of collectives and individuals. Non-governmental organizations hold a unique place in the system of social structures that are the elements of civil society. The role of non-governmental organizations is not an end in itself, because, firstly, the activities of associations are stipulated by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, secondly, non-governmental organizations have the function of participation in the exercise of the private interests and needs of collectives and individuals, including public governance, and thirdly, it is through non-governmental organizations that society gets the possibility of asserting public oversight and control of state government and local self-government. This factor is particularly important when there is a violation of the subjective rights or lawful interests of a collective holder of the right, rather than the individual.

Given the role of non-governmental organizations in the life of state and society, and with a view to increasing the effectiveness of their activities, the Constitutional Court finds that the Administrative Procedure Code of the Republic of Armenia could stipulate for interested non-governmental organizations (i.e. non-governmental organizations that have the appropriate authority under their by-laws), as legal entities, the cases and procedure of exercising the right to apply to court for the violated rights of persons in a given sphere, taking into consideration the latest European trends in relation to the *actio popularis* institution of complaints. Such legal regulation would not only contribute to improving the effectiveness of the protection, including judicial protection of violated rights and lawful interests, but also enhance the role of non-governmental organizations as an element of civil society. When defining the cases and procedure of exercising the right to apply to court or to other bodies and officials for the violated rights of persons, it would be necessary to take into account only the non-governmental organizations that have adopted as their goal the protection of specific collective or community interests. This position would also be consistent with Paragraph 1(3) of Article 15 of the Republic of Armenia Law on Non-Governmental Organizations, which provides that, for achieving the objectives mentioned in its by-laws, an organization may in accordance with the procedure defined by law represent and defend its and its members' rights and lawful interests in other organizations, courts, and state government and local self-government bodies.

8. An overview of the international experience related to the right to apply to court for the protection of the rights of others in administrative proceedings (*actio popularis*) shows that, as a rule, this institution is not applied in the European states in the classical sense and with full scope. Moreover, the Constitutional Court finds, based on the overview, that “legal interest” is the main criterion for determining whether or not an entity has standing to file a claim in an administrative case in a number of countries. The concept of “legal interest” has been so broadly interpreted in court practice that non-governmental organizations or other associations acting by civil initiative and in accordance with the procedure stipulated by law are allowed to seek the protection of the collective right of a certain group, if such protection falls within the specific objectives of such association. This position is essentially reflected in the court practice of the Republic of Armenia, too. In its decision number VD/3275/05/08 dated 30 October 2009, the Cassation Court of the Republic of Armenia has expressed the following legal position: “In the present case, the environmental non-governmental organization “Ekodar” is for purposes of the Aarhus Convention considered “the public concerned” and, as such, is entitled to judicial protection in a matter concerning the protection of the environment, deriving from the statutory objectives of that organization.”

The Committee of Ministers of the Council of Europe, too, has addressed matters of judicial protection of collective rights and lawful interests by non-governmental organizations or other associations. According to Recommendation Rec(2004)20 of the Committee of Ministers (dated 15 December 2004) to member states on judicial review of administrative acts, Member States of the Council of Europe are encouraged to examine whether access to judicial review should not also be opened to associations or other persons and bodies empowered to protect collective or community interests.

In all cases, the main approach is that *actio popularis* should be precluded unless there is a legal interest.

The Constitutional Court finds that, for the exercise of the functions of non-governmental organizations in civil society and for improving the effectiveness of public oversight of state government and local self-government through non-governmental organizations, future legislative development should take into consideration the aforementioned legal positions.

Based on the results of the examination of the case and complying with Paragraph 1 of Article 100 and Article 102 of the Constitution of the Republic of Armenia, as well as Articles 63, 64, and 69 of the Republic of Armenia Law on the Constitutional Court of the Republic of Armenia, the Constitutional Court of the Republic of Armenia hereby DECIDES:

1. The word “its” after the word “violate” in Paragraph 1(1) of Article 3 of the Administrative Procedure Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia, within the scope of the legal positions expressed in this Decision.

2. According to Paragraph 2 of Article 102 of the Constitution of the Republic of Armenia, this decision is final and shall enter into force when published.

PRESIDENT

G. HARUTYUNYAN

7 September 2010  
SDO-906