

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

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**THE CASE ON CONFORMITY OF ARTICLE 198, PART 3 OF THE CIVIL CODE  
OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE  
REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE  
CITIZENS SHAVARSH MKRTCHYAN AND OTHERS**

Yerevan

24 February 2012

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

with the participation of the representative of the Applicants: K. Mezhlumyan, the representative of the Respondent A. Mkhitarian, the Chief Specialist of the Legal Expertise Division of the Legal Department of the National Assembly Staff of the Republic of Armenia,

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 of the Republic of Armenia on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Article 198, Part 3 of the Civil Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizens Shavarsh Mkrtchyan and others.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Shavarsh Mkrtchyan on 16.11.2011.

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

1. The RA Civil Code was adopted by the RA National Assembly on 5 May 1998, signed by the RA President on 28 July 1998 and came into force on 1 January 1999 in accordance with the RA Law on Putting the Civil Code of the Republic of Armenia into effect adopted by the RA National Assembly on 17.06.1998.

Article 198 of the RA Civil Code, titled “Possession, use, and disposition of property in joint ownership,” states:

“1. Participants in joint ownership, unless otherwise provided by an agreement among them, possess and use the common property in common.

2. Disposition of property in joint ownership shall be conducted by agreement of all the participants which shall be presumed regardless which of the participants signs a transaction for disposition of the property.

3. Each of the participants in joint ownership has the right to conduct transactions for the disposition of the common property unless otherwise follows from the agreement of all the participants. A transaction made by one of the participants in the joint property linked with the disposition of the common property may be declared invalid on demand of the rest of the participants in the case of the absence of the participant, who conducted the transaction, of the necessary powers only if it is proved that the other party of the transaction was aware or obviously should have been aware of this.

2. The procedural background of the Case is the following: on 26.06.2009 the RA Government adopted the decision No. 944-Ն “On declaring the right to property of the plots of the citizens residing in Halidzor rural community, Syunik Marz, Republic of Armenia, to be overriding public interest and on changing the target purpose of lands.” By the decision of the Government, “Estate Management and Administration Company” CJSC was declared the purchaser of the alienable plots. The latter brought the case against Shavarsh Mkrtychyan and others before the Court of General Jurisdiction of Syunik Marz with the claim to oblige them to sign the contract of alienation.

The Court of General Jurisdiction of Syunik Marz satisfied the claim by the Decision No. ՄԴ1/0046/02/10 dated 31.08.2010.

On 24.12.2010 the RA Civil Court of Appeal made a decision to decline the appeal of the Applicants. By declining the appeal, the RA Court of Cassation took as grounds the legal position of the RA Court of Cassation expressed in the case No. ԵԱՔԴ/0275/02/08 dated 18.09.2009 that relates to the challenged Part 3 of Article 198 of the RA Civil Code; in the part “Reasons and Conclusions of the Court of Appeal” of its decision the RA Civil Court of Appeal stated the following: “In its decisions the RA Court of Cassation touched upon the legal analysis of Article 198, Part 3 of the RA Civil Code. In particular, in line with Article 198, Part 3 of the RA Civil Code, each of the co-owners shall have the right to dispose of the joint property, unless otherwise provided by the agreement between them. ... Simultaneously, the RA Court of Cassation stated that in the case of disposition of the property in joint ownership stipulated by Article 198 of the RA Civil Code, the presumption of the consent of co-owners and the right to dispose of it operates (see ... the Decision No. ԵԱՔԴ/0275/02/08 of the RA Court of Cassation dated 18.09.2009).

On 27.04.2011 the RA Court of Cassation made a decision to return the appeal of the Applicants, once again stipulating in the decision the legal positions expressed in Decision No. ԵԱՔԴ/0275/02/08 dated 18.09.2009.

3. According to the Applicants, the interpretation of Article 198, Part 3 of the RA Civil Code used in law enforcement practice contradicts the provisions of Articles 1, 3 and Article 31, Part 1 of the RA Constitution. According to the Applicants, the interpretation of Article 198, Part 3 of the RA Civil Code provided by the Court of Appeal and the Cassation Court, resulted in the presumption of the consent on disposition of the property in joint ownership functions in the case, when such a presumption is not stipulated by Article 31 of the RA Constitution, which guarantees the right of the owner to dispose of the property belonging to

him, which assumes the right to dispose of the property only with the consent or at the will of the owner or all owners of the property.

The Applicants find that Article 198, Part 3 of the Code, in so far as it prescribes the presumption of the consent of the right to dispose of the property in joint ownership; and allows any of the participants in joint ownership to alienate the common property without the knowledge or consent of the other co-owners, even against their will; contradicts Article 31 of the Constitution, which grant the owner powers on disposition.

4. Objecting the arguments of the Applicant, the Respondent finds that Article 198, Part 3 of the RA Civil Code is in conformity with the RA Constitution. To substantiate his position, the Respondent touches upon the distinctions of content of the right to common share ownership and the property in joint ownership, the legal opportunity to transform the property in joint ownership into common share ownership; and states that in the case of the property in joint ownership, relationships between the co-owners are based on a special personal trust, when it does not intend and require complete certainty of the ambit of relevant powers of the participants.

Based on the analysis of the materials of the Case, the Respondent finds obvious that "the legislatively stipulated current order of disposing the property in joint ownership has not caused violation of rights of the other participants in joint ownership only due to the relations based on personal trust, and discontent of the Applicants does not relate to the legal regulation prescribed by Article 198, Part 3 of the RA Civil Code, namely to the abuse of the right of each participant of the joint ownership to conduct transactions on the disposal of the common property."

5. The Constitutional Court states, that while recognizing the right of ownership as a fundamental right of everyone prescribed in the first sentence of Article 31, Part 1 of the Constitution, the content of that right is revealed, in particular, the powers to own, use, dispose of and bequeath his/her property, simultaneously establishing the **discretion of the owner** as preconditions for the realization. In this constitutional norm the emphasis of the wording "at his/her discretion" means that the realization of the right of ownership is based on the precisely expressed will of the owner; the latter is considered as a mandatory precondition for the realization of the right of ownership; and in the process of realization of property the will of a person is decisive. The content of this provision leads to the fact that the implementation of property rights should be based on the principles of inviolability of ownership and freedom of contract, which assume, inter alia, **property independence and autonomy of will of the participants in civil legal relations**.

Touching upon the permissible restrictions of the right of ownership in the Decision DCC-630, the Constitutional Court particularly stated: "Article 43 of the Constitution does not consider the right of ownership as the right to be restricted on the basis of that Article. A special case of restriction of rights is available, when the Constitution defines the criteria and scopes of restrictions of a certain right, not even leaving it to the competence of the legislator. First, it may be implemented in the cases prescribed by the law by depriving of the property exclusively in conformity with judicial procedure, as a coercive action arising from liability. Second, this may be implemented through the "alienation of the property," and such an institution is essentially different from "deprivation of property," and it shall be implemented in accordance with Article 31, Part 3 of the Constitution."

The discretion and the will of the owner, which are common element typical for two cases of permissible restrictions of the right of ownership in both cases, are no longer the primary and decisive, as in these cases, other more preferable interests prevail.

Thus, the RA Constitution prescribes only two cases, namely, the cases prescribed by Article 31, Parts 2 and 3, when the will of the owner is not a primary, and the implementation of the right of ownership does not derive from the discretion of the owner. Therefore, in any

other case, in the process of realization of the right of ownership the interference with the discretion of the owner, the disposal of property of the owner without precise expression and manifestation of that discretion may not be considered legitimate and will be a violation of the right of ownership.

The Constitutional Court states that provision stipulated in the first sentence of Article 31, Part 1 of the RA Constitution ensures equal protection for all types of ownership and concerns both the right to individual property and the property in joint ownership. The contents of the common property rights on immovable property must be interpreted so that its protection shall be equivalent to the protection stipulated for the protection of the right of ownership of the person. In case of common ownership (shared and joint), each of the co-owners is an independent subject of property legal relations and is empowered with subjective right of ownership and the power of possession, use, and disposition of property at **his/her discretion** which is the contents of the latter. Consequently, the power of possession, use, and disposition of the property in common ownership may be realized only based on the mutual consent of all co-owners and the will of each of the co-owners.

6. Comparative analysis of Article 198, Parts 1, 2 and 3 of the RA Civil Code states that in the realization of the power of possession, use and disposition of joint property, the legislator, in line with Article 31 of the RA Constitution, accorded special priority to the will of each co-owner. Thus, the norm, stipulated in Article 198, Part 1 of the Code states the procedure for possession and use of joint property by the co-owners of the participants in joint ownership. According to that norm, the participants in joint ownership **possess and use the joint property in common**, unless otherwise agreed upon. This norm is dispositive, and, stipulating the general procedure for possession and use of joint property, at the same time, based on the constitutional requirement of considering the discretion of the co-owners, it provides the co-owners with an opportunity to stipulate other procedure by a mutual agreement.

Article 198, Part 2 of the Code stipulates the procedure for disposition of jointly owned property, that is, the property shall be disposed of as agreed to by all participants. As opposed to the norm laid down in Part 1 of the mentioned Article, the provision stipulated in Part 2 is imperative by its nature, and considers **the availability of the consent of all co-owners** as a compulsory requirement for the implementation of the right to dispose jointly owned property. No exception or precondition is stipulated by this norm. Unequivocally, the disposal of the property without the consent of the co-owners is impossible.

Article 163 of the RA Civil Code reveals the content of the right of disposition of property. Particularly, it highlights that “the right of disposition is the legally supported possibility to determine the legal destiny of the property.” Simultaneously, Part 2 of this Article prescribes that “The owner is authorized to commit at his/her discretion any action in connection with the property belonging to him/her, which does not contradict the law and violate the rights and interests of other persons protected by the law, including to alienate his/her property to the ownership of other persons, to transfer them the rights of possession, use, and disposition of the property, to put in pledge the property or to dispose it in other manner.”

**The power of disposition of property assumes the right of the owner within the scopes and procedure prescribed by law to determine the legal and actual destiny of his/her property through making actions in connection with the property or refraining from the latter.** This is nothing else than the **discretion**, or otherwise **right to manifest autonomy of will** in respect of the destiny of the property within the scopes prescribed by Article 31, Part 1 of the RA Constitution and in the conditions and by the procedure stipulated by the law. However, the autonomy of the will may not be unlimited and may not contradict the law or violate the rights and legitimate interests of others.

The Constitutional Court also necessitates stating that, taking into consideration the legal regulation stipulated by Article 198, Part 3 of the RA Civil Code, according to which, each of the participants in joint ownership shall have the right to conduct transactions for the disposition of the common property, in Part 2 of this Article the legislator emphasizes that property in joint ownership shall be disposed of as agreed to by all the participants in joint ownership, which shall be presumed **regardless of which of the participants conducts the transaction**. Such emphasis is not an end in itself, and it states both the systematic interrelation of Parts 2 and 3 of the Article in question and the difference of the subject of their legal regulation. The peculiarity of legal regulation of disposition, which is the substantial element of the right to joint ownership, is the procedure of realization of the right to determine the destiny of the property in joint ownership, and the possible legal consequences are simultaneously emphasized thereby.

The task of the legal regulation of Article 198, Part 2 of the Code is to establish **the procedure for disposition of the common property**, whereas, taking into account that conducting of transactions is the basic way and form to implement the power of disposition of the property, in Part 3 of this Article the legislator established the mechanism for the implementation of the power of disposition and prescribed the right of each of the co-owners to conduct transactions on behalf of the others. Moreover, as opposed to the imperative norm laid down in Part 2, the norm stipulated in Part 3 is dispositive, and it also provides for the possibility of other agreement between the co-owners regarding the right of conducting transactions. The wording "unless otherwise provided by an agreement among them (co-owners)" stipulated in Part 3 of the Article, concerns the agreement of the co-owners regarding **the realization of the right to conduct transactions** in the conditions of meeting of imperative requirement stipulated by Part 2.

Article 198, Part 3 of the Code settles the following tasks. **First, it establishes the procedure for the implementation of Part 2 of this Article**, providing each of the participants in joint ownership with the right **to conduct transactions for disposition of the property** in joint ownership, **but** subordinating **the realization of that right** to the will of the co-owners. Second, in the case of conducting a transaction for disposition of property only by one of the co-owners it provides with certain guarantee for protection of the rights of the other participants and the good-faith acquirer.

It follows from the systematic analysis of the provisions of Article 198 of the RA Civil Code that

a/ all co-owners shall have equal rights to dispose of jointly owned property, and none of them shall be authorized to dispose of it without the consent of the other participants,

b/ each of them shall have the right to conduct a transaction for disposition of property, if he/she has necessary powers for it.

7. From the perspective of disclosure of the constitutional legal content of the challenged norm, clarification of the content of the wording "necessary powers" is also important. In particular, in this regard the following question whether the legislator mean the availability of the right of one co-owner to conduct transactions on behalf of the other co-owners or the availability of the consent of all co-owners to dispose of the property in joint ownership under the wording "necessary powers"?

The Constitutional Court states that the understanding of the content of the necessary power due to the first question will inevitably lead to the neglect of the requirements of the imperative norm stipulated by Part 2 of the challenged Article. Meanwhile, the requirement of availability of the necessary power is not an end in itself, but it must be a guarantee for the implementation of the discretion of the co-owners.

As it follows from the legal logic of numerous articles of the RA Law on Legal Acts (particularly Articles 14-20), the power is the right and duty vested with the party to the legal relationship to perform a lawful action stipulated by the legislation. In the aspect of protection of subjective rights, the authorized person **may be vested with** such authority **by virtue of the law or by manifestation of autonomy of will of the parties to legal relations**. In civil legal relations it also assumes to empower a person to perform actions on behalf of the authorizing person(s), which may cause certain legal consequences as a result of realization of subjective rights of the latter.

The Constitutional Court finds that the fact of joint ownership may not presume availability of the power to dispose of the joint property by each of the co-owners on their own discretion. In all those cases when, in accordance with the procedure provided for by the Law on State Registration of the Rights to the Property, the certain scope of the co-owners is defined or they are recognized as such by virtue of the law, such presumption should be excluded in law enforcement practice, taking into account that:

a/ this presumption first contradicts the constitutional legal content of the right of ownership. According to Article 31 of the Constitution, everyone shall have the right to **freely** own, use, dispose of and bequeath the property belonging to him. Such **discretion** has subjective nature and must be manifested by a will of the person. Simultaneously, the law provides for the exceptional cases of alienation, deprivation of property and the enjoyment of the right to property that arise from Parts 2, 3 and 4 of the above mentioned Article of the Constitution. The stipulation of other conditions for realization of the right of ownership than it is defined by Article 31 of the Constitution, will inevitably lead to the blockage of that right. On the other hand, according to Article 8, Part 1 of the Constitution, the positive duty of the state is to ensure, provide and protect the right of ownership creating the necessary legal preconditions;

b/ based on the above mentioned constitutional legal requirements, the legal regulation of the right of ownership, stipulated in both Parts 1, 2 and Part 3 of Article 198 of the RA Civil Code, was legislatively **based on the will of the participants in joint ownership, that is the availability of their consent**, taking into consideration the legal fact that two or more persons own the property in joint ownership;

c/ according to Article 189 of the RA Civil Code, joint property is one of the types of common property, and “the share ownership of these persons may be established to the common property by agreement of the participants in joint ownership and in case of failure to achieve agreement, by decision of a court” (Part 5). It follows from the comparative analysis of Chapter 12 of the RA Civil Code, particularly, Articles 189 and 199, as well as Articles 24 (Part 5), 27 (Part 4, Point 1), 35, 42, 43 and 46 of the RA Law on State Registration of the Rights to the Property; and Articles 41 and 46 of the RA Law on the Notary Office, that

- in the process of state registration of the rights to the common property, the participation of one of the participants in joint ownership is legally unrealizable without the consent of the other participants, and in all cases, in the certificate of state registration of the rights to the property all the names (titles) of holders of the registered right are noted, as a legal fact of acknowledgment of the right to ownership of the subjects and, accordingly, undertaking positive obligation to protect it;

- termination of the right of one of the participants in joint ownership shall be **exceptionally by his/her consent** or as the result of his/her death, by the procedure prescribed by the law.

As a result of comparative analysis of the systemically integrated norms of Article 198 of the RA Civil Code, the Constitutional Court finds that the constitutional legal content of Article 198, Part 3 of the RA Civil Code assumes that each of the participants in joint ownership has the right to conduct transactions for the disposition of the common property

(unless otherwise provided by their agreement) **in the conditions of availability of positive (concrete, substantive) consent of all co-owners as a result of realization of their discretion**, when:

1) the rights of the co-owners get state registration, and the legal document (registration certificate) confirming the right of ownership, precisely states that the property is owned by certain owners, who possess with the right of joint ownership;

2) in the manner and in the cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and restrictions on the property occur on the basis of the law and are valid regardless of state registration.

If none of the above mentioned cases is available, **the joint owners have the objective** of preliminary clarification of relationship between each other regarding the disposition of the common property, taking into account that the implementation of the subjective right is first based on the actions of corresponding persons. **The latter assumes both precise state registration of the right to the property by the co-owners, and, if necessary, determination of the proportion of each of them by the procedure prescribed by the law, and the stipulation of other rules than it was agreed to, deriving from the provision in dispute.** It is also necessary to take into account the fact that in accordance with Article 189, Part 5 of the RA Civil Code, **share ownership of the participants in joint ownership may be** established not only on the property, but also according to Article 195, Part 1 of the Code, “In case of sale of an ownership share in the right of common ownership to a third person, the rest of the participants in share ownership have a priority right of purchase of the ownership share sold at the price at which it is being sold and on other equal conditions except for the case of sale at public auction.”

**The discretionary will of the co-owners regarding disposition of common property will be manifested resulting from the clarification of the relations between them.** In the conditions of absence of such discretion, in practice, the subject, in whose name the property was registered, conducted a transaction to dispose of it by the procedure prescribed by Article 198, Part 3 of the RA Civil Code. Based on this situation, under Article 10, Part 2 of the RA Law on Alienation of Property for Public and State Needs the legislator, in particular, stipulated that “if ... the owner of the alienable property does not inform the purchaser about the persons with property rights over the alienable property known to him, who don't have state registration of that right, the owner of the alienable property shall be liable for the damage caused to those persons having property rights as a result of alienation of property, which took place without their participation.”

Taking into account the peculiarities and nature of the origin of the right of joint ownership, and considering that the legal norms regarding common property shall regulate both the relations established between the co-owners, that is, “all participants,” and the relations established between the co-owners and the third party, the task of the legislator is to define legal regulation of manifestation of will of the co-owners, in a way that the rights and legitimate interests of any of the subjects of legal relations were not violated. It is also necessary to ensure that the property is not burdened with obligations not identified at the moment of conducting the transaction, which would hinder the free realization of the rights of the good-faith acquirers for this purpose. If Article 163 of the RA Civil Code conditions the right to dispose of property by the manifestation of discretion, in Articles 192 and 198 of the Code the consent of owners and the interests of third parties are the core of the legal regulation.

However, the constitutional legal criteria for the protection of the right of ownership may not be different depending on the circumstance, whether the property is owned by one person or it is common (shared or joint). However, the peculiarities of legal regulation of realization of the right of ownership, conditioned with diversity of forms stipulated by the

law, should not be ignored neither. Taking into consideration this circumstance, the RA Law on State Registration of the Rights to the Property (in particular, Articles 5 and 43) defines both the content of state registration, and the appropriate procedure for registering the joint property as such. But in Article 198, Part 3 of the RA Civil Code **the virtue of law is reckoned among the consent of the co-owners.**

For the disclosure of the constitutional legal content of the legal norm in dispute, **ensuring equivalent legal guarantees for the protection of the rights and interests of the good-faith acquirer** is also essential. The legislator developed a conceptual approach, according to which, in case of the collision of the rights and interests arising from homogeneous legal relations, the judicial protection of the rights of persons is even more guaranteed and effective in the conditions of full realization of all legal means to implement these rights, as well as exclusion of good-faith acquisition from unauthorized person. This approach is the basis of the legal regulation of the provision stipulated by the second sentence of Part 3 of Article 198 of the RA Civil Code.

8. According to Article 63 of the RA Law on the Constitutional Court, with regard to the issue of constitutionality of the act, the Constitutional Court shall evaluate the act and the existing law enforcement practice.

The research of the law enforcement practice concerning the matter under consideration states that different approaches were manifested regarding the application of Article 198, Part 3 of the RA Civil Code. In the current systems of state registration of immovable property and its certification by notarial procedure, **the positive consent of all co-owners is considered to be compulsory** in the process of certification of the transaction by notarial procedure and state registration of the rights and restrictions on the property, their origin, alteration, transfer and termination.

Other approach is manifested in judicial practice, taking into consideration the authority given to one of the co-owners by the virtue of law that regards conducting a transaction for alienation of the property solely. By the way, in this case different legal positions are also available. In particular, in some cases, in the decisions of the RA Court of Cassation, it is emphasized that "... the absence of disagreement of one of the co-owners indicates the consent of the latter and the availability of the right of the co-owner conducting the transaction to conduct the transaction," or otherwise, "... the presumption of the consent of the co-owners and availability of the right to conduct the transaction for the person conducting the transaction for its disposal" (for example, the decision in the civil case No. ԵԱՔԴ/1023/02/10 dated 27.12.2011). In another case, the following position is stipulated: "... the presumption of the consent of the other co-owners and availability of the right to dispose of it" is operating in the process of disposition of the common property" (the decision in the civil case No. ԵԱՔԴ/0275/02/08 dated 18.09.2009). It is obvious that the constitutional legal contents of these wordings differ. In the first case the **"the presumption of availability of the right to conduct the transaction"** is highlighted, and in the second case the conclusion regards the presumption of **"... availability of the right to disposal"** for one of the co-owners.

The Constitutional Court finds that in the first case, the conclusion in the aspect of the constitutional legal content of the right of ownership is not disputable, as **granting authority to conduct transaction** is not stipulated by the so-called "fact of silence," but it is stipulated by the virtue of law via providing the person with appropriate authority according to the procedure prescribed by the law. In this context, the term "consent" is precautionary in nature (unless they agreed otherwise) and the absence of "other rules" agreed to by them means the absence of the prohibition to exercise the right or the consent



of each of them to conduct transaction for disposition of the property regarding the issue of the competence prescribed by the law.

However, as it was mentioned, the right of disposition of the property is based on **the discretion**, the manifestation of autonomy of will of the owner, as it as mentioned, both by the Constitution and the law. Therefore, the wording given in the second case is controversial both in the aspect of the constitutional legal content, and in the aspect of its expression.

In the aspect of realization of the right of ownership, in particular, in the aspect of the right of disposition of the property, the expression “lack of disagreement is consent” logically contradicts the principle of “discretion of the person” or, otherwise, the principle of “manifestation of the will of the subjects of legal relations,” that follows from the legal content of Article 31 of the RA Constitution, as in this case the initial legal point is not to conduct a transaction when otherwise agreed, **the initial legal point is the availability of certain discretion of the person for realization of the right of ownership.**

International legal practice indicates that the right of ownership, regardless realized separately or jointly, shall have the constitutional legal preconditions of guaranteeing, securing and protecting, that, on the one hand, the person may possess, use and dispose of his/her property exceptionally at his/her discretion; and on the other hand, the realization of the right of ownership must not violate the rights and lawful interests of other persons, society and the state.

The consent of each of the co-owners for realization of his/her right of ownership, especially for disposition of property, is a constitutional requirement which is precisely stipulated also by legal acts of other countries. For example, Section 747 of the Civil Code of Germany clearly states that “... the part owners may control the joint object in its entirety only jointly.” This wording does not significantly differ from the equivalent requirement of Article 198, Part 2 of the RA Civil Code in the aspect of disposition of property in joint ownership exceptionally with the consent of all participants.

The conclusion from the above states that each participant in joint ownership should have the right to conduct a transaction for disposition of common property, taking into consideration that the legislatively stipulated pre-condition for the right to dispose of the property with the consent of the co-owners, as well as availability of the right and **necessary powers** of the person conducting the transaction to conduct the transaction operates.

As a result of the comparative analysis of the mentioned two approaches, the RA Constitutional Court finds that there is no uncertainty or problem in the aspect of constitutionality of Article 198, Part 3 of the RA Civil Code. With regard to its interpretation in judicial practice, as a result of development of the legal positions stipulated by the decision in the civil case No. ԵԱԲԴ/1023/02/10 dated 27.12.2011, insofar as the presumption of availability of **the right** of one of the co-owners **to conduct the transaction** is not in direct contradiction with the constitutional legal content of the legislative norm. However, at the same time it does not mean **the availability of the necessary powers** for the participant **to dispose of** the property in joint ownership in those cases:

a/ when the rights of the co-owners get state registration, and the certificate of state registration of the rights to the property clearly states that the property belongs to certain owners by right of joint ownership,

b/ when according to the procedure and in cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and restrictions on the property rise on the basis of the law and have legal force, regardless of state registration.

In these cases, the alienation of the property may only take place **in the case of positive manifestation of will** of each of the co-owners, according to the requirement of Article 198, Part 2 of the RA Civil Code. These are the cases when the circumstance of availability of the co-owners' right of ownership is already precise when implementing state registration of the rights and restrictions on the property, their origin, alteration, transfer and termination; or its certification by notarial procedure; and a concrete manifestation of their discretion is required, which will confirm also the availability of the necessary power of the person conducting the transaction.

Proceeding from the results of Case consideration and being governed by Article 100, Point 1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Article 198, Part 3 of the RA Civil Code is in conformity with the Constitution of the Republic of Armenia in regard to the constitutional legal content of the provisions of the first sentence of that Part, according to which, each of the participants in joint ownership shall have the right to conduct transactions for disposition of the common property, unless otherwise agreed to by them, taking into consideration that in cases mentioned below the positive consent of all co-owners is required for the certain participant to conduct the transaction for the disposition of the property, which should indicate the availability of the necessary power of the person conducting the transaction. Here are those cases:

a/ when the rights of the co-owners get state registration, and the Certificate of State Registration of the Rights to the Property clearly states that the property belongs to certain owners by right of joint ownership,

b/ when by the procedure and the in cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and restrictions on the property rise on the basis of the law and have legal force, regardless of state registration.

2. Pursuant to Article 102, Part 2 of the RA Constitution this Decision is final and enters into force from the moment of its announcement.

Chairman

G. Harutyunyan

24 February 2012  
DCC - 1009