

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

**ON THE CASE OF CONFORMITY OF POINT 1 OF ARTICLE 204.33 OF THE RA CIVIL
PROCEDURE CODE (HO-247 OF 17.06.1998) IN PART OF THE PHRASE “IN THE
OPERATIVE PART” WITH THE CONSTITUTION ON THE BASIS OF THE
APPLICATION OF ARAM SHAHBAZYAN**

Yerevan

May 15, 2018

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, F. Tokhyan, A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan (Rapporteur), with the participation (in the framework of the written procedure) of representatives of the Applicant: T. Yegoryan and L. Hakobyan, representatives of the Respondent: official representatives of the RA National Assembly V. Danielyan, Head of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff, and S. Tevanyan, Senior Legal Specialist of the Legal Support Division of the same Department, pursuant to Point 1 of Article 168 and Point 8 of Part 1 of Article 169 of the Constitution, as well as Articles 22, 40 and 69 of the Constitutional Law on the Constitutional Court, examined in a public hearing by a written procedure the Case on conformity of Point 1 of Article 204.33 of the RA Civil Procedure Code (HO-247 of 17.06.1998) in part of the phrase “in the operative part” with the Constitution on the basis of the Application of Aram Shahbazyan.

The RA Civil Procedure Code (hereinafter referred to as the Code) was adopted by the National Assembly on 17 June 1998, signed by the President of the Republic on 7 August 1998, entered into force on 1 January 1999 and was declared invalid on 9 April 2018.

The Case was initiated on the basis of the Application submitted to the Constitutional Court by A. Shahbazyan on 31 January 2018.

Having examined the written report of the Rapporteur on this Case, the written explanations of the Applicant and the Respondent, as well as having analyzed the relevant provisions of the Code and other documents of the Case, the Constitutional Court **ESTABLISHES:**

1. Positions of the Applicant

The Applicant challenges Point 1 of Article 204.33 of the Code part of the phrase “in the operative part.” This Article prescribes the grounds for reviewing a judicial act due to new circumstances. Point 1 of this Article, inter alia, prescribes the following ground: new circumstances shall serve as basis for reviewing a judicial act, if the Constitutional Court of the Republic of Armenia has declared the provision of the law, applied by the court under this civil case, as contradicting the Constitution and void or has declared it to be in conformity with the Constitution, but, when revealing its constitutional legal nature in the operative part of the decision, has hold that the given provision has been applied in a different interpretation.

The Applicant notes that the selective study of the decisions of the Constitutional Court indicates that when considering the issue of constitutionality of the challenged provision of the law applied to the applicant, in some cases the Constitutional Court found that the given provision was applied in a different interpretation and revealed its constitutional legal content in the operative part, and in some cases the Court mentioned in the operative part that the challenged provision of the law is in conformity with the Constitution within the framework of the legal positions expressed by the Constitutional Court in the given decision.

The Applicant, in particular, refers to the conclusion made in the civil case No. ԵՄԴ/2598/02/14 of the Court of Cassation dated 26 July 2017, according to which: “...the Court of Cassation finds that substantiation by the plaintiff on the existence of a new circumstance to initiate proceedings of this cassation appeal is groundless, since in the operative part of the Decision DCC-1344 of 07.02.2017 the RA Constitutional Court did not declare the provision of the law challenged by the plaintiff in the cassation appeal, i.e. Part 4 of Article 213 of the RA Civil Procedure Code as contradicting the RA Constitution and void, or declaring it to be in conformity with the RA Constitution and revealing its constitutional legal nature in the operative part of the Decision, the Court finds that the given provision has been applied in a different interpretation. Therefore, the plaintiff has not proved and substantiated the existence of a new circumstance stipulated by Point 1 of Article 204.33 of the RA Civil Procedure Code.”

The Applicant finds that it follows from the content of the challenged provision of the law or its interpretation in the law-enforcement practice, that the legal positions of the Constitutional Court proves not to be a source of law and does not make it possible to review judicial acts due to new circumstances, as well as there is a differentiation between the legal positions of the Constitutional Court due to the circumstance of their location in different parts of the decision of the Constitutional Court. In this context the Applicant refers to a number of decisions of the Constitutional Court, in particular, DCC-652, DCC-943 and DCC-1359, and finds that regarding

the legal positions expressed in the said Decisions are fully applicable for the legal issue raised in this Case.

The Applicant finds that Point 1 of Article 204.33 of the Code in part of the phrase “in the operative part” contradicts Articles 1, 3 and 5, Part 1 of Article 61, Part 1 of Article 63, Articles 75, 78, 79 and 80 of the Constitution.

2. Positions of the Respondent

The Respondent states that the idea and purpose of protection of subjective rights of a person are the grounds for the individual constitutional complaint, and emphasizes that both the accessibility of justice and ensuring the effectiveness of judicial protection of the constitutional rights of individuals with the application of the principle of legal certainty should be the purpose of legislative regulation of legal relations related to the review of a judicial act due to new circumstances. The Respondent finds that due to this, in all cases when the Constitutional Court interprets otherwise the norm applied in the legal positions expressed in its decision, this circumstance must be precisely prescribed in the operative part of the decision, and the Court must note that the norm has been applied against the plaintiff in an interpretation other than expressed in the decision of the Court, and this fact may be considered as a new circumstance for the person. According to the Respondent, the Constitutional Court would thus ensure legal certainty for the person and exclude the possibility of interpreting or assessing the decision of the Constitutional Court at the discretion of the court of general jurisdiction, or exclude the possibility of imposing the burden of proof on the plaintiff regarding the fact that the norm applied against him was interpreted otherwise.

The Respondent also finds that the statement of Part 10 of Article 69 of the Constitutional Law on the Constitutional Court excludes any possibility of different perception with regard to subject matter.

According to the Respondent, if the challenged provision is applied to a person in an interpretation different from that of the Constitutional Court, the wording of this provision alone cannot serve as an obstacle to consideration of this fact as a new circumstance and revision of the judicial act if the Constitutional Court complies with the rule of precise indication the fact of applying to the person the norms in a different interpretation in the operative part of the decision, regardless of the circumstance in which part of the decision the legal analysis, that appeared the basis of such a conclusion, is present.

The Respondent finds that the provisions of Point 1 of Article 204.33 of the Code are in conformity with the Constitution.

3. Circumstances to be clarified within the framework of the Case

When deciding on the constitutionality of the provision challenged in this Case, the Constitutional Court considers it necessary, in particular, to address to the following formulation of the question: whether in the case, when the Constitutional Court by its interpretation declared the challenged provision to be in conformity with the Constitution, prescribing the necessary conditions for reviewing the judicial act due to new circumstances **in the operative part** of the decision – i.e. the Constitutional Court interpreted the challenged provision and at the same time stated that the given provision had been applied against the applicant in a different interpretation – restricts the right to effective judicial protection of human rights and freedoms prescribed in Part 1 of Article 61 of the Constitution.

4. Legal analyses and positions of the Constitutional Court

The Constitutional Court states that Article 204.33 of the Code relates to the legal regulations of grounds for the review of judicial acts due to new circumstances.

In a number of decisions (DCC-701, DCC-751, DCC-758, DCC-767, DCC-833, DCC-935, DCC-943, DCC-984, DCC-1099 and DCC-1275) the Constitutional Court expressed legal positions on the legal guarantees necessary for the realization of the institution of the review of judicial acts due to new circumstances, the criteria of efficiency and viability of that institution, legal safeguards and necessary for the exercise of the constitutional right to judicial protection of a person through this institution. the constitutional right to judicial protection of a person due to that institution. Considering in particular Point 1 of Article 204.33 (in previous version) of the Code in part of interpretation of its content in law-enforcement practice, according to which the given Point 1 does not provide possibility to restore the rights of persons violated in the framework of judicial review as a result of the application of the norms of law in the interpretation different from the constitutional legal content prescribed in the Constitutional Court, by reviewing the case on new circumstances, the Constitutional Court by the Decision DCC-984 declared the aforementioned provision as contradicting the requirements of Articles 3, 6, 18, 19 and 93 of the Constitution of the Republic of Armenia with Amendments through 2005 and void.

By the Law HO-269-N of 26 October 2011, Point 1 of Article 204.33 of the Code was issued in a new edition, and the latter is partially challenged by the Applicant in this Case.

The Constitutional Court states that a similar provision is also prescribed in Point 1 of Part 1 of Article 419 of the current Civil Procedure Code (HO-110-N of 9 February 2018) in regard to the part of the provision challenged in this Case.

Referring to the arguments of the Applicant that the challenged provision does not make it possible to perceive the decisions of the Constitutional Court in their structural integrity, the Constitutional

Court considers it necessary to note that in a number of decisions (in particular, DCC-652 and DCC-943) the Constitutional Court referred to the constitutional legal status and peculiarities of the Constitutional Court, as well as to the essence and content of the legal positions of the Constitutional Court. Within the framework of this Case, the Constitutional Court also reaffirms the legal position expressed in the Decision DCC-943 of 25 February 2011, according to which: “The decisions of the Constitutional Court shall be perceived also in their structural integrity (introduction, descriptive-reasoning and the operative parts), for ensuring the clarity of the implementation of the content, principles and peculiarities of the legal regulations stipulated in these decisions and also the implementation of the rules of objective and subjective behavior. This issue is addressed especially through the **legal positions** expressed in the descriptive-reasoning part of the decisions of the Constitutional Court, which usually contains conclusions of the Court which, as a rule, contain in the appeals addressed to the Constitutional Court and made by the court as a result of the legal analysis of the subject (raised issues and constitutional legal disputes) and underlying the operative part of the decision, if the essence and content of which are ignored, the implementation of the decision of the Court cannot be ensured.”

Taking into account also the aforementioned legal position, in the case when the challenged provision is declared to be in conformity with the Constitution and, in particular, when the decision provided for by Point 1.1 of Part 8 of Article 68 of the Law HO-58-N of 1 June 2006 on the Constitutional Court, in the operative part of that decision the Constitutional Court:

- 1) declared the challenged provision to be in conformity with the Constitution within the framework of legal positions expressed by the Court in the given decision,
- 2) declared the challenged provision to be in conformity with the Constitution within the framework of legal positions expressed by the Court in the given decision, noting also the concrete conclusive legal position/s,
- 3) declared the challenged provision to be in conformity with the Constitution by revealing its constitutional legal content,
- 4) declared the challenged provision to be in conformity with the Constitution revealing its constitutional legal content, and at the same time found that the given provision was applied against the applicant in a different interpretation.

Besides, based on Part 12 of Article 69 of the Law HO-58-N of 1 June 2006 on the Constitutional Court, in the operative part of a number of decisions the Constitutional Court has made a special emphasis on the requirement of the given Law, according to which the final judicial act against the applicant due to new circumstances shall be subject to review in accordance with the procedure provided for by law.

Considering the issue raised in the Application within the framework of legal regulations prescribed in the Constitutional Law HO-42-N on the Constitutional Court – which was adopted on 17 January 2018 and entered into force on 9 April 2018 – the Constitutional Court states that Part 10 of Article 69 of this Law, titled: “Review of cases on the basis of applications submitted by natural persons and legal entities on the constitutionality of the laws implemented by final judicial act against those persons in concrete cases,” states that in the cases defined by this Article on declaring the provision applied against the applicant as contradicting the Constitution and void, as well as in the cases when the Constitutional Court by its interpretation declared the challenged provision to be in conformity with the Constitution and at the same time stated that the given provision had been applied against the applicant in a different interpretation, **the final judicial act made against the applicant due to new circumstances shall be subject to review in accordance with the procedure provided for by law.** According to Part 13 of the same Article: “The rules of Parts 7-20 of Article 68 of this Law shall be applicable when reviewing all other circumstances related to the cases determined by this Article and making decisions on those cases.” By the way, the mentioned Constitutional Law also stipulates that in the case when the decision prescribed in Point 2 of Part 9 of Article 68 of this Law is rendered, that decision shall include the following information **in the operative part**, i.e. a short constitutional legal content of the challenged act or the challenged provision thereof (Point 11 of Part 1 of Article 64).

It follows from the above-mentioned legal regulations that, in particular, the decision of the Constitutional Court is a legal background for the review of the final judicial act made against the applicant due to new circumstances in accordance with the procedure provided for by law, when:

- 1) the provision of the normative legal act applied against the applicant has been declared as contradicting the Constitution and void, or
- 2) the provision of the normative legal act applied against the applicant has been declared as contradicting the Constitution by the interpretation of the Constitutional Court, and at the same time the Constitutional Court has stated that the given provision had been applied against the applicant in a different interpretation, which must be prescribed in the operative part of the decision.

At the same time, the Constitutional Court considers that it is not necessary each time to prescribe in the operative part of the decision of the Constitutional Court the provision of Part 10 of Article 69 of the Constitutional Law on the Constitutional Court, according to which: “...the final judicial act rendered against the applicant due to new circumstances shall be subject to review in accordance with the procedure prescribed by law,” since it is obligatory by the force of the given Constitutional Law.

Taking into account that, according to Part 2 of Article 5 of the Constitution, laws shall comply with the constitutional laws, the Constitutional Court finds that the respective provisions of current

procedural codes shall be studied and if necessary legislatively reviewed in the light of legal regulations of the Constitutional Law on the Constitutional Court.

The Constitutional Court finds that the above-mentioned regulations and the legal positions expressed by the Constitutional Court regarding the latter are essential from the perspective of ensuring legal certainty and correctness, and in human rights activities the latter make it more accessible and predictable the implementation of the constitutional right to judicial protection guaranteed by Part 1 of Article 61 of the Constitution, as well as the direct application of the provisions stipulated by the Constitutional Law on the Constitutional Court, thus excluding their discretionary and arbitrary interpretation by the law enforcers.

Based on the review of the Case and governed by Point 1 of Article 168, Point 8 of Part 1 of Article 169, Parts 1 and 4 of Article 170 of the Constitution, as well as Articles 63, 64 and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS**:

1. Point 1 of Article 204.33 of the RA Civil Procedure Code (HO-247 of 17.06.1998) in regard to the part of the phrase “in the operative part” prescribed therein is in conformity with the Constitution.
2. Pursuant to Part 2 of Article 170 of the Constitution this Decision shall be final and effective upon publication.

Chairman

H. Tovmasyan

May 15, 2018

DCC-1417