

**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 6 OF PART 1 OF ARTICLE 96 OF THE
RA ADMINISTRATIVE PROCEDURE CODE WITH THE CONSTITUTION OF THE
REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF HAYK
MASHURYAN**

Yerevan

October 2, 2018

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan, F. Tokhyan, A. Tunyan, A. Khachatryan (Rapporteur), H. Nazaryan, A. Petrosyan,

with the participation (in the framework of the written procedure)

representatives of the Applicant: A. Zeynalyan, R.Revazyan,

representatives of the Respondent: representative of the RA National Assembly A. Kocharyan, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

pursuant to Point 1 of Article 168, Point 8 of Part 1 of Article 169 of the Constitution, as well as Articles 22, 23, 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 6 of Part 1 of Article 96 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of Hayk Mashuryan.

The Administrative Procedure Code of the Republic of Armenia (hereinafter referred to as the Code) was adopted by the National Assembly on 5 December 2013, signed by the President of the Republic on 28 December 2013 and entered into force on 7 January 2014.

Point 6 of Part 1 of Article 96 of the Code, titled “Termination of proceedings”, states: “The court shall terminate proceedings at any stage of the consideration of the case if: (...) the claimant has withdrawn the claim, except for the cases prescribed by Chapter 26 of this Code, consideration of which follows from the interests of the society or the state ... ”.

The Case was initiated on the basis of the Application of A. Mashuryan lodged at the Constitutional Court on 5 April 2018.

Having examined the Application, the written explanation of the Applicant, as well as having analyzed the relevant provisions of the Law and other documents of the Case, the Constitutional Court **ESTABLISHES:**

1. Positions of the Applicant

In the framework of the raised issues, the applicant notes that “The Constitution of the Republic of Armenia, inter alia, guarantees to persons within the jurisdiction of Armenia the right to judicial protection, as well as equal rights and the prohibition of discrimination”.

The applicant also believes that on August 24, 2013, his rights were violated; he was incriminated for the deed prohibited by law and denied both by him and society was incriminated to him, and attributing this act to him denigrates his honor and dignity. Moreover, by the decision of the RA Administrative Court of October 8, 2014 on imposing a fine, his guilt was confirmed, although the RA Administrative Court of Appeal reversed it, but the fact of his misconduct was not approved, and he faced negative consequences of material and moral character. In his opinion, “The acquittal decision for the applicant is the very first condition and effective means for restoring both in his own eyes and in the eyes of society and restoring his position that existed before the violation of the right”.

According to the applicant, the cases on bringing to administrative responsibility correspond to the concept of “criminal charge”, where it is necessary to guarantee and ensure “the right to a fair ... trial within a reasonable time by an independent and impartial court prescribed by law”.

The applicant considers that, due to the challenged provisions, the administrative law does not establish the concept of the words “acquitted”, “honest” or “innocent”, and in the case of termination of the case on the basis of the refusal of the claim, the fact that the accused is justified or innocent, in many cases it can be perceived as a manifestation of the “plaintiff’s goodwill”. This circumstance, according to the applicant, “for a third-party and objective observer creates confidence that the innocence of the applicant is questioned”. “It provides confidence to the third-party objective observer that the innocence of the applicant is questioned”

The applicant also considers that the legislator, having established the possibility of termination of the proceedings in the administrative law on the basis of refusal of the accusation (lawsuit), did not provide for the liability of justification by a judicial act, because of which a person cannot declare himself “justified” or “innocent”, and this contradicts Articles 1, 3, 23, 28, 61, 63, 75, 78, 79, 80 and 81 of the RA Constitution.

2. The positions of the respondent

The respondent states that the challenged provision must be considered in a systemic relationship with Articles 96, 97, 108, 110, 125 and 131 of the Code. Based on the comparison and analysis of the latter, the respondent argues that in Part 1 of Article 96 of the Code the legislator clearly

established exhaustive grounds for the court to terminate the proceedings at any stage of the consideration of the case, which in itself does not raise the issue of constitutionality.

As for the legislative gap in the challenged position to which the applicant indicated, the respondent considers it necessary to argue that due to ensuring the exercise of the right to appeal the judicial act there are certain legal mechanisms and guarantees regulating the possibility of appealing the Administrative Court's decision on termination of the case, although the legislator did not directly secure the appeal of the court decision.

According to the respondent, the state power will of the court to terminate the proceedings of the case received its external manifestation in the form of a definition, but by its procedural meaning it is not equivalent to the interim judicial acts and cannot be equated to them.. Consequently, as a final act, it can be appealed in the manner prescribed in judicial acts deciding the case on the merits.

The respondent notes that guaranteeing accessibility to the court is one of the priority legal preconditions for the protection of the rights and freedoms of a person before the courts. And here it is important, "... to what extent justice is accessible, to what extent the conditions and tools for the exercise of the right to apply to the courts to protect the violated rights of a person are effective. "

Opposing to the applicant's arguments, the respondent notes that "... within the framework of the subject of this constitutional legal discourse, a person from the point of view of ensuring the implementation of a fair trial has a clear practical opportunity to appeal against a judicial act ...".

Considering the above, the respondent considers that Point 6 of Part 1 of Article 96 of the Code is in conformity with the Constitution.

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

In the scopes of the case under consideration, the Constitutional Court deems it necessary to state that the applicant raises the issue of constitutionality of Point 6 of Part 1 of Article 96 of the Code only in regard to the part that in case of termination of the case during administrative proceedings on the basis of the refusal of the claim, as a result of which a person cannot justify himself or prove his innocence. The applicant does not raise other issues regarding the constitutionality of the challenged legal norm.

Therefore, taking into account the mentioned circumstance, the Constitutional Court considers Point 6 of Part 1 of Article 96 of the Code **exclusively** from the perspective of assessing the constitutionality of the absence of legislative regulation of the possibility of justification through a judicial act in case of termination of proceedings on the basis of the

refusal of the claim filed with the aim of bringing the person to justice. In the framework of the present case, in determining the constitutionality of the challenged provision, the Constitutional Court also considers it necessary, in particular, to address the following issues:

a) Does the challenged provision of the Code, within the framework of system integrity with other norms, provide evidence of the act attributed to the respondent in the court's decision to terminate the case, or an assessment of the evidence supporting it?

B. Is the termination of the administrative case on a challenged basis equivalent to the confirmation of the fact that the respondent did not commit the offense?

C. In the case of termination of proceedings in the framework of administrative court proceedings on the basis of the claimant's refusal of a claim, does the legislation of the Republic of Armenia envisage sufficient guarantees to ensure the protection of the rights of the respondent enshrined in the Constitution?

4. Legal positions of the Constitutional Court

4.1. As a result of an analysis of the provisions of the Code relating to the termination of an administrative case, the Constitutional Court states that the legislator established the grounds, procedure and consequences of the termination of such proceedings arising from the requirements of Article 75 of the Constitution, according to which regulation of fundamental rights and freedoms, laws shall define the organizational structures and procedures necessary for their effective exercise..

From the analysis of the norms of Part 1 of Article 96 of the Code, it follows that it is sufficient for the court to consider confirmed the presence of any of the grounds provided by law for termination of the proceedings. That is, within the framework of the termination procedure, the court does not review the claim, it does not verify the facts stated in it, does not assess the evidence and does not address legal grounds, which means that in this case the parties do not consider the challenged issues.

In the aspect of the challenged provision, this conclusion is also confirmed by Part 2 of Article 96 of the Code, according to which "if the claimant lodges an application for refusal of the claim, the court convenes a court hearing within two weeks to consider it. If the claimant re-declares a refusal of the claim during the session or does not appear at the court session due to proper notification, the court makes a decision on termination of the proceedings within three days." That is, the court considers only the statement of the claimant about the refusal of the claim and once again gets convinced of the authenticity of his intentions.

Moreover, Article 108 of the Code, which is systemically interrelated with the challenged provision, envisages that the claimant has the right, without any motivation, to refuse his claims

in full or in part until the end of the trial. In this case, the Administrative Court makes a decision to discontinue the proceedings in that part of the claim from which the claimant refused, with the exception of cases provided for in Chapter 26 of this Code, consideration of which follows from the interests of the society or the state. It also means that, among the above-mentioned issues, the court does not even consider the reasons or motives of the claimant in refusing the claim.

Consequently, in case of termination of the proceedings on the basis of the challenged provision, the court does not consider and does not resolve any issue relating to the substance of the dispute, and this judicial proceeding, in fact, ends.

4.2. The Constitutional Court reiterates it necessary to consider the challenged provision also from the perspective how the termination of the proceedings on the basis of the refusal of the claim affects the rights and legitimates interests of the respondent.

For the cases of bringing to administrative responsibility by a judicial order, the plaintiff appeals to the court, officially presents his version or reasonable assumption regarding the defendant's obvious administrative offense and, naturally, the corresponding requirement. In the future, the same plaintiff can reject the claim and not be required to submit any justification, that is, not to confirm the allegations submitted by him earlier and no longer claim to receive the expected result from the court.

The Constitutional Court states that the claim is the only reason for initiating a case at the Administrative Court (Article 65 of the Code). At the same time, this is the only procedural document in which facts and arguments, which substantiated the claim, are officially formulated, in particular, whether the person is guilty of an offense and is subject to administrative liability in court. Therefore, the rejection of the claim not only leads to procedural consequences, but also inevitably leads to the elimination of its material grounds.

Refusal of a claim in the cases concerning bringing to administrative responsibility in a judicial procedure should be interpreted and perceived only in the sense that the claimant (the state represented by an administrative body) by this action, in fact, recognizes the absence of the fact of the alleged administrative violation or non-participation of the defendant, including the absence of his guilt in offense. That is, in the case of termination of the proceedings on the basis of the refusal of the claim, the respondent is not only not prosecuted, but in fact his innocence is ascertained, and he is, in fact, "acquitted", regardless of the terminology inherent in various types of legal proceedings.

At the same time, the Constitutional Court states that the logic of legal regulation systemically linked to the challenged provision of Part 2 of Article 60 of the Code implies that in case of termination of the proceedings, the plaintiff is charged with the obligation to compensate the court expenses, if s/he refused a claim.

Consequently, in the context of the above-mentioned, the Constitutional Court states that the definition of termination of proceedings in administratively prosecuted cases on the basis of the refusal of a claim in itself entails the same consequences as in the case of a decision to reject the claim.

4.3. The Constitutional Court considers it necessary to apply also to the availability of sufficient guarantees of the protection of the rights and legitimate interests of the applicant in case of termination of proceedings in the framework of administrative proceedings on the grounds of the refusal of the claim. This is important primarily in the context of ensuring the constitutional right to an effective judicial protection.

The Constitutional Court, in its Decision DCC-1190 of February 10, 2015 stated that “... the decision of the Administrative Court on termination of the proceedings **shall be appealed** according to the rules of appeal of a judicial act which resolves the case on the merits...”.

Developing its legal position, **the Constitutional Court states that in all cases when the decision on termination of proceedings on the basis of a refusal of a claim creates provisions that cast doubt on the respondent’s innocence or otherwise violate his legitimate interest, the applicant enjoys the right to request defense of his allegedly violated rights in the appeal applied in judicial procedure to a court.**

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

1. Point 6 of Part 1 of Article 96 of the RA Administrative Procedure Code is in conformity with the Constitution.
2. Pursuant to Part 2 of Article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

Chairman

H. Tovmasyan

2 October 2018

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