



**IN THE NAME OF THE REPUBLIC OF ARMENIA**

**DECISION**

**OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA**

**THE CASE ON CONFORMITY OF THE SECOND  
PARAGRAPH OF PART 1 OF ARTICLE 37 OF THE CODE  
OF THE REPUBLIC OF ARMENIA ON ADMINISTRATIVE  
OFFENCES WITH THE CONSTITUTION OF THE REPUBLIC  
OF ARMENIA ON THE BASIS OF THE APPLICATION  
OF THE HUMAN RIGHTS DEFENDER  
OF THE REPUBLIC OF ARMENIA**

**Yerevan**

**8 April 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant: Head of Department of Legal Analysis of the Staff of the RA Human Right Defender A. Vardevanyan, specialist of the same department S. Terzikyan,

Respondent: official representative of the RA National Assembly, Adviser of Expertise Department of the Staff of the RA National Assembly, S. Tevanyan

pursuant to Article 100, Point 1, Article 101, Part 1, Point 8 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Second Paragraph of Part 1 of Article 37 of the Code of the Republic of Armenia on Administrative Offences with the Constitu-

tion of the Republic of Armenia on the basis of the application of the Human Rights Defender of the Republic of Armenia.

The case was initiated on the basis of application of the RA Human Rights Defender submitted to the RA Constitutional Court on 22.11.2013.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the RA Code on Administrative Offences of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Code on Administrative Offences was adopted by the Supreme Council of the ArmSSR on December 6, 1985 and entered into force on 1 June 1986.

Part I of Article 37 of the RA Code on Administrative Offences titled “Time terms of imposing administrative penalty” prescribes, “The administrative penalty shall be imposed not later than two months after the commitment of the offence and in case of continuous and lasting offences within two months after its disclosure except for the cases prescribed by this Article.”

The mentioned Article was amended by the RA National Assembly by the Laws of 18.08.93 ՀՕ-73, 23.06.97 ՀՕ-133, 13.06.06 ՀՕ-138-Ն, 11.05.11 ՀՕ-155-Ն, 09.02.12 ՀՕ-11-Ն, 05.12.13 ՀՕ-143-Ն.

2. The Applicant substantiated his position by the statement that the challenged norm of the Code contradicts the principle of legal certainty, as it does not prescribe which is lasting and continuous offence. According to the Applicant, the RA legislation has not revealed the contents of the terms “lasting and continuous offence.” In such conditions, according to the Applicant, the absence of clear legislative definitions, certain binding standards and/or grounds (which the administrative body will rely for qualifying the offence as lasting or continuous) block the right to effective exercise of person’s legal protection as there are no mechanisms for presentation of anti-arguments against the mentioned decisions.

Meanwhile, the Applicant, by clarifying his arguments in the written explanations submitted to the Constitutional Court and stating the fact that doctrinal sources on lasting and continuous offences are available,

admits that the contents of the terms “lasting and continuous offence” shall be enshrined by the RA legislation and in his further arguments does not substantiate the necessity to define the contents of the above-mentioned terms in the challenged norm of the Code.

The Applicant also finds that in the terms of non compliance with the principle of legal certainty of the challenged norm of the Code the principle of ban to perform unequal approach towards identical factual circumstances prescribed in Article 7 of the RA Law on Fundamentals of Administration and Administrative Procedure and Article 5 of the same Law may also be violated as in case of the latter, from the perspective of qualifying the offence as lasting or continuous, the authorities of the administrative bodies are not distinct.

According to the Applicant, in such terms the law enforcement body may qualify the simple offence as long-term or continuous offence and impose administrative liability during two months from the date of disclosure by not implementing the time term restriction prescribed by Part 1 of Article 37.

3. The Respondent objected the arguments of the Applicant and states that absence of legislative definition of the contents of the notions “lasting offence” and “continuous offence” prescribed in Part 1 of Article 37 of the RA Code on Administrative Offences is not sufficient for considering that norm as anti-constitutional.

The Respondent substantiated his position that both from the perspective of linguistics as well as legislation, the terms “lasting” and “continuous” are clear and mainly are comprehensive. The Respondent, as an argument, mentions the relevant glossary as well as relevant special sources where the linguistic and legal meanings of the terms “lasting” and “continuous” are envisaged. According to the Respondent, in the case of availability of the relevant doctrinal interpretations, the legislative stipulation of the considered notions would not change the essence of the legislative regulation as in case of making decision in every concrete administrative offence the law enforcement body will have to make a decision whether the mentioned offence is covered by the relevant notions or not. According to the Respondent, the problem in this case is not mainly in the legislative stipulation of the considered notions, but in stipulation of the nature of each administrative offence in the disposition of the norm prescribing liability for it.

Simultaneously, the Respondent states that in the judicial practice there are no diverse interpretation concerning the challenged norm of the Code and in case of their availability, the RA Court of Cassation may play its essential role by its mission to ensure the identical implementation of the Law.

Summarizing the Respondent finds that, on one hand, the current regulations allow to ensure the identical implementation of the law, and, on the other hand, the doctrinal approaches, which serve as the sources of law, may be of not imperative nature, but may have the identifying effect on the legal consciousness on the law enforcement body in the issue of comprehension and implementation of the relevant norms.

Deriving from the priorities dictated by the practice, the Respondent also expresses opinion about the possibility to make the issue of appropriateness of legislative stipulation of the standards and features of the lasting or continuous offences within further legislative reforms.

4. Comparing the positions of the parties, the RA Constitutional Court states that the issue pointed out by the RA Human Rights Defender mainly comes to the fact that in the case of current regulations of Part 1, Article 37 of the RA Code on Administrative Offences “...the person, who was subject to administrative liability, does not have possibility to counter the circumstance qualifying the offence as lasting and continuous by the administrative body because it cannot be comprehended distinctly that in what case the committed offence is qualified as lasting or continuous.”

It is also fact that the definitions of the terms “lasting and continuous offence” are not provided in the RA Code. Part 1 of Article 42 of the RA Law on Legal Acts prescribed “If new or ambiguous concepts or terms or such concepts or terms are used in a regulatory legal act that are not understood unambiguously without clarification, the legal act concerned shall provide their definitions.”

It also becomes evident from the materials of the case that the efforts of the RA Human Rights Defender to receive clarifications on Part 1 of Article 37 of the RA Code on Administrative Offences and its implementation from the Committee of State Incomes adjunct to the RA Government and RA Ministry of Justice were in vain. The mentioned bodies do not consider themselves competent to provide with the official clarification.

According to the certificate JD-1 E-1703 of 27.03.2014 provided by the RA Judicial Department to the Constitutional Court judicial practice concerning the challenged legal provisions is not formed, the Court of Cassation has not adopted any precedential decision likewise.

5. Part I of Article 41 of the RA Law on Legal Acts prescribes, “...Headings of articles must conform the content of the articles.” The challenged provision of the RA Code on Administrative Offences is headed “Time-limits for imposing administrative penalty.” It derives from the analysis of the relevant Article that the latter is not called upon to define the concepts of the types of the administrative offences. The study of the international practice states that even in the case of legislative stipulation of lasting or continuous administrative offences, the latter and the time-limit for imposing administrative penalties are envisaged in different articles of the relevant act. Thus, the absence of this concept in the challenged article by itself does not contradict the principle of legal certainty.

6. In the framework of the given case, the Constitutional Court considers it necessary to state that the issue raised by the Applicant is not conditioned by the legal regulations prescribed by Part I of Article 37 of the RA Code on Administrative Offences but by the absence of the concepts of “lasting” and “continuous” offences in the RA Code on Administrative Offences in general.

In such conditions the Constitutional Court considers it necessary to discuss the correlation of legislative gap and absence of legal regulation of the definitions of legal terms. Regarding the mentioned, the RA Constitutional Court considers it necessary to state that the legislative gap cannot be mechanically identified merely with the absence of legislatively stipulated definition of this or that term. The legislative gap exists in the case, when due to absence of the element ensuring the completeness of legal regulation or incomplete regulation of that element, the complete and normal implementation of legislatively regulated legal regulations is distorted. Meanwhile, the absence of definition of lasting and continuous offences in the text of the RA Code on the Administrative Offences is the absence of legislative regulation of the legal notion.

The RA Constitutional Court, in a number of its decisions, in particular, DCC-864, DCC-914 and DCC-933 expressed legal position con-

cerning the issue of competence of consideration of the constitutionality of the gap of the law according to which the normative legal solution of the gap of legal regulation is the competence of the legislative power. In particular, pursuant to the legal positions expressed in the mentioned decisions, considering the competences of the legislator and the Constitutional Court in overcoming the gap in law in the context of the principle of separation of powers scope, the Constitutional Court considers it necessary to state that in all cases, when the gap in the law is conditioned by the absence of normative commandment concerning the certain circumstances in the sphere of legal regulations, then overcoming such a gap is within the competence of the legislative body.

The Constitutional Court states that the current issue is not conditioned not by the diverse interpretations of the challenged norm. The legislator, simply, has not clarified the concepts defined by the law. The current situation is the gap of legal regulation, which shall be overcome within the competence of the RA National Assembly.

Based on the results of consideration of the Case and being ruled by Article 100, Point 1, Article 101, Part 1, Point 8 and Article 102 of the Constitution of the Republic of Armenia, Article 32, Point 1, Article 60, Point 1 and Articles 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To dismiss the proceeding of the case of conformity of Article 37, Part 1 of the RA Code on Administrative Offences with the Constitution of the Republic of Armenia on the basis of the application of the RA Human Rights Defender.

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**

**8 April 2014  
DCC-1143**