



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

**DECISION**

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

**ON THE CASE OF CONFORMITY OF PART 1 OF ARTICLE 87  
OF THE RA ADMINISTRATIVE PROCEDURE CODE  
WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA  
ON THE BASIS OF THE APPLICATION OF GEVORG SAFARYAN**

**Yerevan**

**June 23, 2016**

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), K. Balayan, A. Gyulumyan (Rapporteur), A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan, with the participation of (in the framework of the written procedure) T. Yegoryan and G. Petrosyan, representatives of the Applicant Gevorg Safaryan, representative of the Respondent: official representative of the RA National Assembly V. Danielyan, Chief Specialist at the Legal Consultation Division of the Legal Department of the RA National Assembly Staff,

pursuant to Point 1 of Article 100 and Point 6 of Part 1 of Article 101 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the RA Law on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Part 1 of Article 87 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the Application of Gevorg Safaryan.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by Gevorg Safaryan on 19 January 2016.

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

1. The RA Administrative Procedure Code was adopted by the RA National Assembly on 5 December 2013, signed by the RA President on 28 December 2013 and entered into force on 7 January 2014.

Part 1 of Article 87 of the RA Administrative Procedure Code, titled: “Submission of a counterclaim,” stipulates:

“1. Prior to the assignment of the trial of the case, the respondent may file a counterclaim against the applicant for consideration of the counterclaim together with the initial claim.”

2. The procedural background of the Case is the following.

The RA Police filed a case to the Administrative Court of the Republic of Armenia demanding that G. Safaryan (hereinafter referred to as the Applicant) be subjected to administrative liability for non-compliance with the legitimate requirement of a police officer (on the grounds of Article 182 of the Administrative Offences Code of the Republic of Armenia).

The Applicant filed a counterclaim to the Court and demanded to recognize unlawful the actions of police officers, that interfered with the exercise of his rights.

By the Decision of 15.01.2015, the RA Administrative Court rejected to accept the counterclaim, arguing that it was filed after the assignment of the trial of the case.

The appeal submitted by the Applicant against the given Decision of the RA Administrative Court was rejected by the Decision of 03.04.2015 of the RA Administrative Court of Appeal.

By the Decision of 24.06.2015, the RA Court of Cassation rejected to accept the cassation appeal for examination submitted by the Applicant against the given Decision of the Court of Appeal.

3. The Applicant finds that Part 1 of Article 87 of the RA Administrative Procedure Code – which was applied against him by the above-

mentioned judicial acts – contradicts Articles 1, 3, 28 and 29, Part 1 of Article 61, Part 1 of Article 63, Articles 78, 79, 80 and 81 of the RA Constitution.

Referring to the positions of the Constitutional Court (DCC-630, DCC-753, DCC-902) and the case law of the European Court of Human Rights, the Applicant states that the challenged legal position – which restricts the right of the respondent to file a counterclaim – does not meet the requirements of legal certainty and predictability, disproportionately restricts a person’s right to effective judicial protection and a fair trial, as well as it violates the principle of equality of parties to proceedings.

Based on the analysis of a number of articles of the RA Administrative Procedure Code, the Applicant concluded that the deadline prescribed for the implementation of the respondent’s right to file a counterclaim – i.e. the moment for the assignment of the trial – is not predictable for the respondent. The Applicant finds that, under the current legal regulations, it is impossible to predict the minimum time period for assignment of the trial after the Court renders a decision on accepting the claim for examination, since this depends both on the submission of the response to the claim and the discretionary power of the Court regarding the assignment of a preliminary hearing.

According to the Applicant, from the moment of receipt of the decision on the assignment of the trial, the respondent is deprived of the right to file a counterclaim, since this right ceases from the moment of the assignment of the trial, and not from the moment of beginning of the trial. At the moment of receipt of the decision on the assignment of the trial, the respondent is actually notified about the expiry of the time period and the possibility of exercising the right to file a counterclaim, whereas the applicant retains the possibility of changing the grounds and the subject matter of the claim. The Applicant considers that this legal regulation disproportionately restricts the respondent’s right of access to a court and also violates the principle of equality of the parties.

The Applicant considers that the challenged provision is systemically connected with Articles 54 and 80 of the RA Administrative Procedure Code, and even in the case of filing a motion for recognizing the missed time period for filing a counterclaim as valid, the court cannot grant the motion with the motivation that the case is at the trial stage.

4. Objecting the arguments of the Applicant, the Respondent asserts that the challenged legal position meets the requirements of the RA Constitution.

Referring to **the principle of equality of parties**, the Respondent finds that the challenged legal regulation has even more balanced the possibilities of the parties, since according to the previous legislation, the grounds and the subject matter of the claim could be changed before the assignment of the trial of the case, and a counterclaim could be filed within the deadline prescribed for the submission of the response to the claim. According to the current legislation, the grounds and the subject matter of the claim can be changed before the assignment of the trial of the case or within seven days after the receipt of the court decision on the assignment of the trial, and a counterclaim can be filed before the case is assigned for trial.

According to the Respondent, the violation of the principle of **access to a court** is possible in case the right of a person to enjoy judicial protection is limited in practice. Meanwhile, the current legal regulations allow the person to file a counterclaim for consideration of the counterclaim together with the initial claim, as well as in the event of failure to file such a claim, to protect her/his rights within the framework of another proceeding by filing a separate claim.

Regarding the principle of legal certainty, the Respondent notes that procedural time terms can be established both by indicating the specific time period and establishing the certain time period, and the calculation of the beginning or the end of the time period would be conditioned by the occurrence of any procedural event, which does not depend on the will of the parties to the proceedings or cannot be foreseen by the latter. The Respondent finds that this does not mean that the legal regulations in question can lead to unpredictability of legitimate expectations of the person.

5. For determination of conformity of the legal provision - challenged in this Case - with the RA Constitution, the Constitutional Court considers it necessary to find out and assess:

- the constitutional legal content and objective of the institution of counterclaim in administrative proceedings;

- the guarantees for the implementation of the constitutional principle of general equality before the law in the conditions of the challenged legal regulation (Article 28 of the RA Constitution);
- the sufficient certainty of time period for filing a counterclaim, so that the respondent would be able to show appropriate behavior and exercise her/his constitutional rights to effective judicial protection and fair trial, especially the right to access to a court (Articles 61 and 63 of the RA Constitution).

6. It follows from the content of Article 87 of the RA Administrative Procedure Code, that **the filing of a counterclaim for consideration of the counterclaim together with the initial claim** within the framework of certain trial **is an independent requirement presented by the Respondent, which is aimed at deduction of the initial demand, or the satisfaction of which completely or partially excludes the satisfaction of the initial claim, or which is interrelated with the initial claim, and their joint consideration can ensure more prompt and correct resolution of the dispute.** Obviously, in the aspect of protection of constitutional rights, the institution of counterclaim becomes meaningless unless necessary and sufficient procedures are provided for its consideration together with the initial claim.

The institution of counterclaim allows to resolve mutual claims of the parties within one trial and rendering one judicial act, as well as carry out the trial more effectively using minimum procedural powers and means. The relationship between the counterclaim and the initial claim is a binding term, and a separate examination of two interrelated claims may delay the resolution of the dispute on the merits and not fully guarantee the realization of the right to effective judicial protection.

As a procedural means for protection of the interests of the respondent, the counterclaim aims to promote the exercise of her/his right to effective judicial protection and ensure the exercise of the person's right to hearing of his case within a reasonable period, as an element of the right to a fair trial. Therefore, according to the legislation, the main task of the legal regulation of the institution of counterclaim is to provide necessary and sufficient procedural guarantees to ensure its legitimate implementation.

7. The provision – stipulated by Article 28 of the RA Constitution, according to which everyone shall be equal before the law – is expressed as a requirement of equality of parties to the proceedings within the framework of the right to a fair trial guaranteed by Article 63 of the RA Constitution and Article 6 of the European Convention on Human Rights.

In regard to the arguments of the Applicant on the principle of equality of all before the law, the RA Constitutional Court reaffirms the legal position stated in Point 5 of the Decision DCC-881 of 04.05.2010, according to which “... the constitutional principle of equality of all before the law implies ensuring equal responsibility before the law, the inevitability of liability and the equal conditions of legal protection, and this principle is not related to the establishment of preconditions – due to any legitimate aim – for entities having different legal status.”

Referring to the principle of equality of parties during the trial, the European Court of Human Rights reaffirmed its case law in the *Nikoghosyan and Melkonyan v. Armenia* Judgment, according to which “... one of the features of the wider concept of a fair trial, implies that each party must be afforded a reasonable opportunity to present their case – including evidence – under conditions that do not place them at a substantial disadvantage vis-à-vis their opponent” (*Nikoghosyan and Melkonyan v. Armenia*, app., No. 11724/04 and 13350/04, 06.12.2007, §37; *Dombo Beheer B.V. v. The Netherlands*, app. No. 14448/88, 23.09.1993, §33; *Steck-Risch v. Liechtenstein*, app. No. 63151/00, 19.05.2005).

In the *Wynen v. Belgium* Judgment (*Wynen and Centre Hospitalier Interregional Edith-Cavell v. Belgium*, app. no. 32576/96, 05.11.2002), the availability of different terms for submitting additional motions to the Court of Cassation by the parties was considered by the European Court of Human Rights as a violation of the requirement of equality of parties.

Article 6 of the RA Administrative Procedure Code provides for the implementation of administrative proceedings based on the equality of parties, i.e. the court is obliged to provide the parties with equal opportunities throughout the course of the proceedings, which includes also enabling each party full opportunity to submit its position on the case.

Comparing the challenged legal position challenged in this Case with Part 1 of Article 88 of the RA Administrative Procedure Code, the Constitutional Court finds that, according to the legislation, the challenged provision **does not provide the parties with equal opportunities in regard to the time period for submitting her/his position regarding the case.** Thus, Part 1 of Article 88 of the RA Administrative Procedure Code prescribes that the applicant **may change the grounds and (or) the subject matter of the claim during the preliminary hearing or within seven days after the receipt of the decision of the Administrative Court on the assignment of the trial, whereas the respondent may file a counterclaim only before the assignment of the trial.**

8. According to Part 1 of Article 61 of the RA Constitution: everyone shall have the right to effective judicial protection of her/his rights, and according to Part 1 of Article 63: everyone shall have the right to a fair and public hearing of her/his case within a reasonable period by an independent and impartial court.

According to the legal position challenged in this Case, filing a counterclaim in administrative proceedings is possible only before the assignment of the trial. Completely different legal regulation is stipulated by **Article 96 of the RA Civil Procedure Code**, which provides that a counterclaim can be filed before the adoption of a judgment on the case.

Both civil and administrative proceedings are based on the principles of publicity and equality of parties, and in both cases the constitutional legal requirement to consider the case within a reasonable period exists.

By the Decision DCC-1257 of 10 March 2016, the RA Constitutional Court reaffirmed the legal positions - expressed in a number of previous Decisions, in particular in the Decisions DCC-1127, DCC-1190 and DCC-1222 - on the right to a fair trial and the right of access to a court, and within the framework of the judicial protection of the rights and freedoms of a person - deriving from Articles 61 and 63 of the RA Constitution with Amendments through 6 December 2015 – the Court considers that: “... no peculiarity or procedure may hinder or prevent the effective exercise of the right to a court, make senseless the right to the judicial protection guaranteed by the RA Constitution or become an obstacle for its implementation.” It was also stressed

that “no procedural peculiarity may be interpreted as justification for limiting the right of access to a court guaranteed by the RA Constitution ...”

The Constitutional Court considers that the constitutionality of the provision in dispute must also be assessed taking into account the given legal position.

9. Both the Constitutional Court and the European Court of Human Rights have repeatedly emphasized that the access to a court may have certain procedural and temporal restrictions, which, however, should not distort the very essence of this right.

The purpose of establishing the procedural time periods is to regulate the proceedings of the case and to implement it in the shortest time periods.

The institutions of procedural time periods and counterclaim are interrelated, and the filing of a counterclaim must also be envisaged at a stage where the parties to the proceedings were given a reasonable time period to develop their legal position.

The Constitutional Court considers it necessary to note that in the administrative proceedings, the legislator does not establish a certain time period for the assignment of the trial of the case. The Administrative Court issues a decision on the assignment of the trial of the case, when considers that the case is prepared for trial (Article 90 of the Administrative Procedure Code).

According to Part 1 of Article 86 of the RA Administrative Procedure Code, the respondent shall be obliged to submit the response to the claim to the Administrative Court within **two weeks** after the receipt of the decision on accepting the claim for examination. The same Article also provides for the right of the court to establish a **longer time period** for sending the response, or, upon the respondent’s motion, to **extend** the time period for submission of the response, **based on the circumstances of the case**. In addition, according to Part 8 of the same Article, the non-submission of the response may be regarded by the Administrative Court as acceptance of the facts - stated by the applicant - by the respondent, and according to Part 9, the filing of a counterclaim does not release the person from the obligation to submit a response to the claim.



According to Article 89 of the RA Administrative Procedure Code, when preparing the case for trial, the Administrative Court - after the receipt of the respondent's response to the claim, and in case of non-receipt of it, after the expiration of the time period provided for sending the response – **may** convene more than one preliminary hearings for the effective conduct of the trial, and in the course of those hearings the Court, inter alia, determines the grounds and the subject matter of the claim, sets the time periods for the submission of evidence, decides on the issues providing evidence or counterclaim, as well as other motions of the parties.

Only after the completion of the given procedural actions, the court **may** consider the case as prepared and assign the hearing. Such a legislative regulation makes the implementation of **the right of access to a court and the right to a fair trial directly depend on the discretion of the judge regarding the convening of a preliminary hearing and the assignment of a hearing. Moreover, law enforcement practice shows that the current legal regulation also emerges legal uncertainty for the applicant in the aspect of manifestation of legitimate behavior.**

In a number of decisions (DCC-630 and DCC-1142), the RA Constitutional Court addressed the principle of legal certainty, and finds that the latter is necessary in order that the participants of the relevant relations might be reasonably able to foresee the consequences of their behavior and be convinced of the immutability of their officially recognized status, as well as the acquired rights and obligations.

The Constitutional Court also considers it necessary to note that Part 3 of Article 87 of the RA Administrative Procedure Code prescribes that the counterclaim shall be filed in accordance with the general rules for filing a claim. The acceptance or return of the counterclaim for examination, or the rejection to accept the counterclaim for examination shall be carried out in the manner prescribed by Articles 78-80 of the same Code. The acceptance of the counterclaim shall be also rejected, in case it does not meet the requirements of Parts 1 and 2 of the same Article, i.e. **in case it is filed after the assignment of the trial of the case, or in case it is not interrelated with the initial claim.**

Such legal regulation can be a reason for different interpretation in judicial practice, since in one case the legislator considered the missing of the time period as grounds for directly rejecting the claim, however

in the same Article the legislator referred to Article 79 of the Code, according to Point 6 of Part 1 of which: in case the time period for filing the claim is missed and no motion for its restoration is submitted, the acceptance of the claim shall not be rejected, and the claim shall be returned.

In addition, despite the fact that Article 54 of the RA Administrative Procedure Code provided **for the possibility of restoring the procedural time periods - missed** by the participants in the proceedings for due reasons - **by filing a motion to the Administrative Court, nevertheless, in terms of the above mentioned legal regulation, it is unclear how applicable the latter is in the case of a counterclaim.**

The argument of the Respondent - that in case of rejection of a counterclaim, the respondent has the opportunity to file a claim on general grounds - cannot be considered justified, since the effective implementation of the institution of the counterclaim is not guaranteed, and the initiation of a separate claim cannot ensure the effectiveness of judicial protection and guarantee the hearing of the case within a reasonable period.

Based on the review of the Case and being governed by Point 1 of Article 100 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64, 68 and 69 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare Part 1 of Article 87 of the RA Administrative Procedure Code contradicting Part 1 of Article 61 and Part 1 of Article 63 of the RA Constitution and void in regard to the part of the provision “prior to the assignment of the trial of the case.”

2. Pursuant to Part 3 of Article 102 of the Constitution of the Republic of Armenia and Part 15 of Article 68 of the Law of the Republic of Armenia on the Constitutional Court, to determine 1 December 2016 as deadline for invalidating the legal norm declared contradicting the Constitution of the Republic of Armenia by this Decision, thus allowing the National Assembly of the Republic of Armenia and the Government of the Republic of Armenia, in the scopes of their powers, to align the legal regulation of Part 1 of Ar-

article 87 of the RA Administrative Procedure Code with the requirements of this Decision.

3. Pursuant to Point 9.1 of Part 1 of Article 64 and Part 12 of Article 69 of the RA Law on the Constitutional Court, the final judicial act rendered against the Applicant is subject to review due to new circumstances, in accordance with the procedure provided for by law.

4. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia this Decision is final and enters into force from the moment of the announcement.

**Chairman**

**G. Harutyunyan**

**June 23, 2016  
DCC-1289**