
COMPARATIVE STUDY OF THE US TAX COURT AND THE ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

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INTRODUCTION

“The diversity of laws in the modern world is a fact.”¹ Nevertheless, the present stage of the development of the legal systems, as well as the existence of hybrid (mixed) legal systems, shows that the compound institutes of these two legal families have not only differences but also many similarities.

This article is aimed at analysing several questions of one of the United States specialized courts - the US Tax Court - and the unique specialized court of Armenia - the Administrative Court of the Republic of Armenia.

The article starts with an *Introduction* followed by two chapters titled *Historical Background and the Current State of the US Tax Court and the Administrative Court of the Republic of Armenia* and *the Constitutional Bases of the Creation of the US Tax Court and the Administrative Court of the Republic of Armenia*, ending with the *Conclusion and Bibliography*.

The first chapter highlights the stages of development of the Tax Court and the Administrative Court of the Republic of Armenia (hereinafter Administrative Court of RA) up to the present day status. In particular, it focuses on the historical background of the courts and their present day status. At the same time, the two courts are compared and contrasted in terms of their differences and similarities.

The second chapter analyses the constitutional bases of both the US Tax Court’s and the Administrative Court of the Republic of Armenia, focusing on the constitutional norms underlying the creation and acting of the courts. This chapter will also present common similarities and the differences of the constitutional bases of the courts.

1. Historical Background and Current State of the US Tax Court and the Administrative Court of the Republic of Armenia (Differences and Similarities)

US Tax Court: The US Constitution defines that “[t]he Congress shall have power to lay and collect taxes, duties, imposts and excises, ... [t]o constitute tribunals inferior to the Supreme Court” (US Constitution, Article 1, Section 8).² The United States Tax Court is “established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court.”³ Ac-

¹ **Rene David** and **John E. C. Brierley**, *Major Legal Systems in the World Today*, (The Free Press, A Division of Macmillan Publishing Co., Inc., New York, 1978), p. 17.

² U.S. Constitution, Article I, Section 8.

³ USC collection / 26 / § 7441, available at <http://www.law.cornell.edu/uscode/26/7441.html> (last visited in September 2009).

According to this article, it is clear that “[t]he United States Tax Court is a constitutional court devoted exclusively to federal tax cases.”⁴

Tax Court is a separate and distinct court having its own rules of practice, acting “much like a federal district court sitting without a jury.”⁵

Tax Court passed through several stages to reach the present day status. It was established as an administrative body in the executive branch (“independent agency within the executive branch”) in 1924⁶, and it “was not a part of the judicial branch, and was not included in the federal court system.”⁷ At that time it was acting as Board of Tax Appeals established in 1924.⁸ “The function of the board was to provide a forum for taxpayers to challenge proposed assessments by the Bureau of Inland Revenue (now the Internal Revenue Service) without having to pay the disputed amount first (Appeal of Everett Knitting Works, 1 B.T.A. 5, 6 (1924)).”⁹

In 1942, Congress changed the name of the Board of Tax Appeals to the Tax Court of the United States changing the designation of its Board “members” to “judges.”¹⁰ “The change of name effected by the 1942 legislation ... remained for a new generation of Tax Court judges to attempt once again to obtain recognition of the fact that the Tax Court was a court, not an agency of the executive branch.”¹¹ However, as Fahey suggests (2003), the status of the Tax Court remained that of an independent agency in the executive branch (I.R.C. 1100 (1942)).¹²

Furthermore, by the 1969 Tax Reform Act, the Tax Court’s status was elevated to that of an Article I court, as opposed to an executive branch agency and “[t]he official name was also changed to the United States Tax Court”¹³ “following the general form by which federal courts are named.”¹⁴ These changes, thus, made it clear that “[t]he Tax Court cases are reviewable by the circuit courts on the same basis as non-jury district court cases (I.R.C. 7482 (2000)).” Moreover, it should be mentioned that the court now possessed “contempt authority and may compel discovery from non-parties.” Yet, as an Article I court, Tax Court judges still do not enjoy lifetime tenure or guaranteed salary.¹⁵

As for the construction of the US Tax Court, it consists of 19 judges who are appointed by the President of US for a term of 15 years. These appointments are

⁴ **Marshal W. Taylor, Karen J. Simonson, Marc J. Winter, Brian J. Seery**, *Tax Court Practice* 8th ed., (Philadelphia, Pa.: American Law Institute-American Bar association Committee on Continuing Professional Education, 1993), p. 1.

⁵ *Ibid*, p. 4-5.

⁶ **Stephen C. Gara**, *Challenging the Finality of Tax Court Judgment: When Is Final Not Really Final?* 20 **Akron Tax J.** 35 (2005), p. 39; Regarding the US Tax Court development, see also Gregory Germain, *Discharging Their Duty: A Critical Assessment of the Tax Court’s Refusal to Consider Bankruptcy Discharge Questions*, 23 *Va. Tax Rev.* 531 (Winter 2004), p. 538.

⁷ **Marshal W. Taylor et al.**, see *Supra* no. 4, p 5.

⁸ *Ibid*, p. 5.

⁹ **Stephen C. Gara**, see *Supra* no. 6, p. 40.

¹⁰ **Diane L. Fahey**, *The Tax Court’s Jurisdiction over Due Process Collection Appeals, Is It Constitutional?* 55 *Baylor L. Rev.* 453 (Spring 2003), p. 482-483.

¹¹ **Harold Dubroff**, *The United States Tax Court –An Historical Analysis* (Commerce Clear. House, Inc.1979), p. 204.

¹² **Diane L. Fahey** see *Supra* no 10,p. 483.

¹³ **Stephen C. Gara**, see *Supra* no. 6, p. 40.

¹⁴ **Harold Dubroff**, see *Supra* no. 11, p. 213.

¹⁵ **Stephen C. Gara**, see *Supra* no. 6, p. 40.

made by and with the advice and consent of the US Senate.¹⁶ There are also senior judges and special trial judges. Chief Judge selects Special Trial Judges who examine cases “involving deficiencies of less than \$10,000.” All of the judges, including Special Trial Judges, have expertise in the tax law “acquired from prior private practice, government service, or a combination of both.”¹⁷ So, “trial sessions are conducted and other work of the Court is performed” by them.¹⁸

As set forth in § 7445 of the IRC, “the principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States.”¹⁹ The Tax Court also possesses “nationwide service of process and subpoena powers.”²⁰ The cases are heard either in Washington, D.C., where the court is headquartered, or in certain other cities that are “more convenient to the petitioners in the tax controversy.”²¹ At present, the Tax Court hears cases in eighty cities visiting thirty-four cities annually for trials.²²

The Subject Matter Jurisdiction of the US Tax Court: According to Germaine (2004, p. 537) “jurisdiction is the court’s power to decide a case.”²³ The jurisdiction of the US Tax Court is mostly regulated by the norms of the Internal Revenue Code (“IRC”)²⁴ and the Tax Court Rules (“TCR”)²⁵.

The US Tax Court is the principal court, in which taxpayers adjudicate tax disputes with the federal government. Moreover, taxpayers have an alternative and they can file the petition either in a federal district court or the US Court of Federal Claims.²⁶ The privilege of claiming to the US Tax Court is that the taxpayer does not have an obligation of first paying off the amount of tax liabilities.²⁷ It means, the taxpayer, may claim to the US Tax Court without having to pay any tax liabilities.

In general, the jurisdictional statute of the Tax Court provides for more limited powers than that of the other courts. As stated by Taylor et al (1993 p.13-14),²⁸ “in the Tax Court, litigation is limited to those areas of the tax law in which the Tax

¹⁶ USC collection / 26 / § 7443 (a) and (b), available at <http://www.law.cornell.edu/uscode/26/7443.html> (last visited in September 2009).

¹⁷ **David Laro**, *The Evolution of the Tax Court as an Independent Tribunal*, U.Ill. L. Rev. 17 (1995), p. 25.

¹⁸ United States Tax Court, available at <http://www.ustaxcourt.gov/about.htm> (last visited in September 2009).

¹⁹ USC collection / 26 / § 7445, available at <http://www.law.cornell.edu/uscode/26/7445.html> (last visited in September 2009).

²⁰ **David Laro**, see *Supra* no 17, p. 24.

²¹ *Ibid.*

²² *Ibid.*

²³ **Gregory Germain**, *Discharging Their Duty: A Critical Assessment of the Tax Court’s Refusal to Consider Bankruptcy Discharge Questions*, 23 Va. Tax Rev. 531 (Winter 2004), p. 537.

²⁴ USC collection, Title 26 (Internal Revenue Code), available at <http://www.law.cornell.edu/uscode/> (last visited in September 2009).

²⁵ United States Tax Court: Rules of Practice and Procedure, available at <http://www.ustaxcourt.gov/notice.htm> (last visited in September 2009).

²⁶ About the jurisdiction of the federal courts see “The Federal Court System in the United States” An Introduction for Judges and Judicial Administrators in Other Countries, 2nd edition, 2001, p. 16-17.

²⁷ **David Laro**, see *Supra* no 17, p. 19. Martin D. Ginsburg, *United States Claims Court Symposium: Commentary: The Federal Courts Study Committee on Claims Court Tax Jurisdiction*, 40 Cath. U.L. Rev. 631 (Spring 1991), p. 633.

²⁸ **Marshal W. Tayloret al.** see *Supra* no 4, p. 13-14.

Court specifically has been given jurisdiction by Congress”. Yet, as Tailor et al suggest, no ready reference is provided in one single area of the Code, maintaining that “a better starting point may be found in the Tax Court’s Rule 13, which enumerates some of the grants of the court’s jurisdiction” (1993 p.13-14).²⁹ As set forth in the Internal Revenue Code, “[t]he common thread linking all of the Tax Court’s jurisdictional grants is that, for the most part, subject matter jurisdiction attaches only to a controversy brought within strict and unqualified time limits.”³⁰

Therefore, the US Tax Court jurisdiction includes the following types of cases that it can examine: Income Tax 13(a); Gift Tax 13(a); Estate Tax 13(a); Certain Excise Taxes 13(a); Transferee Liability 13(a); Declaratory Judgment (includes qualification of certain pension plans, values of certain gifts, status of certain government obligations, an estate’s qualification for installment payments under IRC §6166, and qualification of certain exempt organizations) 210(c); Certain Disclosure Actions 220(c); Adjustment of Partnership Items of a “TEFRA” Partnership 240(c); Administrative Costs under IRC §7430(f)(2) 270(c); Review of IRS’s Failure to Abate Interest under IRC §6404(e) 280(b); Bankruptcy Cases (the taxpayer must ask the Bankruptcy Court, under Bankruptcy Code §362(d)(2), to lift the automatic stay so that the taxpayer may file a petition with the Tax Court) 13(e); Determination of Worker Classification (Employment Status) under IRC §7436 290(b); Determination of “Innocent Spouse” Relief 320(b); Certain Lien and Levy Actions under IRC §§6320(c) and 6330(d) (“Collection Due Process” cases) 330(b).³¹

At the same time, there are three criteria that should exist for the Tax Court to have jurisdiction to determine the disputes. These criteria are: 1) The type of item in dispute; 2) Procedural prerequisites; 3) Time limitations.³²

In this case, we can bring an example connected with income, gift or estate tax deficiencies (the item in dispute), which are within the jurisdiction of the US Tax Court provided that the taxpayer received a notice of deficiency (the procedural prerequisite) and filed a petition with the court the required time (time limitation).³³

Similarly, the Tax Court has jurisdiction over a dispute involving an IRS levy or notice of federal tax lien (the item in dispute) provided that the taxpayer received an “adverse determination with respect to a properly filed request for a Collection Due Process hearing (the procedural prerequisite) and the taxpayer filed a petition with the Tax Court within the required time (the limitation).”³⁴

²⁹ Ibid.

³⁰ Ibid.

³¹ **David M. Fogel**, EA, CPA, *U.S. Tax Court –An Overview of Rules and Procedures* January/February 2003, California Enrolled Agent, p. 25-26. About the US Tax Court jurisdiction see also Brian Isaacson and Karen Phu *Tax Court Jurisdiction and Code Sec. 6330 Challenges: A Need for Clarification* Journal of Tax Practice and Procedure, CCH Draft February-March 2008, p. 27-37.

³² Tax Law Center, Tax Court Jurisdiction, available at http://www.taxlawcenter.com/index.php?option=com_content&view=article&id=33:tax-court-jurisdiction&catid=23:courts-other&Itemid=12 (last visited in September 2009).

³³ IRC 6213(a), available at http://www.taxalmanac.org/index.php/Internal_Revenue_Code:Sec_6213_Restrictions_applicable_to_deficiencies%3B_petition_to_Tax_Court, TCR 13 (a)(1), available at <http://www.ustaxcourt.gov/notice.htm> (last visited in September 2009).

³⁴ See *Supra* no 32.

At the same time, it is important that “[t]he taxpayer generally bears the burden of proof before the Tax Court. Tax Court Rule 142(a) contains this general rule. Although the burden of proof is generally born by the taxpayer, the IRS bears the burden of proof with respect to “alleged fraud, new issues, items that raise or increase a previously determined deficiency amount, or items with respect to affirmative defences pleaded in the answer.”³⁵

It follows, then, that the principal body which solves the tax disputes - the US Tax Court – has been in evolving development since its creation in 1924 up to present day.

Administrative Court of the Republic of Armenia: On July 5, 1995 the Constitution of the Republic of Armenia was adopted separating the three powers – executive, legislative and judicial in accordance with basic principles of democracy and rule of law.³⁶ This was the first step for the reforms of legal and judicial systems.

On November 8, 1996, the President of the RA signed and promulgated the decree “On Judiciary Reforms of the Republic of Armenia.”³⁷ In 1998, the National Assembly of RA passed laws on “Formation of Courts”,³⁸ “On the Judge Status”,³⁹ “On Prosecution”,⁴⁰ “On Solicitor Service”,⁴¹ “On Court of Arbitration and Arbitration Procedures”,⁴² “On Compulsory Implementation of Judiciary Acts”,⁴³ “On the Service Providing the Compulsory Implementation of Judiciary acts”,⁴⁴ RA Codes of Criminal and Civil Procedures,⁴⁵ RA Civil Code.⁴⁶

Hence, a new judicial system was formed according to the RA legislation. A new three-levelled judicial system was established to replace the previous two-level system.

The constitutional amendments of November 27, 2005 gave start to the second step of the judicial reforms. One can state that at the end of this reform Armenia’s judicial system “will stand on a new level of impartiality, independence and

³⁵ **David Laro**, see *Supra* no 17, p. 25.

³⁶ Constitution of the Republic of Armenia of 1995 (Article 5), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

³⁷ The decree of President of the RA “On judiciary reforms of the Republic of Armenia” (November 8, 1996), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

³⁸ Law on “Formation of Courts” of RA (August 18, 1998), available at <http://www.laws.am> (last visited in September 2009).

³⁹ Law on “The Judge Status” of RA (June 17, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴⁰ Law on “Prosecution” of RA (July 01, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴¹ Law on “Solicitor Service” of RA (June 18, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴² Law on “Court of Arbitration and Arbitration Procedures” of RA (May 05, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴³ Law on “Compulsory Implementation of Judiciary Acts” of RA (May 05, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴⁴ Law on “The Service Providing the Compulsory Implementation of Judiciary acts” of RA (May 05, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴⁵ RA Code of Criminal Procedure (July 01, 1998) and RA Code of Civil Procedure (June 17, 1998), available at <http://www.laws.am> (last visited in September 2009).

⁴⁶ RA Civil Code (May 05, 1998), available at <http://www.laws.am> (last visited in September 2009).

effectiveness of judiciary power.”⁴⁷ Thus, according to Article 5 of the Constitution, “the state power shall be exercised in conformity with the Constitution and the laws based on the principle of the separation and balance of the legislative, executive and judicial powers.”⁴⁸ The new Constitution also established provisions of securing the judiciary power’s independence, secured by “the principles confirming the new order of judge appointments.”⁴⁹

The principles, purposes about judiciary power and particularly about the Administrative Court of RA as the specialized judicial body were specified and confirmed in the “most important normative document of the second phase of judiciary reforms, RA Judicial Code (pronounced on April 18, 2007)”⁵⁰ and the Code of Administrative Proceedings of RA (pronounced on November 28, 2007)⁵¹.

The Administrative Court of RA started its function in 2008. The Court has jurisdiction over the public issues that involve as parties on the one side a state body and on the other side a private party.

According to the Code of Administrative Proceedings, a case is examined by a single judge when it is applied to the court for the first time, except for the cases provided by law. A case is examined by a committee of three judges if the issue is connected with interim acts of the Administrative Court of RA as well as cases concerning the substantive judicial acts of the Administrative Court of RA that were remanded by the Court of Cassation of RA (Article 9(1 and 3))⁵². The interim acts of the Administrative Court of RA are enforced at the moment of statement and the substantive judicial acts of the Administrative Court of RA entered into force one month after its declaration (Article 115)⁵³. According to Judicial Code of RA (Article 35(2)), “judgments of the administrative court may be appealed only through a cassation procedure. In cases stipulated by the Code of Administrative Proceedings, the administrative court shall make judicial acts that shall be final and not subject to appeal.”⁵⁴

As set forth in Judicial Code of RA (Article 37), “the administrative court shall function with a court chairman and 19 judges. The central seat of the administrative court shall be in the City of Yerevan. The administrative court shall have other seats in the Marzes.”⁵⁵

⁴⁷ American Bar Association Rule of Law Initiative and the USAID, The Judiciary of Armenia, available at <http://www.court.am/?l=en> (last visited in September 2009).

⁴⁸ Constitution of the Republic of Armenia of 1995 (Article 5), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁴⁹ American Bar Association Rule of Law Initiative and the USAID, The Judiciary of Armenia, available at <http://www.court.am/?l=en> (last visited in September 2009).

⁵⁰ Ibid.

⁵¹ Code of Administrative Proceedings of RA, available at <http://www.laws.am> (last visited in September 2009).

⁵² Code of Administrative Proceedings of RA (Article 9(1 and 3)), available at <http://www.laws.am> (last visited in September 2009).

⁵³ Code of Administrative Proceedings of RA (Article 115), available at <http://www.laws.am> (last visited in September 2009).

⁵⁴ Judicial Code of RA (Article 35(2)), available at <http://www.laws.am> (last visited in September 2009).

⁵⁵ Judicial Code of RA (Article 37), available at <http://www.laws.am> (last visited in September 2009).

Thus, the Administrative Court of RA consists of 19 judges and the Chairman. The Court's staff is considered to be a subdivision of RA judicial department that guarantees the working process of the court.

The Subject Matter Jurisdiction of the Administrative Court of RA As already has been stated the Court has jurisdiction overall issues in which one of the parties is the state, except for the issues that must be dealt by the Constitutional Court.

According to the Judicial Code of RA "Administrative courts shall have substantive jurisdiction to hear cases stipulated by the Code of Administrative Proceedings."⁵⁶

Each legal and physical person has the right to apply to the Administrative Court of RA if he/she considers that the actions or inactions of the state or local self-governmental bodies as well as of their employees resulted in: 1. the violation or potential violation of his/her rights and freedoms guaranteed by RA Constitution, international treaties that Armenia is a party to, laws or other legal acts; 2. non-proportionate burden of obligations; 3. administrative sanctions that were applied illegally.⁵⁷

Administrative bodies as well as officials have also the right to apply to the Administrative Court of RA for: 1. suing a physical or legal person who is in violation with Code on Administrative Infringements if it is provided by law that only the court has the right to put administrative sanctions; 2. depriving physical or legal persons of some of their rights or putting additional obligations on them if it is demanded to be done so only by the court; 3. confiscation of physical or legal persons' possessions based on an administrative act; 4. suing another administrative body if their case cannot be solved within the administrative bodies (Code of Administrative Proceedings of RA (Article 3(2)).⁵⁸

State and local self-government authorities or officials can apply to the Administrative Court of RA against administrative authority, if they find, that the state or community rights, competence of protection of which is on the applicant's responsibility and if that dispute is not within the jurisdiction to solve by superiority order, can be violated directly or by the authority's administrative acts, actions and inactions (Code of Administrative Proceedings of RA (Article 3(3)).⁵⁹

As a matter of fact, the Administrative Court of RA examines disputes inferred from public legal relationships, that is, a dispute, involving, on the one hand is the authority, which has an administrative power, and, on the other hand, a subject of a private law.⁶⁰

As to the jurisdiction of the Administrative Court of RA, all actions inferred from public legal relationships are within the jurisdiction of the Administrative

⁵⁶ Judicial Code of RA (Article 35), available at <http://www.laws.am> (last visited in September 2009).

⁵⁷ Code of Administrative Proceedings of RA (Article 3), available at <http://www.laws.am> (last visited in September 2009).

⁵⁸ Code of Administrative Proceedings of RA (Article 3(3)), available at <http://www.laws.am> (last visited in September 2009).

⁵⁹ Code of Administrative Proceedings of RA (Article 3(3)), available at <http://www.laws.am> (last visited in September 2009).

⁶⁰ "The Judiciary of Armenia", The Administrative Court of Armenia available at <http://www.court.am> (last visited in September 2009).

Court of RA, among them are: 1. disputes, related to the implementation and being taken into an administrative or alternative service; 2. disputes between administrative authorities, which are not within the jurisdiction to solve in superiority order; 3. the actions related to the disputes to stop or to suspend the activity of the unions acting or having a purpose to act in the sphere of a social law, including trade unions; 4. the actions related to issuing payment order, which infers from public legal relationships.⁶¹

The actions which are not within the jurisdiction of the Administrative Court of RA are: 1. the actions reserved within the jurisdiction of the constitutional court; 2. the actions inferred from legal relationships during criminal proceedings; 3. criminal actions reserved within the jurisdiction of general capacity or criminal court; 4. the actions inferred from legal relationships brought up during bankruptcy proceedings (Code of Administrative Proceedings of RA (Article 3(3)).⁶²

It is also important to mention that “[a]ny person participating in the case must prove the considerations on which one’s demands and objections are based.”⁶³ At the same time, “[w]hen trying the application for considering null and void the act of the state body, local self-government body or its officials, the burden of proving the circumstances which where the grounds for the adoption of the act is on the body which adopted the act or its official.”⁶⁴

So, it should be mentioned that until its formation, the Administrative Court of RA underwent a different process, than the US Tax Court. First of all, it has been formed officially as a specialized court in judicial system of RA as stipulated by RA Constitution⁶⁵ in contrast to the US Tax Court, which has evolved from being a part of administrative authority to federal judicial system link. This circumstance is yet another evidence that the decision of the court is more respected than the decision of other authorities, including the authorities of the executive power in the countries of the Common Law. The transfer of the tax cases examination to a specialized court is an indicator of a change of the attitude towards those cases.

⁶¹ Code of Administrative Proceedings of RA (Article 3(3)), available at <http://www.laws.am> (last visited in September 2009).

⁶² Code of Administrative Proceedings of RA (Article 3(3)), available at <http://www.laws.am> (last visited in September 2009), about several questions connected with the jurisdiction of the Administrative Court of RA see Sergey Meghryan, *The subject matter jurisdiction of the Administrative Court with regard to challenging the legality of normative legal acts*, Collection of Materials of Scientific Conference, Yerevan Press, Yerevan, 2008, p. 65-73, **Sergey Meghryan**, *On the peculiarities of administrative procedures on challenging the legality of normative legal acts*, Problems of Jurisprudence N 1-2, Yerevan, 2008, p. 25-29, **Sergey Meghryan**, *Right to effective remedies and the problem of legal consequences of a judicial act on challenging the legality of a normative act*, Collection of materials of scientific-practical Conference devoted to the 60 anniversary of Declaration of Human Rights, Universal Declaration of Human Rights and the Right of Each Individual to Fair, Independent and Impartial Trial. Yerevan, «Tigran Mets Press, 2008, pp. 82-94.

⁶³ Code of Administrative Proceedings of RA (Article 25(1)), available at <http://www.laws.am> (last visited in September 2009).

⁶⁴ Code of Administrative Proceedings of RA (Article 26(3)), available at <http://www.laws.am> (last visited in September 2009).

⁶⁵ At the same time the Administrative Court of RA is not the only specialized court in the history of the third republic of RA, Economic Court of RA had preceded it, which was examining those economic disputes, which were brought up in the sphere of commercial activity, among them disputes related to the acts, actions and inactions of tax authorities.

As for Armenia, it should be mentioned that RA Constitution has a provision, according to which “Everyone shall have a right to restore his\her violated rights, and to reveal the grounds of the charge against him\her in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent or impartial court within a reasonable time (Article 19).⁶⁶

In this regard, it can be inferred that the reservation of the priority of dispute examination to the court provides additional impetus to raising confidence and to adding respect towards the court and by which it manifests the influence of a common law on a judicial system of RA.

Also, a noteworthy circumstance is how the judges in the US Tax Court and the Administrative Court of RA are appointed.

If the judges of the Administrative Court of RA or other courts are appointed in common order and for lifetime (till the age of 65)⁶⁷ in RA, judges of the US Tax Court are appointed only for 15 years, which is conditioned by the interplay between the first and the third articles of the Constitution. At the same time, in contrast to the Tax Court (Special Trial Judges), only judges appointed by the president of the country act in the Administrative Court of RA, regardless of the total amount of an examined claim. It infers from RA Constitution according to which “in the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitutions and the laws”⁶⁸ as well as the President of RA “shall appoint the presidents and the judges of the Court of Cassation and its chambers, the appeal, first instance and specialized courts”⁶⁹. That is to say, no exception is stipulated and the chairman of the court cannot appoint or discharge judges on his initiative, the way it is practiced in the US Tax Court.

As for the cases, which can be examined in both courts, it is necessary to mention that the jurisdiction of the Administrative Court of RA includes wider scope, taking into consideration only the circumstance that all the actions inferred from public legal relationships are within the jurisdiction of the examination of the Administrative Court of RA, in which there are actions related to tax legal relationships (including the acts of the verification of tax authorities, litigation of the actions and inactions of tax authority and his officials and so on). At the same time, the Administrative Court of RA does not have an alternative in the question of the examination of the actions. That is to say, if the applicant has a dispute connected with tax relations, he cannot decide to apply to this or that court, for example, for a case related to paying or not paying additional tax liability prior to applying to the court (which is present in the case of the US Tax Court).

⁶⁶ Constitution of the Republic of Armenia of 1995 (Article 19), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁶⁷ Constitution of the Republic of Armenia of 1995 (Article 96 “The Judge... shall be irremovable ... The Judge shall hold their offices until the age of 65. They may be removed from office only in the cases and in the manner prescribed by the Constitution and the law”), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁶⁸ Constitution of the Republic of Armenia of 1995 (Article 91), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁶⁹ Constitution of the Republic of Armenia of 1995 (Article 55(11)), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

It is necessary to mention that:

1. Both the US Tax Court and the Administrative Court of RA have separate legal acts regulating their relations. Taking into consideration the circumstance that RA is a country of a civil law we can show the fact that that legal act is the Code of Administrative Proceedings of RA, which was enacted in 2007.

2. Both the US Tax Court and the Administrative Court of RA examine the cases for the first time only in the staff that is composed of one judge and no jurors, which are proper to a judicial system of USA. During the examination of civil cases the judicial system of USA allows for the participation of jurors.⁷⁰

3. Both judges of the US Tax Court and judges of the Administrative Court of RA are appointed by the head of the state, by the president, of course with some peculiarities, which have been discussed above.

4. It is also important that both the US Tax Court and the Administrative Court of RA can act only within the frameworks allowed by the statutes enacted by Congress in case of the US Tax Court and the law enacted by National Assembly in case of the Administrative Court of RA.

2. The Constitutional Bases of the Creation of the US Tax Court and the Administrative Court of the Republic of Armenia (Differences and Similarities)

US Tax Court: According to the Article III (1) of the US Constitution “judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”⁷¹ “The U.S. Supreme Court, circuit courts, and district courts are all derived from this constitutional provision. A defining characteristic of Article III courts is the guarantee of salary and lifetime tenure for their judges. The use of the word "shall" in the above language would lead one to believe that creation of courts outside of Article III is impermissible. However, Congress has successfully established legislative courts⁷² based upon its Article I authority, whose judges do not enjoy salary and tenure guarantees.”⁷³ Then Article III (2) lists several types of cases to which the judicial power exists (including “controversies to which the United States shall be a party.”)⁷⁴ According to the Constitution of the United States the Congress has no obligation to create inferior federal tribunals, but requires that if Congress chose to do so, the judges must have their salary and tenure protected.⁷⁵

“As far back as 1828, the United States Supreme Court has upheld the use of non-Article III tribunals under certain circumstances.”⁷⁶ Both administrative agencies and legislative courts are included in Non-Article III tribunals and the creation of non-Article III tribunals by the Congress is one of the powers under

⁷⁰ Lloyd Bonfield *American Law and the American Legal System in a Nutshell*, Thompson West, 2006, p. 71-74.

⁷¹ U.S. Constitution, Article III, Section 1.

⁷² About legislative and specialized courts see Louis Fisher *American Constitutional Law*, Carolina Academic Press, 2001, p. 125-126.

⁷³ **Stephen C. Gara**, see *Supra* no 6, p. 38.

⁷⁴ U.S. Constitution, Article III, Section 2.

⁷⁵ **Diane L. Fahey**, see *Supra* no 10, p. 481.

⁷⁶ *Ibid.*

Article I of the Constitution.⁷⁷ So the “Article I courts function as courts in their application of law to facts in order to render opinions; however, their judges do not enjoy salary and tenure protection.”⁷⁸ At the same time “The Tax Court is a creature of statute and it is only by statute that the Tax Court may exercise its authority. Accordingly, the Tax Court may only do as Congress specifically allows.”⁷⁹ “Courts created by statute can have no jurisdiction but such as the statute confers.”⁸⁰

“Between 1943 and 1967, legislation was introduced on a number of occasions to change the Tax Court's status to that of an Article III court. ... As chances for passing legislation to change the Tax Court's status to an Article III court dimmed, Representative Mills introduced an alternative bill in 1969 giving the Tax Court legislative court status under Article I.”⁸¹ As mentioned above the US Tax Court changed from administrative body to a court of record under Article I of the US Constitution.

“In 1974, the Tax Court solidified its independence from the executive branch (and the IRS) by moving its physical location from the National Office of the Internal Revenue Service to its own separate building in Washington, D.C.”⁸²

“Because the Tax Court is an Article I court, Congress cannot empower the Tax Court in any manner it deems fit or expedient without running the risk of violating the principle of separation of powers and aggrandizing power to itself at the expense of the judicial branch.”⁸³

In general “Article I courts possess very limited authority and jurisdiction, so as to ensure they do not encroach on the authority of Article III courts. When Article I court has been determined to possess too much power or authority, its enabling legislation has been struck down as an unconstitutional encroachment of the legislative branch upon the judicial.”⁸⁴ Therefore, Article I courts only have the power to accomplish the aim provided by the legislation. According the Gara for the US Tax Court it is the solution of tax disputes between the public authority and taxpayers (Gara, 2005).⁸⁵ “Further, they do not have “inherent powers” but only such powers as are given to them by statute.”⁸⁶

The authority of the US Congress for establishing Article I courts (a. U.S. possessions and territories, b. military affairs, c. civil disputes between private parties and the United States, and d. other areas where the Article I court serves merely as an adjunct to Article III court, who oversees the former's actions to four areas) has been limited by the US Supreme Court. As the US Tax Court is a resolving court of civil tax disputes between “private parties (taxpayers) and the United States (Internal Revenue Service)” it considers as a category “c” court.⁸⁷

⁷⁷ Diane L. Fahey, see *Supra* no 10, p. 482.

⁷⁸ Diane L. Fahey, see *Supra* no 10, p. 482.

⁷⁹ Stephen C. Gara, see *Supra* no 6, p. 37, also see the pages 56-57.

⁸⁰ William Cohen, Jonatan D. Varat, Vikram Amar, *Constitutional Law, Cases and materials* concise twelfth edition, Foundation Press 2006, p. 37-38.

⁸¹ Diane L. Fahey, see *Supra* no 10, p. 483.

⁸² David Laro, see *Supra* no 17, p. 23.

⁸³ Diane L. Fahey, see *Supra* no 10, p. 483-484.

⁸⁴ Stephen C. Gara, see *Supra* no 6, p. 39.

⁸⁵ Stephen C. Gara, see *Supra* no 6, p. 39.

⁸⁶ Diane L. Fahey, see *Supra* no 10, p. 482.

⁸⁷ Stephen C. Gara, see *Supra* no 6, p. 39.

“The Tax Court's primary function has been to serve as a trial court reviewing determinations of deficiencies in income, estate and gift, or certain excise taxes allegedly owed by the taxpayer.”⁸⁸

Therefore, “The Tax Court's function and role in the federal judicial scheme closely resemble those of the federal district courts, which indisputably are “Courts of Law.” Furthermore, the Tax Court exercises its judicial power in much the same way as the federal district courts exercise theirs.”⁸⁹ The constitutional status and the role in the constitutional scheme of the Tax Court functions has been challenged by the US Supreme Court ... “[a]fter concluding that Article I court, which exercises judicial power, is a court of law within the meaning of the Appointments Clause.”⁹⁰ The Tax Court has judicial power, rather than executive, legislative, or administrative. By resolving the disputes between private parties and state authorities, the court exercises a portion of the judicial power of the United States ... “The Tax Court exercises judicial power to the exclusion of any other function. It is neither advocate nor rule maker. As an adjudicative body, it construes statutes passed by Congress and regulations promulgated by the Internal Revenue Service. It does not make political decisions.”⁹¹

Administrative Court of RA: Unlike the US Tax Court which is the I Article Court (legislative court) of the US Constitution, there is no separation in the judicial system of the Republic of Armenia. Especially according to the 91 Article of the Constitution of the Republic of Armenia “[i]n the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitution and the laws.”⁹² At the same time Constitution declares that “The courts operating in the Republic of Armenia are the first instance court of general jurisdiction, the courts of appeal, the Court of Cassation, as well as specialized courts in cases prescribed by the law.”⁹³ The above mentioned articles have been the bases for the creation of the Administrative Court of RA as a specialized court. In particular, according to the 3rd article of the Judicial Code of the Republic of Armenia “The Administrative Court is a specialized court”.⁹⁴ The 14th article of the Judicial Code repeats the norms of the article 96 of the Constitution of the Republic of Armenia which defines that “A judge shall serve in office until reaching age 65. The powers of a judge whose term of office has expired shall terminate on the day following the judge’s reaching age 65.”⁹⁵

The above mentioned speaks about that circumstances that it is not defined any difference, specificity or limitation for the judges of the Administrative Court of

⁸⁸ **Diane L. Fahey**, see *Supra* no 10, p. 456.

⁸⁹ **Diane L. Fahey**, see *Supra* no 10, p. 456.

⁹⁰ *Ibid*, p. 498. See also Gregory Germain, *Discharging Their Duty: A Critical Assessment of the Tax Court's Refusal to Consider Bankruptcy Discharge Questions*, 23 Va. Tax Rev. 531 (Winter 2004), p. 538.

⁹¹ **Diane L. Fahey**, see *Supra* no 10, p. 499.

⁹² Constitution of the Republic of Armenia of 1995 (Article 91), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁹³ Constitution of the Republic of Armenia of 1995 (Article 92), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁹⁴ Judicial Code of RA (Article 14), available at <http://www.laws.am> (last visited in September 2009).

⁹⁵ Judicial Code of RA (Articles 75-86), available at <http://www.laws.am> (last visited in September 2009).

RA. Both for the judges of the first instance court of general jurisdiction, the courts of appeal, the Court of Cassation and for the judges of the Administrative Court of RA it also exists either irreplaceable of the incumbency or the payment of the appropriate salary and the common system of the other social guarantees (75-86th articles of the Judicial Code of the Republic of Armenia).

CONCLUSION

By concluding the results of the article, at the same time knowing the fact that Common Law and Civil Law are completely formed and independent, can be assumed that in some institutes this separation is vanished.

The analysis shows that historically the process of formation of the Administrative Court of RA was different from the US Tax Court. It was formed as a specialized court within the court system of Armenia. Unlike the Administrative Court of RA, the US Tax Court was created as a part of administrative authority. Therefore, the transfer of the tax cases examination to a specialized court is an indicator of a change of the attitude towards those cases. In the case of Armenia it can be inferred that the reservation of the priority of dispute examination to the court (according to the Article 19 of the RA Constitution)⁹⁶ provides additional impetus to raising confidence and to adding respect towards the court and by which it manifests the influence of a Common law on a judicial system of RA.

Also, there have been different procedures established for appointing the judges in the US Tax Court and the Administrative Court of RA are appointed.

While the judges of the Administrative Court of RA are appointed in common order and for lifetime (which is the age of 65)⁹⁷, judges of the US Tax Court are appointed only for 15 years which is conditioned by the interplay between the first and the third articles of the Constitution. At the same time, in contrast to the Tax Court (Special Trial Judges), only judges appointed by the head of the state act in the Administrative Court of RA, regardless of the total amount of an examined claim. Thus, according to the RA Constitution there can be no exceptions in the process of appointment of the judges which means that the chairman, on his initiative, cannot appoint or remove the judge from the office the way it is practiced in the US Tax Court.⁹⁸

As for the cases, which can be examined in both courts, it is necessary to mention that the jurisdiction of the Administrative Court of RA includes wider scope, taking into consideration only the circumstance that all the actions inferred from public legal relationships are within the jurisdiction of the examination of the Administrative Court of RA, in which there are actions related to tax legal relations (including the acts of the verification of tax authorities, litigation of the actions and inactions of tax authority and his officials and so on).

⁹⁶ Constitution of the Republic of Armenia of 1995 (Article 19), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁹⁷ Constitution of the Republic of Armenia of 1995 (Article 96), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

⁹⁸ Constitution of the Republic of Armenia of 1995 (Article 55(11)), available at <http://www.parliament.am/legislation.php?sel=alpha&lang=eng> (last visited in September 2009).

One of the main differences between the courts is the fact that the Administrative Court of RA does not have an alternative in examination of the actions, which means that whether the applicant has a dispute connected with tax relations, he cannot decide to apply to administrative or some other court (for example, for a case related to paying or not paying additional tax liability prior to applying to the court which is present in the case of the US Tax Court).

Also, it is necessary to mention that: Both the US Tax Court and the Administrative Court of RA have special legal acts regulating their legal status and examine the cases for the first time by one judge and without jurors, both, judges of the US Tax Court and judges of the Administrative Court of RA are appointed by the head of the state (Presidents) as well. It is also important that both the US Tax Court and the Administrative Court of RA can act only within the frameworks prescribed by the statutes enacted by Congress (in case of the US Tax Court) and the law adopted by the Parliament (in case of the Administrative Court of RA.)

The analysis of the constitutional bases of both the US Tax Court and the Administrative Court of RA contain some similarities (e.g. the possibility of the creation of two courts are defined in the US Constitution and the Constitution of RA) also there are serious differences. In particular, it is important that unlike the judges of the US Tax Court the judges of the Administrative Court of RA as well as other judges of the Republic of Armenia enjoy the rights of the appointment, the incumbency, the payment of the salary and the common system of the other social guarantees as well.

ԱՐՄԵՆ ՆԻԿՈՂՈՍՅԱՆ – ԱՄՆ հարկային դատարանի և ՀՀ վարչական դատարանի համեմատական հետազոտություն – Իրավական համակարգերի զարգացման ներկա մակարդակը, ինչպես նաև խառը իրավական համակարգերի գոյությունը ցույց են տալիս, որ աշխարհում առկա երկու հիմնական՝ անգլո-սաքսոնական կամ ամերիկյան (ընդհանուր իրավունքի) և ռոմանագերմանական կամ մայրցամաքային (քաղաքացիական իրավունքի), իրավական համակարգերին բնորոշ ինստիտուտներն ունեն ոչ միայն տարբերություններ, այլև նմանություններ:

Հոդվածում հեղինակը հետազոտել է ԱՄՆ-ում գոյություն ունեցող մասնագիտացված դատարաններից մեկի՝ ԱՄՆ հարկային դատարանի և ՀՀ-ում ներկայումս գործող միակ մասնագիտացված դատարանի՝ ՀՀ վարչական դատարանի գործունեության հետ կապված մի շարք հարցեր:

Հոդվածում ներկայացվում են ԱՄՆ հարկային և ՀՀ վարչական դատարանների ստեղծման և զարգացման փուլերը, նրանց ներկա իրավական կարգավիճակը, վերջիններիս ստեղծման սահմանադրական հիմքերը, ինչպես նաև այն հիմնական տարբերություններն ու նմանությունները, որոնք առկա են հետազոտվող երկու դատարանների միջև: Մասնավորապես, այս երկու դատարանները ունեցել են ստեղծման և զարգացման պատմականորեն տարբեր գործընթացներ (օրինակ՝ ԱՄՆ հարկային դատարանը ստեղծվել է սկզբում որպես վարչական մարմնի բաղկացուցիչ մաս, այնուհետև զարգանալով դարձել, այսպես կոչված, օրենսդրական մարմնի դատարան): Տարբերություններ կան նաև դատավորների նշանակման, նրանց սոցիալական և տնտեսական երաշխիքների տրամադրման,

դատարանների իրավասությանը ենթակա գործերի, ինչպես նաև այդ դատարաններին այլընտրանք ունենալու հետ կապված իրավական լուծումներում: Ինչ վերաբերում է նմանություններին, ապա հեղինակը նշում է, որ դրանք ընդգրկում են երկու դատարանների իրավական հիմքը կազմող կողիֆիկացված իրավական ակտեր ունենալու, գործերն առաջին անգամ քննելիս դատարանի նույնական կազմ ունենալու ոլորտները:

Ուստի, հեղինակը եկել է այն եզրահանգման, որ որոշ դեպքերում ընդհանուր և քաղաքացիական իրավաբանական ինստիտուտների տարբերությունները վերանում են, և ստեղծվում են այնպիսի ինստիտուտներ, որոնք ներառում են թե՛ մեկ և թե՛ մյուս իրավական համակարգերին բնորոշ հատկանիշներ:

АРСЕН НИКОГОСЯН – Сравнительное исследование Налогового суда США и Административного суда РА. – Текущий уровень развития правовых систем, а также существование смешанных правовых систем показывают, что институты основных правовых систем – англосаксонской или американской (общее право) и романогерманской или континентальной (гражданское право), имеют не только различия, но и много сходств.

В статье автор изучает некоторые вопросы, связанные с одним из функционирующих в США специализированных судов – Налоговым судом и Административным судом РА, который в настоящее время является единственным специализированным судом в Армении.

В статье представлены этапы возникновения и развития Налогового суда США и Административного суда РА, их действующий правовой статус, конституционные основы создания данных судов, а также их основные различия и сходства. В частности, исследование показывает, что эти два суда прошли разные исторические процессы возникновения и развития (к примеру, Налоговый суд США был создан как часть административного органа, а по мере развития превратился в так называемый суд законодательного органа, постепенно стремясь стать полноценным судом судебной системы). Существуют определенные различия и в правовых решениях, связанных с назначением судей, в предоставлении социальных и экономических гарантий, юрисдикции судов, а также наличии альтернативы данным судам. Что касается сходств, то они включают в себя сферы, связанные с наличием кодифицированных правовых актов, являющихся правовой основой этих двух судов, а также наличием одинакового состава суда в тех случаях, когда дело слушается в первый раз.

Соответственно в некоторых случаях разделение институтов общего и гражданского права исчезает и создаются институты, включающие в себя признаки, свойственные и той, и другой правовой системе.