



IN THE NAME OF THE REPUBLIC OF ARMENIA

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

**ON THE CASE OF CONFORMITY OF ARTICLE 154,
PART 4 AND ARTICLE 158, PART 5 OF THE RA
ADMINISTRATIVE PROCEDURE CODE
WITH THE CONSTITUTION OF THE REPUBLIC
OF ARMENIA ON THE BASIS
OF THE APPLICATIONS OF THE CITIZENS
ARA SARGSYAN, DVIN ISANYANS,
RUDOLF HOVAKIMYAN,
MAGDA YEGHIAZARYAN, ARAM SARGSYAN
AND KHACHATUR MAROZYAN**

Yerevan

March 3, 2015

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan (Rapporteur), A. Gyulumyan, F. Tokhyan, A. Tunyan, A. Khachatryan, V. Hovhanissyan (Rapporteur), H. Nazaryan, A. Petrosyan, with the participation (in the framework of the written procedure) of A. Zeinalyan, the representative of the Applicants D. Isanyans, R. Hovakimyan, M. Eghiazaryan and A. Sargsyan, Applicants: A. Sargsyan and Kh. Marozyan, representative of the Respondent: H. Sargsyan, official representative of the RA National Assembly, Head of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 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 Article 154, Part 4 and Article 158, Part 5 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the applications of the citizens Ara Sargsyan, Dvin Isanyans, Rudolf Hovakimyan, Magda Yeghiazaryan, Aram Sargsyan and Khachatur Marozyan.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizens Ara Sargsyan, Dvin Isanyans, Rudolf Hovakimyan, Magda Yeghiazaryan, Aram Sargsyan and Khachatur Marozyan consequently on 09.07.2014, 26.09.2014 and 27.12.2014.

By the Procedural Decision PDCC-70 of the Constitutional Court of 09.12.2014, the Case on conformity of Article 154, Part 4 and Article 158, Part 5 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the applications of the citizens Ara Sargsyan, Dvin Isanyans, Rudolf Hovakimyan, Magda Yeghiazaryan, Aram Sargsyan and Khachatur Marozyan and the Case on conformity of Article 154, Part 4 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the citizen Ara Sargsyan were combined.

By the Procedural Decision PDCC-1 of the Constitutional Court of 20.01.2015, the Case on conformity of Article 154, Part 4 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the citizen Khachatur Marozyan and the Case on conformity of Article 154, Part 4 and Article 158, Part 5 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the applications of the citizens Ara Sargsyan, Dvin Isanyans, Rudolf Hovakimyan, Magda Yeghiazaryan and Aram Sargsyan were combined.

Having examined the written reports of the Rapporteurs on the Case, the written explanations of the Applicants and the Respon-

dent, 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 December 5, 2013, signed by the RA President on December 28, 2013 and came into force on January 7, 2013.

Article 154, Part 4 of the RA Administrative Procedure Code prescribes: “Natural and legal persons may submit cassation claim only via lawyer.”

Article 158, Part 5 of the RA Administrative Procedure Code prescribes: “A document confirming payment of state due in accordance with the order and amount prescribed by law and the proof of sending the copy of the appeal to the court which tries the case and to the parties of the case and the electronic version (electronic carrier) of the cassation claim.”

Since the adoption of the RA Administrative Procedure Code, Article 154, Part 4 and Article 158, Part 5 were not amended.

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

2.1. Dvin Isanyan’s Application

On 20.11.2013 the Police submitted a claim to the RA Administrative Court against the Applicant with a demand to subject the latter to administrative liability.

On 09.01.2014 on the behalf of the Applicant a counterclaim worded “On reclining the claim on subjecting to administrative liability Dvin Isanyans by the Central Department of the RA Police of Yerevan City, recognizing the fact of violating the right to free expression, expression of free opinion and formation of alliances (freedom of peaceful gatherings), freedom of movement, personal freedom and immunity and recognizing the actions of the police as illegitimate” was submitted to the Administrative Court against the Police.

On 20.01.2014 the Administrative Court by the decision on re-

turning the counterclaim refused to admit the counterclaim which was appealed in the RA Administrative Appeal Court. The latter, by the decision on declining the motion on recovery of the missed procedural timeline and declining admission of the appeal refused to admit the appeal.

The Applicant submitted the cassation claim in person, and regarding which the RA Court of Cassation by the decision on returning the cassation claim dated 26.03.2014 returned the cassation claim with the reasoning that the electronic version of the claim and the license of the lawyer was not attached to the claim. The Applicant was provided with one month period to re-submit the claim.

Regarding the re-submitted cassation claim, the RA Court of Cassation by the decision on leaving the cassation claim without consideration dated 29.05.2014 refused to consider the cassation claim with the following reasoning: “In this case the Court of Cassation states that by the decision of the Civil and Administrative Chamber of the RA Court of Cassation dated 26.03.2014 the cassation claim submitted by Dvin Isanyans was returned and, simultaneously, date for correcting the errors and re-submitting the cassation claim were prescribed. Meanwhile, Dvin Isanyans corrected the errors partially, in particular the cassation claim was not submitted via the lawyer, as well as, the license (certificate on advocate activity) defined in accordance with the order was not submitted and, simultaneously, the Applicant in the re-submitted cassation claim did not sufficiently mention which norms of the material or procedural right were violated or implemented wrongly and did not substantiate its impact on the outcome of the case and submitted the cassation claim with the same substantiation and the Court of Cassation had already made a decision on the given cassation claim.”

2.2. Magda Yeghiazaryan's Application

Magda Eghiazaryan submitted a motion to the RA Administrative Court to eliminate the violation made in the claim for considering the missed timelines for valid reasons and to recover it.

The Administrative Court refused the submission of the motion and the claim.

The Applicant submitted an appeal which was refused likewise.

The Applicant submitted a cassation claim.

By the decision on administrative case ՎԴ/1178/05/13 on returning the cassation claim the Court of Cassation on 05.03.2014 returned the Applicant's appeal substantiating that the electronic version of the claim and the license of the lawyer was not attached to the claim. The Applicant was provided with one month period to re-submit the claim.

Regarding the re-submitted cassation claim, the RA Court of Cassation by the decision on dismissing the cassation dated 05.03.2014 refused to consider the cassation claim with the following reasoning: "In this case the Court of Cassation states that by the decision of the Civil and Administrative Chamber of the RA Court of Cassation dated 26.11.2013 the cassation claim submitted by Magda Eghiazaryan was returned and, simultaneously, date for correcting the errors and re-submitting the cassation claim were prescribed. Meanwhile, Magda Eghiazaryan's representative did not eliminate the errors mentioned by the decision, i.e. the cassation claim was not submitted by the lawyer and once again the cassation claim was submitted by the same reasoning and regarding which the Court of Cassation had already made a decision."

2.3. Aram Sargsyan's Application

From his personal e-mail address (electronic document, electronic version) the Applicant's representative on 09.01.2014 sent a cassation claim signed with digital signature via e-mail to the Court of Cassation, Administrative Court of Appeal and the Respondent against the decision ՎԴ3/0222/05/13 on the administrative case of December 10, 2013. On the same day the cassation claim was delivered to the addresses. The notion No ԴԴ6-Ե-33 of the Head of the Staff of the Court of Cassation was received on 10.01.2014, which stated that that the Head of the Staff of the Court of Cassation had admitted the fact of receiving the cassation claim by e-mail on 09.01.2014. The note states, "...In accordance with Part 4 of Article 2 of the RA Administrative Procedure Code the proceeding of the administrative cases is administered in accordance with the law active during the examination of the case, but according to the RA Administrative Procedure Code, electronic proceeding form is

not prescribed and in accordance with the logics of legal regulation of Articles 118.4 and 118.5 of the same Code, the original version of the cassation claim shall be submitted to the Court of Cassation. ... Based on the above-mentioned, I state that you may submit your cassation claim by following the requirements of the mentioned legal norms, therefore the above-mentioned electronic document file cannot be considered as cassation claim submitted to the RA Court of Cassation.”

On the behalf of the Applicant the mentioned cassation claim was submitted in hard copy version, and as a result the RA Court of Cassation by the decision on returning the cassation claim returned the cassation claim amongst other mentioning that the Applicant had not attached the electronic version of the claim and the license of the lawyer (certificate on advocate activity) to the appeal. The Applicant was provided with one month period to correct the mistakes and re-submit the claim.

As for the re-submitted cassation claim, the RA Court of Cassation adopted the decision on dismissing the cassation claim with the reasoning, “... Thus, in the case of submission of the appeal again with violation of the requirements of the law, defining anew timeline for correcting the mistakes will contradict the principle of legal certainty.”

Taking into consideration that in case of not correcting the mistakes of the appeal submitted anew on the same grounds do not eliminate the obstacles to examine the appeal, but on the other hand the Court of Cassation had already adopted a decision on the case, the Court of Cassation states that in such cases anew submitted appeal shall be dismissed based on the fact that such a decision is already adopted by the Court of Cassation.

In this case the Court of Cassation states that by the decision of the Civil and Administrative Chamber of the RA Court of Cassation of 05.03.2014 the cassation claim of Aram Sargsyan’s representative Artak Zaynalyan was returned and, simultaneously, the timeline was defined for correcting the mistakes of the cassation claim and for its re-submission. Meanwhile, Aram Sargsyan’s representative did not eliminate the mistake mentioned in the decision and had not attached the license of his representative (certificate on advocate ac-

tivity) and submitted cassation claim on the same grounds and regarding which the Court of Cassation had already made a decision.”

2.4. Rudolf Hovakimyan’s Application

On 17.12.2003 the RA Traffic Police Service adjunct to the RA Government with two different claims on payment applied to the RA Administrative Court against the Applicant with a demand to issue a payment order in the amount of 50.000 AMD regarding which the RA Administrative Court consequently issued orders of payment on 19.02.2014 and 25.02.2014.

Regarding the mentioned orders of payment on 21.03.2014, on the behalf of the Applicant two different counterclaims were submitted with a demand to recognize actions of the Traffic Police Service adjunct to the RA Government and issued five-fold fine as illegitimate and decline the claim.

Regarding the mentioned counterclaims, the RA Administrative Court consequently on 28.03.2014 and 02.04.2014 adopted decisions on “Transition of the proceeding of payment order to action proceeding, returning the counterclaim” and “Transition of the proceeding of payment order to action proceeding and returning the counterclaim,” which were appealed at the RA Administrative Court of Appeal. Regarding the above-mentioned the RA Administrative Court of Appeal on 22.04.2014 adopted the decision on returning the appeal and on 09.06.2014 the decision on declining the appeal.

The decision of the RA Administrative Court of Appeal on returning the appeal made on 22.04.2014 was appealed at the RA Court of Cassation which by its decision on returning the cassation claims dated 04.06.2014 returned the cassation claim with the following reasoning, “... Pursuant to Part 4 of Article 158 of the RA Administrative Procedure Code the cassation claim shall be signed by the Applicant, Prosecutor General or her/his deputy. The representative’s power of attorney formulated in accordance with the order stipulated by this Code shall be attached to the claim.

In accordance with Part 4 of Article 154 of the RA Administrative Procedure Code, natural and legal persons submit cassation claim only through the lawyer.

In accordance with Part 1 of Article 157 of the RA Administrative Procedure Code, the cassation claim is sent to the Court of Cassation and the copy of the claim to Court of Appeal and the parties of proceedings.

In this case the person who submitted the appeal did not attach the evidence of sending the copy of cassation claim to the Service... ” The Applicant was provided with one month period for re-submitting the claim.

The decision of the RA Administrative Court of Appeal on returning the appeal made on 09.06.2014 was also appealed at the RA Court of Cassation Appeal on 22.04.2014 which by its decision on returning the cassation claim dated 23.07.2014 returned the cassation claim by the following reasoning, “In accordance with Part 4 of Article 158 of the RA Administrative Procedure Code, cassation claim shall be signed by the applicant, Prosecutor General or her/his deputy. The representative’s certificate formulated in accordance with the order prescribed by the same Code shall be attached to the appeal.

The Court of Cassation stated that although the appeal was submitted by Rudolf Hovakimyan’s representative Artak Zeinalyan (basis – certificate issued on 18.03.2014 record number 21), but no evidence proving that Artak Zeinalyan functions as a lawyer, is available, thus the person who submitted the appeal, violated the requirement of Part 4 of Article 154 of the RA Administrative Procedure Code and did not submit the cassation claim through the lawyer, that is the certificate (license on advocate activity) formulated in accordance with the order prescribed by the law was not attached to the appeal.” The Applicant was provided with the term to re-submit the application.

Regarding the re-submitted cassation claim, the RA Court of Cassation by its decision on leaving the cassation claim without consideration dated 09.03.2014 dismissed the cassation claim by the following reasoning, “In this case the Court of Cassation states that by the decision of the Civil and Administrative Chamber of the RA Court of Cassation dated 23.07.2013 the cassation claim submitted by Rudolf Hovakimyan’s representative was returned and, simultaneously, date for correcting the errors and re-submitting the cassa-

tion claim were prescribed. Meanwhile, Rudolf Hovakimyan's representative did not eliminate the errors mentioned by the decision, i.e. the cassation claim was not submitted by the lawyer although the cassation claim was submitted by Artak Zeinalyan, the representative of Rudolf Hovakimyan (basis – certificate issued on 18.03.2014 record number 21) but no evidence proving that Artak Zeinalyan functions as a lawyer, is available. That is, Rudolf Hovakimyan once again submitted the cassation claim by the same reasoning and regarding which the Court of Cassation had already made a decision.

In such conditions the Court of Cassation states that the cassation claim shall be dismissed...”

2.5. Ara Sargsyan's Application

The Mayor of Yerevan submitted an application to the RA Administrative Court with a demand to issue an order of payment to levy 400.000 /four hundred thousand/ AMD, regarding which the RA Administrative Court issued an order of payment on 01.02.2012.

Regarding the mentioned order of payment, the Applicant submitted a counterclaim to the RA Administrative Court with a demand to recognize the Mayor's decision No Վ-35/4 of 26.10.2011 invalid.

Regarding the mentioned counterclaim the RA Administrative Court adopted a decision on “Transition of the proceeding of payment order to action proceeding, returning the counterclaim” on 21.02.2013.

Regarding the re-submitted counterclaim, by its decision of 03.07.2013, the RA Administrative Court declined the claim and satisfied the counterclaim.

As a result of the examination of the decision on the cassation claim submitted by the City Hall of Yerevan the RA Administrative Appeal Court by its decision of 24.01.2014 cancelled the judgment of the RA Administrative Court and changed it: regarding the counterclaim the proceeding of the case was dismissed and the clam of City Hall of Yerevan was satisfied.

As a result of the examination of the cassation claim against the mentioned decision submitted by the Applicant, the RA Court of Cas-

sation by its decision on returning the cassation claim returned the cassation claim with the following reasoning: “In this certain case the person who submitted the appeal ...did not file the appeal by the advocate...” The Applicant was provided with fifteen day time-limit from the moment of receiving the decision to correct the errors and resubmit the cassation claim.

Regarding resubmitted cassation claim, the RA Court of Cassation by its decision on dismissing the cassation claim dated 14.05.2014 dismissed the cassation claim by the reasoning that “...Ara Sargsyan ...did not file the cassation claim by his advocate...”

2.6. Khachatur Martozyan’s Application

Erebuni district Tax Inspectorate of State Revenue Committee adjunct to the RA Government submitted a claim to the RA Administrative Court with a demand to issue an order to levy 2.000.000 /two million/ AMD from Khachatur Marozyan.

Khachatur Marozyan submitted a counter claim to the RA Administrative Court with a demand to recognize the act No. 1104074 of 14.05.2012 and based on it the decision No 194186 of 12.06.2012 of Erebuni district Tax Inspectorate of State Revenue Committee adjunct to the RA Government as null or invalid.

By the decision of 01.05.2012 the RA Administrative Court transitioned from the proceeding of payment order to action proceeding and returning the counterclaim, and by the decision of 28.02.2014 satisfied the submitted claim.

As the result of examination of the appeal submitted by the Applicant, the RA Administrative Court of Appeal by its 27.05.2014 decision refused the motion to recover the missed procedural time period and submission of the appeal.

As the result of examination of the cassation claim submitted by the Applicant, on 09.07.2014 the RA Court of Cassation adopted the decision on returning the cassation claim according to which the cassation claim was returned amongst others with the following reasoning: “... The person who submitted the appeal...did not file the cassation claim by the advocate...” The Applicant was provided with fifteen day time-limit from the moment of receiving the decision to correct the errors and re-submit the cassation claim.

3. Regarding Part 4 of Article 154 of the RA Administrative Procedure Code the arguments of the Applicants united in one case conclude that Part 4 of Article 154 of the Code contradicts Articles 3, 14.1, 18, 19 and 20 of the RA Constitution and Article 6 of the European Convention on Human Rights and Fundamental Freedoms, since it excludes the possibility to submit the cassation claim on behalf of natural and legal persons in person or through the person appointed by her/him.

Stating that previously the person could appeal the judicial acts of the RA Court of Appeal without and hindrance, the Applicants concluded that nowadays the order to apply to the Cassation Court directly is abolished restricting the possibilities of effective protection of rights.

To substantiate their demand, the Applicants mention that in the conditions of legislative ban to submit the acts subject to appeal exclusively through a lawyer, it is necessary to regulate by law any mechanism for providing guaranteed free legal assistance by the lawyers despite the party's financial position.

The Applicants also highlight the issue that financial means are needed for enjoying the facilities provided by the lawyer, which often makes impossible to employ these facilities.

Regarding Part 5 of Article 158 of the RA Administrative Procedure Code, the arguments of the Applicants conclude that Part 5 of Article 158 of the Code contradicts Articles 1, 3, 18 and 19 of the RA Constitution.

To substantiate their demand, the Applicants mention that Part 5 of Article 158 of the Code does not meet the requirements of certainty, assurance and predictability of the legal law. It is formulated vaguely as it is not clear what kind of electronic version should be attached to the cassation claim and on what electronic carrier. The Applicants also state that the mentioned provision makes impossible to challenge the judicial acts at the Court of Cassation for the persons for whom computer, printer and electronic carrier are not available.

Regarding Part 5 of Article 158 of the RA Administrative Procedure Code, which deals with the obligation to attach evidence on sending the copy of the case to the court which tries the case and

the parties of trial to the cassation claim, the Applicants state that in this provision in law-enforcement practice the term “send” is interpreted in such a manner which excludes the possibility to send the cassation claim signed with digital signature via e-mail to the court trying the case and to the parties of trial. To substantiate the mentioned notion, the Applicants allude that the legal positions concerning Article 4 of RA Law on Electronic Document and Electronic Digital Signature stipulated in Decision DCC-722 and legal positions of the RA Court of Cassation on civil case ԵԿԴ/2293/02/10 concerning part 3 of Article 1087.1 of the RA Civil Code.

4. Referring to Applicants’ arguments, the Respondent states that the challenged norms of the RA Administrative Procedure Code are in conformity with the RA Constitution.

Regarding Part 4 of Article 153 of the RA Administrative Procedure Code, alluding the case law of the European Court of Human rights, state that the requirement to introduce the interests of the applicant by the qualified advocate cannot be considered contradicting Article 6 of Convention and defining such a procedure is justified only by the necessity of submitting more literate appeals.

Referring to the issue from the viewpoint of similarities and differences between lawyer and certified lawyer and citing the decision DCC- 765 of the RA Constitutional Court, Article 41 of the RA Law on Advocacy and in particular the provision of the Article according to which the right to free legal assistance includes compilation of appeals, the Respondent emphasizes that by the RA Law on Advocacy the scopes of free legal assistance and the persons enjoying free legal assistance has increased. According to the Respondent, any insolvent natural person not included in the categories mentioned in Article 41 of the RA Law on Advocacy may also enjoy free legal assistance.

From the perspective of proportionality of the remedy and pursued goal, the Respondent states that choosing of such remedy is conditioned with restriction of the grounds for initiating proceedings of the cassation claim which demands necessary legal knowledge.

The Respondent summarized stating that **first**; the ability of the party to the proceedings as well as the legal equality of the parties

of proceedings is not dependent to the person's financial capacities, **secondly**; unlike the institution of certified advocates, the legal regulation on filing cassation claim exclusively by the advocate does not cause any discrimination between the advocates; **thirdly**, the pursued legal term is proportionate to the pursued goal.

Regarding Part 5 of Article 158 of the RA Administrative Procedure Code, the Respondent states that the requirement to the cassation claim are not an end in itself, but in their logics are aimed to implement effectively the functions of the Court of Cassation and are dictated by the development of science and techniques.

Referring to the RA Law on Electronic Document and Electronic Digital Signature, the Respondent states that in this case any type of carrier capable for preserving and transferring the electronic version of cassation claim can serve as electronic carrier and its types are not specified by the legislation pursuing the goal to provide wider possibility of choice and to minimize the expenses on purchasing the electronic carrier.

The Respondent does not consider as grounded to condition restriction of right of accessibility of justice with the lack of necessary financial means to purchase electronic carrier, as according to the Respondent submission of cassation claim itself demands certain expenses for the Applicant related to amongst others sending the copies of the state due and the appeal to the court trying the case and parties of proceedings. For financially vulnerable persons the legislator envisaged the right to free legal assistance which according to Article 41 of the RA Law on Advocacy includes compilation of appeals.

5. In the framework of the constitutional legal challenge, the RA Constitutional Court considers necessary to clarify and assess:

- The significance of legal requirements stipulated by Part 4 of Article 154 and Part 5 of Article 158 of the RA Administrative Procedure Code and taking into consideration guaranteeing necessary structures of fully-fledged implementation and the rights to accessibility of justice which serves as an effective remedy of judicial remedy of human rights and an element of fair trial prescribed by Articles 18 and 19 of the RA Constitution as well

as Article 6 of the European Convention of Human Rights and Fundamental Freedoms,

- The systemic logics and legitimate significance of legislative regulation to file a cassation claim to the RA Court of Cassation exclusively by the advocate, also taking into consideration the essence and contents of the institution of judicial remedy of the rights by the advocate, legal provisions stipulated in the decisions DCC-765 and DCC-833 of the RA Constitutional Court concerning the efficiency of the issues of legal regulation and constitutionality.

6. In the above-mentioned decisions considering the challenged issues in the context of necessity of fully-fledged and precise legislative regulation of the right to accessibility of justice and the right to effective judicial remedy, the RA Constitutional Court in particular expressed the following legal positions:

a) “The restriction of the right to accessibility of the Court of Cassation by the obligatory demand to file to the Court of Cassation by the accredited in the Court of Cassation advocate relevant to the pursued goal since such restriction does not permit effective and free implementation of persons right to fair justice” (DCC-765),

b) “As for ensuring respect towards the principle of equality before the law for the proceeding participants, then, taking into consideration the circumstance that **the RA legislation does not guarantee free legal assistance for compiling a cassation claim**, ... the Constitutional Court states that by the presence of the institution of accredited advocates the equality between the proceeding participants is violated conditioned on their financial position” (DCC-765).

c) “... taking into consideration the entrepreneurial and monopoly nature of the mentioned institution and comparatively high fees demanded for compilation of the cassation claim by the accredited advocates and the mandatory demand to apply to the Constitutional Court as well as to the European Court of Human Rights only after exhaustion of remedies of protection, it may be stated that the institution of accredited advocates in the Court of Cassation by its existence restricts the rights of accessibility and effective judicial

remedy not only at the Court of Cassation, but also the Constitutional Court and the European Court of Human Rights, and in essence it creates conducive environment for possible cases of discriminatory attitude based on financial position of the person” (DCC-765),

d) “... conditioned with functional peculiarities of the Court of Cassation, the demand to file to the Court of Cassation by the advocate may be considered legitimate if it derives from the interests of natural and legal persons to be represented by professional and experiences specialists. The Constitutional Court at the same time considers necessary to emphasize that the institution to file to the Court of Cassation by the advocate is an alternative option can be considered as a legitimate option only in the case when the legislation guarantees every person the possibility to obtain the services of lawyers despite the financial position of the person” (DCC-765),

e) “... the mandatory requirement concerning representation by the advocate prescribed in the challenged norm concerning submission of the appeal regarding the review of judicial acts by the advocates in the cases of not providing possibility of legal assistance on free basis while submitting application on review of judicial acts by the advocates disproportionately restricts the violated rights guaranteed by the Constitution and the Convention... thus endangering the effective implementation of person’s right to constitutional justice and constitutional right to judicial protection of her/his violated right at the international instances” (DCC-833).

Restating the legal positions prescribed in Decisions DCC-765 and DCC-833 and stating that they were neglected in further legislative amendments, the Constitutional Court finds that the mentioned legal positions concern also this case.

7. For the implementation of authorities of the Court of Cassation to review the judicial acts by the subordinate court amongst the others the institution of appeal of judicial acts, by such a material and procedural legislative regulation which will ensure the effective and fully fledged implementation of the person’s rights and freedoms of judicial protection, is an important guarantee. In the mentioned context the Constitutional Court highlights the systemic integrity of the

institution of appeal of judicial acts and presence of relevant structural and legislative guarantees which ensure efficient implementation which is necessary for preciseness of implementation of the right to judicial protection as well as for assessment in the cassation proceeding.

The Constitutional Court states that any judicial peculiarity or procedure cannot hinder or prevent the possibility of efficient implementation of the right to apply to the court and make senseless the right guaranteed by Article 18 of the RA Constitution or hinder its implementation. While defining the terms for accepting the cassation claim the guarantees of accessibility of the justice and ensuring the right to effective appeal shall prevail. The structural status of the Court of Cassation as a supreme body in the system of general jurisdiction courts system cannot hinder the precise implementation of competence prescribed by law and effective exercising of the right to appeal if legal and structural guarantees necessary for its creation are created.

Prescription of the requirement of filing the cassation claim by the advocate to the Court of Cassation, in the case of precisely established and functioning advocate system, shall be called to assist exercising of the person's constitutional right to effective judicial protection. In the case of such an approach definition of such requirements of acceptance of cassation claim, which may be even stricter, will not be problematic. Although in this instance likewise the admission of claim to examination deriving from **administrative as well as civil legal regulations cannot be implemented due to neglect of constitutionally protected rights or disproportionate restriction**. That is, restriction of preconditions shall not be disproportionate by creating obstacle for protection of rights for people. In this context the Constitutional Court considered necessary to mention that the Court in its Decision DCC-1167 stipulated "... any especially new legal term shall have more effective guarantees to create legitimate goal which shall not be exercised by virtue of neglecting any constitutional legal norm or principle." In the context of the mentioned, the Constitutional Court considered essential to emphasize the circumstance that, for instance, in accordance with Part 1 of Article 46 of the RA Law on the Constitutional Court, in the

body of constitutional jurisdiction parties may appear before the Constitutional Court personally as well as through their representatives.

8. Regarding the issue of constitutionality of the challenged provision the Constitutional Court considers necessary to turn to also in the context of development of administrative - judicial legislation. Before adoption of the current of the RA Administrative Procedure Code, in the former Administrative Procedure Code the mandatory requirement to file the cassation claim to the RA Court of Cassation by the advocate is not present, i.e. the procedure to submit directly the cassation claim is prescribed. Meanwhile the challenged provision not only defines the mediated procedure of submission of the appeal to the Court of Cassation which excludes the possibility to submit the cassation claim directly. In fact, nowadays the mediated procedure functions only and only by the advocate. That is, the only necessary way, which ensured the possibility to apply to the court of cassation directly, has been eliminated. Due to such legal regulation the accessibility of the court of cassation has been essentially restricted.

Admission of the cassation claim by the Court of Cassation is conditioned with the level and circumstance of submission of the cassation claim which follows the requirements prescribed by the legally literate, substantiated legislation. Simultaneously, one should consider that in case of filing the cassation claim by the advocate the possibility of returning the cassation claim by the Court of Cassation or leaving the claim without consideration or refusing to consider is still possible. That is, as in past when the direct procedure of submission of the cassation claim was in force, as well as now when cassation claim can be filed only by the advocate the Court of Cassation did (does) not admit those cassation claims – which do not correspond other requirements stipulated by the RA Administrative Procedure Code and legal norms which are not challenged in this case – by returning the cassation claim leaving it without consideration or by dismissing it. In response to the note submitted to the RA Judicial Department, the Head of the RA Judicial Department in the response note No ᠒᠓-1 ᠖-693 of 16.02.2015 mentions that

the study of actual statistic data reflected in the note reveals that in particular, from 820 cassation claims submitted to the RA Civil and Administrative Chamber of the Court of Cassation only 43 cassation claims were, which comprises 5.24 percent of the submitted complaints and in 2015 the RA Civil and Administrative Chamber of the Court of Cassation from 820 cassation claims adjudicated only 50 of cassation claims, which comprises 4.97 percent of the submitted complaints. The mentioned data state that even in the case when the cassation claim was submitted by the advocate, it did not cause any essential and perceptible changes related to adjudication of cassation claim.

9. The Constitutional Court considers necessary to state that the legislator has not taken into consideration the precise and consistent legal positions expressed in the decisions of the RA Constitutional Court when establishing institutional regulations on submitting cassation claim only by advocate. In the elaboration of legislative regulations of the challenged issue, the legislator did not take into consideration the legal positions expressed in the decisions of the Constitutional Court. In particular, the issues related to the property discrimination have not received legislatively proper solution; meanwhile, the problem is present in the framework of the unique legislative politics of preconditions of administrative proceeding and submitting cassation claim, which creates favorable conditions for possible expression of discriminative attitude conditioned with the property status of a person. This circumstance is based on Part 2 of Article 9 of the RA Law on Legal acts which definitely prescribes that “Laws shall comply with the Constitution of the Republic of Armenia and shall not contradict the decisions of the Constitutional Court of the Republic of Armenia”. And the latter get sense and contents, become the source of the law by their completeness based on the legal positions of the Constitutional Court. The legal positions of the Constitutional Court expressed in this decision are significant source of the legislative elaborations.

Considering the challenged issue in the light of legal positions, the Constitutional Court concludes that by the challenged provision stipulation of the requirement to submit the cassation claim by the

advocate although followed the legitimate aim to assist efficient and precise implementation of the right to judicial protection of human rights and freedoms, actually brought to illegitimate restriction of that law and to irrelevant restriction of possibility of application of the law of appeal of the judicial act and right to accessibility of the court.

Meanwhile, the RA Chamber of Advocates came to the same conclusion (in accordance with the interpretations stated in the letter Ƨ/202 dated 27.02.2015 of the Chair of the RA Chamber of Advocates to the RA Constitutional Court).

10. The Constitutional Court, regarding the requirement to attach the electronic version of the appeal to the cassation claim, stipulated in Part 5 of Article 158 of the RA Administrative Code, as a necessary precondition for submission of the cassation claim, states that this regulation is directly linked to the rights guaranteed in Article 18 of the RA Constitution, as well as right to access to court which is a component to the judicial protection of a person guaranteed by Article 6 of European Convention of Human Rights and Fundamental Freedoms. The European Court of human rights in a number of its decisions states that this right is not absolute, and the states may condition the possibility of its application only certain requirements and standards (Judgment on Luordo v. Italy, 2003, October 17, Judgment on Staroszczyk v. Poland, 2007, 2007, July 9, judgment on Stanev v. Bulgaria, 2012, January 17 , etc.). The challenged provision is stipulated in Article 158 of the RA Administrative Procedure Code which envisages the requirements presented to the contents and to the documents attached to cassation claim. Thus, study of Article 158 states that it prescribes certain legal requirements for enjoying the right to access to court, thus presentation of the electronic version attached to the complaint is also considered as the precondition of the application of this right. The Constitutional Court states that deriving from the requirement of ensuring legal certainty presence of necessary certain imperative precondition for application of the right to access to court cannot be considered as contradicting the RA Constitution. Such precondition should be applicable, reasonable and by its gravity should not bring

to violation of the essence of right. The RA Constitutional Court states that the requirement to present the electronic version attached to the appeal does not block the possibility of application of the person's right to access to court, taking into consideration the circumstance that with such a demand the obligation to show a behavior which is not applicable and contradicts the axiology of the Constitution, consequently it does not lead to violation of the essence of right. The Constitutional Court at the same time states that neither the RA Administrative Code nor any legal act prescribe the requirements presented to the appeal (criteria of formation of the electronic document, ratification terms, format etc.). Absence of such requirements shall be interpreted as the right of the applicant to choose any format to submit the documents electronically and possibility of choice of any criteria. Meanwhile, no requirement is prescribed concerning the electronic digital signature, consequently, the person is not obliged to have such a signature and use it when applying the requirement of Part 5 of Article 158 of the RA Administrative Procedure Code.

The Constitutional Court states that the requirements presented to "electronic carrier" stipulated by Part 5 of Article 158 of the RA Administrative Procedure Code are revealed by the RA Law on Electronic Document and Electronic Digital Signature. In particular, Article 2 of the mentioned Law prescribes: "electronic carrier means magnetic disk, tape, laser disk, semi-conductor or other data carrier, which are used in electronic or other devices to record and store data." Taking into consideration the circumstance that Part 5 of Article 158 of the RA Administrative Procedure Code prescribes the term "electronic carrier" and does not prescribe any other demand concerning the carrier, hence in the case of submission of electronic version of the appeal by any electronic carrier is supposed to be complete.

In his explanation the Respondent also interpreted the requirement of Part 5 of Article 158 of the RA Administrative Procedure Code and in particular mentioned that "Although the legislator did not show unified approach in formulating in the codes and did not specify the format of the electronic document and the type of electronic carrier, that circumstance in the current law-enforcement

practice cannot bring to violation of rights... By not specifying the type of carrier, the legislator by merits considered as admissible any type of carrier which can preserve and transfer the electronic version of cassation claim.”

Regarding Part 5 of Article 158 of the RA Administrative Procedure Code, the Constitutional Court states that although the notion “electronic version” is uncovered in the brackets as “electronic carrier,” these terms are not identical: the first one concerns the computer file containing the text of the cassation claim which is accessible to any computer program, and the second one is used for preservation and transition of the text to technical device. The Constitutional Court signifies this differentiation as the electronic version of the appeal may be submitted not only by electronic carrier but also by e-mail and the Respondent in his explanation mentioned “electronic version of the document which is not submitted by e-mail can be accessible by the means of any carrier capable to carry the electronic version of the document.” Therefore, the requirement prescribed in Part 5 of Article 158 of the RA Administrative Procedure Code does not exclusively concern submission of the electronic version of the appeal attached to the hard copy by the electronic carrier but allows the person to submit the electronic version of the appeal also by the means of e-mail.

The Constitutional Court also states that the relevant unified criteria for ensuring uniformity of application of the requirement to submit the electronic version of the cassation claim prescribed in Part 5 of Article 158 of the RA Administrative Procedure Code shall be legally defined. The study of international practice regarding this issue also states that in the cases when a person is obliged to submit the electronic version of documents together with documents of to apply directly to the relevant body electronically, defined in detail the requirements presented to the electronic version of documents and are accessible in the electronic official web pages of the relevant bodies (Canada, Great Britain etc).

Thus, the Constitutional Court states that absence of unified criteria for submission of electronic version of the cassation claim attached to the appeal stipulated by Part 5 of Article 158 of the RA Administrative Procedure Code implies the Applicant’s right to sub-

mit the electronic version of appeal in any format and in any compilation of the document by any type of electronic carrier and e-mail. The unified criteria for presentation of electronic version of the appeal attached to the cassation claim stipulated by Part 5 of Article 158 of the RA Administrative Procedure Code shall be stipulated legally, hence, the law-enforcement practice shall be elaborated in the framework of legal positions expressed in this decision.

Based on the review of the Case and being governed by the requirements of Article 100, Point 1 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 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 4 of Article 154 of the RA Administrative Procedure Code contradicting Article 14.1, Part 1 of Article 18, Part 1 of Article 19 of the RA Constitution and void, taking into consideration that application of this provision in the current legal regulations creates disproportionate social burden for the persons relating to their financial capacities and does not ensure fully-fledged application of the effective remedy of fair trial, judicial protection of a person and rights to access to court.

2. To declare Part 5 of Article 158 of the RA Administrative Procedure Code in conformity with the Constitution of the Republic of Armenia in the framework of legal positions expressed in this decision.

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

Chairman

G. Harutyunyan

March 3, 2015

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