Non-Official Translation

IN THE NAME OF THE REPUBLIC OF ARMENIA
DECISION OF THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA

ON THE CASE OF CONFORMITY OF ARTICLES 258, 260, 262, 266 AND 267 OF THE CODE ON ADMINISTRATIVE OFFENCES OF THE REPUBLIC OF ARMENIA, PARTS 5 AND 6 OF ARTICLE 5 OF THE LAW OF THE REPUBLIC OF ARMENIA ON POLICE SERVICE WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA

Yerevan **24 January 2017**

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

with the participation (in the framework of the written procedure) of L. Sargsyan, Head of the Office of Legal Analysis of the Staff of the Human Rights Defender of the Republic of Armenia and N. Pirumyan, Adviser of the Human Rights Defender,

the Respondent: H. Sargsyan, Chief of the Legal Department of the Staff of the RA National Assembly and V. Danielyan, Chief Specialist of the Department of Legal Consultation of the same Administration,

pursuant to Point 1 of Article 100, Point 8 of Part 1 of Article 101 of the Constitution of the Republic of Armenia (with amendments of 2005), Articles 25, 38 and 68 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case of conformity of Articles 258, 260, 262, 266 and 267 of the Administrative Offences Code of the Republic of Armenia, Parts 5 and 6 of Article 5 of the Law of the Republic of Armenia on Police Service with the Constitution of the Republic of Armenia on the basis of the application of the Human Rights Defender of the Republic of Armenia.

The Case was initiated on the basis of the Application submitted to the Constitutional Court of the Republic of Armenia by the Human Rights Defender of the Republic of Armenia on 16 September 2016.

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

1. The Code on Administrative Offenses of the Republic of Armenia was adopted by the Supreme Council of the ArmSSR on 6 December 1985 and came into force on 1 June 1986.

Article 258 of the RA Code on Administrative Offenses, titled "Transfer of an Offender," prescribes:

"For compiling a protocol on an administrative offense, if a compiling the protocol is compulsory, when it cannot be compiled on-site, an offender can be transferred to the police by a police officer.

In case of violation of the rules for the use of vehicles, rules for the protection of order and traffic safety, rules aimed at ensuring accident-free cargo in transport, fire safety rules, sanitary and hygienic, and sanitary and anti-epidemic rules in transport, the offender can be transferred to the police by an authorized person, if s/he does not have an identity document and there are no witnesses who can provide the necessary information about the perpetrator.

In order to compile a protocol in case of violation of environmental legislation, if the identity of the offender cannot be established at the site of the violation, inspectors of the authorized body in the field of environmental protection, including public inspectors, as well as police officers can deliver the perpetrators to the police building for suppression of offenses, identification of the offender and drawing up a protocol on the offense.

When committing offenses related to encroachment on protected objects, other state or public property, the offender may be delivered by a paramilitary worker to the office of a paramilitary guard or to the police to suppress offenses, establish the identity of the offender and compile a protocol on the offense.

Delivery must be carried out as soon as possible.

The location of the delivered person at the Volunteer People's Guards Headquarters cannot last more than one hour."

Article 258 of the Code was amended by the Law HO-495-N of December 11, 2002, and the Law HO-2-N of February 7, 2012.

Article 260 of the RA Code on Administrative Offenses, titled "Administrative detention", prescribes:

"A protocol is drafted on administrative detention, stating the number and place of its compilation, position, name, and surname of the person who drafted the protocol, information about the detained person, time, place and reason for detention.

The protocol is signed by the official who drafted it, and the detainee. If the detainee refuses to sign the protocol, an entry is made in it about this.

At the request of the person detained for committing an administrative offense, relatives, the administration at the place of his work or study are notified of his/her whereabouts. In case of the detention of a juvenile, the notification of his/her parents or the persons who replace them is mandatory."

By the Decision DCC-1059 of the Constitutional Court of the Republic of Armenia, dated November 23, 2012, the provision "at the request of the person detained for committing an administrative offense, the relatives, the administration at the place of work or study" are notified of the place of his/her location, stipulated by Part 3 of Article 260 of the Code was declared contradicting the requirements of Part 2 Article 16 of the RA Constitution and void.

Article 262 of the RA Code on Administrative Offenses, titled "Periods of Administrative detention", prescribes:

"Administrative detention of the person who commits an administrative offense can last no longer than three hours, in exceptional cases, due to the special need for legislative acts of the USSR and the Republic of Armenia, other periods of administrative detention may be established.

Persons who violated the border regime or regime at checkpoints across the state border of the USSR may be detained for up to 3 hours to draft a protocol and, if necessary, to identify the person or clarify the circumstances of an administrative offense - up to 3 days with a written notice prosecutor within 24 hours from the moment of detention or with the sanction of the prosecutor - for up to ten days, if the offenders do not have identity documents (This part was no longer in force by Law HO-68-H, adopted on December 24, 2004).
The period of administrative detention is calculated from the moment of delivery of the offender for drafting the protocol, and the person who was in a state of intoxication - since the moment of his/her sobering up."
After adoption, Article 262 of the Code was amended on August 29, 1988, March 10, 1990, and also by the Law HO-102 of December 3, 1996, and the Law LA-68-N on December 24, 2004.
By the Decision DCC-1059 of the RA Constitutional Court dated November 23, 2012, the provisions of Part 2 of Article 262 were declared contradicting the requirements of Part 3 of Article 16 and Parts 4 and 5 of Article 103 of the RA Constitution and void. By the same Decision the provisions of Part 3 of Article 262 systemically interrelated with the provisions of Part 2 of Article 262 were also declared contradicting the requirements of Part 2 of Article 3 and Part 3 of Article 16 of the RA Constitution and void.
Article 266 of the RA Code on Administrative Offenses, titled "Appealing Administrative Arrest, Examination and Withdrawal of Items and Documents," prescribes:
"Administrative detention, personal search, inspection of items and seizure of items and documents can be appealed by the person concerned to a higher authority (official) or to the prosecutor."
Article 267 of the RA Code on Administrative Offenses, titled "Rights and Obligations of Persons Responsible for Administrative Responsibility," prescribes:
"The person transferred to administrative responsibility has the right to get acquainted with the case materials, give explanations, present evidence, apply for applications, use lawyer's legal services during the consideration of the case; the right to speak in his/her native language and to use the services of an interpreter if he/she does not speak the language in which the proceedings are conducted, the right to appeal the decision in the case. The trial of the case on administrative offence shall be conducted in the presence of the person transferred to administrative responsibility. In the absence of this person, the case can only be considered if there is

information about his/her timely notification of the place and time of the case and if s/he has not received an application for adjournment of the case.

In cases of administrative offenses provided for in Articles 40^1-40^4, 40^6-40^{12}, 53, Part 2 of Article 147, Article 172, Part 3 of Article 175, Articles 182 and 185 of this Code, the presence of a person transferred to administrative responsibility is mandatory. In the event of evasion from attendance at the call of the police or a people's judge, a person may be transferred to appear before the police.

Legislation of the USSR and the Republic of Armenia may provide for other cases when the appearance of a person transferred to administrative responsibility before an authority (before an official) authorizing a case is obligatory."

Article 267 of the Code was amended on August 2, 1991, by the Law HO-137 of May 19, 1995, by the Law HO-102 of December 3, 1996, amended by the Law HO-165-N of May 26, 2011 and the Law HO-2-N of February 7, 2012.

The RA Law on Police Service was adopted by the RA National Assembly on April 16, 2001, signed by the RA President on May 16, 2001 and entered into force on June 10, 2001.

Part 5 and 6 of Article 5 of the RA Law on Police Service, titled "Police Activity and Protection of Human Immunity" (the title is edited by Law No. 123-H adopted on June 1, 2006) prescribe:

"... At the request of a person, a notice of his/her rights and obligations is made in writing. The list of rights subject to notification and the notification procedure are approved by the Government of the Republic of Armenia.

The police are obliged to provide detainees with a real opportunity to exercise the right to receive legal assistance, notify their relatives within three hours from the time of their transfer to the police, or, in the absence of such, the administration at their place of work or study of their whereabouts. If necessary, measures are taken to provide them with medical and (or) other assistance, as well as to eliminate the danger that threatens the life, health, property of a person or members of his/her family in connection with his/her detention ... ".

The mentioned article of the Law was amended by the Law HO-123-N adopted on June 1, 2006.

2. The Applicant finds that the challenged provisions of the RA Code on Administrative Offenses contradict Articles 26, 27, 75, 79 and 81 of the RA Constitution, since they do not

provide certainty for the realization of the person's guaranteed rights and do not provide sufficient guarantees for the person's right to freedom.

The Applicant submits that the existing legislative regulations for administrative detention do not contain legal guarantees against undue restriction of a person's right to freedom, ill-treatment of persons deprived of their liberty, and there is an obvious need to bring them in line with the RA Constitution and the European Convention on Human Rights.

According to the Applicant, by virtue of Article 262 of the RA Code on Administrative Offenses, the detention of a person may last no more than three hours, which is considered to be a clear deprivation of liberty, but at the same time does not have those minimum rights that follow from the guarantee regulations of Article 27 of the RA Constitution and Article 5 of the European Convention on Human Rights.

The Applicant, referring separately to Part 3 of Article 262 of the RA Code on Administrative Offenses, states that the provision on the calculation of the term of administrative detention from the moment of transfer of the offender and the interpretation provided in law enforcement practice are contrary to Articles 27, 79 and 81 of the RA Constitution insofar as the wording "at the moment of transfer of the offender" is not identified with the moment of actual deprivation of the person's freedom.

The Applicant challenges the constitutionality of Article 266 of the RA Code on Administrative Offenses, arguing that it does not provide for the possibility of challenging the lawfulness of administrative detention in court, as well as the drive and delivery of the offender and the release by a court of a person in a short time in the event of the unlawfulness of the deprivation of liberty.

As a result of a comparative analysis of the challenged provisions, the Applicant concludes that the goals and the grounds for applying the institutions of "administrative detention", "transfer" and "delivery" are not clearly delineated and the rights of a person deprived of liberty are not prescribed.

The Applicant finds that the purposes of applying the procedures for the delivery and detainment of a person in terms of identifying the offender, drafting a protocol on the offense partially coincide in the context of the administrative violation case, but the distinctive features of these legal mechanisms that are identical from the point of view of restricting the rights are not concretely defined.

In the opinion of the Applicant, in the conditions of the challenged legislative formulations, an artificial division between the elements of a single mechanism of deprivation of liberty was carried out, which led to the problem of the correct calculation of the beginning of the person's acquisition of the status of a detainee in law enforcement practice.

According to the Applicant, the legal procedure for challenging the lawfulness of administrative detention directly follows from the regulation of the Code on Administrative Offenses. As for the provision of other deprivation of liberty, exposure to the transfer and the right to appeal the lawfulness of the delivery of the offender, the corresponding regulation of the Code simply lacks.

The Applicant claims that a stable illegal practice has been formed in the framework of the administrative offense proceedings due to the absence of clear and certain legislative regulations reflecting the constitutional and international legal provisions guaranteeing the person's freedom. The Human Rights Defender stated that the reason for such a conclusion was numerous cases with the failure to submit grounds for depriving a person of liberty, non-clarification of his/her rights, failure to notify the person preferred by him/her, preventing the lawyer from entering the police station. In such cases, the police reasoned that the person had only been transferred and when s/he was arrested, s/he would be provided with these opportunities.

The lack of clear regulation of the challenged procedures according to the Applicant led to the illegitimacy of law enforcement practice also in the sense that there is practically no clear procedure for the actual deprivation of the person of freedom, under which all guarantees of the lawfulness of the application of this measure of influence would be ensured. The Applicant finds that, from the point of view of ensuring legality, clear regulation is also necessary in connection with the requirements for drafting and maintaining the protocol and its delivery to a person deprived of liberty.

The Applicant believes that the provisions of Parts 5 and 6 of Article 5 of the RA Law on Police Service, as far as they concern the legal positions expressed in the Application concerning the legal regulations of the Code on Administrative Offenses, also contradict Articles 26, 27, 75, 79 and 81 of the RA Constitution.

In the Applicant's opinion, the list of rights and notification procedure cannot be approved by the Government, since "the content of procedures restricting the person's right to personal freedom,

primarily in the aspect of securing the rights of a person, must be disclosed at the level of the law."

The Applicant finds that the regulation of Part 6 of Article 5 of the noted Law insofar as it envisages the duty of the police to secure the person's right to notify him/her of his/her whereabouts within three hours, from the moment s/he was taken to the police, does not directly satisfy the requirements of Part 3 of Article 27 of the Constitution.

3. The Respondent, referring to a number of legal positions of the European Court of Human Rights, **agrees with the Applicant** that the institutions of administrative detention, transfer and delivery of an offender within the essence of Article 5 of the European Convention on Human Rights are deprivation of liberty prescribed by the Code on Administrative Offenses.

The Respondent, comparing the legal guarantees found in some international legal documents (Resolution No. 43/173 of the UN General Assembly of December 9, 1988, Resolution of the Parliamentary Assembly of the Council of Europe No. 2122 /2016/) with legal guarantees, established by the RA Code on Administrative Offenses, **that the latter do not provide persons deprived of their liberty with all the necessary legal guarantees that meet international criteria.**

The Respondent finds that Article 258, titled "Transferring of the Offender", as well as Articles 259 and 267 of the Code on Administrative Offenses, clearly indicates the separate legal grounds for the delivery, administrative detention and transfer of the offender, which makes it possible to establish special legal regimes for these forms of depriving a person of liberty, taking into account the legitimate aims pursued by the latter within the framework of the RA Constitution and international treaties. In this aspect, the challenged provisions correspond to the requirements of the law for legal certainty, clarity and sufficient availability of the used formulation.

Concerning the challenged provisions of the RA Law on Police Service, the Respondent claims that there is **an issue of legal certainty.** According to the Respondent's assessment, the requirement "within three hours from the moment of transfer to the police", ambiguously stipulated in Part 6 of Article 5 of this Law, concerns the provision of detained persons with the right to receive legal aid or notification of their relatives, and in the absence thereof, place of work or study of their location. The Respondent notes that although the Law has applied a higher

criterion for the exercise of the rights of a person, however, in cases where the notification of the relatives of a person is possible in a shorter period of time not exceeding three hours, proceeding from the literal interpretation of this provision of the RA Law on Police Service, there is a risk that the law enforcer will not immediately notify, hence the wording of this provision is also **inconsistent with the international criteria.**

According to the Respondent, the requirements of Article 27 of the RA Constitution stipulate that the content of the procedures restricting the right to liberty has been disclosed by law, and in cases where the Constitution delegates certain regulation to the legislator, it cannot be delegated to the latter by any other state body. Therefore, in a particular case, the list of rights subject to notification under the RA Law on Police Service must be prescribed by law, and not by a decision of the Government of the Republic of Armenia.

The Respondent also reports that the RA Ministry of Justice has already drafted a new Code on Administrative Offenses, which shows an institutional approach to the challenged legal regulations, especially highlighting the rights of persons deprived of their liberty by administrative coercion, consonant with international standards, and the corresponding responsibilities of the administrative body.

The Respondent concludes that related to conformity of the provisions of the RA Constitution, the provisions of Articles 258, 260, 262, 266 and 267 of the RA Code on Administrative Offenses and Part 6 of Article 5 of the RA Law on Police Service cause the problem insofar as they do not provide the necessary legal guarantees for persons actually deprived of their freedom, and the provision stipulated by Part 5 of Article 5 of the RA Law on Police Service **does not comply with the requirements of the RA Constitution**.

4. The RA Constitutional Court first of all states that the positions of the parties regarding the constitutionality of the challenged legal provisions coincide per se and considers it necessary to reaffirm the legal position expressed by the Decision DCC-1059 according to which: "if the applicant and the respondent agree on the alleged contradiction between the legal act, in this case between one or another provision of the law and the norms of the Constitution, this contradiction must be eliminated within the competence of the authority which adopted a legal act, which simply is a constitutional requirement."

The Constitutional Court also finds that the Applicant challenges Articles 260 and 262 of the Code on Administrative Offenses entirely, when the provision "at the request of a person detained for committing an administrative offense, his/her relatives, the administration at the place of work or study are notified of the place of his/her location" of Part 3 of Article 260, as well as the provisions of Part 2 of Article 262 and the provisions of Part 3 of Article 262 of the RA Code on Administrative Offenses systematically interrelated with them by the Decision DCC-1059 of the RA Constitutional Court **of November 23, 2012** were declared contradicting the RA Constitution and void.

According to Point 1 of Article 60 of the RA Law on the Constitutional Court, proceedings on the case shall be dismissed if at any stage of the case review grounds are discovered that can make the Court to reject the appeal under Article 32 of this Law. Pursuant to Point 3 of Article 32 of the Law, the proceeding of the case shall be dismissed, if there isa a decision of the Constitutional Court on the issue raised in the appeal.

Consequently, in regard to the part of the provisions of Articles 260 and 262 of the RA Code on Administrative Offenses, declared contradicting the RA Constitution and void by the mentioned decision of the Constitutional Court, the proceedings of the case shall be dismissed.

5. In accordance with Part 7 of Article 68 of the RA Law on the Constitutional Court, taking into account the need to ensure and protect the free exercise of the rights and freedoms of a person and citizen enshrined in the Constitution, the permissibility of their restrictions, as well as the need to ensure the direct operation of the Constitution, and based on the arguments of the Applicant, the Constitutional Court considers it necessary to establish:

a) the grounds and the objective of the challenged legal regulations;

b) according to the semantics of the RA Constitution and the European Convention on Human Rights, are "transfer of an offender", "administrative detention" and "transfer the offender" deprivation of liberty and from what moment?

c) in the conditions of the challenged legal regulations, whether legal guarantees, including the right to apply to the court against such actions, are ensured for persons deprived of their liberty by the RA Constitution and international treaties of the Republic of Armenia?

6. Based on Articles 258, 260 and Part 2 of Article 267 of the RA Code on Administrative Offenses (hereinafter referred to as the Code), the actions "transfer of the offender", "administrative detention" and "transfer the offender" are coercive measures and the committed or possible administrative violation may serve as grounds for it. The objectives of these measures are different.

The transfer of the offender, prescribed by Article 258 of the Code, is applicable to the person who committed the offense in order to ensure the enforcement of the action prescribed by the Law; drawing up a protocol on an administrative offense, in certain cases the identification of the offender likewise and prevention of the offense.

According to Article 259 of the Code, **administrative detention is a coercive measure**, the use **of which** is permitted in the cases directly stipulated by the RA legislation for prevention of administrative offenses, if other measures of influence have been exhausted, for the identification of a person, drawing up a protocol on an administrative offense, if it cannot be drafted on the spot, and if the drafting of a protocol is mandatory, in order to ensure timely and proper consideration of cases and enforcement of decisions on cases of administrative offenses.

From the above-mentioned articles of the Code it follows that the purposes of transfer of the offender and detention basically coincide.

The purpose of the transfer the offender envisaged by Part 2 of Article 267 of the same Code is to make the person, involved in administrative responsibility, a participant in the consideration of the case, when the presence of the latter in the cases prescribed by the Code is mandatory, and s/he declines to appear.

Regardless of the purposes, in all these cases a coercive act is enforced against the person, as a result of which s/he is prevented from leaving the place voluntarily. The parties in this Case are of the same opinion that in all these cases a person is actually deprived of his/her freedom.

The case law of the European Court of Human Rights also states that the use of the coercive element in the exercise of the powers of the police to identify and carry out personal searches is a sign of depriving a person of his freedom, regardless how long this action lasts (Krupko and others v. Russia, 26587/07, 26.06.2014; Foka v. Turkey, 28940/95, 24.06.2008; Brega and others v. Moldova, 61485/08, 24.04.2012, etc.). In the last noted case of the European Court, one of the applicants (the second applicant) was detained by police in a trolleybus and only after a few stops, after 8 minutes was released. The ECtHR found that although the applicant had been

deprived of his liberty for a very short time, nevertheless, it can be seen from the case file that with the unlawful purpose of obstructing his participation in the demonstration he was preventing from leaving that place and, consequently, his right to personal liberty was violated.
The RA Constitutional Court, comparing the "transferring of the offender", "administrative detention" and "transfer the offender " measures prescribed in the above-mentioned articles of the Code with cases of deprivation of liberty of the person listed in Part 1 of Article 27 of the RA Constitution and Part 1 of Article 5 of the European Convention on Human Rights, noted the legal position of the ECHR, states that they **are activities that deprive individuals of freedom, therefore, subjects directly influencing each of them are guarantees prescribed in the RA of Constitution and international legal documents**.
Referring to the applicant's argument regarding the absence of a specific provision in the challenged articles regarding the exact moment of deprivation of liberty, detention, transfer and transfer the offender , the RA Constitutional Court finds that the interference with the right to personal liberty guaranteed in Article 27 of the RA Constitution starts with the actual deprivation of personal freedom, regardless whether it happens by "transferring an offender", "administrative detention" or "transfer the offender ". **From the moment of actual deprivation of liberty**, the fundamental rights enshrined in the Constitution for these persons are in effect, regardless whether they are reflected in the legislation on administrative offenses or not, as in accordance with Part 3 of Article 3 of the RA Constitution (with amendments of 2015), public authority is limited to the fundamental rights and freedoms of a man and citizen, which are **directly applicable by law**.

7. Article 27 of the RA Constitution exhaustively lists the cases when a person can be deprived of personal freedom in accordance with the procedure prescribed by law. Moreover, the deprivation of liberty must be carried out according to the procedure clearly prescribed by law, and the law in turn must satisfy the constitutional requirements of proportionality and certainty of the restriction of fundamental rights prescribed in Articles 78 and 79 of the RA Constitution.
Simultaneously, from the moment of deprivation of liberty, the Constitution guarantees certain fundamental rights to a person, and a person must be able to enjoy them freely. In particular, according to Part 2 of Article 27 of the RA Constitution, every person deprived of personal

freedom is immediately notified of the reasons for the deprivation of liberty, and in case of a criminal charge, also of the accusation in a language that s/he understands.
The RA Constitutional Court considers that the "immediate notification" of this person about the reasons for the deprivation of liberty is a direct duty of the public authorities and a discretionary approach to this issue is prohibited.
Turning to the right of a person deprived of liberty to be notified, the ECtHR finds that Paragraph 2 of Article 5 of the European Convention on Human Rights indicates an elementary guarantee that everyone who is arrested shall be informed promptly of the reasons for his arrest and of any charge against him. The ECtHR considers that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The ECtHR also stated the absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (**Anguelova v. Bulgaria, application no. 38361/97, 13/06/2002, § 154**).
According to Part 3 of Article 27 of the RA Constitution, everyone deprived of personal liberty shall have the right to have a person of his choosing be immediately notified about it; this right is also directly applicable law.

8. The Constitutional Court also finds that, irrespective of the fact that Article 266 of the RA Code on Administrative Offenses prescribes that administrative arrest may be appealed to a higher authority or a prosecutor, but it does not indicate the court, and it does not mean that this provision excludes the person's right to judicial protection, prescribed by the RA Constitution and regulated by the RA Code on Administrative Offenses.
First, according to Part 1 of Article 61 of the RA Constitution, everyone shall have the right to effective judicial protection of his rights and freedoms, which, by virtue of Part 3 of Article 3 of the Constitution, is directly applicable law.
Secondly, Part 5 of Article 27 of the RA Constitution states that everyone deprived of personal liberty shall have the right to challenge the lawfulness of depriving him of liberty, about which the court shall render a decision in a short time and shall order his release if the deprivation of liberty is unlawful.

Thirdly, the norm of identical content is also prescribed in Part 4 of Article 5 of the European Convention on Human Rights, and in Part 5 of the same article prescribes that everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation, which implies that the right to challenge the legality of depriving a person of liberty in court includes the right to challenge by the judicial order the legality both during the deprivation of liberty and the termination of the circumstance of deprivation of liberty.

Fourthly, according to Article 3 of the RA Code on Administrative Offenses, each natural or legal entity shall have the right to appeal to the Administrative Court in the manner prescribed by the same Code if s/he considers that an administrative act, an act or omission of a state or local government body or its official violated or directly violated his/her rights and freedoms, enshrined in the Constitution, international treaties, laws or other legal acts of the Republic of Armenia, as well as, if obstacles were created for the implementation of these rights and freedoms, however, they were to be provided by virtue of the Constitution, international treaty, law or other legal act.

The above-mentioned Article of the RA Code on Administrative Offenses offers the person to challenge the deprivation of liberty in the Administrative Court as an action of a state body. In the position submitted to the Constitutional Court, the RA Government reported that a sustainable judicial practice was formed in respect to judicial review of administrative detention and referred to the decisions of the RA Administrative Court in the cases No. ՎԴ/9046/05/13, ՎԴ/2710/05/14 and ՎԴ/1702/05/14.

Another issue is whether the regulation of the RA Code on Administrative Offenses takes into account all the measures of deprivation of liberty specified in the Code of Administrative Offenses, their specifics, duration, etc. The latter stands outside of the framework of the constitutional and legal dispute raised in this Case.

9. The RA Constitutional Court, referring to the constitutionality of Part 5 of Article 5 of the RA Law on Police Service, states that by virtue of the challenged provision the RA Government Decision does not restrict fundamental human rights or freedoms, but approves the list of rights to be notified and the notification procedure. The noted provision has a constitutional legal content, according to which the list of rights subject to notification includes all rights provided

for at least by the RA Constitution and the European Convention on Human Rights, in particular, for persons deprived of liberty by administrative procedure, including the right to legal assistance and the right to medical examination.
At the same time the Constitutional Court concludes that according to the aforementioned Article of the Law, the list approved by the RA Government Decision No. 818- Ն of June 14, 2007 covers all rights guaranteed by the RA Constitution to a person deprived of their liberty, including the right to know from the moment of restriction of liberty not only the reasons and the grounds for restricting his/her freedom, but also the position, rank, surname of a police officer restricting his/her freedom, provide explanation or refuse in the presence of an attorney, review the documents or materials directly related to the restriction of his/her rights and freedoms, receive medical assistance if necessary, demand that legal measures be taken to eliminate the danger to his/her life, health, property or members of his/her family in connection with his/her detention, as well as the protection of his property left unattended, as well as get acquainted with the procedure for challenging the legality and validity of restricting his/her freedom, appeal in the hierarchy of actions and decisions of the police either to the prosecutor or to the court.
In accordance with the procedure prescribed by the Government Decision, a written notification of the list of rights provided does not exempt the police officer from the obligation to notify of other rights provided for by law.
The Applicant's argument that, in practice, even the requirements of the noted Government Decision are not ensured, it is not the constitutionality of this provision that forms the issue, but an assessment of the behavior and responsibility of the respective law enforcer, which is not the subject of consideration by the Constitutional Court.

10. Regarding Part 6 of Article 5 of the RA Law on Police Service, the RA Constitutional Court states that according to Part 3 of Article 27 of the RA Constitution the exercise of the right to immediate notification of a person selected by a person deprived of liberty may be postponed only in cases, order and term, prescribed by law for preventing or detecting crimes.
The Constitution did not exclude the fact that immediate notification could also lead to the receipt of relevant information by others, which may make it more difficult to prevent or detect crimes. Possible crimes may concern state security, public order, fundamental rights and freedoms of others, whose protection is also the task of the state. At the same time, taking into

account the nature of the compulsory measure of deprivation of liberty, the existence of circumstances hindering the conduct of such an act cannot be excluded, which **objectively** hamper the **immediate** fulfillment of duties aimed at realizing the rights of a person. Another issue is that Part 6 of Article 5 of the RA Law on Police Service does not concern only this objective, enshrined in Part 3 of Article 27 of the RA Constitution, **but concerns all cases of deprivation of liberty, including administrative offenses,** which is incompatible with the requirements of the RA Constitution.

11. Regarding the Code on Administrative Offenses, the RA Constitutional Court in its Decisions DCC-1048, DCC-1059 stated that the above-mentioned Code contains numerous articles that continue to refer to the USSR legislation, use the terms "the territory of the USSR", "local councils of deputies", "socialist property", "socialist legality", "internal affairs bodies", and establish in the field of legislation on administrative violations issues that fall within the competence of the USSR etc., that creates an unworthy legal danger to the rule of law. Moreover, as a result of amendments made earlier in a number of articles of the Code after the adoption of the Constitution, the abbreviation "USSR" was replaced by "RA", and in a number of other articles, including Articles 262 and 267 of the Code, challenged in this Case, the last amendment was made by the RA National Assembly on December 24, 2004 in Article 262, and in the last one - on February 7, 2012, but even the abbreviation "USSR" continues to be preserved. In the Judgment Mkrtchyan v. Armenia (case number 6562/03), adopted on January 11, 2007, the European Court of Human Rights accepts that it may take some time for a country in transition to establish its legislative framework, but the Court did not consider reasonable the delay of almost thirteen years for adoption of the law on fundamental human rights (§43).
Concerning the above-mentioned issue, the Ra Constitutional Court, in 2012, in the Decisions DCC-1048, DCC-1059 noted the need to adopt a new Code on Administrative Offenses, specify the scope of existing legal regulations, based on the results of a study of current international experience, and the inexpediency of fragmentary amendments in Soviet legal regulations.
The RA Constitutional Court takes note that a draft of the new Code on Administrative Offenses was drafted by the RA Ministry of Justice and submitted for public discussion recently. However, the Court notes at the same time that during the consideration of the case concerning Decision DCC-1059 of November 23, 2012, it was found out that by letter 01/10.1 of the RA

Prime Minister dated 19.10.2010, the National Assembly was informed that the RA Ministry of Justice had drafted a new draft Code which was discussed by the RA Government. In November 2010, a similar draft was submitted to the National Assembly, but in February 2011 it was withdrawn. Considering such a situation as a threat to the security of the legal system of the Republic of Armenia, the RA Constitutional Court considered the adoption of a new Code on Administrative Offenses as an urgent necessity.

Due to the failure of the RA Government and the RA National Assembly to implement the noted Decision of the RA Constitutional Court, not only a certain legislative gap has arisen, but in the sphere of ensuring the person's right to freedom an illegal legal practice has developed, making possible the long-term use by the police of a legal position recognized by the Constitutional Court as contradicting to the Constitution and invalid, which in turn is a serious threat to the constitutional law in the country.

Due to the failure of the RA Government and the RA National Assembly to implement the noted Decision of the RA Constitutional Court, a certain legislative gap arose, but in the sphere of ensuring the person's right to freedom, illegal legal practice was developed, making possible the long-term use by the police of a legal position declared contradicting the Constitution and void by the Constitutional Court, which in turn is a serious threat to the constitutional legality in the country.

Taking into account the current situation, the Constitutional Court considers it necessary to reaffirm the requirement of Point 6 of Decision DCC-1059 that, from the point of view of establishing constitutional legality in the country, the adoption of a new Code on Administrative Offenses is an urgent necessity. And before that, judicial practice should, if possible, be guided by the requirements of the provisions of Articles 3 and 27 of the RA Constitution, according to which "The public power shall be bound by fundamental rights and freedoms of the human being and the citizen as the directly applicable law", and "Everyone deprived of liberty shall be informed promptly, in a language which he understands, of the reasons for deprivation of liberty ", "Everyone deprived of liberty shall have the right to immediately notify a person of his choosing about it. The exercise of this right may be postponed only in cases, order and for the period established by law, for the purpose of preventing or solving crimes."

Based on the review of the Case and governed by Point 1 of Article 100, Point 8 of Part 1 of Article 101, and Article 102 of the Constitution of the Republic of Armenia (with Amendments of 2005), Point 3 of Article 32, Point 1 of Article 60, Articles 63, 64 and 68 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. To partially terminate the proceedings of the Case on conformity of Articles 258, 260, 262, 266 and 267 of the Code on Administrative Offences of the Republic of Armenia, Parts 5 and 6 of Article 5 of the Law of the Republic of Armenia on Police Service with the Constitution of the Republic of Armenia on the basis of the Application of the Human Rights Defender of the Republic of Armenia in regard to the part of the provision "Upon a request from a person detained for committing an administrative offense, the relatives and the administration at the place of work or education shall be notified of the place of her/his location" stipulated by Part 3 of Article 260 of the RA Code on Administrative Offences, as well as in regard to the part of the provisions stipulated by Parts 2 and 3 of Article 262 of the RA Code on Administrative Offences, since the RA Constitutional Court has adopted decisions in regard to the above-mentioned, stressing at the same time that improper implementation of the Decisions DCC-1048 and DCC-1059 of the RA Constitutional Court in regard to the RA Code on Administrative Offences has become a serious threat to the establishment of constitutional legality in the country.

2. The rest of the provisions of Articles 260 and 262, as well as Articles 258 and 267 of the RA Code on Administrative Offences are in conformity with the RA Constitution in the constitutional legal content, according to which, in the case of measures such as "bringing of the offender", "administrative arrest" and "transfer ", the rights established by Article 27 and Part 1 of Article 64 of the RA Constitution - as directly applicable rights - shall be ensured for the person deprived of her/his liberty from the moment of de facto deprivation of personal liberty.

3. Article 266 of the RA Code on Administrative Offences is in conformity with the RA Constitution in the constitutional legal content, according to which, the failure to mention the court in this Article may not be interpreted and applied in such a way as to impede the exercise of the right of the person to challenge the legitimacy of administrative detention in court.

4. The provisions of Part 5 of Article 5 of the RA Law on Police Service are in conformity with the RA Constitution in the constitutional legal content, according to which, the list of rights subject to notification always must at least include the rights established by Article 27 and Part 1 of Article 64 of the RA Constitution.

5. To declare Part 6 of Article 5 of the RA Law on Police Service contradicting the requirements of Parts 2 and 3 of Article 27 of the Constitution of the Republic of Armenia and void in regard to the part that necessary legal guarantees for the protection of constitutionally stipulated rights for the persons - who were at the very moment de facto deprived of liberty - are not ensured.

6. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia (with Amendments of 2005) this Decision shall be final and effective upon publication.

Chairman **G. Harutyunyan**

24 January 2017

DCC-1339