

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

**ON THE CASE OF CONFORMITY OF PART 3 OF ARTICLE 9 OF THE LAW OF
THE REPUBLIC OF ARMENIA ON SUPPORT, SERVICE AND SOCIAL
GUARANTEES OF THE ACTIVITY OF THE OFFICIALS WITH THE
CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE
APPLICATION OF THE ADMINISTRATIVE COURT OF THE REPUBLIC OF
ARMENIA**

Yerevan

February 12, 2019

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan (Rapporteur), F. Tokhyan, A. Tunyan, A. Khachatryan, H. Nazaryan, A. Petrosyan,

with the participation of (in the framework of the written procedure):

the applicant: RA Administrative Court,

the respondent: A. Kocharyan, official representative of the RA National Assembly, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, as well as articles 22, 41 and 71 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of part 3 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

The Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials (the title of the Law was amended by the Law HO-143-N of 07.03.2018) (hereinafter – the Law) was adopted by the National Assembly on 4 February 2014, signed by the President of the Republic on 13 February 2014 and entered into force on 1 July 2014.

Part 3 of article 9 of the Law, titled: “Transitional Provisions”, stipulates:

“In case of at least 20 calendar years of professional experience as of 1 July 2014, a pension is also awarded:

1) to a person who has been dismissed from the post of the prosecutor on the grounds established by clauses 1 and 2 of part 1 of article 62 of the Law of the Republic of Armenia on the Prosecutor's Office, if he was born before 1 January 1974;

2) to a person who has been dismissed from the post the Special Investigation Service officer on the grounds established by clauses 2 and 3 of part 1 of article 12 of the Law of the Republic of Armenia on Special Investigation Service.

The period of work as a prosecutor of the Republic of Armenia (deputy prosecutor, assistant to the prosecutor and employees of scientific and educational institutions of the prosecutor's office who have been awarded class ranks before 1 December 2007), police investigator, investigator of an authorized state defense agency, and investigator of the national security agencies of the Republic of Armenia (including investigator of the prosecutor's office; chief and deputy chief of an investigative department, unit or division - before 1 December 2007), the period of work as a Special Investigation Service officer, prosecutor and investigator of the USSR Prosecutor's system, the period of tenure as a judge in the Republic of Armenia and the USSR, as well as the period of mandatory fixed-term military service.

The amount of pension established by this part shall be calculated in the amount of 70 percent of the estimated salary; for every full year of professional work experience over 20 years, 2 percent of the estimated salary is added to the pension, and 1 percent for each year of work, before the prosecutor takes office, not counted as professional work experience. The amount of pension established by this part may not exceed the amount of the estimated salary.

The estimated salary of the person holding the post of prosecutor is determined at 90 percent of the salary (amount of official salary and surcharges issued for years of work as a prosecutor, judge, investigator of the prosecutor's office) calculated for the last position held by the prosecutor in the manner established by the legislation effective before 1 July 2014, taking into account the last position, class rank and years of work in the post of prosecutor, judge, investigator of the prosecutor's office as of the day of dismissal from the post of prosecutor.

The estimated salary of the Special Investigation Service officer is determined in the amount of the difference between the salary (the amount of the official salary issued for the class rank of the allowance and the allowance issued for the years of work as a Special Investigation Service officer, prosecutor or investigator) calculated for the last position held by the Special Investigation Service officer in the manner established by law effective before 1 July 2014, and income tax calculated from this amount, taking into account the last position, class rank and years of work as a Special Investigation Service officer, prosecutor or investigator as of the day of dismissal from the post of the Special Investigation Service officer.

The procedure for calculating estimated salary is established by the Government of the Republic of Armenia.

As of the day of entry into force of this Law, the pension of a person who has held the position of a member of the Constitutional Court is calculated in the manner prescribed by the Law of the Republic of Armenia on the Constitutional Court.

If a person has at least 20 calendar years of professional experience as of 1 July 2017, a pension shall be also awarded to the latter as prescribed in clauses 1 and 2 of this part, who were appointed to the position of a prosecutor or a Special Investigation Service officer before 1 June 2017 "after filling the position of the Investigative Committee officer in accordance with part 3 of article 51 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia.

The case was initiated on the basis of the application of the Administrative Court of the Republic of Armenia (in the person of judge L. Hakobyan) submitted to the Constitutional Court on 24 September 2018, which included the decision of the Administrative Court of the Republic of Armenia on "Applying to the RA Constitutional Court" on the case VD/14459/05/17 of 18 September 2018 and the application of the Administrative Court of the Republic of Armenia (in the person of judge A.

Harutyunyan) submitted to the Constitutional Court on 3 December 2018, which included the decision of the Administrative Court of the Republic of Armenia on “Terminating the proceedings of the administrative case and applying to the Constitutional Court of the Republic of Armenia” on the case VD/6695/05/17 of 29 November 2018.

Having examined the applications, the written explanations in the case, as well as having analyzed the relevant provisions of the Law and other documents of the case, the Constitutional Court **FOUND:**

1. Applicants’ arguments

Analyzing clause 25 of article 6, parts 1 and 2 of article 55 of the Criminal Procedure Code of the Republic of Armenia, the applicant (in the person of judge L. Hakobyan) concludes that the function and powers granted to the investigator are carried out by the investigators of the Investigative Committee, the Special Investigation Service, national security agencies and tax or customs agencies. The Criminal Procedure Code of the Republic of Armenia does not provide for any differentiation in terms of the nature and extent of the work carried out by the above investigators and the scope of their authority.

Referring to article 21 of the Law of the Republic of Armenia on National Security Agencies, article 70 of the Law of the Republic of Armenia on Military Service and the Status of Military Serviceman, articles 38 and 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, article 27 of the Law of the Republic of Armenia on Special Investigation Service, article 16 of the Law of the Republic of Armenia on Tax Service, articles 17 and 18 of the Law of the Republic of Armenia on State Pensions, as well as articles 2 and 9 of the Law, the applicant notes that the legislation of Republic of Armenia granted the investigators of the Investigative Committee, the Special Investigation Service, national security agencies the right to a pension for long service, not including the investigators of tax and customs agencies in the framework of the right to a pension for long service. By such regulation, the legislator differentiated between the investigators of the Investigative Committee, the Special Investigation Service and national security agencies, on the one hand, and the investigators of tax and customs agencies, on the other.

Based on the foregoing, the applicant believes that part 3 of article 9 of the Law contradicts article 29 of the Constitution, insofar as it does not provide the right to a pension for long service to the investigators of tax and customs agencies, since there is an unjustified differentiation between the investigators of the Investigative Committee, the Special Investigation Service, national security agencies, on the one hand, and the investigators of tax and customs agencies, on the other.

The applicant (in the person of judge A. Harutyunyan) argues the constitutionality of paragraph 1 of part 3 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials. Having analyzed the noted legal norm and paragraph 1 of part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, the applicant reports that the pension is awarded to the RA Special Investigation Service officer, if the latter has at least 20 calendar years of professional experience **as of 1 July 2014**, and to the RA Investigative Committee officer - if the latter has at least 20 calendar years of professional experience **as of 1 July 2017**. According to the applicant, the challenged norm violates the constitutional legal principle of prohibition of discrimination.

Based on the foregoing, the applicant believes that paragraph 1 of part 3 of article 9 of the Law contradicts article 29 of the Constitution, insofar as it provides for the right to a pension for the RA

Special Investigation Service officers if the latter have at least 20 calendar years of professional experience as of 1 July 2014.

2. Respondent's arguments

Referring to the decisions DCC-881 and DCC-1142 of the Constitutional Court, a number of judgments of the European Court of Human Rights regarding the right to pension or social security, the respondent reports that the legislator has stipulated the challenged provision based on the circumstance that according to the person's right to pension, the state has the equivalent obligation to properly ensure this right insofar as the level of economic development of the state affords at the moment.

According to the respondent, in part 3 of article 9 of the Law the legislator did not provide the right to a pension for long service to the investigators of tax and customs agencies, providing it to the investigators of the Investigative Committee, Special Investigation Service, Prosecutor's Office, and the National Security Service. According to the respondent, the legislator had relied exclusively on the results of a systemic analysis and comprehensive assessment of labor legislation, legislation governing pension relations, criminal-legal, criminal-procedural, customs and tax legislations, where certain specific differences were considered as the objective basis and legitimate aim of the legal regulation of the constitutional legal dispute at issue, in particular, the peculiarities of the status due to the nature of the total volume of the work, disproportion of workload of the parties, as well as substantial non-identity arising from the characteristics and dangers of work.

Consequently, according to the respondent, "the choice of the procedure for calculating and re-calculating pensions is within the discretion of the state, so long as this does not contradict the requirements of the Constitution or international commitments undertaken by the Republic of Armenia.

The respondent reports that the current legal regulations of the social security system of the Republic of Armenia are also determined by the financial, economic and material capabilities of the country, which is objectively aimed at guaranteeing the full and dignified exercise of the right of RA citizens to social security.

Based on the foregoing, the respondent concludes that the provision prescribed in part 3 of article 9 of the Law is in conformity with the requirements of the Constitution.

3. Circumstances to be ascertained within the framework of the case

When assessing the constitutionality of the provision challenged in this case, the Constitutional Court considers it necessary, in particular, to address the following questions:

- Is there a legislative differentiation between the statuses of investigators of various investigative agencies operating in the Republic of Armenia?

- Does the existing legislative differentiation between the indicated officials, from the viewpoint of pension security, comply with the principles of universal equality before the law and the prohibition of discrimination prescribed in article 29 of the Constitution?

Based on the foregoing, the Constitutional Court considers the constitutionality of the legal regulation challenged in this case in the context of articles 29 and 83 of the Constitution.

Considering the circumstance that part 3 of article 9 of the Law is systematically interconnected with part 1 of article 2 of the same Law, the Constitutional Court considers it necessary to determine the conformity of this provision with the Constitution.

Part 1 of article 2 of the Law establishes: “1. The following is entitled to the pension established by this Law:

1) (the clause has expired by the Law HO-14-N of 04.03.15);

2) a judge of the Constitutional Court:

a. in the event of the termination of powers on the grounds envisaged in clause 1 of part 1 of article 12 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, regardless of age;

b. in cases of termination or suspension of powers on the grounds envisaged in clause 2 of part 1, and clause 4 of part 2 of article 12 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force;

c. in the case envisaged in part 4 of article 88 of the Constitutional Law of the Republic of Armenia on the Constitutional Court;

2.1) a person who has held the position of a member of the Supreme Judicial Council, elected by the National Assembly, for at least five years, whose powers have been terminated or suspended on the basis of being declared legally incompetent by a court judgment that has entered into legal force or the acquisition of a physical ailment or illness that impedes his appointment;

2.2) a person who has held at least one constitutional term the position of a member of the Supreme Judicial Council elected by the National Assembly - upon reaching the age of 65 years;

2.3) a person who has held at least one term as a judge of an international court operating with the participation of the Republic of Armenia - upon reaching the age of 65 years;

3) a person who has held the position of a judge for at least 10 years, whose powers have been terminated or suspended on the basis envisaged in clause 2 of part 1 of article 160 of the Constitutional Law of the Republic of Armenia Judicial Code of the Republic of Armenia, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force or the acquisition of a physical ailment or illness that impedes his appointment as a judge;

4) a person who has held the position of a prosecutor for at least 10 years, who has been dismissed on the grounds prescribed in clause 2 of part 1 of article 62 of the Law of the Republic of Armenia on the Prosecutor's Office, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force or the acquisition of a physical ailment or illness that impedes his appointment as a prosecutor;

5) an officer who has served in the Special Investigation Service for at least 10 years, whose powers have been terminated on the basis envisaged in clauses 3 and 5 of part 1 of article 12 of the Law of the Republic of Armenia on Special Investigation Service, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force;

5.1 an officer who has served in the Investigative Committee of the Republic of Armenia for at least 10 years, whose powers have been terminated on the basis envisaged in clauses 3 and 5 of part 1 of article 22 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force;

6) a person who has held the position of Human Rights Defender of the Republic of Armenia for at least one constitutional term - upon reaching the age of 65 years;

7) a person who has held the position of deputy of the National Assembly of the Republic of Armenia for at least one constitutional term or who has held the position of deputy of the Supreme Council of the Republic of Armenia for at least five years - upon reaching the age of 65 years;

7.1) a person who has held the position of Chairman of the Control Chamber of the Republic of Armenia for at least one constitutional term or who has held the position of Chairman of the Control Chamber of the National Assembly for at least six years - upon reaching the age of 65 years;

8) a person who has held the positions established by Annex N 1 to this Law, the position of the head of the diplomatic service agency operating in a foreign state for at least 10 years, upon reaching the age of 65 years;

9) President of the Republic, deputies of the National Assembly, members of the Government, judges of the Constitutional Court and other courts, members of the Supreme Judicial Council elected by the National Assembly, Human Rights Defender, Chairman of the Audit Chamber, prosecutors, officers of the Special Investigation Service, Investigative Committee in case of recognition as disabled persons with a disability to labor activity of the 3rd degree as a result of an injury or ailment sustained in the performance of their official duties or in connection with their performance”.

4. Legal assessments of the Constitutional Court

4.1. One of the key elements of the legal status of investigative agencies, as well as investigators, is their function, which is generally stipulated in part 1 of article 178 of the Constitution, according to which, the investigative agencies shall, in the cases and procedure prescribed by law, organize and conduct the pre-trial criminal proceedings.

According to part 2 of the same article of the Constitution, the status and powers of investigative agencies and the procedure of their formation and operation shall be prescribed by law.

The inclusion of the provisions on investigative agencies in the Constitution, in fact, underlined, at least, their functional independence in pre-trial proceedings.

Relations in connection with the status of investigators are also regulated in the relevant articles of the Criminal Procedure Code of the Republic of Armenia. In particular, according to clause 25 of article 6 of the Code, the investigator is an official of the Investigative Committee, the Special Investigative Service, national security agencies, and tax and customs agencies, carrying out a preliminary investigation in a criminal case within the framework of his competence.

According to parts 1-3 of article 55 of the Criminal Procedure Code of the Republic of Armenia,

“1. The investigator is a state official, carrying out a preliminary investigation in a criminal case within the framework of his competence.

2. The investigator is authorized to prepare materials on the event of the crime and institute criminal proceedings, and in accordance with the rules of subordination established by this Code, accept the case for his proceedings or forward it to other investigator, institute a criminal case during the investigation of the case in his proceedings, if a new crime event is discovered committed by another person. The investigator is also entitled, in accordance with the provisions of this Code, to reject the institution of the proceedings of a criminal case. The investigator shall send a copy of the decision to institute criminal proceedings or to refuse to initiate criminal proceedings within 24 hours to the prosecutor, in order to verify the legality of the decision.

3. After accepting the criminal case for his proceeding, the investigator, for the purpose of comprehensive, full and objective investigation, shall be entitled to independently lead the course of investigation, make necessary decisions, conduct investigatory and other procedural actions in accordance with the provisions of this Code with the exception of cases, when criminal procedure law stipulates to obtain court permission. The investigator shall bear responsibility for the lawful and timely implementation of investigatory and other procedural actions”.

According to article 189 of the Criminal Procedure Code of the Republic of Armenia, preliminary investigations in criminal cases shall be carried out by investigators of the Investigative Committee, the Special Investigation Service, national security agencies, and tax and customs agencies. Article 190 of the same Code regulates the subordination rules. For instance, according to part 1 of this article, a preliminary investigation in cases of crimes prescribed in articles 104-164, 166-187, 190.1, 190.2, 191, 192, 195-201, 204, 212-214, 218, 222, 223, 225, 225.1, 227-232, 235-249 (with the exception of article 235.1), 251-298 (with the exception of article 267.1), 300, 300.1, 300.2, 301, 301.1, 308-328 (with the exception of article 310.1), 331-332.5, 336, 341, 341.1, 341.2, 343-345.1, 347-355 of the Criminal Code of the Republic of Armenia shall be carried out by investigators of the Investigative Committee.

At the same time, preliminary investigations in criminal cases prescribed in certain articles of the Criminal Code of the Republic of Armenia (articles 188, 189, 189.1, 193, 194, 202, 203, 205 /except for crimes in the field of customs legal relations/, 207-211) may be carried out both by the investigators of the Investigative Committee, and the investigators of the tax agencies (part 2 of article 190 of the Criminal Procedure Code of the Republic of Armenia).

In addition, article 190 of the Criminal Procedure Code of the Republic of Armenia also prescribes the so-called permanent subordination rules, according to which, one investigative agency also conducts preliminary investigations in criminal cases to be investigated by other investigative agencies if these crimes are uncovered during the investigation of a case under the investigation in his proceedings (parts 8 and 9 of article 190).

As a result of the analysis of the above legal norms, the Constitutional Court states that **the status** of investigators of all investigative agencies operating in the Republic of Armenia **is essentially identical: they carry out professional activities aimed at fulfilling the function given to the investigative agencies as prescribed by the Constitution (preliminary investigation in a criminal case).**

The Constitutional Court also considers it necessary to note that the subordination of criminal cases at the preliminary investigation stage, which, as follows from the contents of article 190 of the Criminal Procedure Code of the Republic of Armenia, in some cases is purely conditional, cannot have any significant effect on the status of the investigator neither in terms of the volume of his activity, nor in the sense of the content of this activity, nor can it be regarded as an objective justification for a differentiated approach in providing any advantage or privilege.

4.2. According to article 1 of the Constitution, the Republic of Armenia is a sovereign, democratic, and **social** state governed by the rule of law. A person's right to social security is prescribed in article 83 of the Constitution, according to which, everyone shall, in accordance with law, have the right to social security in cases of maternity, having many children, illness, disability, workplace accidents, need of care, loss of breadwinner, old age, unemployment, loss of employment, and in other cases.

As the Constitutional Court has noted in its Decision DCC-1142 of 2 April 2014, social security is not only the person's right, but also a target function conditioned by positive obligation of the state.

Relations connected with the right of investigators of the Investigative Committee, the Special Investigation Service, national security agencies, and tax and customs agencies to social security, in particular to pension, are regulated by a number of legal acts.

So, according to part 1 of article 38 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, "Pension provision for the RA Investigative Committee officer, social security for the Investigative Committee officer and his family members shall be carried out in the manner prescribed by the Law of the Republic of Armenia on Social Guarantees of Persons Holding Public Positions, in case of recognition as a disabled person with a disability to labor activity of the 3rd degree as a result of an injury or ailment sustained in the performance of his official duties or in connection with their performance".

According to clause 5.1 of article 2 of the Law, the RA Investigative Committee officer who has served for at least 10 years, whose powers have been terminated on the grounds prescribed in clauses 3 and 5 of part 1 of article 22 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, as well as on the basis of being declared legally incompetent by a court judgment that has entered into legal force, shall have the right to a pension prescribed by this Law.

According to the first and second paragraphs of part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, "an employee dismissed from the position of the Investigative Committee officer on the grounds prescribed in clauses 2, 3 and 5 of part 1 of article 22 of the Law of the Republic of Armenia on the Investigative Committee of the Republic Armenia, and also on the basis of being declared legally incompetent by a court judgment that has entered into legal force, shall be awarded a pension, if the latter has been appointed to the position of the Investigative Committee officer in accordance with part 3 of article 51 of this Law and if the latter, on the day of dismissal, has **at least 20 calendar years of professional experience as of 1 July 2017.**

The period of military service and the period of occupying the position of the Investigative Committee officer shall be calculated in calendar for the service prescribed in this part".

According to article 27 of the Law of the Republic of Armenia on Special Investigation Service, pension provision for the Special Investigation Service officer, social security for the Special Investigation Service officer and his family members shall be carried out in the manner prescribed by the Law of the Republic of Armenia on Social Guarantees of Persons Holding Public Positions, in case of recognition as a disabled person with a disability to labor activity of the 3rd degree as a result of an injury or ailment sustained in the performance of his official duties or in connection with their performance.

According to clause 5 of part 1 of article 2 of the Law, the Special Investigation Service officer who has served for at least 10 years, and who has been removed from office on the grounds prescribed in clauses 3 and 5 of part 1 of article 12 of the Law of the Republic of Armenia on Special Investigation Service, as well as on the basis of being declared legally incompetent by a court

judgment that has entered into legal force, shall have the right to a pension prescribed by the mentioned Law.

According to clause 2 of part 3 of article 9 of the Law, a person dismissed from the position of the Special Investigation Service officer on the grounds prescribed in clauses 2 and 3 of part 1 of article 12 of the Law of the Republic of Armenia on Special Investigation Service, shall be awarded a pension, if he has at least 20 calendar years of professional experience as of 1 July 2014.

And according to the last paragraph of part 3 of article 9 of the Law, “persons specified in clauses 1 and 2 of this part, who have been appointed to the position of a prosecutor or the Special Investigation Service officers before 1 June 2017 - after taking the position of the investigator of the Investigative Committee in accordance with part 3 of article 51 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia, and who have at least 20 calendar years of professional experience as of 1 July 2017, shall also be awarded a pension.

The general procedure for calculating the amount of pensions of officials entitled to receive a pension under the law is prescribed in article 5 of the Law.

The procedure for calculating the amount of pension of investigators entitled to receive a pension, as prescribed in clause 2 of part 3 of article 9 of the Law, as well as in part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia (the investigators of the Special Investigation Service and the Investigative Committee who are not included in the entities referred to in article 2 of the Law, and the right to an appropriate pension of which is provided by transitional provisions), is established, respectively, in paragraphs 3, 4 and 5 of part 3 of article 9 of the Law and in paragraph 3 of part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia.

According to article 21 of the Law of the Republic of Armenia on National Security Agencies, social protection of employees of national security agencies (including investigators of investigative agencies) shall be carried out in accordance with the Law of the Republic of Armenia on Military Service and the Status of a Military Servicemen, and the Law of the Republic of Armenia on Remuneration of Persons in Public Posts and Persons Holding Public Office. Relations in connection with the right to pension of investigators of the investigative agencies of the National Security Service are regulated, in particular, by part 1 of article 70 of the Law of the Republic of Armenia on Military Service and the Status of a Military Servicemen, and clause 1 of part 1 of article 17, part 1 of article 18 of the Law of the Republic of Armenia on State Pensions, according to which the investigators of the said agencies are granted a military pension for long service. The length of the military pension for long service shall be calculated in the manner prescribed by article 19 of the Law of the Republic of Armenia on State Pensions.

Unlike the aforementioned investigative agencies, the relations in connection with the exercise of the right to pension of tax and customs investigators are regulated in general procedure. So, part 4 of article 16 of the Law of the Republic of Armenia on Tax Service expressly states that for tax officers, the retirement age shall be calculated in general procedure established by the legislation of the Republic of Armenia. It should be noted that the Law of the Republic of Armenia on Customs Service also does not provide for any special reservation regarding the investigators of the customs agency.

Based on the results of a systemic analysis of these legal norms, the Constitutional Court concludes that the social policy of the state pursued in relation to persons holding public office in the Republic of Armenia, in particular in the field of implementation of the right to pension at issue, has, inter alia, such a peculiarity, that for a particular category of officials, the legislator has established higher social guarantees and the right to pension on more favorable terms based on the peculiarities of their status or functions.

Those are, inter alia, the investigators of the Special Investigation Service, the Investigative Committee and the agencies of the National Security Service. The Constitutional Court came to this conclusion on the basis of a comparative study of the relevant provisions of special laws regarding the procedure for calculating the retirement age (in particular, the initial coefficients for calculating the amount of pension), the professional experience required for the right to a pension, as well as the pension amount of the said investigators (see clauses 5 and 5.1 of part 1 of article 2, article 5, and part 3 of article 9 of the Law; part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee; article 21 of the Law of the Republic of Armenia on National Security Agencies; part 1 of article 18, and article 19 of the Law of the Republic Armenia on State Pensions/.

At the same time, despite the general approaches of the social policy pursued by the status of investigators, the legislation showed a differentiated approach to tax and customs investigators in the sense that, in comparison with the investigators of the aforementioned agencies, it established the right to pension for them less favorable conditions or, in other words, investigators of the tax and customs agencies are not included in the special entities entitled to pension under more favorable conditions, and enjoy the right to pension on a general basis.

In addition, the legislator showed a differentiated approach also to the investigators of the Special Investigation Service and the Investigative Committee when providing for the right to a pension under more favorable conditions. In particular, despite the fact that, in essence, high social guarantees have been established for investigators of both the Special Investigation Service and the Investigative Committee, at the same time, the professional experience required for the right to a pension of the investigators of the Special Investigation Service is calculated as of **1 July 2014** (in accordance with the challenged provision), and for investigators of the Investigative Committee - as of **1 July 2017** (in accordance with part 4 of article 56 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia), **as a result of which the latter are obviously in more favorable situation, than the investigators of the Special Investigation Service under the same conditions.**

4.3. Given the fact that, in the field of social security, the legislation has shown a differentiated approach to the investigators of the Investigative Committee and the Special Investigation Service, as well as to the investigators of the Investigative Committee, the Special Investigation Service, the National Security Service and the tax or customs agencies, the Constitutional Court deems it necessary to consider the challenged legal regulations from the perspective of the principle of the prohibition of discrimination prescribed in the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 29 of the Constitution, titled “Prohibition of Discrimination” prescribes that any discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion, worldview, political or any other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

With regard to the differentiated and discriminatory treatment of persons, the Constitutional Court has expressed the following legal positions:

- the positive constitutional duty of the state is to ensure such conditions that provide persons with the same status with equal opportunity to exercise, and in case of violation, protect their rights, otherwise not only the constitutional principles of equality, the prohibition of discrimination, but also the rule of law and legal certainty would be violated (DCC-731);

- within the framework of the principle of prohibition of discrimination, the Constitutional Court considers acceptable any differentiated approach based on an objective basis and a legitimate aim. The principle of the prohibition of discrimination does not mean that any differentiated approach to persons

of the same category can turn into discrimination. The differentiated approach devoid of an objective basis and a legitimate aim is considered as a violation of the principle of the prohibition of discrimination (DCC-881);

- discrimination exists when, within the framework of the same legal status, a differentiated approach is shown to a person or persons, in particular, they are deprived of certain rights or these rights are limited, or they receive privileges (DCC-1224).

Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the prohibition of discrimination establishes that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. According to the case law of the ECHR, in order to raise the issue of the prohibition of discrimination, there should be a difference in the treatment of persons in comparable situations.

According to the European Court, not every differentiation or difference can be considered discrimination. In particular, in one of its judgments (*Andrejeva v. Latvia* (GC 18.02.2009, 55707/00, § 81), the European Court noted that "... no objective and reasonable justification means that the distinction in issue does not pursue a legitimate aim or that there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".

Although according to article 83 of the Constitution, the legislator is authorized to determine the content of the right to social security, in particular the right to a pension (for example, the size of the pension, the procedure for assignment and payment, etc.), nevertheless, the Constitution, inter alia, firstly **excludes non-guaranteeing of this right by law**, that is, the legislator is obliged to adopt a law guaranteeing the right to a pension. In addition, such a law should be certain, predictable, and not violate the principles of equality and the prohibition of discrimination.

The Constitutional Court states that the approaches aimed at realizing the right of the investigators of the Investigative Committee and the Special Investigation Service, as well as the investigators of the Investigative Committee, the Special Investigation Service, the National Security Service and the tax or customs agencies, in this case the right to pension, should be in tune with the general approaches to the social policy pursued in relation to the investigators, due to their status, taking into account the particularities arising from the institutional position of the respective investigative agencies in the system of public authorities.

The legislation in the field of social security, in general, guarantees the right to pension of the employees of all investigative agencies operating in the Republic of Armenia. At the same time, the analysis of the legislation shows that the right to a pension guaranteed for tax and customs investigators does not reflect the general approaches of the social policy with respect to the latter, and in the issue of granting a pension to the investigators of the Special Investigation Service and the Investigative Committee (who were appointed to the position of the Investigative Committee officer in accordance with part 3 of article 51 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia and if the latter, on the day of dismissal, have at least 20 calendar years of professional experience as of 1 July 2017) the legislator envisaged more favorable legal regulation regarding the procedure for calculating pensions.

So, on the one hand excluding the investigators of tax and customs agencies from the general framework of social policy, and on the other hand establishing different terms for the calculation of the professional experience required for the right to a pension for the investigators of the Special Investigation Service and the Investigative Committee, are differentiated approaches to persons of the

same category, there is no objective and reasonable criteria for the latter, they are not justified and do not pursue a legitimate aim.

Based on the review of the case and governed by clause 1 of article 168, part 4 of article 169, and article 170 of the Constitution, as well as articles 63, 64 and 71 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. To declare part 3 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials contradicting article 29 of the Constitution, in part of not including the investigators of tax and customs agencies in the framework of the entities included therein.

2. To declare clause 2 of part 3 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials contradicting article 29 of the Constitution, insofar as it establishes less favorable conditions of the right to pension for the investigators of the Special Investigation Service in comparison with the investigators of the Investigative Committee.

3. To declare part 1 of article 2 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials systemically interrelated with part 3 of article 9 of the same Law, contradicting article 29 of the Constitution, in part of not including the investigators of tax and customs agencies in the framework of the entities included therein.

4. Based on part 3 of article 170 of the Constitution, pursuant to clause 4 of part 9 and part 19 of article 68 of the Constitutional Law on the Constitutional Court, and taking into account the circumstance that declaring the challenged provisions as contradicting the Constitution by the Decision of the Constitutional Court will inevitably result in consequences for the society, thereby violating the legal security established by repealing the mentioned normative legal act effective at the moment, to define 1 June 2019 for the invalidation of the provisions declared by this Decision as contradicting the Constitution, providing the National Assembly the possibility to reconcile the relevant legal regulations of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials with the requirements of this Decision.

5. Pursuant to part 2 of article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

Chairman

H. Tovmasyan

February 12, 2019

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