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 THE NORMS PRESCRIBED IN PART 6 OF ARTICLE 284 OF THE RA CRIMINAL PROCEDURE CODE AND AFFILIATED ARTICLES 287-289, AND PART 2 OF ARTICLE 385 OF THE SAME CODE, AND PARTS 1 AND 2 OF ARTICLE 6 OF THE RA LAW ON OPERATIVE INVESTIGATIVE ACTIVITIES WITH THE CONSTITUTION ON THE BASIS OF THE APPLICATION OF THE CRIMINAL COURT OF APPEAL OF THE REPUBLIC OF ARMENIA

Yerevan April 28, 2020

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

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

the applicant: Administrative Court of the Republic of Armenia,

the respondent: K. Movsisyan, official representative of the RA National Assembly, Head of the Legal Support and Service Division 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 and 71 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of the norms prescribed in part 6 of article 284 of the RA Criminal Procedure Code and affiliated articles 287-289, and part 2 of article 385 of the same Code, and parts 1 and 2 of article 6 of the RA Law on Operative Investigative Activities with the Constitution on the basis of the application of the Criminal Court of Appeal of the Republic of Armenia.

The Criminal Procedure Code of the Republic of Armenia (hereinafter – the Code) was adopted by the National Assembly on 1 July 1998, signed by the President of the Republic on 1 September 1998 and entered into force on 12 January 1999.

The challenged part 6 of article 284 of the Code, titled: “Discussion procedure of petitions against operational search measures”, stipulates:

"Based on the results of the discussion of the issue, the court makes a decision to authorize or turn down the application, indicating the grounds for approval or dismissal. The relevant materials are returned by the court to the body in charge of operational search measures".

Articles 287-289 stipulate:

"**Article 287.** Appeals against a court decision on choosing or not choosing detention as a preventive measure

1. Appeals against the judge's decision on choosing or not choosing detention as a preventive measure, as well as on the extension of detention or turning down detention extension, are brought by the prosecutor, the accused, his lawyer or legal representative to the Court of Appeal directly or through the court which made the decision or the administration of the detention facility.

2. After receiving complaints addressed to the court, the administration of the detention facility must register them and forward by jurisdiction, informing the supervising prosecutor about that.

3. The Court of Appeal, receiving the complaint, immediately demands to present the materials justifying the necessity of detention, and the court decision".

The article was amended by the Law HO-91-N of 25.05.06.

"**Article 288.** Judicial review of the lawfulness and justification of the decision on choosing or not choosing detention as a preventive measure

1. Judicial review of the lawfulness and justification of choosing or not choosing detention as a preventive measure, as well as the extension or refusal to extend the detention period, shall be carried out by the Court of Appeal.

2. The court verifies the lawfulness and justification of detention or the extension of detention period within three days from the date of receipt of materials confirming the lawfulness and justification of the chosen preventive measure.

3. Judicial review is carried out in a closed court session with the participation of the prosecutor and defense counsel. Failure to appear by a party who was previously aware of the day of consideration of the complaint does not prevent the implementation of the judicial review. The court may summon an employee of the inquiry agency or investigator, as well as the victim, to the court session to give explanations.

4. At the beginning of the session, the presiding judge announces the complaint to be considered, presents the persons who have appeared in court and explains to them their rights and obligations. Then the applicant, if he participates in the consideration of the complaint, substantiates the complaint, after which the other persons present at the session are heard.

5. As a result of judicial review, the court makes one of the following decisions:

1) on cancellation of detention as a measure of restraint and release of a person from detention;

2) on choosing detention as a preventive measure or on the extension of its term;

3) on dismissal of the complaint.

6. In the event that materials confirming the lawfulness and justification of choosing detention as a preventive measure, as well as the extension of detention period, are not presented at the hearing, the court shall issue an order to cancel this measure of restraint and to release the person from custody.

7. A copy of the court decision is sent to the prosecutor and the applicant, and in the case of a decision on the release of a person from custody - also to the administration of the detention facility for immediate execution.

8. If the complaint is dismissed, repeated consideration by the court of the complaint of the same person in the same case in accordance with the procedure established by this article is allowed in each case of extension of detention period".

The article was amended by the Law HO-91-N of 25.05.06.

"**Article 289.** Appealing and verifying court decisions on the conduct of investigative actions and operational search measures, as well as on the application of measures of procedural coercion

Appealing and verifying court decisions on the conduct of investigative actions and operational search measures, as well as on the application of measures of procedural coercion, with the exception of the cases prescribed in article 289.1 of this Code, shall be conducted in accordance with the rules prescribed in articles 287 and 288 of this Code".

The article was supplemented by the Law HO-69-N of 16.01.18.

Part 2 of article 385 of the Code, titled: “Scopes of the case consideration in the Court of Appeal”, stipulates:

“2. With the exception of cases considered in accordance with the rules of Chapter 45^1 of this Code, the Court of Appeal shall revise the judicial act based on the evidence available in the case, and in exceptional cases prescribed in part three of article 382 of this Code - also on the basis of additional evidence presented”.

The RA **Law on Operational Search Activities** (hereinafter - the Law) was adopted by the National Assembly on 22 October 2007, signed by the President of the Republic on 19 November 2007 and entered into force on 8 December 2007.

Parts 1 and 2 of article 6 of the RA Law on Operational Search Activities, titled: “Publicity of materials and documents obtained as a result of operational search activities”, stipulate:

“1. Each person, within three months after the refusal to initiate a criminal case against him or the termination of proceedings on the criminal case initiated against him, in connection with the absence of a crime event or the absence of corpus delicti in the act, or recognition of the damage caused by criminal law as legitimate or after the acquittal verdict is issued - shall have the right to demand from the bodies conducting operational search activities, materials and documents obtained as a result of conducting operational search measures against him.

2. The provision of these materials and documents is rejected if there is a danger of disclosing state or official secrets, or when the secret staff of the bodies carrying out operational search activities and persons collaborating or collaborating with these bodies on a confidential basis may be declassified”.

The case was initiated on the basis of the application of the Criminal Court of Appeal of the Republic of Armenia submitted to the Constitutional Court on 7 November 2019, which included the decision of the same Court on “Applying to the Constitutional Court and terminating the case proceedings” on the case YD-9 of 5 November 2019.

Having examined the application, the written explanation of the respondent, having analyzed the relevant provisions of the Code and the Law, as well as other documents of the case, the Constitutional Court **FOUND:**

1. Applicant’s arguments

Referring to articles 33, 63, 67, 79, 81 and other articles of the Constitution, having analyzed both the challenged legal regulations of the Code and the Law, and other legal regulations interrelated with the latter, referring to the legal positions expressed in a number of decisions of the Constitutional Court, the case-law of the European Court of Human Rights, citing, in particular, the requirements of part 6 of article 284 of the Code, the applicant considers that, according to the legal regulation, which provides for the return by the court after examination of the relevant materials substantiating the application for authorizing to conduct operational search measures restricting the rights of persons to confidentiality of correspondence, telephone conversations, postal, telegraphic and other messages to the body conducting operational search activities and failure to submit, during the consideration of the appeal, the materials substantiating the application, and in the case of submission, the impossibility of identifying the materials presented in the court of first instance and the court of appeal, in the absence of the possibility of participation of the defense party in the closed examination of the said petition in the court of first instance:

- a person is deprived of the rights prescribed in articles 61 and 63 of the RA Constitution to effective judicial protection and a to a fair trial “when an issue is challenged in the appellate instance both in connection with the fact and in connection with the right”;

- the Criminal Court of Appeal is deprived of valid opportunities to administer justice, “namely, consideration of an appeal in adversarial proceedings and verification of the challenged judicial act within the framework of the grounds and substantiation of the appeal, evidence in the case, issuance of a well-grounded, reasoned and legal judicial act”.

Referring to the legal regulation prescribed in parts 1 and 2 of article 6 of the Law, the applicant finds that within the framework of pre-trial or judicial proceedings, from the moment a person has access to the act of the body carrying out the proceedings until the final, including the indictment, judicial act in the case is issued, it does not provide with materials submitted to the court of first instance for authorization to conduct operational search activities, and effective (including in a timely manner and in compliance with the rules of justice) protection of his rights and freedoms in court prior to the issuance of an acquittal or indictment against him.

The applicant also considers that in the context of the aforementioned legal regulations, the rules of article 289 of the Code are essentially formal and practically do not comply with the requirements of part 1 of article 6, articles 61, 63 and 79 of the Constitution.

2. Respondent's arguments

The respondent considers that the legal regulation prescribed in part 6 of article 284, articles 287-289, part 2 of article 385 of the Code are in conformity with the Constitution.

In particular, considering that the mechanism for providing individuals with materials and documents obtained as a result of operational search measures conducted in order to protect the public interest follows from ensuring a fair balance of public and private interests to guarantee the possibility of effective legal protection of the latter, which, according to the respondent, in no way deprives a person of the rights to effective judicial protection and to a fair trial as prescribed in articles 61 and 63 of the RA Constitution. Within the framework of pre-trial proceedings, regardless of the presence of any petition, persons have a sufficient opportunity to familiarize themselves with the case materials and exercise their procedural rights.

According to the respondent, the regime of confidentiality of materials justifying the petition for conducting an operational search measure is equally applicable both for higher courts and for the court of first instance. Consequently, when the availability of materials regarding operational search activities is limited in higher courts due to the principle of confidentiality, it is reasonably subject to restriction also in the court of first instance in accordance with the legal regulation of part 5 of article 284 of the Code.

According to the respondent's conclusion, "when certain materials substantiating the petition are presented to the court of first instance, they should be available to a certain extent also in higher courts". As for the admissibility, relevance and reliability of evidence obtained as a result of operational search measures, according to the respondent, they are subject to assessment by the court considering the criminal case on the merits.

With regard to the issue raised in the appeal with respect if the constitutionality of the norms of the Law, the respondent considers that the application of these norms goes beyond the scope of the case and "the scope of issues subject to consideration by the Court of Appeal".

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

When assessing the constitutionality of the norms of the Code challenged in the framework of the present case, the Constitutional Court considers it necessary to establish:

1) Is the mechanism for authorizing the conduct of operational search measures, involving the restriction of a person's right to confidentiality of correspondence, necessary and sufficient to achieve the goals prescribed in article 33 of the Constitution?

2) Is the exercise of fundamental rights to effective judicial protection and to a fair trial guaranteed by the challenged and related legal regulations?

The Constitutional Court considers it necessary also to establish whether parts 1 and 2 of article 6 of the Law challenged by the applicant are applicable in the certain case through its caseload.

4. Legal assessments of the Constitutional Court

4.1. According to article 3 of the Constitution, the human being shall be the supreme value. The inalienable dignity of the human being shall be the integral basis of his rights and freedoms. The respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duties of the public power. Thus, the public power shall be bound by fundamental rights and freedoms of the human being and the citizen as the directly applicable law, which at the same time presupposes a clear legislative regulation of relations between an individual and the state, in particular, the subjective rights of individuals, including the framework for the implementation and possible restrictions of the right to freedom and the confidentiality of private correspondence.

According to part 1 of article 33 of the Constitution, everyone shall have the right to freedom and confidentiality of correspondence, telephone conversations and other means of communication. The same provision establishes that a person has the right to protect the fact and content of this communication from the accessibility of other persons, including representatives of the state, that is, the right to confidentiality.

At the same time, this right may be restricted only on the grounds and in the procedure prescribed by law, with the aim of protecting state security, the economic wellbeing of the country, preventing or solving crimes, protecting the public order, health and morals, or the fundamental rights and freedoms of others. Except for the special case prescribed by the Constitution, the confidentiality of correspondence may be restricted only by a court decision (parts 2 and 3 of article 33 of the Constitution).

Confidentiality of correspondence, as a fundamental right of a person, is also guaranteed by international legal documents. In particular, according to article 12 of the Universal Declaration of Human Rights: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.

According to article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: “Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

The European Court of Human Rights (hereinafter - the European Court), in turn, stated that it generally recognizes the role of wiretapping in criminal proceedings when they are envisaged by law and are necessary, in particular, for the protection of public order, public safety or the prevention of criminal offenses, because these measures truly help the police and justice authorities in their crime prevention work. However, the practical conditions for their organization by the state must prevent any abuse or arbitrariness (see Dumitru Popescu v. Romania (No. 2), 26.04.2007, app. no. 71525/01, § 69).

In the legal positions expressed by the Constitutional Court, the Court outlined the role and importance of guaranteeing freedom of communication as a fundamental right in strengthening and further developing the democratic and legal content of the relationship between the state and the individual, in particular, emphasizing that:

- guaranteeing this right is important, firstly, in order to protect a person from inappropriate interference by public authorities in his personal and family life;

- restriction of this right is permissible provided that there are three preconditions simultaneously:

a / in cases prescribed by law;

b / in the manner prescribed by law;

c / by a court decision (see the Decision DCC-926 of 23 November 2010):

The confidentiality of correspondence, as a right and, at the same time, a principle of criminal procedure, is enshrined in article 14 of the Code, according to which: “1. Everyone has the right to confidentiality of correspondence, telephone conversations, postal, telegraphic and other communications. Unlawful deprivation of these rights of a person or their restriction is prohibited in the course of criminal proceedings. 2. Control of correspondence, postal, telegraphic and other communications, wiretapping of telephone conversations may be carried out in the course of criminal proceedings only by a court decision and in the manner prescribed by law”.

It follows from the analysis of the above-mentioned constitutional, convention and legislative regulations, that the right to privacy, including correspondence, is one of the important rights guaranteed by both domestic and international law and should be protected from any arbitrary and unlawful interference. Moreover, this right may be restricted only for the purpose of achieving a legitimate goal, in the cases and procedure prescribed by law, and by a court decision.

4.2. In the context of the foregoing, when assessing the constitutionality of the legal regulation challenged in the present case, the Constitutional Court, firstly, considers it important to disclose the legislative grounds, limits and terms (procedure) of interference by the bodies conducting operational search activities into the constitutional right of a person to confidentiality of correspondence, which are necessary for determining their compliance with the constitutional criteria for restricting this right.

As a result of the analysis of the legal content of a number of articles of the Law and the Code, the Constitutional Court states that:

1) operational search measures restricting the right to confidentiality of correspondence - control over correspondence, postal, telegraph and other messages, control over telephone conversations, as well as their content are prescribed by the Law (articles 25 and 26 of the Law);

2) these measures can be carried out only in cases where the person, in respect of whom they are to be carried out, is suspected of committing a grave or especially grave crime and if there is reasonable evidence that the search by the body conducting the operational search measures, of the information necessary for it is impossible for carrying out the tasks assigned by the Law in any other way (part 4 of article 31 of the Law);

3) in order to obtain authorization to conduct operational search measures restricting the right to confidentiality of correspondence, it is necessary to have a reasoned application, which, inter alia, must contain the grounds for the implementation of the relevant measure, the data that is

expected to be obtained as a result of it, the place and time of implementation of the measure, and all those materials are attached to the application that justify the need to conduct operational search measures (parts 1-3 of article 37, part 2 of article 34 of the Law, and part 3 of article 284 of the Code).

4) operational search measures restricting the right to confidentiality of correspondence may be conducted only by a court decision, and in order to verify the sufficiency of the grounds for the conduct of an operational search measure, the judge may demand an explanation or additional materials from the relevant official (part 1 of article 34 of the Law, part 1 article 281, and part 5 of article 284 of the Code);

5) based on the results of consideration of the petition, the court makes a decision to authorize the conduct of an operational search measure or turn down the petition, indicating the grounds for authorization or turn down, and the court's decision, inter alia, must contain a note on the conduct of an operational search measure, indicating to whom it applies, the period of validity of the decision, the official authorized to execute the decision (part 6 of article 284, and article 286 of the Code).

The Constitutional Court considers that the operational search measures limiting the right to confidentiality of correspondence pursue the aim of suppressing or disclosing crimes, clear requirements are imposed on them in terms of the circle of persons and justification, and they are fully under judicial control. Consequently, the above legal regulations correspond to the basic constitutional grounds for restricting the right to confidentiality of correspondence. In addition, the relevant norms specify in a certain way the conditions, the procedure for limiting the right of a person to the confidentiality of correspondence due to the need to conduct an operational search activity and the content of judicial control over the legality of limiting this right. Consequently, the existing legislative mechanism does not cause problems from the perspective of constitutionality.

4.3. Turning to the guarantees of the exercise of the rights to effective judicial protection and to a fair trial, the Constitutional Court, in the framework of judicial control over the legitimacy of restricting the right to confidentiality of correspondence, deems it necessary to consider legal regulations regarding the appeal of a court decision to authorize the conduct of an appropriate operational search measure.

It follows from the content of parts 4, 5 and 6 of article 284 of the Code that applications for the conduct of operational search measures restricting the right to confidentiality of correspondence

are considered by a single judge in a closed court session with the participation of the official who submitted the application or his representative, and in order to verify the sufficiency of the grounds in order to conduct an operational search measure, the judge may demand explanations and additional materials from the relevant official.

The petition is considered and the decision is issued within 12 hours after its receipt. Based on the results of the consideration of the issue, the court shall issue a decision to authorize the conduct of operational search measures or turn down the application, indicating the grounds for authorization or turn down. The court returns the relevant materials to the body conducting operational search activities.

Thus, the procedure for considering in the court of first instance a petition for the conduct of an operational search measure that restricts the right to confidentiality of correspondence is objectively not adversarial, since the parties to the legal relationship arising under this procedure are exclusively the court and the authorized public authority that submitted the petition, the question of the legality and validity of the submitted petition will be decided.

The Constitutional Court considers that such a procedure for restricting the right to confidentiality of correspondence is objectively and reasonably justified, since it is designed to ensure the legality, confidentiality and speed of the relevant measure from the perspective of protecting the public interest in the instant case, therefore, the court of first instance, exercising only judicial control in such cases, must establish all the circumstances necessary for a fair resolution of the petition. Consequently, the peculiarities of the legal procedure are due to the fact that the person concerned or his representative does not participate in the consideration of the petition, does not have the opportunity to familiarize himself with the petition and the materials supporting the latter, cannot submit objections, file petitions, i.e. implement legally guaranteed legal remedies within the framework of this procedure. Such legal remedies are available to interested persons only within the framework of a judicial appeal against a decision made following the examination of a petition, and such appeal is implemented in the manner prescribed by the provisions of articles 287-288 of the Code (article 289 of the Code), therefore, there are guarantees also in the context of the constitutional legal content of part 1 of article 61 and article 63 of the Constitution.

In particular:

1) The Court of Appeal, having received the complaint, immediately requests materials justifying the need for implementation of the measure, and the decision of the court of first instance (part 3 of article 287 of the Code);

2) The Court of Appeal verifies the legality and validity of the measure within three days from the date of receipt of materials confirming the latter (part 2 of article 288 of the Code);

3) The Court of Appeal verifies the legality and validity of the decision of the first instance court in a closed court session with the participation of the parties, making them aware of their rights and obligations (parts 3 and 4 of article 288 of the Code);

4) As a result of a judicial review, the Court of Appeal issues a decision to authorize or turn down the complaint (part 5 of article 288 of the Code);

5) In the event that materials confirming the legality and validity of the measure are not submitted to the session, the Court of Appeal shall issue a decision to cancel this measure (part 6 of article 288 of the Code).

The foregoing general regulations indicate that from the perspective of the constitutional legal content of the rights to effective judicial protection and to a fair trial, the Code, in general, provides an opportunity to appeal the legality and validity of a court decision restricting the right to confidentiality of correspondence.

In this regard, the Constitutional Court emphasizes that within the framework of the challenged legal regulations, the need for judicial appeal is also indicated in the case-law of the European Court, according to which: "...where a State institutes secret surveillance the existence of which remains unknown to the persons being controlled, with the effect that the surveillance remains unchallengeable, Article 8 (art. 8) could to a large extent be reduced to a nullity. It is possible in such a situation for an individual to be treated in a manner contrary to Article 8 (art. 8), or even to be deprived of the right granted by that Article (art. 8), without his being aware of it and therefore without being able to obtain a remedy either at the national level or before the Convention institutions" (see Klass and others v. Germany, 06.09.1978, app. no. 5029/71, § 36).

At the same time, the Constitutional Court considers that the rules prescribed in articles 278-288 of the Code are applicable to appeal and verify court decisions on authorizing to conduct operational search measures insofar as they correspond to the essence and content of this type of judicial control.

4.4. From the perspective of interpretation and application in the light of the issues raised in the application, the Constitutional Court considers problematic the norm of the Code, according to which, after issuing a decision to authorize the conduct of an operational search measure, the court of first instance returns the relevant materials to the body conducting operational search activities (part 6 of article 284 of the Code). Such legal regulation cannot be a reason for non-submission of these materials to the parties and the Court of Appeal; otherwise it will lead to the limitation of the rights guaranteed by articles 61 and 63 of the Constitution.

The Constitutional Court considers that in conjunction with the legal norms analyzed in this Decision, the above provision of part 6 of article 284 of the Code should be perceived and interpreted only in such a sense that the true essence of the rights to effective judicial protection and to a fair trial guaranteed by part 1 of article 61 and part 1 of article 63 of the Constitution is not violated.

As for the issue raised in the application regarding the protection of state, official and other secrets within the framework of judicial control, it follows from the analysis of the norms of part 5 of article 284 of the Code that, at the request of the judge, he, as a rule, is also provided with other materials justifying the need for conducting operational search measures, except for cases where there is a danger of violating state or official secrets or when this may reveal the staff secretaries of the bodies conducting operational search activities, and the persons cooperating with these bodies on a confidential basis, the sources of obtaining the relevant information and the methods of obtaining them.

On the other hand, in accordance with the legal regulations of articles 171 and 172 of the Code, in the process of criminal proceedings, the legally protected measures must be taken to protect information containing state secrets, which, in comparison with the above-mentioned legal requirements of the Code, is a general principle of compliance with criminal proceedings.

4.5. Having analyzed the content of part 2 of article 385 and article 289 of the Code, the Constitutional Court notes that the above-mentioned norms mostly contain references to other articles of the Code, which, from the perspective of the rules of legislative technique, aims to avoid unjustified repetitions of the norms established by the same normative legal act, or to emphasize the relationship of these provisions. Consequently, in this aspect, the constitutionality of the above norms is not problematic.

4.6. Referring to the issue of applicability of parts 1 and 2 of article 6 of the Law on a specific case pending before the applicant, the Constitutional Court states that, as a necessary condition, it can follow from the requirements of part 4 of article 169 of the Constitution and part 1 of article 71 of the RA Law on the Constitutional Court. While in the case cited in the application, it was not the question of the implementation (on the basis of the aforementioned norms of the Law) of the person's right to reclaim materials and documents obtained as a result of operational search measures, but the decision of the court of first instance to authorize the conduct of the operational search measure, the question of verification of the legality and validity of which may become the subject of consideration on the grounds and procedure prescribed by the Code.

Consequently, the issue of assessing the constitutionality of parts 1 and 2 of article 6 of the Law cannot be a subject of consideration at the Constitutional Court on the basis of this application submitted by the RA Criminal Court of Appeal, which, according to clause 1 of part 1 of article 60 of the Constitutional Law on the Constitutional Court, is the basis for terminating the case in this part.

Based on the review of the case and governed by clause 1 of article 168, part 4 of article 169, parts 1 and 4 of 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. The second sentence of part 6 of article 284 of the Criminal Procedure Code of the Republic of Armenia is in conformity with the Constitution in the interpretation that the return by the court of materials justifying the need for an operational search measure to the body conducting operational search activities should not hinder the provision of these materials to the person entitled to file an appeal and the Court of Appeal, while ensuring at the same time the protection of state, official and other secrets protected by law.

2. Articles 287-288 of the Criminal Procedure Code of the Republic of Armenia are in conformity with the Constitution in part that the rules stipulated therein are applicable in relation to appeal and verification of court decisions to authorize the conduct of operational search measures.

3. Part 2 of article 385 and article 289 of the Criminal Procedure Code of the Republic of Armenia are in conformity with the Constitution.

4. To terminate the proceedings of the case in part of determination of the issue of conformity of the norms prescribed in parts 1 and 2 of article 6 of the RA Law on Operative Investigative Activities with the Constitution.

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**

April 28, 2020
DCC -1526