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ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 198, PART 3 OF THE CIVIL CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZENS SHAVARSH MKRTCHYAN AND OTHERS

Yerevan ***24 February 2012***

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan, M. Topuzyan (Rapporteur), A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,

with the participation of the representative of the Applicants: K. Mezhlumyan,

the representative of the Respondent A. Mkhitaryan, the Chief Specialist of the Legal Expertise Division of the Legal Department of the National Assembly Staff of the Republic of Armenia,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law of the Republic of Armenia on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Article 198, Part 3 of the Civil Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizens Shavarsh Mkrtchyan and others.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Shavarsh Mkrtchyan on 16.11.2011.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicants and the Respondent, having studied the Civil Code of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The RA Civil Code was adopted by the RA National Assembly on 5 May 1998, signed by the RA President on 28 July 1998 and came into force on 1 January 1999 in accordance with the RA Law on Putting the Civil Code of the Republic of Armenia into effect adopted by the RA National Assembly on 17.06.1998.

Article 198 of the RA Civil Code, titled "Possession, use, and disposition of property in joint ownership," states:

"1. Participants in joint ownership, unless otherwise provided by an agreement among them, possess and use the common property in common.

2. Disposition of property in joint ownership shall be conducted by agreement of all the participants which shall be presumed regardless which of the participants signs a transaction for disposition of the property.

3. Each of the participants in joint ownership has the right to conduct transactions for the disposition of the common property unless otherwise follows from the agreement of all the participants. A transaction made by one of the participants in the joint property linked with the disposition of the common property may be declared invalid on demand of the rest of the participants in the case of the absence of the participant, who conducted the transaction, of the necessary powers only if it is proved that the other party of the transaction was aware or obviously should have been aware of this.

2. The procedural background of the Case is the following: on 26.06.2009 the RA Government adopted the decision No. 944-Ն "On

declaring the right to property of the plots of the citizens residing in Halidzor rural community, Syunik Marz, Republic of Armenia, to be overriding public interest and on changing the target purpose of lands." By the decision of the Government, "Estate Management and Administration Company" CJSC was declared the purchaser of the alienable plots. The latter brought the case against Shavarsh Mkrtchyan and others before the Court of General Jurisdiction of Syunik Marz with the claim to oblige them to sign the contract of alienation.

The Court of General Jurisdiction of Syunik Marz satisfied the claim by the Decision No. ՍԴ1/0046/02/10 dated 31.08.2010.

On 24.12.2010 the RA Civil Court of Appeal made a decision to decline the appeal of the Applicants. By declining the appeal, the RA Court of Cassation took as grounds the legal position of the RA Court of Cassation expressed in the case No. ԵԱՔԴ/0275/02/08 dated 18.09.2009 that relates to the challenged Part 3 of Article 198 of the RA Civil Code; in the part "Reasons and Conclusions of the Court of Appeal" of its decision the RA Civil Court of Appeal stated the following: "In its decisions the RA Court of Cassation touched upon the legal analysis of Article 198, Part 3 of the RA Civil Code. In particular, in line with Article 198, Part 3 of the RA Civil Code, each of the co-owners shall have the right to dispose of the joint property, unless otherwise provided by the agreement between them. ... Simultaneously, the RA Court of Cassation stated that in the case of disposition of the property in joint ownership stipulated by Article 198 of the RA Civil Code, the presumption of the consent of co-owners and the right to dispose of it operates (see ... the Decision No. ԵԱՔԴ/0275/02/08 of the RA Court of Cassation dated 18.09.2009).

On 27.04.2011 the RA Court of Cassation made a decision to return the appeal of the Applicants, once again stipulating in the decision the legal positions expressed in Decision Decision No. ԵԱՔԴ/0275/02/08 dated 18.09.2009.

3. According to the Applicants, the interpretation of Article 198, Part 3 of the RA Civil Code used in law enforcement practice contradicts the provisions of Articles 1, 3 and Article 31, Part 1 of the RA Constitution. According to the Applicants, the interpretation of Article 198, Part 3 of the RA Civil Code provided by the Court of Appeal and the Cassation Court, resulted in the presumption of the consent on disposition of the

property in joint ownership functions in the case, when such a presumption is not stipulated by Article 31 of the RA Constitution, which guarantees the right of the owner to dispose of the property belonging to him, which assumes the right to dispose of the property only with the consent or at the will of the owner or all owners of the property.

The Applicants find that Article 198, Part 3 of the Code, in so far as it prescribes the presumption of the consent of the right to dispose of the property in joint ownership; and allows any of the participants in joint ownership to alienate the common property without the knowledge or consent of the other co-owners, even against their will; contradicts Article 31 of the Constitution, which grant the owner powers on disposition.

4. Objecting the arguments of the Applicant, the Respondent finds that Article 198, Part 3 of the RA Civil Code is in conformity with the RA Constitution. To substantiate his position, the Respondent touches upon the distinctions of content of the right to common share ownership and the property in joint ownership, the legal opportunity to transform the property in joint ownership into common share ownership; and states that in the case of the property in joint ownership, relationships between the co-owners are based on a special personal trust, when it does not intend and require complete certainty of the ambit of relevant powers of the participants.

Based on the analysis of the materials of the Case, the Respondent finds obvious that "the legislatively stipulated current order of disposing the property in joint ownership has not caused violation of rights of the other participants in joint ownership only due to the relations based on personal trust, and discontent of the Applicants does not relate to the legal regulation prescribed by Article 198, Part 3 of the RA Civil Code, namely to the abuse of the right of each participant of the joint ownership to conduct transactions on the disposal of the common property".

5. The Constitutional Court states, that while recognizing the right of ownership as a fundamental right of everyone prescribed in the first sentence of Article 31, Part 1 of the Constitution, the content of that right is revealed, in particular, the powers to own, use, dispose of and bequeath his/her property, simultaneously establishing the **discretion of the owner** as preconditions for the realization. In this constitutional norm

the emphasis of the wording "at his/her discretion" means that the realization of the right of ownership is based on the precisely expressed will of the owner; the latter is considered as a mandatory precondition for the realization of the right of ownership; and in the process of realization of property the will of a person is decisive. The content of this provision leads to the fact that the implementation of property rights should be based on the principles of inviolability of ownership and freedom of contract, which assume, inter alia, **property independence and autonomy of will of the participants in civil legal relations**.

Touching upon the permissible restrictions of the right of ownership in the Decision DCC-630, the Constitutional Court particularly stated: "Article 43 of the Constitution does not consider the right of ownership as the right to be restricted on the basis of that Article. A special case of restriction of rights is available, when the Constitution defines the criteria and scopes of restrictions of a certain right, not even leaving it to the competence of the legislator. First, it may be implemented in the cases prescribed by the law by depriving of the property exclusively in conformity with judicial procedure, as a coercive action arising from liability. Second, this may be implemented through the "alienation of the property", and such an institution is essentially different from "deprivation of property," and it shall be implemented in accordance with Article 31, Part 3 of the Constitution".

The discretion and the will of the owner, which are common element typical for two cases of permissible restrictions of the right of ownership in both cases, are no longer the primary and decisive, as in these cases, other more preferable interests prevail.

Thus, the RA Constitution prescribes only two cases, namely, the cases prescribed by Article 31, Parts 2 and 3, when the will of the owner is not a primary, and the implementation of the right of ownership does not derive from the discretion of the owner. Therefore, in any other case, in the process of realization of the right of ownership the interference with the discretion of the owner, the disposal of property of the owner without precise expression and manifestation of that discretion may not be considered legitimate and will be a violation of the right of ownership.

The Constitutional Court states that provision stipulated in the first sentence of Article 31, Part 1 of the RA Constitution ensures equal protection for all types of ownership and concerns both the right to individual

property and the property in joint ownership. The contents of the common property rights on immovable property must be interpreted so that its protection shall be equivalent to the protection stipulated for the protection of the right of ownership of the person. In case of common ownership (shared and joint), each of the co-owners is an independent subject of property legal relations and is empowered with subjective right of ownership and the power of possession, use, and disposition of property at **his/her discretion** which is the contents of the latter. Consequently, the power of possession, use, and disposition of the property in common ownership may be realized only based on the mutual consent of all co-owners and the will of each of the co-owners.

6. Comparative analysis of Article 198, Parts 1, 2 and 3 of the RA Civil Code states that in the realization of the power of possession, use and disposition of joint property, the legislator, in line with Article 31 of the RA Constitution, accorded special priority to the will of each co-owner. Thus, the norm, stipulated in Article 198, Part 1 of the Code states the procedure for possession and use of joint property by the co-owners of the participants in joint ownership. According to that norm, the participants in joint ownership **possess and use the joint property in common**, unless otherwise agreed upon. This norm is dispositive, and, stipulating the general procedure for possession and use of joint property, at the same time, based on the constitutional requirement of considering the discretion of the co-owners, it provides the co-owners with an opportunity to stipulate other procedure by a mutual agreement.

Article 198, Part 2 of the Code stipulates the procedure for disposition of jointly owned property, that is, the property shall be disposed of as agreed to by all participants. As opposed to the norm laid down in Part 1 of the mentioned Article, the provision stipulated in Part 2 is imperative by its nature, and considers **the availability of the consent of all co-owners** as a compulsory requirement for the implementation of the right to dispose jointly owned property. No exception or precondition is stipulated by this norm. Unequivocally, the disposal of the property without the consent of the co-owners is impossible.

Article 163 of the RA Civil Code reveals the content of the right of disposition of property. Particularly, it highlights that "the right of disposition is the legally supported possibility to determine the legal destiny

of the property". Simultaneously, Part 2 of this Article prescribes that "The owner is authorized to commit at his/her discretion any action in connection with the property belonging to him/her, which does not contradict the law and violate the rights and interests of other persons protected by the law, including to alienate his/her property to the ownership of other persons, to transfer them the rights of possession, use, and disposition of the property, to put in pledge the property or to dispose it in other manner".

The power of disposition of property assumes the right of the owner within the scopes and procedure prescribed by law to determine the legal and actual destiny of his/her property through making actions in connection with the property or refraining from the latter. This is nothing else than the **discretion**, or otherwise **right to manifest autonomy of will** in respect of the destiny of the property within the scopes prescribed by Article 31, Part 1 of the RA Constitution and in the conditions and by the procedure stipulated by the law. However, the autonomy of the will may not be unlimited and may not contradict the law or violate the rights and legitimate interests of others.

The Constitutional Court also necessitates stating that, taking into consideration the legal regulation stipulated by Article 198, Part 3 of the RA Civil Code, according to which, each of the participants in joint ownership shall have the right to conduct transactions for the disposition of the common property, in Part 2 of this Article the legislator emphasizes that property in joint ownership shall be disposed of as agreed to by all the participants in joint ownership, which shall be presumed **regardless of which of the participants conducts the transaction**. Such emphasis is not an end in itself, and it states both the systematic interrelation of Parts 2 and 3 of the Article in question and the difference of the subject of their legal regulation. The peculiarity of legal regulation of disposition, which is the substantial element of the right to joint ownership, is the procedure of realization of the right to determine the destiny of the property in joint ownership, and the possible legal consequences are simultaneously emphasized thereby.

The task of the legal regulation of Article 198, Part 2 of the Code is to establish **the procedure for disposition of the common property**, whereas, taking into account that conducting of transactions is the basic way and form to implement the power of disposition of the property, in

Part 3 of this Article the legislator established the mechanism for the implementation of the power of disposition and prescribed the right of each of the co-owners to conduct transactions on behalf of the others. Moreover, as opposed to the imperative norm laid down in Part 2, the norm stipulated in Part 3 is dispositive, and it also provides for the possibility of other agreement between the co-owners regarding the right of conducting transactions. The wording "unless otherwise provided by an agreement among them (co-owners)" stipulated in Part 3 of the Article, concerns the agreement of the co-owners regarding **the realization of the right to conduct transactions** in the conditions of meeting of imperative requirement stipulated by Part 2.

Article 198, Part 3 of the Code settles the following tasks. **First, it establishes the procedure for the implementation of Part 2 of this Article**, providing each of the participants in joint ownership with the right **to conduct transactions for disposition of the property** in joint ownership, **but** subordinating **the realization of that right** to the will of the co-owners. Second, in the case of conducting a transaction for disposition of property only by one of the co-owners it provides with certain guarantee for protection of the rights of the other participants and the good-faith acquirer.

It follows from the systematic analysis of the provisions of Article 198 of the RA Civil Code that

a/ all co-owners shall have equal rights to dispose of jointly owned property, and none of them shall be authorized to dispose of it without the consent of the other participants,

b/ each of them shall have the right to conduct a transaction for disposition of property, if he/she has necessary powers for it.

7. From the perspective of disclosure of the constitutional legal content of the challenged norm, clarification of the content of the wording "necessary powers" is also important. In particular, in this regard the following question whether the legislator mean the availability of the right of one co-owner to conduct transactions on behalf of the other co-owners or the availability of the consent of all co-owners to dispose of the property in joint ownership under the wording "necessary powers"?

The Constitutional Court states that the understanding of the content of the necessary power due to the first question will inevitably lead to

the neglect of the requirements of the imperative norm stipulated by Part 2 of the challenged Article. Meanwhile, the requirement of availability of the necessary power is not an end in itself, but it must be a guarantee for the implementation of the discretion of the co-owners.

As it follows from the legal logic of numerous articles of the RA Law on Legal Acts (particularly Articles 14-20), the power is the right and duty vested with the party to the legal relationship to perform a lawful action stipulated by the legislation. In the aspect of protection of subjective rights, the authorized person **may be vested with** such authority **by virtue of the law or by manifestation of autonomy of will of the parties to** legal relations. In civil legal relations it also assumes to empower a person to perform actions on behalf of the authorizing person(s), which may cause certain legal consequences as a result of realization of subjective rights of the latter.

The Constitutional Court finds that the fact of joint ownership may not presume availability of the power to dispose of the joint property by each of the co-owners on their own discretion. In all those cases when, in accordance with the procedure provided for by the Law on State Registration of the Rights to the Property, the certain scope of the co-owners is defined or they are recognized as such by virtue of the law, such presumption should be excluded in law enforcement practice, taking into account that:

a/ this presumption first contradicts the constitutional legal content of the right of ownership. According to Article 31 of the Constitution, everyone shall have the right to **freely** own, use, dispose of and bequeath the property belonging to him. Such **discretion** has subjective nature and must be manifested by a will of the person. Simultaneously, the law provides for the exceptional cases of alienation, deprivation of property and the enjoyment of the right to property that arise from Parts 2, 3 and 4 of the above mentioned Article of the Constitution. The stipulation of other conditions for realization of the right of ownership than it is defined by Article 31 of the Constitution, will inevitably lead to the blockage of that right. On the other hand, according to Article 8, Part 1 of the Constitution, the positive duty of the state is to ensure, provide and protect the right of ownership creating the necessary legal preconditions;

b/ based on the above mentioned constitutional legal requirements, the legal regulation of the right of ownership, stipulated in both Parts 1,

2 and Part 3 of Article 198 of the RA Civil Code, was legislatively **based on the will of the participants in joint ownership, that is the availability** of their consent, taking into consideration the legal fact that two or more persons own the property in joint ownership;

c/ according to Article 189 of the RA Civil Code, joint property is one of the types of common property, and "the share ownership of these persons may be established to the common property by agreement of the participants in joint ownership and in case of failure to achieve agreement, by decision of a court" (Part 5). It follows from the comparative analysis of Chapter 12 of the RA Civil Code, particularly, Articles 189 and 199, as well as Articles 24 (Part 5), 27 (Part 4, Point 1), 35, 42, 43 and 46 of the RA Law on State Registration of the Rights to the Property; and Articles 41 and 46 of the RA Law on the Notary Office, that

- in the process of state registration of the rights to the common property, the participation of one of the participants in joint ownership is legally unrealizable without the consent of the other participants, and in all cases, in the certificate of state registration of the rights to the property all the names (titles) of holders of the registered right are noted, as a legal fact of acknowledgment of the right to ownership of the subjects and, accordingly, undertaking positive obligation to protect it;
- termination of the right of one of the participants in joint ownership shall be **exceptionally by his/her consent** or as the result of his/her death, by the procedure prescribed by the law.

As a result of comparative analysis of the systemically integrated norms of Article 198 of the RA Civil Code, the Constitutional Court finds that the constitutional legal content of Article 198, Part 3 of the RA Civil Code assumes that each of the participants in joint ownership has the right to conduct transactions for the disposition of the common property (unless otherwise provided by their agreement) **in the conditions of availability of positive (concrete, substantive) consent of all co-owners as a result of realization of their discretion, when**:

1) the rights of the co-owners get state registration, and the legal document (registration certificate) confirming the right of ownership, precisely states that the property is owned by certain owners, who possess with the right of joint ownership;

2) in the manner and in the cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and

restrictions on the property occur on the basis of the law and are valid regardless of state registration.

If none of the above mentioned cases is available, **the joint owners have the objective** of preliminary clarification of relationship between each other regarding the disposition of the common property, taking into account that the implementation of the subjective right is first based on the actions of corresponding persons. **The latter assumes both precise state registration of the right to the property by the co-owners, and, if necessary, determination of the proportion of each of them by the procedure prescribed by the law, and the stipulation of other rules than it was agreed to, deriving from the provision in dispute.** It is also necessary to take into account the fact that in accordance with Article 189, Part 5 of the RA Civil Code, **share ownership of the participants in joint ownership may be** established not only on the property, but also according to Article 195, Part 1 of the Code, "In case of sale of an ownership share in the right of common ownership to a third person, the rest of the participants in share ownership have a priority right of purchase of the ownership share sold at the price at which it is being sold and on other equal conditions except for the case of sale at public auction."

The discretional will of the co-owners regarding disposition of common property will be manifested resulting from the clarification of the relations between them. In the conditions of absence of such discretion, in practice, the subject, in whose name the property was registered, conducted a transaction to dispose of it by the procedure prescribed by Article 198, Part 3 of the RA Civil Code. Based on this situation, under Article 10, Part 2 of the RA Law on Alienation of Property for Public and State Needs the legislator, in particular, stipulated that "if ... the owner of the alienable property does not inform the purchaser about the persons with property rights over the alienable property known to him, who don't have state registration of that right, the owner of the alienable property shall be liable for the damage caused to those persons having property rights as a result of alienation of property, which took place without their participation."

Taking into account the peculiarities and nature of the origin of the right of joint ownership, and considering that the legal norms regarding common property shall regulate both the relations established between the co-owners, that is, "all participants," and the relations established

between the co-owners and the third party, the task of the legislator is to define legal regulation of manifestation of will of the co-owners, in a way that the rights and legitimate interests of any of the subjects of legal relations were not violated. It is also necessary to ensure that the property is not burdened with obligations not identified at the moment of conducting the transaction, which would hinder the free realization of the rights of the good-faith acquirers for this purpose. If Article 163 of the RA Civil Code conditions the right to dispose of property by the manifestation of discretion, in Articles 192 and 198 of the Code the consent of owners and the interests of third parties are the core of the legal regulation.

However, the constitutional legal criteria for the protection of the right of ownership may not be different depending on the circumstance, whether the property is owned by one person or it is common (shared or joint). However, the peculiarities of legal regulation of realization of the right of ownership, conditioned with diversity of forms stipulated by the law, should not be ignored neither. Taking into consideration this circumstance, the RA Law on State Registration of the Rights to the Property (in particular, Articles 5 and 43) defines both the content of state registration, and the appropriate procedure for registering the joint property as such. But in Article 198, Part 3 of the RA Civil Code **the virtue of law is reckoned among the consent of the co-owners.**

For the disclosure of the constitutional legal content of the legal norm in dispute, **ensuring equivalent legal guarantees for the protection of the rights and interes**ts of the good-faith acquirer is also essential. The legislator developed a conceptual approach, according to which, in case of the collision of the rights and interests arising from homogeneous legal relations, the judicial protection of the rights of persons is even more guaranteed and effective in the conditions of full realization of all legal means to implement these rights, as well as exclusion of good-faith acquisition from unauthorized person. This approach is the basis of the legal regulation of the provision stipulated by the second sentence of Part 3 of Article 198 of the RA Civil Code.

8. According to Article 63 of the RA Law on the Constitutional Court, with regard to the issue of constitutionality of the act, the Constitutional Court shall evaluate the act and the existing law enforcement practice.

The research of the law enforcement practice concerning the matter under consideration states that different approaches were manifested regarding the application of Article 198, Part 3 of the RA Civil Code. In the current systems of state registration of immovable property and its certification by notarial procedure, **the positive consent of all co-owners is considered to be compulsory** in the process of certification of the transaction by notarial procedure and state registration of the rights and restrictions on the property, their origin, alteration, transfer and termination.

Other approach is manifested in judicial practice, taking into consideration the authority given to one of the co-owners by the virtue of law that regards conducting a transaction for alienation of the property solely. By the way, in this case different legal positions are also available. In particular, in some cases, in the decisions of the RA Court of Cassation, it is emphasized that "... the absence of disagreement of one of the co-owners indicates the consent of the latter and the availability of the right of the co-owner conducting the transaction to conduct the transaction," or otherwise, "... the presumption of the consent of the co-owners and availability of the right to conduct the transaction for the person conducting the transaction for its disposal" (for example, the decision in the civil case No. ԵԱՔԴ/1023/02/10 dated 27.12.2011). In another case, the following position is stipulated: "... the presumption of the consent of the other co-owners and availability of the right to dispose of it" is operating in the process of disposition of the common property" (the decision in the civil case No. ԵԱՔԴ/0275/02/08 dated 18.09.2009). It is obvious that the constitutional legal contents of these wordings differ. In the first case the **"the presumption of availability of the right to conduct the transaction"** is highlighted, and in the second case the conclusion regards the presumption of **"... availability of the right to disposal"** for one of the co-owners.

The Constitutional Court finds that in the first case, the conclusion in the aspect of the constitutional legal content of the right of ownership is not disputable, as **granting authority to conduct transaction** is not stipulated by the so-called "fact of silence," but it is stipulated by the virtue of law via providing the person with appropriate authority according to the procedure prescribed by the law. In this context, the term "consent" is precautionary in nature (unless they agreed otherwise) and

the absence of "other rules" agreed to by them means the absence of the prohibition to exercise the right or the consent of each of them to conduct transaction for disposition of the property regarding the issue of the competence prescribed by the law.

However, as it was mentioned, the right of disposition of the property is based on **the discretion**, the manifestation of autonomy of will of the owner, as it as mentioned, both by the Constitution and the law. Therefore, the wording given in the second case is controversial both in the aspect of the constitutional legal content, and in the aspect of its expression.

In the aspect of realization of the right of ownership, in particular, in the aspect of the right of disposition of the property, the expression "lack of disagreement is consent" logically contradicts the principle of "discretion of the person" or, otherwise, the principle of "manifestation of the will of the subjects of legal relations," that follows from the legal content of Article 31 of the RA Constitution, as in this case the initial legal point is not to conduct a transaction when otherwise agreed, **the initial legal point is the availability of certain discretion of the person for realization of the right of ownership**.

International legal practice indicates that the right of ownership, regardless realized separately or jointly, shall have the constitutional legal preconditions of guaranteeing, securing and protecting, that, on the one hand, the person may possess, use and dispose of his/her property exceptionally at his/her discretion; and on the other hand, the realization of the right of ownership must not violate the rights and lawful interests of other persons, society and the state.

The consent of each of the co-owners for realization of his/her right of ownership, especially for disposition of property, is a constitutional requirement which is precisely stipulated also by legal acts of other countries. For example, Section 747 of the Civil Code of Germany clearly states that "... the part owners may control the joint object in its entirety only jointly." This wording does not significantly differ from the equivalent requirement of Article 198, Part 2 of the RA Civil Code in the aspect of disposition of property in joint ownership exceptionally with the consent of all participants.

The conclusion from the above states that each participant in joint ownership should have the right to conduct a transaction for disposition of common property, taking into consideration that the legislatively stip-

ulated pre-condition for the right to dispose of the property with the consent of the co-owners, as well as availability of the right and **necessary powers** of the person conducting the transaction to conduct the transaction operates.

As a result of the comparative analysis of the mentioned two approaches, the RA Constitutional Court finds that there is no uncertainty or problem in the aspect of constitutionality of Article 198, Part 3 of the RA Civil Code. With regard to its interpretation in judicial practice, as a result of development of the legal positions stipulated by the decision in the civil case No. ԵԱՔԴ/1023/02/10 dated 27.12.2011, insofar as the presumption of availability of **the right** of one of the co-owners **to conduct the transaction** is not in direct contradiction with the constitutional legal content of the legislative norm. However, at the same time it does not mean **the availability of the necessary powers** for the participant **to dispose of** the property in joint ownership in those cases:

a/ when the rights of the co-owners get state registration, and the certificate of state registration of the rights to the property clearly states that the property belongs to certain owners by right of joint ownership,

b/ when according to the procedure and in cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and restrictions on the property rise on the basis of the law and have legal force, regardless of state registration.

In these cases, the alienation of the property may only take place **in the case of positive manifestation of will** of each of the co-owners, according to the requirement of Article 198, Part 2 of the RA Civil Code. These are the cases when the circumstance of availability of the co-owners' right of ownership is already precise when implementing state registration of the rights and restrictions on the property, their origin, alteration, transfer and termination; or its certification by notarial procedure; and a concrete manifestation of their discretion is required, which will confirm also the availability of the necessary power of the person conducting the transaction.

Proceeding from the results of Case consideration and being governed by Article 100, Point 1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Article 198, Part 3 of the RA Civil Code is in conformity with the Constitution of the Republic of Armenia in regard to the constitutional legal content of the provisions of the first sentence of that Part, according to which, each of the participants in joint ownership shall have the right to conduct transactions for disposition of the common property, unless otherwise agreed to by them, taking into consideration that in cases mentioned below the positive consent of all co-owners is required for the certain participant to conduct the transaction for the disposition of the property, which should indicate the availability of the necessary power of the person conducting the transaction. Here are those cases:

a/ when the rights of the co-owners get state registration, and the Certificate of State Registration of the Rights to the Property clearly states that the property belongs to certain owners by right of joint ownership,

b/ when by the procedure and the in cases stipulated by Article 18 of the RA Law on State Registration of the Rights to the Property, the rights and restrictions on the property rise on the basis of the law and have legal force, regardless of state registration.

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

CHAIRMAN **G. HARUTYUNYAN**

24 February 2012
DCC - 1009

ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 8, PART 4, SUBPOINT "F," ARTICLE 12, PARTS 6 AND 7 OF THE LAW OF THE REPUBLIC OF ARMENIA ON STATE AND OFFICIAL SECRETS WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF "HELSINKI CITIZENS' ASSEMBLY VANADZOR OFFICE" NON-GOVERNMENTAL ORGANIZATION

Yerevan *6 March 2012*

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan, M. Topuzyan, A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan (Rapporteur), V. Poghosyan,

with the participation of the representatives of the Applicant: A. Zeynalyan and A. Ghazaryan,

representative of the Respondent: A. Mkhitaryan, the Senior Expert of the Legal Expertise Division of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the RA Law on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Article 8, Part 4, Subpoint "f", Article 12, Parts 6 and 7 of the Law of the Republic of Armenia on State and Official Secrets with the Constitution of the Republic of Armenia on the basis of the Application of "Helsinki Citizens" Assembly Vanadzor Office" Non-Governmental Organization.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by "Helsinki Citizens' Assembly Vanadzor Office" Non-Governmental Organization on 23.11.2011.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, having studied the Law of the Republic of Armenia on State and Official Secrets and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on State and Official Secrets was adopted by the RA National Assembly on 3 December 1996, signed by the RA President on 30 December 1996 and came into force on 9 January 1997.

Subpoint "f" of Part 4 of Article 8 of the Law of the Republic of Armenia on State and Official Secrets, titled "Powers of the state bodies, local self-government bodies and officials in the fields of referring information as State and Official Secrets and its protection", states that public administration bodies, territorial and local self-government bodies:

"f) exercise other powers in the fields of referring information as State and Official Secrets and its protection within their competence."

Parts 6 and 7 of Article 12 of the same Law, titled "Referring information as State and Official Secrets", state:

"The heads of state bodies with the authority to refer information as State and Official Secrets, elaborate departmental expanded lists of cipherable information, which include

a) State Secret information under their disposal,

b) information referred as Official Secret.

The secrecy rate of each piece of included information is also men-

tioned in departmental lists. Those lists and amendments and supplements made to them are approved by corresponding Heads of State bodies. Departmental lists are ciphered and nonpublic.

2. The procedural background of the Case is the following. On 10.02.2010 the Applicant requested from the Minister of Defense of the Republic of Armenia information on the number, names and addresses of the fixed period and contract servicemen who died in 2009 while serving in the Armed Forces of the Republic of Armenia.

On 20.02.2010, in response to the request, the Ministry of Defense of the Republic of Armenia refused to provide with information, referring to the requirements of Article 8, Point 1 of the Law of the Republic of Armenia on Freedom of Information, and argues that the requested information is a secret information in accordance with the requirements of the Law and the RA Ministry of Defense expanded departmental list of cipherable information which was brought into action by the corresponding secret Order of the Minister of Defense of the Republic of Armenia, and it is an official secret according to the requirements of Article 4 of the Law of the Republic of Armenia on State and Official Secrets.

On 27.02.2010 the Applicant sent a new request for information to the Ministry asking to provide with corresponding secret Order of the Minister of Defense of the Republic of Armenia and the RA Ministry of Defense expanded departmental list of cipherable information, which was brought into action by that order, but referring to the requirement of the Law it was also denied by the Ministry.

On 19.04.2010 the Applicant filed a claim to the Administrative Court of the Republic of Armenia against the Ministry of Defence. Having considered the administrative claim of "Helsinki Citizens" Assembly Vanadzor Office Non-Governmental Organization against the Ministry of Defence, demanding to recognize the violation of the right of "Helsinki Citizens" Assembly Vanadzor Office Non-Governmental Organization to freedom of information and, as a derivative demand, the case ՎԴ/1314/05/10 on abolishing the RA Ministry of Defense Order on the expanded departmental list of cipherable information and obligating the Ministry of Defense of the Republic of Armenia to provide with the required information requested by inquiry Ե/ 2010-051 dated 10.02.2010, the Administrative

Court of the Republic of Armenia rejected the claim by its decision of 23.11.2010, stating that not providing the information required by the Plaintiff based on the provisions of Article 43 of the Constitution of the Republic of Armenia and Article 6, Part 3 of the Law of the Republic of Armenia on Freedom of Information, and, therefore, there is no violation of the Plaintiff's rights to freedom of information.

Simultaneously, the Administrative Court also stated that: "... the mentioned analysis is fully sufficient for rendering a final and reasoned judgment in the scopes of the Plaintiff's demands, regardless of the application of the last paragraph of Article 12 of the RA Law on State and Official Secrets. Accordingly, the Court does not address the merits of the motion indicated by the Plaintiff, at the same time stating that, in the opinion of the Court, the last paragraph of Article 12 of the RA Law on State and Official Secrets does not contradict Article 6, Article 83.5, Points 1, 2, 3, 5 and 6 of the RA Constitution".

By its Decision dated 16.03.2011 the Administrative Court of Appeal of the Republic of Armenia rejected the appeal filed by the Applicant, reaffirming the legal positions of the Administrative Court of the Republic of Armenia.

By its Decision "On returning the cassation appeal" dated 18.05.2011 the Court of Cassation of the Republic of Armenia returning the cassation appeal filed by the Applicant.

3. Challenging the constitutionality of Article 8, Part 4, Subpoint "f" and Article 12, Parts 6 and 7 of the Law of the Republic of Armenia on State and Official Secrets, the Applicant finds that they contradict the requirements of Articles 3, 5, 6, 27, 43, 83.5 and 117 of the Constitution of the Republic of Armenia.

According to the Applicant, the legislator left the legal regulations on referring information as State and Official Secrets stipulated by Article 8 of the RA Law on State and Official Secrets to be regulated by departmental acts, and based on Article 12 the legislator provided the public administration bodies with the authority to elaborate and, through adoption of acts confirm the expanded departmental lists of cipherable information under their disposal. Simultaneously, Article 12, Part 7 of the Law stipulates that the departmental lists on secret information shall be ciphered and they shall not be subject to publication, that is, "the de-

partmental non public secret legal acts determine the information which is secret".

According to the Applicant, in terms of such legal regulation an important domain of the public bodies remains beyond civil control, which is incompatible with the fundamental principles of legal and democratic society. The Applicant also states: "As it is a secret what information is secret, then any information well-known to the members of the society, with a certain probability may be included in those lists, and its imparting may result in factual and legal consequences for the participants of legal relations".

As regarding Article 117 of the RA Constitution, the Applicant notes that the Law in dispute was adopted before the 2005 constitutional amendments, and finds that the RA Law on State and Official Secrets is one of the many laws which was not reviewed and amended by virtue of Article 117 of the Constitution of the Republic of Armenia after the amendments to the Constitution entered into force.

4. Objecting the arguments of the Applicant, the Respondent states that the right to freedom of expression, including freedom to seek, receive and impart information and ideas, is not an absolute right. Inter alia, the justified restriction to this right for national security reasons is stipulated in a number of international instruments.

The Respondent finds the assertion of the Applicant according to which the legislator has left the legal regulations of referring information as State and Official Secrets to the regulation by departmental acts to be ill-founded, as the legal relations concerning the right to freedom of expression, including freedom to seek and receive information are not regulated by departmental acts, but the possibility of such restriction is stipulated by international legal instruments and the Constitution of the Republic of Armenia, and the mentioned legal relations have been more thoroughly regulated, particularly by the Law of the Republic of Armenia on State and Official Secrets and the Law on Freedom of Information.

According to the Respondent, the RA Law on State and Official Secrets clearly defines the procedure for referring information as State and Official Secrets. The law determines the information to be referred as State and Official Secrets, as well as restrictions to referring it as State and Official Secrets. Public officials, empowered to refer information as State and Official Secrets, are not entitled to go beyond the scopes pre-

determined by the Law and they are competent only to detail them by domains and departmental belonging, and not to establish a new category of information.

As regarding the Applicant's assertion according to which the secrecy of the expanded departmental lists may cause the inclusion of any information well-known to the members of the society, with a certain probability in those lists, and its imparting may result in factual and legal consequences for the participants of legal relations, the Respondent finds it groundless, as, in particular, the Criminal Code of the Republic of Armenia determines liability for intentional disclosure of information containing State Secret by the person who has the right to become familiar with state secret and to whom it was entrusted or became known ex professo, if there are no signs of high treason.

The Respondent finds that the challenged provisions are not unconstitutional by their content and have not made their review necessary up to this date.

5. The Constitutional Court states that, according to Article 27 of the RA Constitution, the right to freedom of expression also includes freedom to seek and receive information. Access to public information is one of the essential prerequisites for democracy and responsible transparent public governance. Democratic control exercised through public opinion stimulates transparency of public administration actions and facilitates accountability of public authorities and officials.

However, this constitutional right is not an absolute right and it is subject to restriction on the grounds and in the manner prescribed by Article 43 of the RA Constitution. The correlation of this constitutional value with other constitutional values, especially with national security, determines the nature of its possible restrictions. The possibility of restriction of freedom to seek and receive information in the legitimate interest of protection of national security, as prescribed in Article 43 of the RA Constitution, allows the state power to refer information as State or Official Secrets, and thus to restrict the access of information, imparting of which may harm national security. According to Article 43 of the RA Constitution, Article 8 of the RA Law on Freedom of Information, titled “Restrictions on freedom of information," restricts the access of the information that contains state, official, bank or commercial secret.

6. The constitutional legal dispute raised in the framework of the present Case, in particular, puts forward the following legal issues:

a/ whether the implementation of legislatively prescribed power to refer information as State or Official Secrets by executive bodies within their competence assumes restriction of the right to receive information, and thus, whether the expanded departmental lists of cipherable information elaborated by those executive bodies, by themselves, are restriction to the mentioned right,

b/ whether the ciphering and the nonpublic nature of the expanded departmental lists of cipherable information are justified.

For answering these questions, first, it is important to do systemic analysis of the law, which will make possible to find out, whether the law determines clear, specific and complete standards to qualify any information as State Secrets and to ensure the principle of restriction of the right exclusively by the law.

Article 2 of the RA Law on State and Official Secrets defines the concept "state secret." According to that Article, information, relating to the RA military, foreign affairs, economic, scientific-technical, intelligence, counterintelligence, operative-intelligence domains, is classified as state secrets, which are protected by the state, and imparting of which may cause serious consequences for the security of the Republic of Armenia.

In addition to this definition, Article 9 of the above mentioned Law defines the scope of information to be referred as state secrets. This Article marks out the information to be referred as state secrets according to all domains mentioned in Article 2. At the same time, Article 10 of the Law defines the information that may not be referred as state secrets. Article 11 of the Law also prescribes the principles of ciphering.

Comparison of the definition of state secrets stipulated in Article 2 of the RA Law on State and Official Secrets, the scope of information to be referred as state secrets prescribed in Article 9 of the Law and restrictions defined in Article 10, allows to state that the law determines the scopes of referring certain information as state secrets and, as a result, their access, hence, also the restriction of the right of a person to seek and receive information.

The RA Law on State and Official Secrets also defines the secrecy rates, simultaneously determining the orienting criteria upon which the competent officials classify certain information by the secrecy rate.

Based on the above mentioned, the Constitutional Court finds that the implementation of the constitutional principle of restriction of rights exclusively by the law is guaranteed, and the function of ensuring the implementation of legislative requirements is left to by-laws.

7. Article 8 of the RA Law on State and Official Secrets defines the powers of state bodies, local self-government bodies and officials in the domain of referring information as State and Official Secrets. In Article 9 of the Law the legislator stipulates the information to be referred as state secrets according to relevant domains and in Article 12 of the Law for the purpose of exercising unified state policy in the domain of ciphering the information authorizes the RA Government to elaborate list of information subject to referring as the RA state secrets, which also includes the list of state bodies with the authority to dispose of each information. According to the Law, the mentioned list shall be ratified by the RA President, reviewed if necessary and shall be subject to publication. Determining the public nature of that list, the Law provides its access and predictability of the concerned persons' actions.

Providing by Article 8 of the Law the public administration bodies with the authority to refer information as state and official secrets **within the scopes of their competence**, in Article 12 the legislator, simultaneously, clarified the nature of departmental lists subject to elaboration by those bodies, stating that they are **expanded lists**.

In accordance with Article 8 of the Law on State and Official Secrets, on 19 August 1997 the RA Government adopted the Decision No. 350 on Approval of the list of officials with the authority to refer information as state and official secrets". According to Articles 8 and 12 of the Law, by the Decision No. 173 of the RA Government dated 13 March 1998 the list of information referring as state secrets in the Republic of Armenia was approved, and the heads of executive bodies with the authority to refer information as state and official secrets were entrusted to elaborate the expanded departmental lists of cipherable information during one month period.

By the Decision No. 665 dated 29 October 1998the RA Government approved the procedure for elaboration of the list of information referred as state secrets of the Republic of Armenia. According to Point 2 of the procedure approved by that Decision, "draft lists of information

referred as state secrets shall be elaborated in accordance with the requirements of Article 9 of the Law of the Republic of Armenia on State and Official Secrets ..." That is, they should include **the information subject to referring as state secrets, deriving from the requirements of the Law. It equally concerns also the expanded departmental lists**.

Based on the above mentioned, the RA Constitutional Court finds that:

a/ the properly made detailed departmental lists of state secret information themselves, may not lead to restriction to the right to receive information. Restrictions to that right are provided by the law, and determining the authority stipulated in the challenged norms the legislator does not delegate its exclusive power to establish restrictions to the right to the executive bodies, but, exercising the constitutional authority to set limitations, it authorized **those bodies to implement the limitations provided by the law**,

b/ the above mentioned Decisions of the RA Government, the legitimacy of which does not raise an issue, were confirmed by the RA President before the amendments to the RA Constitution dated 2005 and in accordance with the requirements of the current procedure. Taking into account the new procedure of adoption and enforcement of the decisions of the RA Government after constitutional amendments, the legislator, based on the requirements of Article 117, Part 1 of the RA Constitution, had to make necessary amendments to Article 12, Part 5 of the RA Law on State and Official Secrets, keeping in mind that the RA President will no longer be able to confirm these amendments in accordance with the previously established procedure, if new amendments to the list of information referring as state secrets are necessary.

8. The Constitutional Court also finds important to refer to the issue of legitimacy of the non-public nature of expanded departmental lists of cipherable information. It must be considered in light of the common logic of legal regulation of cipherable information of the RA Law on State and Official Secrets, as well as in light of the legal reg-

ulation of determining criminal liability for disclosure and dissemination of state secrets, also taking into account the international obligations of the Republic of Armenia.

Article 3 of the RA Law on State and Official Secrets, which reveals the content of the concepts used in the Law, defined **the term "ciphering of information**" as "application of limitations to the information including state and official secrets and dissemination of such information-holders."

Article 13 of the Law titled "**Ciphering of information**", states that ciphering is expressed in determining the secrecy rate of each certain information and giving secrecy mark to the certain information-holder in the manner prescribed by the RA Government.

Comparing the mentioned norms of the Law with the definition of the state and official secrets given in Article 2, the Constitutional Court states that, regarding the legal regulation of the process of information ciphering, from the common logic of legislative legal regulation follows, that according to the established procedure restrictions are **applicable to information**, the distribution of which may lead to serious consequences for the security of the Republic of Armenia.

Based on the above mentioned, the phrase "**departmental lists shall be ciphered**", which is defined in the challenged Part 7 of Article 12 of the Law, would mean the application of restrictions to those lists owing to the fact that disclosure of their contents may lead to serious consequences for the security of the Republic of Armenia. Whereas the departmental lists only specify the domains mentioned in public lists, which are prescribed by law and approved by the RA Government.

As regards such possible situations when the title (name) of the certain information included in departmental lists itself may unavoidably be a state secret by virtue of the fact of establishment, in such situations, in accordance with the principles of ciphering following from the Law, in particular with the principle of reasonableness of ciphering, it may be considered as information, distribution of which may lead to serious consequences for the security of the Republic of Armenia, and it may be ciphered as certain information.

In addition, referring to the standards of legitimate limitations of the freedom to seek and receive information, the RA Constitutional Court, as well as the European Court of Human Rights expressed the legal position

that, first of all, the legal basis for limitation of that freedom shall be accessible and predictable. Significance of these requirements concerning the legal basis of limitation becomes more emphasized when intervention of the mentioned freedom is expressed in subjecting the person to criminal liability for dissemination of relevant information.

The RA Criminal Code prescribes a number of corpus delicti concerning dissemination of state secrets, in particular, "high treason" (Article 299 of the RA Criminal Code), "espionage" (Article 302 of the RA Criminal Code) and "publication of state secret" (Article 306 of the RA Criminal Code). Based on the fact, that the conviction of a person for the mentioned acts, may be also legally based on the information ciphered by any departmental list, in addition to the RA Law on State and Official Secrets and departmental lists of cipherable information approved by the RA Government, the Constitutional Court finds that besides the information, **ciphering of departmental lists** may also be an obstacle for the legal subjects to foresee the legal consequences of their acts, in particular to consider that the disseminated information is a state secret and leads to criminal liability.

A number of international organizations have touched upon this issue. In particular, in Point 10.2 of the Resolution 1551 (2007) on "Fair trail issues in criminal cases concerning espionage or divulging state secrets" the Parliamentary Assembly of the Council of Europe stated the following principle: "...legislation on official secrecy, including lists of secret items serving as a basis for criminal prosecution must be clear and, above all, public. Secret decrees establishing criminal liability cannot be considered compatible with the Council of Europe's legal standards and should be abolished in all member states."

Simultaneously, Judgment of the European Court of Human Rights concerning in Case of Stoll v. Switzerland (10 December 2007, Point 44, Stoll v. Switzerland) refers to the comparative study of the legislations concerning state secret in the European Council member states carried out by the rapporteur on this Resolution, which, in particular, stated: "...Generally speaking, one can identify three basic approaches: the first consists in a short and general definition of the notion of official or state secret (or equivalent), presumably to be filled in on a case-by-case basis. The second involves lengthy and more detailed lists of specific types of classified information. The

third approach combines the other two by defining general areas in which information may be classified as secret, and then relying upon subsequent administrative or ministerial decrees to fill in more specifically which types of information are in fact to be considered as secret. ... Each of these legislative approaches allows for reasonable responses to the difficult task of specifying in advance the types of information that the State has a legitimate interest in protecting, while nonetheless respecting the freedom of information and the need for legal security. But any administrative or ministerial decrees giving content to more generally worded statutes must at the very least be publicly accessible".

Proceeding from the above mentioned and taking into consideration the practice of constitutional justice of various countries, the RA Constitutional Court finds that ciphering of departmental lists according to current procedure is out of the scopes of general logics of **information ciphering** expressed in the legal regulation of the RA Law on State and Official Secrets, and the non-public nature of the latter, insofar as it does not concern any certain cipherable information, does not follow the legitimate aim of protection of interests of state security and causes problems in the domain of protection of human rights.

Proceeding from the results of consideration of the case and being ruled by Article 100, Point 1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Article 8, Part 4, Subpoint "f" and Article 12, Part 6 of the Law of the Republic of Armenia on State and Official Secrets are in conformity with the Constitution of the Republic of Armenia.

2. To declare the provision of Article 12, Part 7 of the Law of the Republic of Armenia on State and Official Secrets "Departmental lists are cipherable and non public" insofar as it does not concern certain cipherable information, contradicting Articles 27 and 43 of the Constitution of the Republic of Armenia and void.

3. Proceeding from the requirements of Article 64, Point 9.1 and Article 69, Part 12 of the RA Law on the Constitutional Court, the final judgment rendered against the Applicant is reviewable due to new cir-

cumstances in accordance with the procedure prescribed by law, as well as taking into consideration that the RA Administrative Court acted ultra vires not considering the requirements of Article 93 of the RA Constitution while rendering the Judgment ՎԴ/1314/05/10 dated 23.11.2010 and stating that the last Paragraph of Article 12 of the RA Law on State and Official Secrets does not contradict Article 6 and Article 83.5, Points 1, 2, 3, 5 and 6 of the RA Constitution.

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

CHAIRMAN **G. HARUTYUNYAN**

6 March 2012
DCC-1010

ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 138 OF THE RA ADMINISTRATIVE PROCEDURE CODE WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN SHAVARSH MKRTCHYAN AND OTHERS

Yerevan *11 April 2012*

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

with the participation of the representative of the Applicant K. Mejlumyan,

official representative of the Respondent A. Mkhitaryan, Senior Specialist and H. Sardaryan, Leading Specialist of the Legal Expertise Division of the Legal Division of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38, 68 and 69 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Article 138 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the citizen Shavarsh Mkrtchyan and others.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Shavarsh Mkrtchyan dated 17.01.2012.

Having examined the report of the Rapporteur on the Case, the explanations of the representatives of the Applicant and the Respondent, having studied the RA Administrative Procedure Code, other legislative acts and international legal practice concerning the legal regulation of the challenged issue, the international obligations of the Republic of Armenia, as well as other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Administrative Procedure Code was adopted by the RA National Assembly on 28 November 2007, signed by the RA President on 10 December 2007 and came into force on 1 January 2008.

The challenged Article 138 of the Code titled "Peculiarities of the Consideration of the Claims "stipulates, "The court considers the cases prescribed by Article 135 of the Code in written procedure except for the cases when, by the court assesses the case as having public sonority or its oral consideration will contribute the quicker revelation of the circumstances of the case".

2. The procedural background of the case under consideration is the following: Shavarsh Mkrtchyan and others submitted a claim to the RA Administrative Court against the RA Government with the demand to declare as invalid the Decision N 944-N of the RA Government dated 26.06.2009 on "Declaring of exceptional prevailing public interest towards the property of citizens of the Halidzor Village Community of Syunik Region of the Republic of Armenia and changing the target significance of the lands". Based on Article 138 of the RA Administrative Procedure Code the Administrative Court accepted the claim to be considered by written procedure. The Applicants motioned to consider the case in public, which was declined by the Court based on the absence of necessary grounds for case consideration the by oral procedure, prescribed by Article 138 of the

RA Administrative Code, and on 01.03.2010 the Decision VD/4396/05/09 on declining the demand to recognize invalid the Decision N 944-N of the RA Government adopted on 26.06.2009, was announced. By the Decision dated 05.05.2010 the RA Court of Cassation returned the cassation complaint submitted against the decision of the Administrative Court based on Part 1, Article 141 of the RA Administrative Procedure Code, reasoning also that the Administrative Court judgments on challenging the legitimacy of normative legal acts may be appealed in the RA Court of Cassation only due to the fact of violation of the substantial right. By Decision DCC – 936 of the RA Constitutional Court Part 1 of Article 141 of the RA Administrative Procedure Code was declared as contradicting Articles 3, 18 and 19 of the RA Constitution and invalid in regard to blocking the person's right to appeal the Administrative Court judgments in cases challenging the validity of the normative legal acts based on the violation of the norm of procedural law, to be incompatible with Articles 3, 18 and 19 of the RA Constitution and invalid. Based on the mentioned Decision of the Constitutional Court, the Applicants submitted a cassation appeal due to a new circumstance which was satisfied partially by the RA Court of Cassation by the Decision dated 29.07.2011, and was declined on the grounds of violation of the procedural right of the Applicant, and the Administrative Court Decision dated 01.03.2010 was left in force. At the same time, the RA Court of Cassation considered the position of the RA Administrative Court on declining the motion on considering the case by oral procedure to be reasonable and well-founded, as no condition, prescribed by Article 138 of the RA Administrative Procedure Code, i.e. the case has public sonority or its oral trial will contribute the quicker revelation of the circumstances of the case, was available.

3. The Applicant finds that the challenged norm with the interpretation of the RA Administrative Court and the Court of Cassation does not correspond the Constitution "as, the rule on case consideration by written procedure prescribed by Article 138 of the RA Administrative Procedure Code, may not be considered as the right of the court to announce the judgment without the public trial" and does not derive from the requirements of Article 19 of the RA Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms "and the rights guaranteed by them are violated". The right to public trial is the

constitutional right of an individual, "the cases of restriction of which are listed in the Constitution and which are not present in instant case and, according to Article 3 of the Constitution, this is an ultimate value and the state shall be limited by that right". Applicant finds that opposite to the above mentioned principle ensured by the Constitution and Convention, the Administrative Court did not carry out public consideration of the case with the participation of parties in the courtroom and "without the public consideration of the case shall announce the judgment on the merits, which violated our above mentioned rights". The Applicant also finds that this approach of the court they deprived them of the possibility to submit evidences to the court. Besides, "the court identified and thus mixed two different principles – the constitutional principle of publicity which guarantees the public hearing of the cases as an exception prescribing the cases of the closed court session and the principle of oral procedure which concerns consideration of the cases by oral or written procedure". According to the Applicant, "the principle of publicity is not similar to the case consideration by oral or written procedure, in particular the oral closed court session may take place, which will be maintenance of the requirement of oral consideration but violation of the principle of publicity, if the grounds for closed trial prescribed by the Constitution and Convention are not present". As a result, the Applicant finds that "the Administrative Court is provided with the possibility to consider the case without public trials on the basis of pretence on written procedure, in particular, after receiving the application, without the public or closed consideration of the case", which violated the rights of the litigants guaranteed by Article 19 of the Constitution and Article 6 of the Convention.

4. The Respondent finds that Article 138 of the RA Administrative Procedure Code is in conformity with Articles 3, 18 and 19 of the RA Constitution on the reasoning, that taking into consideration the importance of the publicity for execution of the person's right to fair trial, the publicity of trial is equaled to the constitutional principle of justice and is reflected both in the international legal instruments stipulating the independence of the judicial system and guarantees for protection of human rights, and in the national legislation. According to the Respondent "publicity has broad and limited meaning. In a broad sense publicity means the presence of the citizens and mass media at the case a trial, and in a limited sense - presence of the

litigants at the case trial." Oral consideration of the case is one of the procedural principles "which provides with the possibility to ensure the more complete implementation of publicity principle in case trial". The procedural principles, although independently, by their essence characterize this or that institution (stage)of proceeding, but at the same time are interlinked and are one united logical-legal system. The Respondent also finds that "implementation of oral consideration is a precondition for implementation of the principle of publicity." Oral consideration is clear and accessible for all litigants, which provides the court and participants of the case "to comprehend the circumstances of the case easier, assess them correctly, and the citizens and representatives of mass media, who are present at the court hearing, to get acquainted with the considered case, to carry out review over the activity of the court. Due to oral consideration, the parties of the case may exchange ideas lively and quickly". Simultaneously, according to the Respondent, reasonable implementation of the trial only through the application of the principle of oral consideration is impossible and taking into consideration the peculiarities of some cases, their more effective consideration may be implemented in written form and absence of the oral procedure is justified if the court considers exclusively legal issue, when "presenting evidences is not only the right but the obligation of the party". According to the Respondent, the RA Administrative Procedure Code provides with possibility to present additional evidences after the end of the preparation of the case to consideration as well as the plaintiff is entitled to change the substance and subject of the plea before carrying out the proceeding.

5. In the frames of the instant case the Constitutional Court necessitates clarifying:

- The content and peculiarities of the legislative assurance of the written procedure as the procedural form of implementation of the constitutional right to fair and public trial,
- The content and peculiarities of the written procedure in the international legal (European) practice and in case law of the European Court of Human Rights in this sphere,
- The assurance of protection of the litigants' rights (including procedural) in the challenged norms, as well as in the norms systemically interrelated with them, during the consideration of the cases under the jurisdiction of the Administrative Court.

6. According to Article 19 of the RA Constitution, everyone shall have a right to restore his violated rights, and to reveal the grounds of the charge against him in a fair public hearing under the equal protection of the law and fulfilling all the demands of justice by an independent and impartial court within reasonable time. This right is also guaranteed by the European Convention of Human Rights (hereinafter Convention); according to Part 1, Article 6 of which in determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time. In addition, **the public hearing** (in particular public information concerning the trial court, the pending case, place and date of the court hearing, procedure of hearing, etc), as well as **compulsory pronunciation of the judgment** is the least and important guarantees for the implementation of this right.

Pursuant to Article 3 of the RA Constitution, as well as in the framework of the assumed international obligations, the task of the state is to ensure the administration of justice according to the procedural rules which will ensure the legal terms necessary for the implementation of the right to public trial, including also through the implementation of different procedural forms of the case consideration in the court, deriving from the peculiarities of the considered cases and necessity of their fair, immediate and effective solution. The latter conditions the availability of the procedural forms of case consideration, such as **oral and written procedures** of case trial or principles of oral and written examination. During the written procedure the case consideration is performed without "oral hearings", without direct participation of the parties which is conditioned with a number of procedural peculiarities.

The above-mentioned two trial principles are equally highlighted in the established international legislative and judicial practice, and have different manifestation conditioned with the legal system, structure of judicial system, contents of the functions of the bodies administering justice, as well as peculiarities of the certain cases considered by the court, other circumstances prescribed by the domestic legislation. The complex research of this experience principally concludes to following:

- The principles of oral and written hearing is equally applicable in all spheres of justice (general jurisdiction (criminal and civil cases), administrative, constitutional and other specialized justice),
- If the oral procedure is applicable without exception, then the case

consideration by written procedure is implemented in certain cases and in certain circumstances, in particular,

1. when there is no necessity in oral examination of factual circumstances of the case, or, if the oral examination of the materials (documents, etc.) submitted to the court will not contribute the further clarification of the challenged issue, and if, it does not contradict the famous principles of protection of human rights and fundamental freedoms,

2. when the court, based on motion of the litigants or without it, makes a decision to consider the case by written procedure,

3. at the stage of preparation of the case consideration when the issue of admissibility of the application is considered,

4. in the cases when the court makes a decision on implementation of temporary remedies for prevention of the danger threatening the public interests or for other necessary objectives,

5. by court decision if the motion of the parties on non-participation in trial is available,

6. if the court considers necessary to make a decision on the basis of the written documents available in the case,

7. if the clarification of the circumstances of the case is impossible otherwise (through oral examination),

8. for ensuring speedy case trial,

9. in the cases of necessity to hold a decision on the issues of right and procedure,

10. while considering cases (appeals, complaints) in accordance with judicial supremacy (appeal, cassation), if other procedure is not stipulated,

11. if the examination of the case does not bring to factual or legal issue and the facts are clarified,

12. if the court decision will not contain legal assessments,

13. if the application under consideration of the court, is unconditionally well-founded or is obviously ill-founded, and the court finds that there is no need for the oral examination,

14. if the disputes on public law are considered,

15. if there is no legal dispute between the parties or the respondent agrees with the demands presented to the court.

The above-mentioned legal terms are also reflected in case law of the European Court of Human Rights. In particular, the European Court

stated that right to public hearing prescribed in Article 6 of the Convention necessarily entails an entitlement to "oral" hearing." However, the obligation to conduct such hearings is not absolute. Thus, the absence of oral trial may be compatible with the requirements of Article 6, when the examined issue does not raise a question of fact or law which can adequately be resolved on the basis of the case materials without oral observations of the parties (Elsholz v. Germany, Judgment of 13 July 2000, p. 66, Fredin v. Sweden (no.2) Judgment of February 1994, pp, 21-22, Fischer v. Austria, Judgment of 26 April 1995, p.44).

The practice of the European Court of Human Rights in respect of Article 6 assesses the written trial as fair and public, if

- it is conditioned with exceptional circumstances,
- is implemented within a reasonable time as well as for ensuring speedy case trial,
- is conditioned with the peculiarities of the examined case,
- is implemented principally in the solution of the issues of law, during the examination of such factual circumstances which are justified in the terms of written procedure.

Consequently, while deciding the constitutionality of the challenged norms, the Constitutional Court is also guided by the necessity of assessment of their conformity with the above-mentioned criteria.

Thus, the Constitutional Court states that both oral and written procedures of trial are organizational procedural forms of justice administration, were brought in the practice of justice by legal stipulation and are aimed, in one case, at the implementation of procedural actions without "oral hearings", and in other case at the assurance of fair, effective and public trial, adoption of judgments and their publication. In all cases, the trial by both oral and written procedure should provide necessary guarantees for exercising the rights litigants.

7. The institution of trial by written procedure is introduced into the spheres of constitutional, as well as into the administrative justice and is called to ensure fair and public trial of certain case and in certain circumstances. In the framework of administrative trial the written procedure may be implemented based on the will of the parties and initiative of the court in the cases of availability of certain grounds. That procedure is implemented for the cases of speedy trial (Article 108, Part 1, Point 3

of the RA Administrative Procedure Code), while considering the appeals submitted against the judgments (as well as interim judgments) of the Administrative Courts (Article 117.10, Parts 3, 4 and 5 of the RA Administrative Procedure Code), while considering the cases challenging the lawfulness of the normative legal acts (as well as for the cases prescribed in Article 147 of the RA Administrative Procedure Code), except for the cases when the court assessed the case to have public sonority or when oral trial will contribute the quicker revealing of the circumstances of the case (Article 138 of the RA Administrative Procedure Code), as well as while considering the claim on payment order (Article 158, Part 1 of the RA Administrative Procedure Code).

It is worth mentioning that in contrast to the rules of written examination prescribed in the above-mentioned Code, the rules for oral trial or the general order (in the form of systemized norms) of the case consideration in the administrative courts is prescribed in Chapter 16 of the Code.

8. As to the constitutionality of the challenged norm, the Constitutional Court states that in accordance with the norms prescribed in Chapter 24 of the RA Administrative Procedure Code, including Article 138, the Administrative Court implements the written procedure for the proceedings of the cases challenging lawfulness of the normative legal acts (listed in Article 135), except for the cases when the court assesses the case to have public sonority or when oral trial will contribute the quicker revealing of the circumstances of the case. As it follows from the content of legal regulation, the legislator considers the cases consideration by written procedure compulsory for the cases when the court faces **the issue of identical and correct understanding and interpretation of the content of the right (lawfulness of the legal provision)** prescribed by the normative act, the solution of which demands from the Administrative Court, first, to examine the challenged normative legal act, to conduct legal comparative analysis with the provisions of the normative acts having supreme legal force, etc. That is, for the cases deriving from the public-legal disputes, the court, as a rule, does not have the necessity to conduct trial actions publicly and orally with direct participation of the parties, which is aimed at the organization of effective trial. Simultaneously, considering that certain and legally-grounded circumstances and based on the necessity

to provide wider participation of the society and more direct public control over the case trial, as well as on the necessity to organize more prompt examination, the court is authorized to render the substantiated decision on conducting the case trial by oral procedure. Besides, based on the certain circumstances, as well as on the above mentioned considerations, the Administrative Court, on its discretion or by reasoned motion of the parties, is authorized to combine the oral and written procedures within the trial of the same case (e.g. on the grounds prescribed in Articles 108, 111 and 138 of the RA Administrative Code), having the aim to provide more effective and prompt clarification of the circumstances of the case.

It shall be also considered that even for the cases of oral trial the clarification of the circumstances of the case is conducted not only through "oral hearings" in the court, but also **through the examination of written evidences**. Consequently, the Constitutional Court finds that **the principle of the oral examination is not absolute** in the framework of the challenged legal regulation.

9. The Constitutional Court necessitates mentioning that, according to the general content of the positions of the Applicant, the issues presented in the instant case demand to reveal also the legal content of interrelations of implementation of the principles of written and oral case trial, as well as the principle of access to justice.

The Constitutional Court finds that the publicity of trial first means possibility to implement public control over the trial and the judgments adopted by the court.

Simultaneously, the Constitutional Court necessitates mentioning that "supposed conflict" between the principles of trial by written procedure and publicity of the case trial is especially obvious, when any legal provision excluding the principle of orality in the context of guarantee of public hearing prescribed in Article 19 of the RA Constitution may seem to be disputable only outwardly. Although the implementation of the trial by written procedure may not be considered as violation of the guarantees of the fundamental principles of justice, if implemented based on mutual consent, as well as in the cases prescribed by law when it is not necessary to listen to the expert, to interview the witnesses, to make an inspection and to give judicial assignments (Article 108, Part 1, Point 3, Article 117.10, Part 5 of the RA Administrative Procedural Code).

On the other hand, the written trial is excluded when compulsory circumstances for oral trial precisely prescribed by law are present. The Constitutional Court also states that the trial by written procedure, in the sense of Article 19, Part 1 of the RA Constitution, may not be interpreted as administration of justice based on the principle of non-publicity, even moreover be interpreted as means for neglecting the normative terms of Part 2 of Article 19 of the RA Constitution, if it is implemented in accordance with precisely prescribed procedure thus guaranteeing the effective implementation of the rights of litigants.

In accordance with the principle prescribed in the case law of European Court on Human Rights, **holding the consideration of the case circumstances (or "oral hearing") and pronouncement of the decision** are prior elements of public trial (regardless the procedural **manner of implementation**). In accordance with position of that court " Whilst the member States of the Council of Europe all subscribe to this principle of publicity, their legislative systems and judicial practice reveal some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the "pronouncement" of judgments. The formal aspect of the matter is, however, of **secondary importance** as compared with the purpose underlying the publicity required by Article 6 para. 1(art. 6-1)." (Sutter v. Austria Judgment of 26 March 1982, para. 30, Pretto and others v. Italy Judgment of 26 March, 1982, para. 23 and Axen v. Germany Judgment of 8 December 1983, para. 25).

From this it follows that while considering the issue of law, the Administrative Court being obliged to follow the principle of publicity of justice guaranteed by Article 19 of the RA Constitution, and based on specific circumstances of the case, is competent and in the cases prescribed by the Code is obliged to implement (for making the circumstances of the case consideration more accessible for the public) or not to implement the wider means of application of that principle in one case, and to organize more prompt and effective trial in the other case.

The Constitutional Court finds that in all above mentioned cases the legislator obliges the Administrative Court, regardless the peculiarities of the considered case and other circumstances which serve as grounds for the solution of the case by written procedure, **to implement fair, effective and public trial unconditionally**, thus such legal regulation pursues a constitutional legal objective.

10. In the framework of this case, necessitating to clarify the issue of ensuring the rights of the litigants by challenged legal regulation, it shall be stated that as it derives from the analysis of the norms included in Chapter 24 of the RA Administrative Procedure Code and other norms systemically interconnected with them, in the cases of the trial by written procedure **the litigants, including parties, are not limited to implement their procedural rights and bear relevant obligations** (Articles 15. 16. 19, 25, Article 26, Part 4, Article 36, Part 4, Articles 39, 42, 43, 44, 48, 83, 84 and 85 of the RA Administrative Procedure Code) which may be implemented **considering the peculiarities of written trial**, in particular in the cases when the issue concerns the implementation of procedural actions (examination of evidences, as it is prescribed by rules of Chapter 7 of the RA Administrative Procedure Code), and rights and responsibilities of the parties concerned. Consequently, **the Constitutional Court states that the implementation of these peculiarities does not change the essence of the rights and obligations of the participants**. That is, as it derives from the above mentioned analysis, also in the case of the written procedure, the legislator **guaranteed the preservation of the rules of competitive trial** (including the normative requirements of Chapter 2 of the Code). The judgments rendered by this procedure, as it follows from the content of the above mentioned norms, are unconditionally subject to both **pronouncement** (for the parties) and to **official publication** (for the public) (Article 142 of the Administrative Procedure Code). That is, the complete texts of these acts are made accessible in the same way as they would have been done as a result of oral hearings. Simultaneously, as a result of case trial by written procedure, the necessary legislatively prescribed legal consequences follow the adoption and pronouncement of the judgments (Article 140 of the RA Administrative Procedure Code), which are accessible and assessable both for the litigants and for the public, and those acts **are subject to review** in accordance with the manner prescribed in the rules of Article 141, Chapters 19.1, 20 and 22, and Section 4 of the Code.

11. The Constitutional Court also necessitates considering the issue of ensuring the rights of the litigants in the trial by written procedure in the context of peculiarities of implementation of these rights and possibilities of their manifestation in the framework of judicial discretion, taking

into consideration the fact that, unlike the oral procedure (Chapter 16 of the Code), as well as the RA constitutional judicial practice, the rules for written procedure are not defined and systemized in the RA Administrative Procedure Code. Although their absence does not directly cause issue of constitutionality, it may become an obstacle for ensuring the rights of persons, as well as for fair and public trial. In the framework of such consideration the possible (clearly predictable) means for the implementation of the rights of persons, guaranteed by the Code, are indefinite and can be resolved on the merits in the framework of absolute discretion of the court.

The Constitutional Court finds a gap of legal regulation in the RA Administrative Procedure Code, which concerns the absence of precise procedure for the trial by written procedure. Overcoming of that gap is within the competence of the legislative body which may be implemented by prescribing rules for written procedure in the RA Administrative Procedure Code, amongst them:

- the rules for preparation and conduct of written procedure,
- the manner of implementation of the rights (connected with the written evidences, additional materials, explanations, arguments (counter arguments), motions and time terms of their submission and exercising of other procedural actions during the whole trial) of the parties prescribed by the RA Administrative Procedure Code,
- the procedure for adoption of interim judgments in the framework of written trial,
- the framework of the necessary actions of the court (connected with the organization and procedure (time terms) of the circulation of documents, on one hand between the parties, and on the other hand between the parties and the court) during the written case trial,
- the rules for registration of the process of written trial and getting acquainted with it,
- the procedure for adoption and pronouncement of decisions on the merits as a result of trial by the written procedure.

Consequently, deriving from the constitutional legal content of the challenged norms and other norms systematically interconnected with them, comparing the common legal regulation of written procedure in the sphere of the RA administrative justice with principles and approaches

stipulated in the procedural forms applied the international legal practice for ensuring the right of fair and public trial, as well as with the normative general content of Article 19 of the RA Constitution, at the same time necessitating the solution of the existing gap in the RA administrative procedure by the legislative body, the Constitutional Court finds that Article 138 of the RA Administrative Procedure Code, per se, may not cause any problem of constitutionality.

Proceeding from the results of consideration of the case and being ruled by Article 100, Point 1 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Article 138 of the RA Administrative Procedure Code is in conformity with the Constitution of the Republic of Armenia.

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

CHAIRMAN **G.HARUTYUNYAN**

April 11, 2012
DCC-1020

ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 208, PART 2 OF THE CIVIL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN NELLY MKRTCHYAN

Yerevan *18 July 2012*

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan, M. Topuzyan (Rapporteur), A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,

with the participation of the representative of the Applicant: Advocate G. Torosyan,

official representative of the Respondent: A. Mkhitaryan, the Chief Specialist of the Legal Expertise Division of the Legal Department of the National Assembly Staff of the Republic of Armenia and H. Sardaryan, Leading Specialist of the same Division,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the

Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Article 208, Part 2 of the Civil Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Nelly Mkrtchyan.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Nelly Mkrtchyan on 06.03.2012.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondents, having studied the Civil Procedure Code of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The RA Civil Procedure Code was adopted by the RA National Assembly on 17 June 1998, signed by the RA President on 7 August 1998 and came into force on 1 January 1999.

Part 2 of Article 208 of the RA Civil Procedure Code, titled "Limits for filing appeals," states: "Appeals in civil cases with property demand are permissible to be considered only if the amount in dispute fifty times exceeds the minimum wage".

2. The procedural background of the Case is the following: on 08.12.2010 the Applicant submitted a claim to the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts against "Yerevan Hotel" OJSC with the demand to recover the amounts unjustifiably withheld from wages.

The Applicant informed the Court that from 24 March to 27 July 2009 she worked at "Yerevan Hotel" OJSC as registrar according to the labor contract. She was dismissed due to the expiration of the contract. On 07.09.2009 she was again employed by "Yerevan Hotel" OJSC as registrar and was dismissed on 8 October 2010. No new labor contract was signed for that period of time, and she was informed that the labor contract signed on 24.03.2009 is in force. During the final calculation it was found out that 45.000 /forty-five thousand/ AMD were deducted from her as a fine. Based on the above-mentioned, the Applicant asked

the court to recover the afore-mentioned 45.000 /forty-five thousand/ AMD from "Yerevan Hotel" OJSC.

On 07.06.2011 the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts made a decision to reject the claim.

The Applicant filed an appeal against the mentioned judgment.

By its decision of 25.07.2011 the RA Civil Court of Appeal returned the appeal with the reasoning that Article 208, Part 2 of the RA Civil Procedure Code does not allow to appeal the judgments, if the amount of property demand does not exceed the minimum wage for fifty times, and the amount in dispute of the considered case is 45.000 /forty-five thousand/ AMD, that is "appeals in cases of such property demand are not allowed".

By its decision dated 07.09.2011 the RA Court of Cassation returned the appeal filed by the Applicant against the decision of 25.07.2011 of the RA Civil Court of Appeal, and reconfirmed the legal positions of the RA Civil Court of Appeal.

3. Challenging the constitutionality of Article 208, Part 2 of the RA Civil Procedure Code, the Applicant finds that it contradicts Articles 1, 3, 18, 19 and 20 of the RA Constitution.

Referring to the mentioned articles of the Constitution and citing Article 6 of the Constitution, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Applicant asserts that the unity of the mentioned provisions is the content of the rights to judicial protection and fair trial. According to the Applicant the right to judicial protection supposes not only the entitlement to go to the court for protection and restoration of violated or challenged rights, but also the state-guaranteed opportunity to appeal judgments. According to the Applicant, if any interested person has the right to apply to the court for protection of violated rights, the participants of civil circulation apply to the court of first instance submitting a claim /application/ and to the higher courts – submitting an appeal and cassation petition. Based on this, the Applicant concludes that the right to appeal judgments directly follows from the content of the right of the person to judicial protection and the state shall bear the obligation to guarantee it. Reproducing the content of Article 3 of the RA Constitution, the Applicant concludes that the RA legal system shall contain the necessary mechanisms for the implementation of the right to appeal judgments, which include the appeal and cassation form of judgments review.

Referring also to the legal positions expressed by the RA Constitutional Court in the Decision DCC-765, as well as in the Decisions DCC-652, DCC-665, DCC-673, DCC-719 and DCC-780, the Applicant finds that judicial review should be considered as a mechanism for ensuring the implementation of the right to appeal and cassation, which simultaneously provides with opportunity to guarantee making lawful and well-grounded judgments, the uniform application of the law, protection of the rights, freedoms and legitimate interests of the participants of civil circulation.

The Applicant points out that the Constitution has defined unlimited right to judicial protection, incidently, Articles 18 and 19 of the latter do not include reference to any specific law regarding judicial protection, and the terms and conditions for implementation of that right must only be determined by the Civil Procedure Code, without limiting the provisions of the RA Constitution.

According to the Applicant, in this case the tendency or aim to limit the right to appeal with 50.000 /fifty thousand/ AMD is also very uncertain. If this restriction is based on the circumstance that the amount is not large enough, the Applicant draws attention to the fact that according to Article 1 of the RA Law on the Minimum Wage, the minimum wage in the Republic of Armenia is 32.000 AMD, and according to the data of the RA National Statistical Service, the cost of the minimum consumer basket in the Republic of Armenia is 43.499.8 AMD.

The Applicant also mentions the circumstance that the challenged norm of the Code does not stipulate exceptions to appeal: for example, opportunity to appeal in case of certain gross procedural violations.

4. Objecting the arguments of the Applicant, the Respondent finds that Article 208, Part 2 of the RA Civil Procedure Code is in conformity with the RA Constitution. To reason his position, the Respondent refers to the certain Recommendations of the Committee of Ministers of the Council of Europe and the case law of the European Court of Human Rights, concluding that the challenged legal regulation is derived from the international legal approaches and is not intended to exclude the implementation of the right to access to justice. In principle, the possibility to review the judgments of the court of first instance in the Court of Appeal is ensured. The challenged norm does not restrict the person's constitutional right to appeal, but it limits the implementation

of the right to review only for those cases where the subjects in disputes are small claims.

The Respondent states that in Point a/ of Article 1, titled Right to judicial control, of the Recommendation No. 95/5 adopted by the Committee of Ministers of the Council of Europe on 7 February 1995 concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures on Civil and Commercial Cases, states that "in principal, it should be possible for any decision of a lower court ("first court") to be subject to the control of a higher court ("second court"). Should it be considered appropriate to make exceptions to this principle, any such exceptions should be founded in the law and should be consistent with general principles of justice." Referring also Article 3 of this Recommendation, titled "Matters excluded from the right to appeal," the Respondent emphasizes the circumstance that in order to ensure the consideration of by the second court, the states should consider certain measures, excluding cases of certain category, for example possibility of exclusion of appeal in cases concerning the claims of small amount. Based on that, the Respondent concludes that "The procedure of appeal defined by the RA legislation is fully in conformity with the requirements of the above-mentioned Recommendation of the Committee of Ministers of the Council of Europe."

5. Within the framework of the constitutional legal dispute of the instant case, the Constitutional Court emphasizes the following legal issues:

- Whether it is legitimate to limit the possibility of implementation of the right to appeal based on the amount of the claim;
- What criteria should be taken as basis when setting the rate of amount of the claim, while limiting the right to appeal?;
- Whether certain exceptions are legitimate and necessary fro such limitation?

The Constitutional Court finds necessitates considering these issues in the context of the right to judicial protection and fair trial, taking into account international legal experience and approaches concerning the issue in dispute.

The study of international legal approaches and international experience concerning the issue in dispute states that the right to appeal in civil cases is not absolute, and the possibility to appeal in certain cases may be excluded being justified by certain circumstances.

So, according to Point 15 of the Recommendation No. R (81) 7 of the Committee of Ministers of the Council of Europe on Measures Facilitating Access to Justice, adopted on 14 May 1981, where there is a dispute about a small amount of money, a special procedure should be provided that enables the parties to put their case before the court without incurring expense that is out of proportion to the amount at issue. To this end consideration could be given to the provision of simple forms, the avoidance of unnecessary hearings and **the limitation of the right of appeal.**

In accordance with Principle 8, Part 1, Point b) of the Recommendation No. R (84) 5 of the Committee of Ministers of the Council of Europe on the Principles of Civil Procedure Designed to Improve the Functioning of Justice, adopted on 28 February 1984, particular rules or sets of rules should be instituted in order to expedite the settlement of disputes in cases relating to an undisputed right or an established liquidated claim and **in cases involving small claims**.

Point 3 of the Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe Concerning Measures to Prevent and Reduce the Excessive Workload in the Courts, adopted on 16 September 1986 states that, in order to reduce the workload in the courts, the member states should provide with bodies of **justice** which shall be at the disposal of the parties to solve **disputes on small claims and** in some specific areas of law.

Point a) of Article 3 titled "Matters excluded from the right to appeal" of the Recommendation No. R (95) 5 "Concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures in Civil and Commercial Cases" adopted by the Committee of Ministers of the Council of Europe on 7 February 1995, states: "In order to ensure that only appropriate matters are considered by the second court, states should consider taking any or all of the following measures... excluding certain categories of cases, for example small claims".

Bases on the above-mentioned, the Constitutional Court states that, according to Recommendations No. R (84) 5 and R (95) 5 of the Committee of Ministers of the Council of Europe **not excluding the implementation of the right to appeal in civil cases**, nevertheless, as opposed to the right of appeal in criminal cases, appeals on civil cases in the court of second instance (court of appeal) may be subjected to certain limitations, in particular, for the disputes on small claims.

6. The comparative analysis of Articles 18, 19 and 20 of the RA Constitution states that the RA Constitution, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the additional protocols has stipulated the right to appeal in criminal cases.

Article 19 of the RA Constitution concerns the appropriate procedures, and, in particular, the procedures corresponding to the demands of justice, of the certain case consideration in the court of each instance. That is, the provision prescribed in Article 19 of the RA Constitution concerning fair trial is applicable only after implementation of the right to appeal or cassation, if the right to appeal or cassation is defined for such cases. The same concerns Article 6 of the European Convention. According to the European Court, the right stipulated by Article 6 of the Convention does not include the right to appeal. The case law of European Court sequentially expresses the principal legal position, according to which, the European Convention does not compel the Contracting States to set up courts of appeal or of cassation, however, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants to enjoy the guarantees of Article 6... (particularly, the case of Staroszczyk v. Poland, application No. 59519/00, Judgment of 22 March 2007, Point 125).

Touching upon the revelation of the constitutional legal content of the provisions of Article 18, Part 1 of the RA Constitution from the perspective of the right of judicial protection and the right to effective remedies for judicial protection, the Constitutional Court finds that even though the right to appeal the judgment or the right to review are elements of the right of access to court and the right of effective judicial protection in case of existence of the courts of appeal and cassation, nevertheless, these rights are not absolute and are subject to certain restrictions, one of which is the restriction of the right to appeal in civil cases of certain categories stipulated by the challenged provision of the Code. In this regard, the Constitutional Court considered as lawful the restriction of the right to appeal in civil cases based on the amount of the claim, per se. The lawfulness of the amount stipulated by the challenged norm of the Code, as well as the conformity of such restriction as an exception to the general rule, with the common principles of justice is another issue.

7. Based on the results of study of international experience, the Constitutional Court states that in all those states, the legislation of which allows to restrict the right to appeal the judgments in case of a "small" amount of the claim, there are certain criteria and factors, and the legislator determines the rate of the amount of the certain claim in a reasonable relation with them. In particular, the rate of minimum wage, the cost of the minimum consumer basket, the living standards of the population serve as similar criteria. By the way, in some cases, for example in the Federal Republic of Germany, where the possibility to appeal is not defined, the rate of the amount of the claim significantly bates the rate of minimum wage.

Assessing the availability of the significant disadvantage, as a requirement for accessibility of individual complaints involved by Protocol No. 14 of the European Convention as a new term, the European Court often bases on financial influence of the given violation on the Applicant, particularly the circumstance that the amount in dispute is small.

In this aspect, it is characteristic that often being guided by the fact of availability or absence of pecuniary interest of the Applicant while assessing the availability of significant disadvantage, at the same time the European Court acknowledges that pecuniary interest is not the only element to determine the availability or absence of significant disadvantage. Particularly, in its decision of 1 July 2010 on the case of Korolev v. Russia the European Court expressed the following fundamental legal position: "... violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest".

Moreover, according to Article 12 of the Protocol No. 14, individual application shall not be declared inadmissible even if no significant disadvantage exists, unless respect for conventional rights requires an examination of the application on the merits.

Based on the study of international procedural experience and taking into account the above-mentioned factors, the Constitutional Court finds that within the dispute in question the consideration of any sum of money as the maximum limit of "small" claims, in particular, shall be based on criteria specific to the concrete social reality, such as, for example, correlation of the rate of average monthly income of the citizens in the state, the minimum wage and the cost of the minimum consumer basket.

It must be borne in mind that, for example, according to Article 1 of the RA Law on the Minimum Wage, the minimum wage in the Republic of Armenia composes 32.500 AMD. At the same time, the cost of the minimum consumer basket composes 43.499.8 AMD. According to Article 175, Part 4 of the RA Criminal Code, **large amount** of embezzlement starts from the amount that thirty times exceeds the calculated minimum wage (30.000 AMD). In all cases determination of not appealable limit of money is the competence of the legislator, though it must be defined deriving from the purpose of a fair and reasonable balance of the mentioned factors, at the same time, the necessity making the constitutional legal issues of justice serve the purpose of social justice must be taken into consideration.

8. The aim of the institution to appeal judgments is not only checking the legitimacy of rejecting or satisfying the claim set forth. This institution is the basic and essential legal guarantee, whereby observance of the basic elements of the right to fair trial, in particular, those stipulated by Article 19, Part 1 of the RA Constitution and Article 6, Part 1 of the European Convention is ensured by the lower courts. In all cases, when the court of first instance did not observe the mentioned procedural guarantees, having no right of appeal, in fact the citizen is deprived of the opportunity to effective implementation of his/her right to fair trial and effective remedies against the violations of the right to fair trial. Hence, considering the challenged legal regulation in the context of the right to fair trial, the Constitutional Court finds that conditioned with the rate of the amount of the claim, the restriction of the right to appeal may be considered legitimate only when the main essence of the right to fair trail is not violated. In this regard, the Constitutional Court necessitates revealing the common logic, which is the basis of Article 207 and Article 228, as well as Article 204.32 of the RA Civil Procedure Code that regard the institution of appeal. In particular, Article 207, Part 7 of the RA Civil Procedure Code prescribes the exceptional cases when appeal may be also filled to the court of first instance against the judgment on the merits which is in force. Namely, when in the process of previous trial of the case such fundamental violations of substantive or procedural law were committed, **which are resulted in the rendered the judgment violating the main essence of justice**.

Article 228, Part 2 of the RA Civil Procedural Code defines the violations of the norms of procedural law that are the basis for mandatory abolishment of the judgment. Namely, the court considered the case in illegal composition, the court considered the case in the absence of one of the litigants (violation of the principle of competition of parties and legal equality), the judgment was signed by the judge who did not issue it, the judgment was issued by the judge, who is not a part of the trial court, and no court record is available in the case.

Article 204.32 of the RA Civil Procedural Code prescribes the cases when the judgments in force are disputable due to newly revealed circumstances. In particular, the following serve as such grounds: obviously false testimonies of the witness established in the court judgment in force; obviously false conclusions of the expert; obviously false translation of the translator; forgery of documents or material evidences; commitment of crimes by the participants of the case, their representatives or the judges within the case trial; as well as annulment of the judgment, verdict, decision of administrative authorities or local government authorities served as a basis for rendering the judgment.

The Constitutional Court states that the exceptions and grounds stipulated by the above-mentioned articles concern judicial errors or situations violating the main essence of the right to fair trail, and the common logic of those legal regulations brings to the fact that the judgment adopted as a result of violating the main essence of the right to fair trail, may not have legal force.

The Constitutional Court finds that determining restrictions of the right to appeal the cases stipulated by the challenged norm, the legislator deviated from the aforementioned common logic of the Code and did not prescribe exceptions to the restriction of the right to appeal in all cases when the court of first instance made a judicial error violating the main essence of the right to fair trail.

The Constitutional Court also states that necessity to establish such exceptions follows from the requirements of Point b/ of Article 1, titled Right to judicial control, of the Recommendation No. 95 (5) adopted by the Committee of Ministers of the Council of Europe on 7 February 1995 concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures on Civil and Commercial Cases, according to which should it be considered appropriate to make exceptions to this

principle, any such exceptions should be founded in the law and should be consistent with **general principles of justice**. Such approach is also consonant with the approaches of the European Court that were formed in the practice of assessing "significant disadvantage."

The Constitutional Court also finds necessary to note that in the letter N01/3091-12 of 23.05.2012 of the RA Ministry of Justice provided as an answer to the request of the Constitutional Court, the necessity to facilitate workload of the Court of Appeals is mentioned as a circumstance that justifies the determination of the challenged provision in the RA Civil Procedure Code. In this regard, the Constitutional Court states that in practice such legal regulation not only serves its purposes ineffectively, but, making the interested parties file a claim with the demand exceeding 50.000 AMD to circumvent the challenged restriction of appeal, it leads to workload of courts by the unreasonable demand regarding the amount of the claim in excess of 50.000 AMD.

Based on the review of the Case and being governed by Article 100, Point 1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. To declare Article 208, Part 2 of the RA Civil Procedure Code, so far as it does not determine exceptions to the restriction of the right to appeal in all cases when the court of first instance made a judicial error violating the main essence of the right to fair trail, particularly, when the procedural guarantees stipulated by Article 19, Part 1 of the RA Constitution and Article 6, Part 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950, contradicting Articles 18 and 19 of the Constitution of the Republic of Armenia and void.

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

CHAIRMAN **G. HARUTYUNYAN**

18 July 2012
DCC - 1037

ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 35, PART 6, PARAGRAPH 1 AND PART 9, PARAGRAPH 1, ARTICLE 41, PART 2, POINT 3 OF THE LAW OF THE REPUBLIC OF ARMENIA ON STATE PENSIONS 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 *02 October 2012*

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

with the participation of the representative of the Applicant A. Vardevanyan, the Member of the Staff of the RA Human Rights Defender,

the representative of the Respondent H. Sardaryan, the Leading Specialist of the Legal Expertise Division of the Legal Division of the RA National Assembly Staff,

the representative of the RA Government A. Asatryan, the Minister of Labour and Social Issues of the RA invited to the session of the RA Constitutional Court based on the Decision PDCC-29 of the RA Constitutional Court dated 11.05.2012,

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

examined in a public hearing by an oral procedure the Case on conformity of Article 35, Part 6, Paragraph 1 and Part 9, Paragraph 1, Article 41, Part 2, Point 3 of the Law of the Republic of Armenia on State Pensions 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 RA Human Rights Defender on 24.02.2012.

Having examined the report of the Rapporteur on the Case, the explanations of the representatives of the Applicant and the Respondent, the clarifications of the Representative of the RA Government, as well as having examined the RA Law on State Pensions, international legal instruments concerning the matter of the Application and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The RA Law on State Pensions was adopted by the RA National Assembly on 22 December 2010, signed by the RA President on 30 December 2010 and came into force on 1 January 2011.

After submission of the RA Human Rights Defender's Application to the RA Constitutional Court before the beginning of the Case consideration, the challenged provisions of Article 35, Part 9, Paragraph 1 of the Law were amended by the RA Law HO-100-N dated 19.03.2012. Taking into consideration the above mentioned, the provisions of Article 35, Part 9, Paragraph 1 of the Law are being considered taking into account those amendments as well.

Paragraph 1 of Part 6 of Article 35 of the RA Law on State Pensions is titled "Payment of Pensions" and prescribes: "A pensioner in receipt of pension in non-cash manner shall be obligated to submit to the bank

at least on annual basis a document on his /her well being verified by the notary, who is conducting activities in the Republic of Armenia or to show up to the bank in person and make a declaration about his /her well being".

Paragraph 1 of Part 9 of Article 35 prescribes: "The pension may also be paid when submitting the power of attorney verified by a notary conducting activities in the Republic of Armenia to the unit assigning pensions".

Due to amendment made by HO-100-N of the RA Law dated 19.03.2012 to Paragraph 1 of Part 9 of the challenged Article 35, the latter prescribes the following legal regulation: "The pension shall also be paid by power of attorney verified by a notary conducting activities in the Republic of Armenia and provided in the Republic of Armenia by the pensioner (legal representative, i.e., parent, adopter or custodian if the pensioner is underage or under custody), if the written application about it and the power of attorney are submitted to the unit assigning pensions. Pension shall not be paid by the re-authorized power of attorney".

The challenged Article 41, Part 2, Point 3 of the Law, titled "Termination and Resumption of the Right to Pension, Termination and Resumption of Pension Payments" prescribes that payment of pension shall be ceased "... in the case of failure to submit documents or make a declaration in the manner prescribed by Article 35, Point 6 of this Law".

2. The Applicant, referring the legal provisions expressed in the Decision DCC-731 of the Constitutional Court concerning prohibition of the discrimination in the sphere of pension security, states that the norms in dispute contradict Articles 6, 14.1, 37 and 43 of the RA Constitution. According to the Applicant, the requirements for exercising the right to pension prescribed in Paragraphs 1, Parts 6 and 9 of Article 35 of the Law in concern with the citizens residing (staying) outside the RA territory leads to the restriction of the social security of a person guaranteed by Article 37 of the RA Constitution to the extent, which is not only unproportional from the perspective of Article 43 of the Constitution, but also does not have objective and rational reasoning and leads to distinction based only on the place of residence (staying) between the persons (pensioners) with the same status.

The Applicant also finds that prescribing differentiation based only

on place of residence (staying) between the pensioners residing in the RA territory and residing (staying) outside the RA territory, is not consonant to the principle of equity before the law prescribed in Article 14.1 of the RA Constitution from the perspective of the possibility to receive the pension de facto, and accordingly to the legal positions of the RA Constitutional Court. The Applicant grounds the alleged contradiction between Paragraphs 1, Parts 6 and 9 of Article 35 of the Law and Article 43 of the RA Constitution, on the statement that the challenged restriction to the right to pension, which is based on the requirements prescribed by law, does not obviously correspond the objective of verification of the fact of the pensioner's well-being. By the way, the Applicant for basing his arguments from the above mentioned perspective refers, in particular, Article 4 of the International Covenant on Economic, Social and Cultural Rights and a number of other international legal instruments.

The applicant grounds the alleged unconstitutionality of Article 41, Part 2, Point 3 of the Law in the context of his reasoning concerning Paragraphs 1, Parts 6 and 9 of Article 35 of the Law, taking into consideration the interconnection of Article 41, Part 2, Point 3 of the Law with the provisions of Paragraphs 1, Parts 6 and 9 of Article 35 of the Law.

Simultaneously, touching upon the law enforcement practice and referring a number of international treaties regarding mutual recognition of documents which are ratified by the Republic of Armenia and, as a proof, quoting the note No. AGG/SS-1-1/1013-12 of the RA Minister of Labor and Social Issues, the Applicant states that the challenged provisions of the Law are implemented by the interpretation contradicting the requirements of Article 6 of the RA Constitution.

The Applicant also concluded that the issue mainly concerns not the content of the norms of the Law, but their incorrect implementation.

3. The Respondent objected the Applicant's arguments, stating that the challenged legal provisions are in conformity with the RA Constitution. In previously presented written explanations the Respondent stated that the citizen of the Republic of Armenia, who departed the Republic of Armenia for more than six months or took up residency in a foreign state for more than six months, by dropping from the registration, **loses the**

right to receive a pension, except for the persons who depart (have departed) to take up permanent residency in the countries which had signed intergovernmental agreement with the Republic of Armenia on cooperation in the sphere of pension security. They, as well as the foreign citizens and stateless persons, **may renew their right to pension** in accordance with Article 41, Part 3.2 of the RA Law on State Pensions, if they are registered in the place of residency in the Republic of Armenia.

According to the written explanation of the Respondent, the raised question **should be discussed only regarding the pensioners, who departed the Republic of Armenia for up to six months**. In concern with the latter, the Respondent thinks that in such cases Article 6 of the RA Constitution shall be implemented. The Respondent also thinks that problems may occur in the law enforcement practice if the corresponding authorized body does not possess with technical capacities to control the entrance into and exit out of the Republic of Armenia of the persons entitled to receive pension.

During oral explanations the Respondent mentioned that "Currently the state policy in the sphere of social security is built on the principle, according to which, if there is a pensioner, there is a payment, if no pensioner, no payment. The mentioned principle is also reflected in the RA Law on State Pensions." Actually, the Respondent continues insisting on his above mentioned position concerning the issue.

The Respondent also finds that "Taking into consideration the financial capacities of our country, the legislator defined additional conditions for the implementation of the right to receive pension for the citizens residing outside of the RA, which... complicate the implementation of this right, but, as such, they are not aimed at the restriction of the right to pension".

Concerning the contradiction which, according to the Applicant, has occurred between the challenged provisions of the Law and Article 14.1 of the Constitution, the Respondent, on the basis of interpretation of notion "discrimination", finds that the challenged legislative provisions do not contradict Article 14.1 of the Constitution, as there is obviously no expression of discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, belonging to a national minority, property, birth, disability, age or other personal or social circumstances.

Concerning the contradiction between the challenged provisions of the Law and Article 37 of the Constitution, on the basis of the analysis of certain articles of the Law, the Applicant finds that failure of the pensioner to submit to the bank the documents prescribed in Article 35, Part 6 of the Law, i.e., a document on his /her well being verified by the notary, who is conducting activities in the Republic of Armenia or to show up to the bank in person and make a declaration about his /her well being, does not restrict or terminate the right of a person in receipt of pension in non-cash manner, but terminates the payment of a pension which renews, as well as the amounts of unpaid pensions are paid after submitting to the bank the above mentioned documents.

Touching upon the document prescribed in Article 35, Part 9 of the Law, i.e. power of attorney, the Respondent states the requirements presented to the form of the power of attorney aim to ensure reliability in the pension relations and are significant for the implementation of the pension right. In this concern the respondent also finds that not following the requirements presented to the form of the power of attorney does not deprive the person from the right to receive a pension, but temporarily terminates the right to receive the pension, which is either reconciled, amongst the others, after submitting the power of attorney or the pension is assigned.

4. Taking into consideration that a number of arguments in the Respondent's explanations and the RA Government Representative's clarifications, may have an essential impact on the contents of the constitutional – legal dispute, the Constitutional Court first necessitates touching upon the statement according to which the main task of the challenged law is solving the social security problem and that the citizen of the Republic of Armenia, who departed the Republic of Armenia for more than six months or took up residence out of the RA territory for more than six months, loses the right to receive the pension except for the persons who departed (have departed) to take up permanent residency in the countries which had signed intergovernmental agreement with the Republic of Armenia in the sphere of pension security.

The analysis of Article 7, Article 33, Part 1, Paragraph 1 and Part 7, Point 2, Article 41, Part 5 shows that the **right to pensions, the right to receive a pension, restoration of the right to receive a pension** and

a resumption of the payment of a pension of the citizen of the Republic of Armenia, foreign citizen, person with dual citizenship or stateless person is conditioned with the registration of the residence of the Republic of Armenia based on the data on the address of registration of a person who enjoys the right to pension in the Republic of Armenia available in the state register of population of the Republic of Armenia.

What concerns the termination of the right to receive a pension **after assignment of the pension**, the combined analysis of the relevant provisions of the RA Law on State Pensions, in particular Article 7 titled "Right to Pension and Eligibility for Receiving Pension" and Article 41 titled "Termination and Resumption of the Right to Pension, Termination and Resumption of Pension Payments" states that the legislator conditions forfeiting the right to receive a pension with the fact of terminating residence in the Republic of Armenia and residing in another country or dropping from the registration of residence in the Republic of Armenia only for foreign citizens, stateless persons and dual citizens accordingly. Meanwhile, in the case of the RA citizens forfeiting of the right to receive pension is conditioned with amongst the others **the fact of termination of the RA citizenship** (Article 41, Part 1, Point 7 of the Law) and in concern with the RA citizens Article 41 of the Law does not prescribe the circumstance of dropping out of the registration of the residence of the Republic of Armenia as a ground to terminate the right to receive a pension **despite the fact whether the RA citizen departed to the foreign state for six months or more, as well as despite the circumstance whether the foreign state has signed intergovernmental agreement in the sphere of pension security with the Republic of Armenia**.

The Constitutional Court states that in practice such situations are not excluded, when the RA citizen because of personal motivation (e.g., long-term treatment, etc) resides in the foreign country for more than six months. In this concern, on the basis of analysis of the RA legislation, in particular the RA Law on State Register of Population the Constitutional Court also states that the mentioned case automatically does not cause termination of the registration of residence in the Republic of Armenia of the citizen or obligation to forward the pension file to that state.

Based on the above mentioned, the Constitutional Court does not consider the interpretation of the provisions of the Law, according to

which the citizen of the Republic of Armenia, who resides outside of the territory of the Republic of Armenia for more than six months, forfeits the right to receive pension, to be well-founded and justified.

5. Within the constitutional legal dispute in instant case, the Constitutional Court also necessitates clarifying:

- whether the requirement to submit documents prescribed by Article 35, Part 6 of the RA law on State Pensions is justified in the sense of the constitutional legal contents,
- the scope of implementation of the current norms in the RA legislation concerning the institution of "the power of attorney" in the concerned legal relations,
- the scope of implementation of the norms prescribed in the RA relevant international agreements to the concerned legal relation.

To assess the lawfulness of the requirement to submit documents prescribed by Article 35, Part 6 of the RA Law on State Pensions, the Constitutional Court first necessitated clarifying the aim pursued by normative provisions concerning the obligation to submit the mentioned documents.

The Constitutional Court states that the legislator, stipulating the obligation to submit the documents in receipt of pension in non-cash manner prescribed by Article 35, Part 6 of the Law, i.e. the document on his /her well being verified by the notary, who is conducting activities in the Republic of Armenia, or to make a declaration about his/her well-being, pursues the legitimate aim to prevent payments of pension to the deceased pensioner and to use the budgetary funds effectively.

The appropriateness of definition of the mentioned aim is another issue, taking into consideration and not excluding the circumstances when within one year after submitting the above mentioned documents to the bank the citizen can decease or within one year after submitting the mentioned documents to the bank the citizen before his/her death can give the power of attorney to another person in accordance with Article 35, Part 9 of the Law. Besides, in accordance with Article 35, Part 6, Paragraph 3 of the RA Law on State Pensions, the amount of pension paid during the months following the death of the pensioner shall be subject to return to the state budget of the Republic of Armenia. In this regard, the Constitutional Court, taking into consideration also the discretion of the State to prescribe the forms of pension, the procedure and conditions

of their assignment, states that, nevertheless, the definition of the obligation to submit documents prescribed by Article 35, Part 6 of the Law by itself does not cause the issue of constitutionality.

6. Regarding the issue of implementation of the current norms of the RA legislation concerning the institution of "Power of Attorney" in the frames of concerned legal regulation, the Constitutional Court states that Article 321, Part 3 of the RA Civil Code points out the subjects, who may provide the powers of attorney equivalent to ones verified by the notary. Moreover, Part 4 of the Article prescribes a special legal regulation for certain cases, including the power of attorney to receive a pension. In accordance with that norm, the organization where the pensioner works, the local self-government body of his/her residence and the administration of the hospital where he/she undergoes treatment can also verify the power of attorney.

Regarding the power of attorney verified by the subjects prescribed by Article 321, Part 3 of the RA Civil Code, Article 35, Part 9 of the RA Law on State Pensions stipulates a special legal regulation only concerning the power of attorney verified by the head of penitentiary institution or psychiatric hospital making it equivalent to the one verified by the notary. In this concern, the Constitutional Court, basing on Article 9, Part 6 of the Ra Law on Legal Acts, which prescribes that "In the field of legal relations regulated by a Code all other laws of the Republic of Armenia must comply with Codes," as well as the requirement of Article 1, Part 1 of the RA Civil Code, according to which "Norms of civil law contained in other laws must correspond to the present Code," finds that **"While implementing the RA Law on State Pensions the power of attorneys verified by the subjects mentioned in Article 321, Parts 3 and 4 shall also be considered as grounds in the law enforcement practice".**

7. The issue must be addressed also within the context of the implementation of the norms stipulated in the RA relevant international treaties to the concerned legal relations and to be considered from the perceptive of the interrelation between "the pensioner residing in the state which has signed the inter-state agreement in the field of pension security and the pensioner residing in the state member to the Hague Convention of October 5 1961, Abolishing the Requirement of Legalization for Foreign

Public Documents or in the state which is member of a number of international multilateral and bilateral treaties which regulate legal relations connected with the mutual recognition of the validity of the documents provided by the foreign competent bodies". With regard this, the Constitutional Court states that according to Article 6, Part 4 of the RA Constitution if a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. In its decision DCC-966 the Constitutional Court touched upon the contents of Article 6, Part 4 of the RA Constitution and mentioned that "...the RA international treaties are normative legal acts which are consistent part of the RA legal system, i.e. contain mandatory rules for the subjects of the relevant sphere of legal regulation, have a higher legal force than the RA laws and other legal acts, are subject to mandatory execution by all state and local self government bodies and officials of the RA throughout the entire territory of the RA".

Article 3 of the RA Law on State Pensions prescribe that the relations pertaining to the state pension security are regulated by the RA Constitution, **RA international treaties**, the mentioned law, other laws and other legal acts. Pursuant to Article 35, Part 9, Paragraph three of the same Law in the field of the RA pension security in case of forwarding the pension file of the pensioner leaving (left) for a permanent residence to a country with which the Republic of Armenia has concluded an intergovernmental agreement in the pension security sector, the overdue pension of the given pensioner shall be paid also on the basis of the power of attorney verified by the notary conducting activities in the given country.

The Constitutional Court states that in the law enforcement practice **the abovementioned norms** of the RA Law on State Pensions **are interpreted narrowly**, and in the process of implementation of the challenged legislative provisions, the law enforcers considered as applicable only the international treaties, which exclusively touched upon the field of the social security. Meanwhile the Republic of Armenia is a member to a number of international multilateral and bilateral treaties which regulate legal relations connected with the mutual recognition of the validity of the documents provided by the foreign competent bodies and authorized persons and which are implemented in every field of the public life, including the sphere of social security.

For example, the Republic of Armenia participates to the Convention

on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters signed on 07.10.2002 in Kishinev in the frames of the CIS, Article 43 of Part 4 titled "Property Legal Relations" of which prescribes: "The form and term of validity of the power of attorney is determined by the legislation of the contracted party on whose territory it is provided. Such a power of attorney, with the notarized translation into the language of the contracting party on whose territory it shall be used or into Russian, shall be accepted without any special verification in the territories of other contracting parties".

Pursuant to Article 23, Point1 of the Agreement on Legal Assistance in Civil and Criminal Matters signed between the Republic of Armenia and Romania, the documents prepared or verified by one of the institutions of justice or other competent bodies, as well as the documents signed by the private persons, where the year, month and date is mentioned and the validity of the signature of the private persons is verified in accordance with the prescribed manner, are valid in the territory of the other Contracting Party without any verification. The same rule is also applied to the excerpts from the documents and copies if they are verified as authentic copies. In accordance with Point 2 of the same Article, the documents, mentioned in Point 1 of that Article, **which are considered as official documents in the territory of one Contacting party**, have the same legal force in the territory of the other Contracting party, as the same type of documents prepared by the last Contracting Party.

Pursuant to Article 22 of the Agreement on Legal Assistance in Civil Matters signed between the Republic of Armenia and Republic of Bulgaria, the official documents prepared in the territory of one of the contracting parties (including the notary documents) are exempt from the verification or similar conditionalities if necessity arises to submit them in the territory of the other Contracting Party. In accordance with Article 25 of the Agreement, the documents prepared or verified by the court or other institution of the Contracting Party are valid in case of availability of the official stamp of the institution of that Contracting Party. They are accepted without verification by the court and other institution of the other Contracting Party.

In accordance with Article 25 of the Agreement on Legal Assistance in Civil Matters signed between the Republic of Armenia and Georgia, the documents prepared or verified by the court or other institution of

the Contracting Party are valid in case of availability of the official stamp of the institution of that Contracting Party. They are accepted as such without verification by the court and other institution of the other Contracting Party.

Pursuant to Article 13, Point 1 of the Agreement on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters signed between the Republic of Armenia and the Republic of Lithuania the documents which are prepared or verified by the relevant institution or by authorized person within their competence in the prescribed manner and verified with a stamp with an image of emblem in the territory of one of the Contracting Parties are accepted without any verification in the territory of other contracting party. In accordance with Point 2 of the same Article, the documents, which are considered as official in the territory of one Contracting Party, are endowed with evidential force of the official documents in the territory of the other Contracting Party.

On May 24, 1993, the Republic of Armenia joined the Hague Convention of October 5 1961, "Abolishing the Requirement of Legalization for Foreign Public Documents", which has 103 Member States. Joining to this Convention, the Republic of Armenia committed to abolish reciprocally the requirement of legalization of official documents provided in the territory of other Contracting States and presented in the Republic of Armenia, **including documents verified by notary**. By this Convention the institution of certification is also brought in, which supersedes the procedure of legalization. Bringing in the institution of certification has the aim to ensure the usage of an official document verified by the certificate provided in the territory of one Contracting State in the territory of the other Contracting Party. By the way, the certificate issued in conformity with the requirements of the Convention for the official document provided in the territory of one Contracting Party shall not be declined and disacknowledged in the territory of the other Contracting Party. Declining or disacknowledging shall be considered as non-implementation of the international obligation.

The Constitutional Court emphasizes necessity of unconditional implementation of the fundamental requirement of the prevailing of the legal force of the norms of the ratified international treaties over the norms of the law prescribed by Article 6, Part 4 of the RA Constitution, as well as proper implementation of the commitments assumed

by the Republic of Armenia. The Constitutional Court states that in the concerned situation the implementation of those requirements shall exclude the factual differentiated approach based on the necessity for the pensioners to return to the Republic of Armenia for receiving pension, between the pensioners residing outside the Republic of Armenia but in the state which has signed interstate agreement in the sphere of pension security on one hand, and on the other hand the pensioners residing outside of the Republic of Armenia but in the states member to the Hague Convention of October 5 1961, "Abolishing the Requirement of Legalization for Foreign Public Documents," as well as to the bilateral and multilateral international agreements regulating the legal relations connected with mutual recognition of validity of foreign official documents.

Simultaneously, the Constitutional Court states that the above-mentioned differentiated approach cannot cause in the principle of discrimination prohibition prescribed by article 14.1 of the RA Constitution as the considered approach emerged **exclusively in the law-enforcement practice because of non-fulfillment of the requirements of Article 6 of the RA Constitution by the relevant competent bodies**, which is confirmed by the above-mentioned note N AGG/SS-1-1/1013-12 dated 17.02.2012 provided by the RA Labor and Social Issues Minister, which confirms that, in particular, the pension payment in the RA **is not based** on the power of attorney ratified by the Member States to Kishinev and Hague above-mentioned Conventions in the Republic of Armenia.

Based on the above-mentioned the Constitutional Court states that the issue raised by the Applicant is conditioned not with the constitutionality of the challenged provisions of the Law but with negligence of the legal requirement of the superior legal force of the norms of ratified international instruments over the legislative norms prescribed by Article 6, Part 4 of the RA Constitution in the law enforcement practice.

Concerning the pensioners who are the RA citizens and who reside in the state which has not signed an interstate agreement on pension security or in a state which is not a member to the Hague Convention of *October 5 1961*, Abolishing the Requirement of Legalization for Foreign Public Documents, or in the states which are not member to international multilateral and bilateral treaties which regulate legal relations connected with the mutual recognition of the validity of the foreign official docu-

ments, the Constitutional Court states that restriction of the scope of the documents required by the provisions of Article 35, Parts 6 and 9 by documents verified only by the notary conducting activities in the territory of the Republic of Armenia for the above-mentioned pensioners opposed to the pensioners residing in the territory of the Republic of Armenia causes necessity to return to the Republic of Armenia, however, finds that the above-mentioned circumstance does not cause in any way the violation of the principle of discrimination prohibition prescribed in Article 14.1 of the Constitution, as, first, the duty to submit the mentioned documents is prescribed for all pensioners, secondly, their accordingly confirmation and validation is restricted by the same subject, i.e. the notary conducting activity in the territory of the Republic of Armenia, thirdly, **the factual situation** caused by the legal regulations aimed at implementation of any right, **in this certain case necessity to return to the Republic of Armenia** cannot conclude to the violation of the principle of non-discrimination, if the situation is not connected with the defining different extent of the rights and duties of the persons of the same category. The mentioned factual situation cannot conclude to the unreasonable restriction of the right if the prescribed legal regulation pursues a legitimate goal. The Constitutional Court states that in this case the legitimacy of the aim pursued by the legal regulation is conditioned with the fact that for the pensioner who resides in the state which is not the member to the Hague Convention of October 5, 1961, Abolishing the Requirement of Legalization for Foreign Public Documents or in the state which is which not the member to international multilateral and bilateral treaties which regulate legal relations connected with the mutual recognition of the validity of the foreign official documents the Republic of Armenia assumes an additional burden to check the authenticity of the documents prescribed by Article 35, Parts 6 and 9, Paragraph 1 of the Law provided in those states and this is done in the absence of the relevant international legal grounds. In this case, regarding the above mentioned pensioners, the legitimacy of the aim of the legal regulation prescribed by Law is conditioned with the prevention of the possible violations in the field of pensions payment, and as a result, with the necessity of guaranteeing the pensioner's rights and effective usage of budget means.

Simultaneously, basing on Article 36 and Article 41, Part 4 of the RA Law on State Pensions the Constitutional Court finds that the issue

raised by the Applicant does not concern the permissibility of the restrictions to the right of the social security prescribed by Article 37 of the RA Constitution, as in all cases Article 36 and Article 41, Part 4 of the RA Law on State Pensions provides with the possibility to receive the amounts of unpaid pensions for the previous three years prior to the month of submitting the application to receive the pension (in accordance with the legal regulation which was in action on the date of applying to the Constitutional Court), and in the case of the failure of the department assigning the pension for the entire period. The Constitutional Court also takes into consideration that on the basis of the Application of the RA Human Rights Defender, the Court has started the consideration of the case on conformity of Article 38, Part 1, Points 1 and 2, Article 36, Part 1, Point 2 (in accordance with the amendment made by the RA Law HO – 100 dated 19.03.2012), Article 14, Part 3, Paragraph 2, Article 29, Part 2, Point 6 of the RA Law on State Pensions with the RA Constitution and will touch upon the constitutionality of the mentioned articles in the frame of that case.

Proceeding from the results of the case consideration and being ruled by Article 100, Point 1, Article 101, Part 1, Point 8 and Article 102 of the Constitution of the Republic of Armenia and Articles 63, 64 and 68 of the Law on the Constitutional Court of the Republic of Armenia, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Provisions of Article 35, Part 6, Paragraph 1 and Part 9, Paragraph 1, Article 41, Part 2, Point 3 of the Law of the Republic of Armenia on State Pension are in conformity with the Constitution of the Republic of Armenia within the framework of the legal positions expressed in this Decision.

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

CHAIRMAN **G.HARUTYNUYAN**

October 2, 2012
DCC-1050

ON BEHALF OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 379, PART 1, POINT 3 AND ARTICLE 380, PARTS 1 AND 2, OF THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN GAYANEH ASHUGHYAN

Yerevan ***16 October 2012***

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan (Rapporteur), F. Tokhyan, M. Topuzyan, A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,

with the participation of the representatives of the Applicant A. Zeynalyan and A.Ghazaryan,

the representative of the Respondent A. Mkhitaryan, the Senior Specialist and H. Sardaryan, the Leading Specialist of the Legal Expertise Division of the Legal Division of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Article 379, Part 1, Point 3 and Article 380, Parts 1 And 2 of the Criminal Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Gayaneh Ashughyan.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Gayaneh Ashughyan on 23.02.2012.

Having examined the written report of the Rapporteur on the Case, the written explanations of the representatives of the Applicant and the Respondent, having examined the RA Criminal Procedure Code and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The RA Criminal Procedure Code was adopted by the RA National Assembly on 1 July 1998, signed by the RA President on 1 September 1998 and came into force on 12 January 1999.

Article 379, Part 1, Point 3 of the RA Criminal Procedure Code, titled "Deadlines for filing appeal" defines: "The appeal is filed ... in the course of five days from the day of pronouncement of the decision of the First Instance Court on detention, extension of the term of detention, placing a person in a medical institution and other acts not resolving the cases on the merits in the course of ten days from the day of pronouncement of the decision".

Article 380, Parts 1 and 2 of the RA Criminal Code titled "Procedure of restoration of the term of appeal" define correspondingly:

"1. If the established term for appeal is missed because of valid reasons, the persons entitled to appeal may petition to the court, which had rendered the judgment, for restoration of the missed term. The petition for the restoration of the missed term is considered in the court session by the court which made a decision or verdict, which is entitled to summon the petitioner for explanations.

2. The decision to turn down the petition on the restoration of the missed term may be appealed in the appellate court within 15 days, which is entitled to restore the missed term and consider the case observing the requirements specified in Article 382 and Article 383, Part 2 of this Code".

2. The procedural background of the case is following: the representatives of the Applicant submitted a complaint to the Court of General Jurisdiction with the request, inter alia, to oblige the RA Prosecutor General to apply to the RA Criminal Appeal Court with the demand to file a review proceeding of the decisions of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts on "Imposing an Administrative Fine" dated 07.04.2003 and 09.04.2003.

On 07.04.2011 Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts made a decision to decline the complaint, stating that "...G. Ashughyan's rights and freedoms were not violated by the RA Prosecutor General and Prosecutor's Office".

On 22.04.2011 the representatives of the Applicant submitted an appeal to the Appeal Court against this decision pointing out the circumstance that the Decision of the First Instance Court was passed to the Post Service on 12.04.2011 and they received it on 13.04.2011. Based on the mentioned facts, the representatives of the Applicant expressed opinion in the complaint submitted to the Appeal Court that the 10-day time period for appealing the decision shall start from the moment of receiving the decision.

The RA Appeal Criminal Court, by its decision ԵԿԴ/0025/ dated 28.04.2011 left the appeal without consideration reasoning that the deadline had expired. Simultaneously, ruled by Article 380 of the Criminal Procedure Code, the RA Appeal Court directed the representatives of the Applicant to submit a motion to Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts to restore the missed term as the decision of the latter on declining the motion could be appealed in the Appeal Court.

The representatives of the Applicant submitted a cassation complaint against this decision which was returned by decision ԵԿԴ/0025/22/22 of the Cassation Court dated 24.05.2011.

Simultaneously, in concordance with the legal position mentioned in the above mentioned decision ԵԿԴ/0025/22/22 of the RA Appeal Criminal Court dated 28.04.2011, the representatives of the Applicant submitted a motion to Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts to restore the missed term, which considering the fact, that the Decision of the First Instance Court dated 07.04.2011 had been received by the representatives of the Applicant by

post service on 13.04.2011, as confirmed, declined the motion by its decision of 06.05.2011 reasoning that the representatives of the Applicant had sufficient time and possibility to appeal the mentioned decision and could have appealed the decision of the Court in a relevant manner and time period prescribed by law up to and including 18 April 2011, which was not done.

The representatives of the Applicant submitted an appeal against the decision of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts dated 07.04.2011.

By the Decision ԵԿԴ/0033/25/11 the RA Appeal Criminal Court, in essence, repeated the legal positions expressed in Decision of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts dated 07.04.2011, and declined the appeal, adding that "...the fact of receiving the judgment from 07.04.2011 on 12.04.2011 in this certain case does not appear as such a restriction which could violate the right of access to the court".

The representatives of the Applicant submitted a cassation complaint which was returned by the Decision ԵԿԴ /0033/15/11 of the Cassation Court dated 22.08.2011.

3. Challenging the constitutionality of provision "from the moment of pronouncement" of Article 379, Part 1, Point 3 and Article 380, Parts 1 and 2 of the RA Criminal Procedure Code the Applicants finds that they contradict Articles 18 and 19 of the RA Constitution.

For substantiating her position, the Applicant states that the court lawfully publicizes only the conclusive part of the judgment, but the start of the time period for appeal is calculated from the moment of pronouncement, as a result of which, on one hand, the time period of appeal starts flowing and, on the other hand, the complainant does not have the content part of the judgment, i.e. does not have the real possibility to appeal, as he/she does not have any important data necessary for the efficiency of the appeal, e.g. the facts considered as essential by the court, the applied norms, the conclusions, reasoning and grounds of the court, etc. Referring to the mentioned Articles of the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, quoting Article 3 of the Constitution, as well as legal positions mentioned in the relevant judgment of the European

Court of Human Rights of Case "Mamikonyan v. Armenia", the Applicant finds that the challenged provisions of the Code do not ensure the right to effective judicial protection of persons prescribed by Articles 18 and 19, Parts 1 of the RA Constitution.

Referring a number of judgments of the European Court of Human Rights, where the legal positions are expressed, in accordance which six-month time period prescribed for applying to the European Court of Human Rights may be counted from the moment of receiving the copy of the final decision of the national court, the Applicant insists that Article 379, Part 1, Point 3 of the RA Criminal Procedure Code contradicts the subject and goals of the articles stating the right to fair trial guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms and the RA Constitution.

The Applicant does not consider the legal regulation prescribed by Article 380, Part1 of the Code, according to which "for acquiring the right to examine the appeal on the merits, the individual shall address to the judge, whose judgment he is going to criticize" as an effective remedy of judicial protection.

4. The Respondent objected to the arguments of the Applicant, stating that the provision "From the moment of pronouncement" stipulated in Article 379, Part 1, Point 3 and Article 380, Parts 1 and 2 are in conformity with Articles 18 and 19 of the Constitution of the Republic of Armenia. For substantiating his position the Respondent quotes the conclusion of the European Court of Human Rights in the case "Mamikonyan v. Armenia" mentioned by the Applicant likewise, according to which the European Court of Human Rights does not find the domestic rule, pursuant to which the ten-day time-limit for lodging an appeal to the European Court of Human Rights started to run not from the date of serving of a copy of the judgment, but from the date of pronouncement of that judgment, in itself, to be in violation of Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, provided that it is accompanied by sufficient guarantees enabling the appellants to enjoy the effective access to the appeal instance, including by affording them the opportunity to submit well-grounded appeals. Consequently, the Respondent finds that Article 174 and the challenged Article 380, as well as Article 402, Part 2 of the

RA Criminal Procedure Code envisaged the guarantees which ensure the right of effective judicial protection of a person.

As for the time periods prescribed in Article 379, Part 1, Point 3 of the Code, the Respondent mentions that prescription of such a short term pursued the aim to fasten the resolution of the disputes on judgments which do not resolve the case on the merits, which is aimed at assurance the fluent process of criminal proceeding. What concerns the prescription of shorter time period for the appeal of the judgments on depriving a person from freedom, which do not resolve the case on the merits, then, according to the Respondent, it is conditioned with the legislator's intention to repeal the illegal or non-relevant restrictions of the freedom of a person in possible shorter term.

Referring Article 285, Part 5, Article 290, Part 5, Article 479, Part 3 of the RA Criminal Procedure Code, the Respondent finds that despite the fact that the term for appeal of the judgments, as a rule, is counted from the moment of pronouncement, however, the legislator has stipulated **sufficient grounds** which provide appellants with possibility to enjoy the effective access to appeal instance.

Regarding the position of the Applicant, according to which the latter does not consider as effective remedy the legal regulation prescribed by Article 380, Part 1 of the Code, according to which "for acquiring the right to examine the appeal on the merits, the individual shall address to the judge, whose judgment he is going to criticize", the Respondent, pointing out Article 97 of the RA Constitution, finds, that the independence of the judge is not absolute, and in the given case the court shall be guided by law and satisfy the motion if a valid reason is available.

Regarding the difference of restoration of the missed term in accordance with criminal, civil and administrative procedures, the Respondents states that the criminal procedure for restoration the missed terms prescribed in Article 380 of the Code may not lead to the violation of the right to judicial protection, as in the case of satisfying the motion the appeal is proceeded by the court and in the case of declining the motion "... the possibility is prescribed to appeal to the Appeal Court, which is authorized to restore the missed deadline and consider the case ,which is an additional guarantee for the right to judicial protection of a person".

The Respondent also thinks that incomplete implementation of the rights of the Applicant is conditioned "... not with the unconstitutionality

of the challenged provisions of the RA Criminal Procedure Code, but with the failure to follow the provisions of the law by the Applicant. In particular, for restoring the missed term the Applicant applied to the Appeal Court and not the First Instance Court, which resulted in refusal".

5. Considering the positions of the parties, within the framework of the consideration of this case the RA Constitutional Court deemed necessary to consider the challenged provisions in the context of the other provisions of the Code, and in particular, those concerning the obligation of the court to serve the party with the judgment on the merits, the terms for exercising that obligation, as well as the starting moment of counting the term for appeal of the judgment not resolving the case on the merits.

The RA criminal procedure legislation contains a differentiated legal regulation in regard to serving the concerned party with the judgments of the First Instance Court not resolving the case on the merits. In particular, in accordance with Article 285, Part 5 of the RA Criminal Procedure Code the Court serves, inter alia, the defendant and the defender with the decisions on selecting the custody as a measure of restraint, extending the time-term for keeping under custody or on declining the motion on them, on the day of their adoption, and in the case of not attending the court hearing sends them in due manner.

Regarding the criminal procedural norm mentioned above the Constitutional Court necessitates stating the fact of impossibility to send the judgment to the defendant who is wanted and does not have a defender, as well as the circumstance that if Defendant or Defender did not attend the court hearing, then there is an indefinite time period between sending the judgment to them and moment of the factual receipt of the judgment by the latter.

What concern all other judgments not resolving the case on the merit, the Code does not contain terms for serving the concerned parties with the judgments (e.g. Article 283, Part 5, Article 290, Part 5 of the Code). As a result of such legal regulation there is indefinite time term also between the moment of sending the judgments which do not resolve the case on the merit and the moment of their factual receipt by the defendant and the defender.

Simultaneously, the Constitutional Court states that on contrary to the provisions of Article 379, Part 1, Point 3 of the Code, in a number

of cases the legislator considered the moment of the receipt of the judgment by the addressee as the start of the term for appeal of the judgment not resolving the case on the merits (for instance Article 479, Part 3 and Article 412 of the Code).

6. While assessing the constitutionality of the challenged norms the Constitutional Court considered necessary to derive from:

- necessity to ensure the judicial protection of the fundamental rights and freedoms of a person and a citizen in accordance with the international legal principles and norms (Article 3 of the RA Constitution),
- necessity to ensure the right to legal remedy and appeal, which is an important element of the latter prescribed in Article 18 of the Constitution, and right to ensuring fair trial prescribed in Article 19 of the Constitution, based on the joint concept of the complex legislative development in that sphere, which derives from the decisions of the RA Constitutional Court on the constitutionality of the institution of judicial appeal.

7. In its former decisions the RA Constitutional Court expressed the legal positions, which, amongst others, concerns the effective implementation of the right to appeal the judgment. In its Decision DCC-719 from 28.11.2007 the court, in particular, stipulated that, "The constitutional right of judicial protection of an individual resulted in the positive obligation of the state to **ensure it both in rule-making and law enforcement activity**. It assumes, on one hand, the obligation of the legislator to stipulate the possibility and mechanisms of full judicial protection in the laws, and, on the other hand, the obligation of the law enforcer, without any exclusion, to admit for examination the applications lawfully addressed by the persons, who request legal protection from alleged violations of their rights. It is obvious that this requirement, first, concerns the courts because of their authorization with the comprehensive powers of legal protection. ...On the other hand, the judicial power is the only one, which is capable and is obliged to review itself, i.e. the higher courts shall repeal the judicial errors of the lower courts. But, the inaction of the court towards the addressed applications distorts the essence of the right of judicial protection. Such an approach makes the justice impossible;

it becomes non-accessible for the people. This situation is incompatible with the constitutional legal principles of legal state".

Referring to the admissibility criteria for submitting the application with the higher court, the RA Constitutional Court mentioned that "The situation differs for the higher judicial instances where **the admissibility criteria for the application may be stricter**. However, in these instances likewise the proceeding of the applications may not be implemented arbitrarily".

The RA constitutional Court, in its Decisions DCC-652 of 18 October 2006, DCC-665 of 16 November 2006, DCC-690 of 9 April 2007 and in a number of other decisions has touched upon many times the access and effectiveness of the justice guided by Articles 1,3,14,18,42, 43 and other Articles of the RA Constitution, the provisions prescribed in the European Convention for Protection of Human Rights and Fundamental Freedoms and other international legal documents, stating also the international practice of development of democracy and case law of the European Court of Human Rights, highlighted creation and development of sufficient legal normative preconditions for guaranteeing the effective protection of the rights of a person, especially in the framework of the international obligations, assumed by the Republic of Armenia before the Council of Europe. Simultaneously, certain margin of appreciation in legislative restrictions for access to justice and, especially, the right of judicial appeal, is highlighted, deriving from these obligations.

In its Decision DCC-690 of 09.04.2007, the RA Constitutional Court, referring to the issue of appealing of the judgments, envisaged that **"making severe of such preconditions should not be disproportionate, creating obstacles for the persons to protect their rights**. Besides, in the matter of admitting for consideration the appeal and cassation complaints, the courts shall have not unlimited margin of appreciation, but the right and duty to accept or refuse to consider the complaint, based on the grounds, which are legislatively prescribed, precise and are understood uniformly by the persons. Referring to the above-mentioned matter, the Constitutional Court also highlighted the availability of relevant procedural and legislative guarantees ensuring the systemic complexity of the institution of appeal of the judgments.

8. The RA Constitutional Court stated that the prescription of certain deadline for the appeal of judgment pursues the legitimate aim to ensure the legal certainty, at the same time, based, in particular, on the legal positions stipulated in the Decisions DCC-652, DCC-665, DCC-690 and DCC-719 of the Constitutional Court finds, that deriving from the constitutional rights of access to the court and effective judicial protection, the legislator is obliged to stipulate legislatively the necessary preconditions for ensuring and guaranteeing them, while prescribing provisions on appealing the judgments of the lower court within a certain term from the moment of its pronouncement. The Constitutional Court the full implementation of the constitutional right of a person to judicial protection trough appealing the judgments of the lower court to the higher court, greatly depends on the circumstance **to what extent the challenged judgment is accessible to the concerned person, in what reasonable time period s/he may submit a well-grounded complaint for the judicial protection of his/her rights**. Such a legal position is based, in particular, on Article 381 of the Code, which concerns the requirements regarding the appeal and leaving the appeal without consideration, Article 407 that concerns the requirements regarding the cassation complaint and the grounds for leaving it without consideration, Article 414.1, which concerns returning the cassation appeal. Pursuant to Article 381, Part 1, Point 5.1 of the Code the appellant must substantiate in the complaint the violation of material or procedural norms by the lower court and its impact on the outcome of the case, and in the case of absence of such a substance the appeal is left without consideration in line with Part 2 of the same Article. Pursuant to Article 407, Part 1, Point 5 of the Code cassation appellant is obliged to substantiate in his complaint the violation of the material and procedural norms by the lower court, as well as its impact on the outcome of the case and in accordance with Point 6.1 of the same Part, the cassation appellant shall substantiate in his/her complaint the alleged judicial error made by the lower court, as well as the fact or the possibility of occurrence of grave consequences resulted from that error, and in case of absence of the mentioned argumentations and substantiations the cassation complaint is returned in line with Article 414.1, Part 1 of the Code.

Based on the above mentioned the RA Constitutional Court states that for preparing the appeal and cassation complaint consonant to the

requirements prescribed by the law, the appellant or the cassation appellant should necessarily have the appealed judgment for being able to substantiate in his/her appeal or cassation complaint, the violation of the norms of material or procedural law by the lower court and its impact on the outcome of the case or the fact or possibility of occurrence of grave consequences resulted from them, based on the examination of the mentioned act. Meanwhile, in accordance with Article 379, Part 1, Point 3 of the Code considering the moment of pronouncement of the appealed act as the start of the term for appeal, the legislator, conditions full implementation of the constitutional right of a person to judicial protection through appealing the judgment of a lower court to the higher court, with the judicial discretion regarding the consideration of the missed term as well-grounded or ill-grounded. The fact is that after pronouncement of the judgment, a certain time period objectively passes between the sending it to the addressee and receipt of it by the addressee, which may be prolonged conditioned with the subjective factors. In such conditions the person often does not possess the appealed judgment and does not have possibility to form the appeal and cassation complaints in accordance with the requirements prescribed by law, which legitimately serves as grounds for leaving the appeals and cassation complaints without consideration or for returning them, correspondingly.

9. For exercising the constitutional right of a person to judicial protection by appealing the judgment of the lower court to the higher court, the legislator also stipulated Article 380 of the Code, which concerns the consideration of the missing of the term for appeal as well-grounded. In this case, the task of the Constitutional Court is to find out whether Article 380 of the Code precisely ensures the constitutional right of the person to judicial protection.

Considering as confirmed the fact that a certain time period had passed from the moment of pronouncement of the appealed judgment and its receipt by the Applicant, the RA courts, anyway, did not consider the missing of the term as well-grounded, and based on the fact that after receiving the appealed judgment 6 days were left till the end of time period prescribed by law, which, according to the RA courts, is sufficient time period for stating that the appellant had real possibility to lodge an appeal within the prescribed term.

Concerning the above-mentioned the Constitutional Court states that in Article 380 the legislator authorized the courts with a wide margin of appreciation to consider missing the terms as well-grounded or ill-grounded. In this concern, guided by the necessity to implement effectively the right of a person to judicial protection and based on its own legal position expressed in Decision DCC-690, according to which "in the matter of admitting for consideration the appeal and cassation complaints, the courts shall have not unlimited margin of appreciation, but the right and duty to accept or refuse to consider the complaint, based on the grounds, which are legislatively prescribed, precise and are understood uniformly by the persons", the Constitutional Court finds that Article 380 of the Code does not ensure effective implementation of the constitutional right of a person to judicial protection through appealing the judgment of the lower court to the higher court, because the implementation of the mentioned margin of appreciation leads to uncertainty. For instance, the approach of the court is not clear for the certain cases, when after receiving the judgment the term for appeal expires not after 6 days, as it was in the case of the Applicant, but after 5 days or less. In this concern, the Constitutional Court considers as ill-grounded providing the courts with wide margin of appreciation in the case, when the motion is filed for considering as well-grounded the missing of the term for appeal based on the fact of late receipt of the appealed judgment. If based on the nature of the appealed judgment and considering the necessity of implementation of the right of access to the court and right to fair trial, the legislator regarded the term, in this case five or ten day period, as well-grounded for appealing this act, then the mentioned terms shall start to run from the moment of real possibility to get known to the appealed judgment, moreover, that in a number of cases the legislator not only does not exclude, but directly prescribes the moment of receipt of the judgment by the addressee as starting point of the term for appealing the judgment.

In this regard, also taking into consideration the requirement of Article 63, Part 1 of the RA Law on the Constitutional Court, the Constitutional Court also considers important to touch upon the general situation in the RA judicial practice. In this regard, the situation envisaged by Decision 36 of the Council of the Chairmen of the RA Courts dated 22 December 2000, according to which there are cases "...when the courts serve the appellants with the judgments and decisions late, violating the

time periods prescribed by law, and this deprives the latter from the possibility to lodge complaints to the higher courts within the time periods prescribed by law". Deriving from such assessment of the situation, the Council of the Chairmen of the Courts found that in all cases, **when the term is missed for the reasons regardless the will of the appellant**, missing of the term **shall be considered as substantiated** by the courts. In particular, it concerns also the cases when the term is missed because the court **serves** the copy of the judgment later than the time prescribed by the law.

Thus, in the conditions of availability of such a position the matter has not been legislatively regulated, but is again left to the margin of appreciation of the court. The Constitutional Court finds that in the sense of protection of the constitutional rights of an individual in the mentioned cases the missed term shall be considered as substantiated ex jure, which will guarantee the effective implementation of the right to access to the court and right to fair trial.

10. Concerning the second matter raised by the Applicant, which concerns Parts 1 and 2 of the challenged Article 380, the Constitutional Court finds that in case of missing the legislatively prescribed term for appeal based on valid reasons, the competence to endow the courts adopted the judgment with the power to examine the motion of the appellant on restoration of the missed term, is within the margin of appreciation of the legislator. In the frames of this legal regulation the right to appeal the decision on refusal of the above-mentioned motion is an essential guarantee. In particular, Part 2 of the challenged Article 380 of the Code stipulates that "The decision to refuse the motion on restoration of the missed term may be appealed against within 15 days with the Court of Appeal, which is authorized to restore the missed term and consider the case in accordance with the requirements envisaged in Article 382 and Article 383, Part 2 of the Code".

The moment of the beginning of the fifteen-day time period, stipulated in the mentioned norm of the Code, is another issue. In this concern, the Constitutional Court states that Part 2 of Article 380 contains legal uncertainty; the norm does not precisely mention whether the judgment may be appealed at the Court of Appeal within 15-day time-period from the moment of pronouncement or from the moment of receiving the copy of

judgment. Taking into consideration the legal positions prescribed in Point 9 of this Decision, **the Constitutional Court finds that the 15-day time-period prescribed by Part 2 of Article 380 of the Code starts from the moment of factual receipt of the judgment by the addressee or from the moment when it was accessible for him practically in the manner prescribed by law and the law enforcement practice shall be guided by such understanding of constitutional legal content of Part 2 of Article 380 of the Code.**

11. What does the analysis of the international legal practice and the case law of European Court of Human Rights concerning this matter state? The legal practice of a number of countries states that both legal provisions, according to which the appeal against the judgment may be brought after the pronouncement of the judgment or after serving with its copy (Slovakia, Rumania, Ukraine, Georgia, Moldova, etc.) and the legal regulation, when this term is prescribed to run from the moment of handing over the judgment (Poland, Montenegro, Greece, Spain, Germany, Croatia, etc.) are equally acceptable. The essential point here is the fact that in all those countries where the calculation of the term for appeal starts from the moment of pronouncement of the, necessary and sufficient guarantees are envisaged legislatively to ensure the receipt of **the entire** judgment by the appellant in a reasonable time and to enable him/her to exercise effectively his/her right of access to the court and right to fair trial.

In practice, the European Court of Human Rights has expressed similar position. In particular, in case "Mamikonyan v. Armenia (Complaint No. 25083/05, 16 March 2010), which was quoted by in the explanations of the parties, the European Court of Human Rights expressed a distinct legal position, according to which the calculation of the ten-day time-limit for lodging a cassation appeal from the date of pronouncement of the judgment of the Court of Appeal, in itself, may not be considered as to be in violation of Article 6 of the Convention. Although, simultaneously, it is highlighted that "... provided that it is accompanied by sufficient guarantees which authorize the appellants to enjoy the effective access to the appeal instance, including by affording them the opportunity to submit well-grounded appeals." The Court also considered as an essential guarantee the circumstance that in line with the requirements pre-

scribed in Part 2 of Article 402 of the RA Criminal Procedure Code that a copy of Court of Appeal's judgment **should be served the defendant** not later than three days after the date of its pronouncement.

The last circumstance shall be considered as pivotal in the conditions of such legal regulations, when the term of appeal is calculated from the moment of pronouncement of the judgment. Moreover, the Constitutional Court, first, drives the attention to the circumstance that in the mentioned decision of the European Court of Human Rights (which is officially published in Armenian by the RA Ministry of Justice) the term "serve on" is used. This term is also used in the abovementioned decision of the Council of Chairmen of the RA Courts. Although the term **"is sent"** is prescribed in Part 2 of Article 402 of the RA Criminal Procedure Code. It is obvious that these are essentially different and in terms of time **"sending"** is not relevant to **"serving on"** and it is unknown, when it will get to the subject of these legal relations, depending on the way of sending. In the sense of contents, these notions may be considered as identical only in the cases when the entire text of a judgment **is provided to** the relevant subjects within this term or is posted at the official website of the court for them to be accessible, as it is done in a number of countries. Thus the RA Constitutional Court finds that in all such cases the party shall have reasonable time-period to submit a well-grounded appeal after **receiving** the judgment **or having its entire text under his/her disposal, when it is officially accessible**. And as it has been already mentioned, in all cases when the legislatively prescribed reasonable time lodging an appeal is violated because of the circumstances not depending on an appellant, the missed time-period shall be considered as valid ex jure, and the solution of that matter should not be left to the margin of appreciation of the court. Only in such terms the right to submit a well-grounded appeal within a reasonable time, right of the access to the court and the right to fair trial will be ensured for the appellants.

Proceeding from the results of the Case consideration and being ruled by Article 100, Point 1, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Article 379, Part 1, Point 3 of the RA Criminal Procedure Code is in conformity with the Constitution of the Republic of Armenia insofar

as it guarantees serving the appellant with the judgment in accordance with the procedure and time-period prescribed by law is guaranteed and the missing of the term for reasons not depending on him/her is declared as valid, ex jure.

2. To declare Parts 1 and 2 of Article 380 of the RA Criminal Procedure Code as contradicting the requirements of Article 18 and 19 of the Constitution of the Republic of Armenia in regard to leaving the restoration of the missed term for lodging an appeal for the reasons not depending on an appellant, to the margin of appreciation of the court and not considering it as valid, ex jure.

3. The provisions of Article 402 of the RA Criminal Procedure Code which are systemically interrelated to the challenged articles, are in conformity with the Constitution of the Republic of Armenia insofar as the term "is sent" prescribed in Part 2 of the Article guarantees serving (access) the entire judgment with the subjects prescribed by law within that term.

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

CHAIRMAN **G. HARUTYUNYAN**

16 October 2012
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