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OF THE REPUBLIC OF ARMENIA

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IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 5, ARTICLE 15, PART 1 OF THE RA LAW ON EDUCATION AND ARTICLE 6, PART 1, POINT 2 AND ARTICLE 14, PART 5 OF THE RA LAW ON HIGHER AND POST-GRADUATE SPECIALIZED EDUCATION AND THE DECISION No. 597-Ն OF APRIL 26, 2012 OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE HUMAN RIGHTS DEFENDER OF THE REPUBLIC OF ARMENIA

Yerevan **24 January 2014**

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, V. Poghosyan,

with the participation of the representatives of the Applicant: A. Vardevanyan, Head of Legal Analysis Department of the Staff of the RA Human Rights Defender, S. Yuzbashyan and A. Margaryan, executives of the same Department,

representatives of the Respondent: A. Ashotyan, RA Minister of Education and Science, official representative of the National Assembly of the Republic of Armenia, S. Tevanyan, Advisor to the Department of Expertise of the Staff of the RA National Assembly,

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 on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by an oral procedure the joint Case con-

cerning the conformity of Article 5, Article 15, Part 1 of the RA Law on Education and Article 6, Part 1, Point 2 and Article 14, Part 5 of the RA Law on Higher and Post-graduate Specialized Education and the Decision No. 597-Ն of April 26, 2012 of the Government of the Republic of Armenia 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 applications submitted to the RA Constitutional Court by the RA Human Rights Defender on 18.05.2013 and 25.10.2013.

By the Procedural Decision PDCC-87 of 05.11.2013 of the Constitutional Court it was decided to join the Case on conformity of the Decision No. 597-Ն of April 26, 2012 of the Government of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the RA Human Rights Defender and the Case on conformity of Article 5, Article 15, Part 1 of the RA Law on Education and Article 6, Part 1, Point 2 and Article 14, Part 5 of the RA Law on Higher and Post-graduate Specialized Education with the Constitution of the Republic of Armenia on the basis of the application of the RA Human Rights Defender, and examine in a public hearing by an oral procedure, also involving the RA National Assembly in the proceeding as the authority, having adopted the RA Law on Education and the RA Law on Higher and Post-graduate Specialized Education.

Having examined the report of the Rapporteur on the Case, the explanations of the Applicant and the Respondent, as well as having studied the RA Law on Education and the RA Law on Higher and Post-graduate Specialized Education, the Decision No. 597-Ն of April 26, 2012 of the RA Government, and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on Education was adopted by the RA National Assembly on April 14, 1999, signed by the President of the Republic of Armenia on May 8, 1999 and came into force on May14, 1999.

The RA Law on Higher and Post-graduate Specialized Education was adopted by the National Assembly of the Republic of Armenia on December 14, 2004, signed by the President of the Republic of Armenia on January 18, 2005 and came into force on March 2, 2005.

The Decision No. 597-Ն on Approving the Admission Procedure of State and Private Higher Education Institutions of the Republic of Armenia (according to the bachelor's studies), and Declaring the Decision No. 686 of

April 28, 2011 of the Government of the Republic of Armenia null, was adopted by the RA Government on April 26, 2012, signed by the RA Prime Minister on May 16, 2012 and came into force on May 24, 2012.

Article 5 of the RA Law on Education, titled "Principles of state policy in the field of education" prescribes:

"Principles of state policy in the field of education" are as follows:

1) humanistic nature of education, priority of universal values, human life and health, free and comprehensive development of the individual, education of civic conscience, national dignity, patriotism, legality and environmental outlook;
2) accessibility, continuity, succession and conformity of education with the level, peculiarities and level of training of learners' development, while providing the mandatory state minimum;
3) ensuring the principles of democracy in the field of education;
4) integration in the international educational system;
5) supporting the educational process of preserving Armenians in Diaspora;
6) secular education in educational institutions;
7) reasonable autonomy of educational institutions;
8) guaranteeing opportunities for the citizens for education in public and private educational institutions;
9) ensuring the equal status of educational institutions and the issued graduation certificates.

Part 1 of Article 15 of this Law, titled "General requirements for admission to educational institutions" prescribes: "According to this Law, requirements for admission of learners to pre-school, general secondary, preliminary professional (Craftsmanship), middle professional educational institutions shall be defined by the founder, taking into account the peculiarities of the institution, and requirements for admission of learners to state and private higher education institutions shall be defined by the Government of the Republic of Armenia."

Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Professional Education, titled "Autonomy, competence and academic freedom of higher education institutions" prescribes: "Higher education institutions ...shall be independent in the choice of organization of educational process, educational technologies, as well as forms, procedure and periodicity of current evaluation of learners."

Part 5 of Article 14 of this Law, titled "Admission to Higher and Post-graduate Professional Education Providing Organizations" prescribes: "Admission procedure of the state and private higher education institutions,

according to the bachelor's studies, shall be defined by the Government of the Republic of Armenia."

The challenged Decision of the RA Government stipulates:

According to Article 14, Part 5 of the Law of the Republic of Armenia on Higher and Post-graduate Professional Education and Article 15, Part 1 of the Law of the Republic of Armenia on Education, the Government of the Republic of Armenia holds:

1. To approve the admission procedure of the state and private higher education institutions (according to the bachelor's studies) in accordance with the annex.

2. To declare null the Decision No. 686-Ն of April 28, 2011 of the Government of the Republic of Armenia on Approving the admission procedure of state and private higher education institutions (according to the bachelor's studies), and on Declaring the Decision No. 238-Ն of March 11, 2010 of the Government of the Republic of Armenia null.

3. This Decision enters into force from the next day of its official announcement.

The annex of the challenged Decision of the RA Government defines the admission procedure of state and private higher education institutions (according to the bachelor's studies) by the following Chapters: I. General Provisions, II. Registration of unified and centralized examinations, III. Admission of application forms and documents, IV. Registration of professions, V. Correction of application forms and withdrawal of documents, VI. Fixation of application forms for admission, VII. Renewal of the examination ticket of centralized and inter-HEIs examinations, VIII. Organization, conduct and appeal of unified examinations, IX. Organization, conduct and appeal of centralized admission examinations (oral and written), X. Organization, conduct and appeal of grades in inter-HEIs admission examinations, XI. Organization of additional examinations for students who failed to appear at inter-HEIs and centralized examination, XII. Conduct of admission competition to HEIs, XIII. Republican selection committee for admission examinations.

The Constitutional Court considers it necessary to state that despite the Applicant challenged Article 5 of the RA Law on Education entirely, however, the Applicant's substantiations relate exclusively to the provisions of Point 7 of the given Article. Furthermore, with respect to the above-mentioned Decision of the RA Government the Applicant in essence only challenges the constitutionality of Point 6 of the procedure stipulated by the annex of the given Decision. According to the mentioned Point, "Admission examinations shall be unified, centralized and inter-higher education insti-

tution (HEI) examinations. Admission examinations shall be organized and conducted by "Assessment and Testing Center" state noncommercial organization (hereinafter Assessment and Testing Center)."

2. The positions of the Applicant concerning the challenged laws bring to the following: the principles of autonomy of HEIs are stipulated by the RA Law on Education and the RA Law on Higher and Post-graduate Professional Education, and the latter are not enough precisely formulated and their boundaries are not clear. Article 39 of the RA Constitution guarantees the autonomy of education institutions, and the constitutor left the provision of the principles of autonomy of those education institutions to the legislator's discretion. Provision of such a norm also precludes such a situation in the future, where the HEIs may lose the principles of auto-nomy.

Referring to the reasonable autonomy of education institutions prescribed by Point 7 of Article 5 of the RA Law on Education as a principle, the Applicant states that the legislator did not violate the constitutional guarantee by the term "reasonableness", however, the Applicant states that no legislative limit is precisely defined by the mentioned Article, therefore, it includes the risk of different interpretations. Consequently, referring to the Judgment of the European Court of Human Rights on the Case of The Sunday Times v. the United Kingdom dated 26.04.1979, as well as the Decision DCC-753 of the RA Constitutional Court, the Applicant finds that it raises the issue of contradiction to the principle of legal certainty.

According to the Applicant, the legal regulations of Article 6 of the RA Law on Higher and Post-graduate Professional Education also raise the issue of legal certainty. The Applicant finds that the concept "organization of educational process" stipulated by Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Professional Education, is also indefinite and first of all it may presume the autonomy of the HEI in the field of organization of admission, learning and graduation processes. According to the Applicant, education process begins with the admission of students, which is the main institution that guarantees the autonomy and independence of the HEI, and it is accepted in a number of countries (Finland, the Czech Republic, Estonia, etc.).

As for the challenged provisions of Part 1 of Article 15 of the RA Law on Education and Part 5 of Article 14 of the RA Law on Higher and Post-graduate Professional Education, in the opinion of the Applicant, an issue arises concerning the latter so far as they provided possibility of restriction of the guarantee stipulated by the Constitution by the decision of the Gov-

ernment. The applicant substantiates the mentioned opinion referring to Point 2 of Article 83.5 of the RA Constitution, according to which, restrictions on the rights and freedoms of natural and legal persons, their obligations, shall be determined exclusively by the laws of the Republic of Armenia.

With regard to the challenged Decision of the RA Government, the Applicant finds that the latter contradicts the requirements of Articles 39, 83.5 and 85 of the RA Constitution.

To substantiate his position, and referring to Parts 4 and 5 of Article 39 of the RA Constitution, which accordingly stipulate that the law shall define the principles of autonomy in higher educational institutions, and the procedures for the establishment and operation of educational institutions shall be defined by the law, the Applicant states that the HEIs implement their autonomy on the basis of the principles of self-governance and collegiality. The Applicant also states that according to the legislation, the HEIs are independent in matters relating to both the operation and the financial and economic activity, and comes to the conclusion that in the context of Article 83.5 of the RA Constitution no law provides such restriction of the rights of the HEI as a legal person, and that the decisions of the Government shall be adopted on the basis of the Constitution, international treaties and normative acts of the RA President and for the purpose of ensuring their implementation.

Referring to Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Professional Education, which stipulates that "Higher education institutions ...shall be independent in the choice of organization of educational process, educational technologies, as well as forms, procedure and periodicity of current evaluation of learners," the Applicant finds that the notion "organization of educational process" used in the latter, first of all, presumes the autonomy of HEIs in the field of organization of admission, learning and graduation processes. According to the Applicant, education process begins with the admission of students, which is the main institution that guarantees the autonomy and independence of the HEI, and it is accepted in a number of countries. Organization of admission as one of the most important powers of the HEIs, is precisely stipulated by Point 1 of Part 2 of Article 6 of the RA Law on Higher and Post-graduate Professional Education, and the latter particularly states that "Organization of admission procedure and educational process for the students, including foreign citizens and stateless persons, ...according to the educational studies... shall be at the competence of the higher education institution."

Referring to international practice and, in particular, referring to the Bergen declaration and the report of the "European Association for Quality Assurance in Higher Education" (ENQA) (ENQA report on "Standards and Guidelines for Quality Assurance in the European Higher Education Area", Third Edition, 2009, Helsinki, p.11.), pointing out that the principle of autonomy of HEIs is one of the principles of the Bologna Process and the international legal principle in the field of education, the Applicant, based on the above-mentioned, finds that providing such powers only for the "Assessment and Testing Center" and in practice depriving HEIs of competence for the organization of admission examinations by the challenged Decision of the RA Government may entail a real risk of non-legitimate restriction of the principles of self-governance and collegiality of HEIs, following from the principle of autonomy stipulated by the Constitution and accepted by international law.

3. Objecting the arguments of the Applicant concerning the provisions of the laws challenged by this Case, the representative of the Respondent, the official representative of the RA National Assembly finds that the Applicant challenges the issue of conformity of the term "reasonable" prescribed by Point 7 of Article 5 of the RA Law on Education with the Constitution, substantiating that the latter contradicts the principle of legal certainty, and in this regard the Respondent finds necessary to touch upon the essence and the level of certainty of the given term, and accordingly the possibility of the contiguous relevant legal regulations to be foreseeable. According to the Respondent, the above-mentioned term "reasonable" and the terms "proper" and "good-faith" as assessment concepts get the degree of certainty in the context of regulation of each law. That is, in case it is possible to identify, stipulate and foresee, from the general content of the law and the wordings set forth in other articles, the peculiarities of content of each of the mentioned terms referring to social relations in the framework of legal regulation of certain law, the availability of the latter in the law does not contradict the concepts of legal law and rule of law state. According to the Respondent, the availability of such term only provides an opportunity to ensure more flexible legal regulations via the law or sometimes a subordinate act. It is obvious that, according to the Applicant, raising the issue of conformity of the Decision No. 597-Ն of the RA Government with the RA Constitution, the Applicant manifested an approach, which did not even question the fact that the currently challenged norms and, in particular, the term "reasonable" follow from the RA Constitution. The Respondent finds that the availability of the term "reasonable" men-

tioned in the challenged act does not arise any issue from the standpoint of certainty. Touching upon Part 1 of Article 15 of the RA Law on Education, the Respondent expresses the position, according to which the latter stipulates that the RA Government, as the competent public authority, may define the requirements for admission to state and private higher education institutions. That is, the scope of the regulation of the given provision is to vest the appropriate body with some functions for organization of admission of learners. The relevant articles of the RA Law on Higher and Post-graduate Professional Education more precisely stipulate the legal regulation of the relations concerning the admission of the learners. Thus, Point 2 of Part 1 of Article 6 of the above-mentioned Law stipulates the scope of autonomy of the HEI in the field of organization of educational process, and Part 5 of Article 14 once again points out the competent body which shall stipulate the admission procedure of HEIs. Moreover, the Respondent finds that raising the issue of conformity of Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Professional Education with Article 39 of the RA Constitution, the Applicant did not submit such substantiation which would prove the contradiction between the given challenged norm and the principle of autonomy of HEIs stipulated by Article 39 of the RA Constitution. According to the Applicant, all the accents made are aimed to disclosure of the concept "learning process" and discussion of the issue of inclusion of the stage of organization of admission examinations in learning process. Vesting the RA Government with the authority to stipulate the admission procedure of HEIs or stipulate the requirements for admission of learners is not anyhow considered to be a restriction of the rights of HEIs; it simply assumes realization of certain functions via solving procedural issues or defining certain standards.

Objecting the arguments of the Applicant concerning the part of the challenged Decision by this Case, the representative of the Respondent, the official representative of the RA Government finds that the challenged Decision of the RA Government is in conformity with Articles 39, 83.5 and 85 of the RA Constitution and the relevant norms of International Law.

To substantiate his position, the Respondent states that the challenged Decision of the RA Government was adopted within the framework of the powers of the RA Government, based on the requirements of Part 5 of Article 14 of the RA Law on Higher and Post-graduate Professional Education, and Part 1 of Article 15 of the RA Law on Education which vest the RA Government with the power to stipulate the admission procedure of state HEIs and the requirements for admission to state and private HEIs.

Touching upon the argument of the Applicant, according to which the

notion "organization of educational process" used in Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Professional Education, first of all, presumes the autonomy of HEIs in the field of organization of admission, learning and graduation processes, the Respondent refers to Point 1 of Part 2 of Article 6 and Point 7 of Part 1 of Article 21 of the RA Law on Higher and Post-graduate Professional Education; Parts 1 and 2 of Article 14 of the RA Law on Education and Points 1, 6 and 14 of the procedure established by the challenged Decision of the RA Government, and finds that the admission is not a part of learning process, and the concepts "organization of admission" and "organization of admission examinations" are different.

Based on the above-mentioned, the Respondent finds that the HEIs do not organize the admission examinations, except for the cases stipulated by Point 14 of the procedure established by the challenged Decision of the RA Government, which relate to inter-HEIs examinations.

Referring to international practice the Applicant mentioned and stating that the content of the concepts "autonomy of HEIs" and "academic freedom" is not entirely revealed by the RA legislation, and stating that the principle of autonomy of HEIs is perceived differently, and even very often it is perceived inconsistently, which is conditioned by educational traditions of many countries; as well as pointing out the current 3 systems of organization of admission examinations in the framework of the European Union, which include provision of admission criteria both by the HEI or with the participation of the HEI, and by external body, the Respondent finds that the mentioned 3 systems are now considered in the framework of autonomy of HEIs, depending on the peculiarities of the policy conducted in relevant domain of the certain state.

4. It follows from the study of the application on the provisions of the laws challenged by this Case, that in the conditions of availability of the requirement of Point 8 of Part 1 of Article 101 of the RA Constitution, an application has been submitted to the RA Constitutional Court, which concerns the issue of conformity of Part 1 of Article 15 of the RA Law on Education and Part 5 of Article 14 of the RA Law on Higher and Post-graduate Specialized Education not so much, in essence, with the provisions of Chapter 2 of the RA Constitution, as Point 2 of Article 83.5 of the RA Constitution, which is beyond the competence of the Applicant.

The main part of the issues could be resolved within the framework of constitutional competence of homogeneous application of the law, generating also equivalent law enforcement practice.

At the same time, based on Point 1 of Article 32 of the RA Law on the Constitutional Court, the Constitutional Court finds that the proceeding of the Case is subject to dismissal in regard to the part of the challenged Decision No. 597-Ն of the RA Government by the reasoning, that in the mentioned part the Applicant raises an issue which is beyond the competence of the Constitutional Court, namely, the issue of legitimacy and conformity of the Decision of the RA Government with the RA laws is essentially raised. By virtue of Point 4 of Part 1 of Article 15 of the RA Law on Human Rights Defender the Applicant could file a sue in court for fully or in part acknowledging the challenged Decision No. 597-Ն of the RA Government void, which could be considered as means of possible protection of the rights of HEIs.

In this regard the Constitutional Court considers it necessary to state that Article 191 of Administrative Procedure Code of the Republic of Armenia states that "The following cases on challenging normative legal acts of state and local self-government bodies and their public officials, shall be under the jurisdiction of the Administrative Court:

Cases on challenging the conformity of normative legal acts of the President of the Republic of Armenia, the Government of the Republic of Armenia, the Prime Minister of the Republic of Armenia, departmental normative legal acts, as well as normative legal acts of the Council of Elders and the Head of Community with the normative legal acts having higher legal force (except for the Constitution)."

Part 3 of Article 192 of the given Code stipulates that "On the cases stipulated by Article 191 of instant Code, the Human Rights Defender may also bring an action before the Administrative Court..."

It is obvious that in such case the Constitutional Court must be guided by the requirement of Article 5 of the RA Constitution and take into account that in the framework of administrative justice the issue of legitimacy of the Decision of the RA Government must first be the subject of litigation in relevant competent court.

5. Touching upon the provisions of Article 5 of the RA Law on Education, and Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Specialized Education, as well as based on study of the Applications by instant Case, the challenged legal norms and the documents attached to the Applications, the Constitutional Court states that the Applicant in essence raises the issue before the Constitutional Court, why the "Assessment and Testing Center" state noncommercial organization organizes and conducts admission examinations instead of autonomous HEIs.

In regard to the above-mentioned issue raised by the Applicant, the Constitutional Court considers it necessary to state the following: **firstly**, Part 4 of Article 39 of the RA Constitution is first of all aimed at effective and full realization of the right to education as provided by Part 1 of the same Article; **secondly**, the Constitution of the Republic of Armenia does not anyhow predetermine the boundaries of autonomy of HEIs, and the disclosure of its content and securing the stipulation of its boundaries was provided at the legislator's discretion by virtue of Part 4 of Article 39 of the Constitution; **thirdly**, any legal principle by its content differs from the norms having certain regulatory significance, and its content is revealed by the latter; **fourthly**, emphasizing the right to education in the development of society and guaranteeing it on constitutional level, the state undertakes the obligation to ensure quality education, which also simultaneously predetermines the possibility and necessity for both the state and the HEI to carry out activities in the field of education; **five**, the realization of educational policy, including the guaranteeing of a minimum level of quality of education follow from the obligation of the state to ensure quality education; **six**, Article 5 of the RA Law on Education prescribes the principles of state policy in the field of education, and defines the term "reasonable" in regard to the autonomy of HEIs, and an attempt was made to reveal the scope of the activities carried out by the state and the HEI in the field of education; **seven**, stipulating by Article 5 of the RA Law on Education the "Principles of state policy in the field of education," the legislator considered them as a single interconnected system, which are holistic only in unity, and none of them can be absolute and each of them is aimed to mutually reinforce the others and form a harmonious whole. In practice, however, by the RA Law on Education and the RA Law on Higher and Post-graduate Specialized Education the legislator tried to outline the boundaries of administrative, financial, organizational and academic freedom of HEIs via uncertain order.

The Constitutional Court agrees with the opinion regarding the approach that a reasonable autonomy of HEIs does not presume absolute independence of HEIs. The framework of reasonable autonomy of HEIs is conditioned by the framework of the policy conducted by the state aimed to ensure quality education based on the law. Therefore, the Constitutional Court does not consider reasonable the circumstance that legal uncertainty is available in the provisions of Article 5 of the RA Law on Education. Simultaneously, **the RA Constitutional Court shares the concern of the Applicant that the wordings in the disputed laws could for the most part comply with the principle of legal certainty and**

not cause ambiguity. However, no attempt was made to overcome this ambiguity within the framework of homogeneous application of the law, and the interpretations are discretionary in nature. Nonetheless, the comparative analysis of the norms of the law indicates that within the concern of the Applicant, and together with the availability of the issue of legislative reforms, no issue of constitutionality is present.

The Constitutional Court does not consider the Applicant's arguments regarding the legal uncertainty of the concept "organization of educational process" stipulated by Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Specialized Education by the reasoning, that in Point 1 of Part 1 of Article 6 of the same Law the admission of learners to HEIs is separated from the organization of educational process.

Besides, the Constitutional Court considers it appropriate to state that the expressions "organization of admission" and "organization of educational process" cannot have the same content, and the organization and conduct of unified, centralized and inter-HEIs examinations by other bodies is just aimed at providing harmonious standards for organization and conduct of admission examinations (according to the bachelor's studies) both in state and private HEIs, stipulating the minimum quality level below which it is impossible to guarantee the necessary conditions for the provision of higher education by respective professions. The provisions of Article 5 of the RA Law on Education and Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Specialized Education do not create any obstacle for stipulating additional standards or requirements for admission, thus guaranteeing inalienable autonomy of the certain HEI.

Based on the result of the consideration of the Case and being governed by Article 100, Point 1, Article 101, Part 1, Point 8, Article 102 of the Constitution of the Republic of Armenia, Article 32, Points 1 and 2, Article 60, Point 1, Articles 63, 64 and 68 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To dismiss the proceeding of the Case in regard to the part of Part 1 of Article 15 of the RA Law on Education and Part 5 of Article 14 of the RA Law on Higher and Post-graduate Specialized Education, as well as in regard to the part of the Decision No. 597-Ն of April 26, 2012 of the Government of the Republic of Armenia.

2. Within the framework of legal positions in the instant Decision, the provisions of Article 5 of the RA Law on Education and Point 2 of Part 1 of Article 6 of the RA Law on Higher and Post-graduate Specialized Education are in conformity with the Constitution of the Republic of Armenia.

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

Chairman **G. Harutyunyan**

24 January 2014
DCC - 1136

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

CASE ON CONFORMITY OF ARTICLE 30, PART 1, SUB POINT 5 OF THE LAW ON STATE REGISTRATION OF RIGHTS TO THE PROPERTY OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

Yerevan **23 April 2014**

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

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

official representative of the RA National Assembly, advisor to the Department of Expertise of the RA National Assembly Staff: S. Tevanyan,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 7 of the Constitution of the Republic of Armenia, Articles 25 and 71 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on the conformity of Article 30, Part 1, Sub point 5 of the Law on State Registration of Rights to the Property of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, the substantiations submitted by the Ministry of Justice of the RA, the expert opinion, as well as having studied the Criminal Code of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The Law ՀՕ-295 on State Registration of Rights to the Property was adopted by the RA National Assembly on 14 April, 1999, signed by the RA President on 30 April, 1999 and came into force on 6 May 1999.

The Applicant's challenged provision was added in the RA Law on State Registration of Rights to the Property by the Law ՀՕ-247-Ն on Making Amendment in the RA Law on State Registration of Rights to the Property adopted by the National Assembly of the Republic of Armenia on June 23, 2011, signed by the RA President on 19 June, 2011 and come into force on 1 January, 2012.

Sub-point 5, Part 1, Article 30 of the Law prescribes, "1. The competent body, which conducts the state registration, shall decline the state registration of the right, if ...5) the right or individual legal act, which prescribes the restriction, is adopted by the non-competent body or the official or the right or the individual legal act, which prescribes the restriction, is in non-conformity with the provisions of the law or normative legal act which served as grounds for its adoption."

2. The prehistory of the considered case is the following: based on the decision of June 21, 2003, April 12, 2007 and July 18, 2007, on March 10, 2008 the Council of Elders of Idjevan Community held a tender on providing the plots of land for urban construction purposes and Suren Sardaryan was recognized as the winner.

By the Decision N38 adopted on March 10, 2008, the City Mayor of Idjevan announced the final minutes according to which the plot of land of 800 square meters, located on Ohanyan 78 str, Idjevan city was passed to Suren Sardaryan by the right to construction on 99 year period.

On January 23, 2013 Suren Sardaryan applied to the State Committee of Real Estate Cadastre to the RA Government with the request to register the rights concerning the land plot on the basis of Decision

N38 of March 10, 2008 of the City Mayor of Idjevan (hereinafter State Committee of Real Estate Cadastre) which was declined.

Suren Sardaryan applied to the RA Administrative Court with the request to oblige State Committee of Real Estate Cadastre to register his right to public construction concerning the plot of land of 800 square meters, located on Ohanyan 78 str, Idjevan city.

On February 26, 2013 by the decision of the RA Administrative Court the application was taken over.

By the Decision No. ՎԴ/1238/05/13 the RA Administrative Court suspended the proceeding applied to the RA Constitutional Court to decide the issue of conformity of Sub point 5, Part 1, Article 30 of the Law with Articles 1, 5 and 91 of the RA Constitution.

3. The Applicant states that neither the challenged law, nor any other law prescribe State Committee of Real Estate Cadastre official's powers, procedure and terms of administration to check and assess the legitimacy of an administrative act adopted by other administrative body.

To substantiate his position the Applicant states that Article 2 of the law prescribes the notion of "State Committee of Real Estate Cadastre" and according to the Decision N442 of June 28, 1999 of the RA Government administration of State Committee of Real Estate Cadastre includes state registration of rights to property, recording of real estate, its assessment and establishment and management of information bank, as well as cadastral mapping.

According to the Applicant, the actions of the officials of the State Committee of Real Estate Cadastre to verify the compliance and confirmation of non-conformity of the individual legal act, which establishes the right or restriction, to the requirements of the law or normative legal act which served as grounds for its adoption do not derive from the requirements of Articles 1, 5 and 91 of the Constitution of the Republic of Armenia.

Correlating legal provisions of Article 35 of the RA Judicial Code with Articles 3 and 65 of the RA Administrative Procedure Code, the Applicant concludes that the legitimacy of the administrative act adopted by the administrative body or its official is subject to assessment solely in accordance with judicial procedure, and as long as individual legal act is not recognized invalid by administrative or judicial procedure,

taking into account the principle of legal certainty every person shall derive from the presumption that the legal act was adopted in the framework of the powers prescribed by the RA Constitution and laws, therefore, from this it shall be concluded that this individual legal act is legitimate, and no person, including the public authority may doubt the validity of the mentioned Act.

The Applicant states that in case of application of Sub point 5 of Part 1 of Article 30 of the Law, State Committee of Real Estate Cadastre by merits not only challenges the legitimacy of the administrative act adopted by the administrative body or an official, but also confirms its inconformity with the law actually administering powers of the court which State Committee of Real Estate Cadastre is not authorized to in the context of Article 5 of the RA Constitution, as the latter is considered to be an executive body, and deriving from the principle of separation of powers, implementation and application of laws shall be the function of the executive power.

4. The Respondent challenges the Applicant's statements and finds that the provisions of Sub point 5 of Part 1 of Article 30 of the Law are in conformity with the requirements of the RA Constitution.

To substantiate his position the Respondent states that Article 5 of the Constitution envisages the principle of separation of powers and simultaneously prescribes that State and local self-government bodies and public officials are competent to perform only such acts for which they are authorized by Constitution or the laws. The Applicant's concern, according to which availability of the challenged norm authorizes the administrative body to perform justice and therefore violates the principle of separation of powers, is not justified according to the Respondent, as the interpretations to the Constitution state that: "... resolution of legal issues by other bodies and organizations in the framework of their competence is not considered as a performance of justice."

According to the Respondent, in practice the competent body led by the endowed powers examined the documents submitted for registration and revealed the grounds for declining the registration, and therefore, manifested legitimate behavior. In such a situation the competent body cannot apply to the Administrative Court with the demand to clarify the legitimacy of the act of the local self-government body, therefore,

for avoiding further violation of the RA legislation, the maximum that it is authorized to do, is to deny the performance of relevant actions.

In the Respondent's opinion, in the case of current legal regulations when the competent body by suspending the process of registration, cannot judicially challenge the legitimacy of the legal act adopted by other administrative body and the relevant entity in whose favor the individual legal act prescribing that right, is not interested in challenging its legitimacy by judicial or administrative procedure and obviously faces legislative gap.

According to the Respondent, therefore, absence of relevant structures and insufficient legislative regulations cannot bring to non-constitutionality of the challenged norm.

5. Concerning the issue of constitutionality of the challenged provision, the RA Constitutional Court finds necessary to consider:

a) in the context of the types of legal acts prescribing right or its restriction and taking into account the necessity of assessment of the constitutionality of the context of the phrase "prescribing right or its restriction,"

b) in the context of the principle of legitimacy as an element of the rule of law state and taking into account the mandatory nature of performance of the requirements of the legal acts in legal force,

c) in the context of the presumption of legitimacy of administrative acts which are the element of the principle of legal certainty deriving from the principle of the rule of law state,

d) in the context of the principle of inadmissibility to perform control by the body not authorized with the functions of non-departmental control over the body with relevant or higher authoritative status,

e) in the context of the principle of independence and sovereignty of the bodies of local self-government prescribed by the constitutional regulations.

Meanwhile, within the framework of consideration of the context of the types of legal acts prescribing the issue of constitutionality of the challenged provision of the law prescribing right or restriction, the Constitutional Court states the following:

Pursuant to Part 1 of Article 42 of the RA Constitution, the fundamental human and civil rights and freedoms stipulated in the Constitution shall not exclude the other rights and freedoms prescribed by the laws and international treaties.

Pursuant to Part 1 of Article 43 of the RA Constitution, fundamental human and civil rights and freedoms set forth in Articles 23-25, 27, 28-30, 30.1, Part 3 of Article 32 may be temporarily restricted only by law if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as the honor and reputation of others.

Pursuant to Part 2 of Article 43 of the RA Constitution, limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia.

Pursuant to Point 2 of Article 83.5 of the RA Constitution, restrictions on the rights and freedoms of natural and legal persons shall be exclusively prescribed by the laws of the Republic of Armenia.

The study of the above mentioned provisions of the RA Constitutions states that in all cases the right and the restriction of natural and legal persons (except for the cases prescribed by Article 44 of the RA Constitution on temporarily restriction of the right) shall be prescribed either by the Constitution or the law or by an international treaty, but not by other legal act.

On the basis of the above mentioned the RA Constitutional Court states that other normative as well as individual legal acts cannot envisage and prescribe rights or restrictions, Individual legal acts, as law enforcement acts can only be used for enforcement of the restrictions to right.

On the level of legislative regulation these notions shall be clearly and precisely prescribed and shall not distort the contents of legal regulation. The Constitutional Court considers that in the scopes of legal regulation of the challenged law, the subject of regulation is not the definition or restriction of the right but the implementation of the restriction prescribed by the law.

6. In the scopes of the present case, the Constitutional Court considers it necessary also to refer to the logic and guidelines of the current legal regulation of the administrative acts, which implement the right or restrictions in respect to the property and the order and consequences of their appeal.

Therefore, Point "b" of Part 1 of Article 62 of the RA Law "On the

Fundamentals of Administration and Administrative Proceedings" provides: "1. Void is the administrative act, which, in particular, has the following obvious mistakes... the act was adopted by the incompetent administrative body." According to Part 2 of the same article "insignificant administrative act is not legally binding and is not subject to execution or application since its adoption."

Point "a" of Part 1 of Article 63 of the same Law provides that void is the one which does not consider unlawful administrative act, which was adopted in violation of the law, as well as, as a result of the incorrect implementation or misinterpretation of the law. Part 2 of the same Article stipulates that unlawful administrative act can be declared null and void by the administrative body which adopted that law or by a higher authority, as well as in court.

And discussing the administrative complaint submitted against an administrative act, by virtue of Point "a" of Part 1 of Article 76 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings" administrative body that adopted the act, shall be entitled to declare the legislation invalid or void or to adopt a new administrative act.

According to Part 2 of Article 69 of the Code of Administrative Procedure of the Republic of Armenia of December 5, 2013 concerning the suit on recognizing, the complainant may request to declare the administrative act null and void.

By virtue of Point 1 of Part 1 of Article 125 of the Code, the Administrative Court is competent to adopt a judicial act, which decides the case on the merits, on the recognition of the administrative act invalid in whole or partially, and by virtue of Point 4 of the same Part - the presence or absence of the legal relations either on administrative nullity of the act in whole or partially.

From the logic of the above provisions of the Code of Administrative Procedure of the Republic of Armenia and the RA Law "On the Fundamentals of Administration and Administrative Proceedings", it follows that:

a) the result of unlawful administrative act, including the individual legal act of exercising the right or restriction, is its invalidity or nullity;
b) in contrast to the invalidity of the administrative act, nullity of the administrative act due to obvious blunders that occur due to

lack of testing and evaluation in accordance with a special procedure on the legality of the administrative act;

c) the validity of an administrative act, as well as an individual legal act on performing rights or restrictions may be challenged both judicially and extra- judicially, and in the framework of administrative proceedings, judicial authorities and the bodies adopting the act, or the higher administrative authorities are authorized to recognize the administrative act to be invalid or void;

d) Although Part 2 of Article 69 of the RA Administrative Procedure Code provides the possibility of recognizing the administrative act null and void judicially, but the opportunity by virtue of Article 3 of the Code is available only to those concerned, and the person whose state registration of right is declined is not considered as such;

e) unlike other unlawful administrative acts, which are not null, null administrative acts are considered to be such by the force of law, which does not oblige the right holder to challenge such administrative acts and as a result to have a decision adopted by competent authorities on confirming the circumstance of non-validity of the administrative act, taking into account the fact that in accordance with the RA Law On Fundamentals of Administration and Administrative Proceedings, performance or implementation of the null administrative act entails liability prescribed by the Law.

Taking as a basis the above mentioned the Constitutional Court states that the challenged provisions of the Law prescribe two separate grounds for refusal of state registration of the rights to property:

a) an individual legal act prescribing the right or restriction was adopted by the body or official not authorized to adopt it, which is the basis for the recognition of the administrative act null and void;

b) an individual legal act prescribing the right or restriction does not correspond with the requirements of the law and the normative legal act which served as a basis and therefore serves as grounds for invalidity of the given administrative act.

Simultaneously, the Constitutional Court states that in the process of state registration of property by the State Committee of Real Estate Cadastre checking and assessment of the circumstance of the right

subject to state registration or the restriction performing administrative act which is recognized as null, is not only legitimate but also necessary and binding conditioned with the rights and freedoms of others as well as with the circumstance of non being subject to liability prescribed by law for the implementation or performance of the administrative act recognized as null.

7. Referring to the Applicant's statement on checking and assessing of the grounds of invalidity of the right subject to registration or the administrative act performing restriction by the State Committee of Real Estate Cadastre, the Constitutional Court states that the authorized state body refusing the state registration of the right of property, by the power of the challenged provisions of the law, has not followed the requirements of the administrative act by neglecting the circumstance that no any competent subject has challenged the administrative act enforcing the right subject to state registration, and the latter is in power.

In connection with the above mentioned and taking into account the arguments set forth, the Constitutional Court finds that the denial of the right to state registration on the basis of non-conformity of the law or normative legal act as basis of the administrative act implementing right or restriction of the administrative act may be regarded as legitimate only in the case when the individual legal act performing right or restriction of the state registration is canceled in accordance with judicial or extra judicial order, i.e. the legal force of the administrative act has lost its validity. Otherwise, it occurs that by power of law the State Committee of Real Estate Cadastre has not implemented the requirement of the administrative act in force.

Regarding the motivations underlying this position, the Constitutional Court notes the following:

a) one of the most important components of the rule of law state enshrined in Article 1 of the Constitution of the Republic of Armenia is the principle of the rule of law, which also implies that the legal acts shall comply with the requirements of legal certainty and shall be implemented in the manner and terms prescribed by law, provided that binding implementation of the requirements of those acts by all subjects of right including the state and local self-government bodies and their officials;

b) the comparative analysis of Article 11.2 and Part 1 of Article 105 of the Constitution state that guaranteeing the local self-governance as well as the bodies of local self-government, in the constitutionally admissible frames, by the means of performance of certain actions directed to independent management and administering the community's property and by means of expression of will, the state simultaneously undertakes relevant obligation stipulated by Article 108.1 of the Constitution to ensure the lawfulness of the activities of local self-government bodies, legal control shall be exercised in conformity with the procedure defined by the law. That is, in the system of local self-governance implementation of the principle of constitutional lawfulness is directed not only to guarantee local self-governance but also preserve legality in that system.

The authority of the RA Constitutional Court prescribed in Point 1 of Article 100 of the RA Constitution to define the conformity of the decisions of the local self-government bodies with the Constitution by the manner prescribed by law is directed towards guaranteeing independence of the local self-government. This power is called to guarantee constitutionality of the rule-making activity of the local self-government bodies and to prevent redundant interference of the state bodies. Moreover, in the case of such legal regulations the issue of lawfulness of the acts of the local self-governance bodies shall be subject to examination exclusively by judicial procedure in the frames of procedures prescribed by the RA Administrative Procedure Code.

8. The Constitutional Court considers necessary to refer to the Applicant's argument that the State Committee of Real Estate Cadastre, not legislatively empowered with extra departmental control functions, supervised over the local self-government body which is structurally beyond its jurisdiction, recognized the administrative act performing right of state registration unlawful.

The RA Law on the Fundamentals of Administration and Administrative Proceeding prescribes possibility of checking and assessment of the legitimacy (but not invalidity) of the administrative act by the judicial or supremacy order and by administrative special procedure. Simultaneously, the local self-government body may act as a body adopting an administrative act implying right to registration or restriction, and, according to

the RA Administrative Procedure Code and the RA Law on the Fundamentals of Administration and Administrative Proceeding, the legitimacy of the acts of the latter, as an administrative body, may be checked and assessed **exceptionally by judicial procedure**. This is the requirement of Article 91 of the RA Constitution likewise. Meanwhile, the challenged provision of the Law prescribes other procedure without definition of the special procedure and without taking into consideration the circumstance that the State Committee of Real Estate Cadastre cannot act as supervisor of the local self-governance body.

Simultaneously, it derives from the systemic analysis of Article 41 of the RA Land Code and Article 5 of the RA Law on Control over Maintenance and Inspection of Lands, as well as from the contents of the Decision No. 1149 on Division of land state departmental competencies of the State Committee of Real Estate Cadastre and marzpets of the Republic of Armenia, that the State Committee of Real Estate Cadastre adjunct to the Government of the Republic of Armenia is authorized with the competence to supervise the maintenance and inspection of lands.

In the framework of the constitutional regulations and implementing the requirements of Article 108.1 of the RA Constitution, by the Chapters 7.1 and 7 of the RA Laws on the Local Self-governance and Self-governance of Yerevan city the State Committee of Real Estate Cadastre is not included in the list of the bodies performing legal control, which presumes necessity of relevant legislative regulation on clarification of the contents and borders of the terms "control" and "inspection" in the RA Law on Control over Maintenance and Inspection of Lands as well as in the system of local self-governance. State inspection, forms, mechanisms and procedure of their implementation over the activity over the local self-governance bodies, which cannot contravene the independence of the local self-governance and its bodies, shall be pivotal.

9. Within the framework of this Case the Constitutional Court finds it also necessary to consider the challenged provisions of the law in the scope of the systemically interrelated legal regulations prescribed in Sub point 8 of Part 1 of Article 30 of the RA Law on State Registration of Rights to the Property which served as grounds for declining the state registration of the rights to property, analyzing the respective provisions of other legal acts, particularly those prescribed in the RA Land Code and the RA Civil Code directed to the regulation of the given relations.

In particular, according to Sub point 8, Part 1, Article 30 of the RA Law on State Registration of Rights to the Property, the competent body, which conducts the state registration, shall decline the state registration of the right, if other grounds prescribed by the legislation of the Republic of Armenia are available. In particular, the Constitutional Court states that, for instance, arbitrary altering of the designated and functional purpose of the lands or failure in observance of the requirement of the state registration of rights deriving from deals and etc., may serve as such grounds.

In particular, it derives from the systemic analysis of the provision prescribed in Part 7 of Article 7 of the RA Land Code that not only the acts of the state government and local government bodies may serve as grounds for arbitrary changing the targeting and functional purpose of the lands in accordance with the laws and normative legal acts, but, as well as, by judicial order recognizing the deals regarding the plot of land as invalid and refusing the state registration of the rights regarding the land.

Based on the circumstance that within the laws of the Republic of Armenia various grounds for refusal of state registration of rights to property can be stipulated by different legal acts and taking into account the legal positions stipulated in this Decision, the Constitutional Court finds that, in Sub Point 8 of Part 1 of Article 30 of the Law, the phrase "shall refuse" cannot apply to those grounds for refusal of state registration of rights and restrictions towards property which lead to opportunity for the authorized state body performing of the state registration of the rights to property to check and assess the lawfulness of the individual legal acts implementing the right or restrictions to right, as well as lead to such necessity.

Based on the results of consideration of the Case and being goverled by Article 100(1), Article 102, Parts 1 and 4 of the Constitution of the Republic of Armenia, Articles 63, 64 and 71 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. The provision "individual legal act establishing the right or restriction imposed by the body or official, not authorized to adopt it," enshrined in Sub Point 5 of Part 1 of Article 30 of the RA Law on State Registration of Rights to Property", is in conformity with the

Constitution of the Republic of Armenia in the framework of the legal positions stipulated in the present Decision.

2. To declare the provision of Sub point 5 of Part 1 of Article 30 of the RA Law on State Registration of Rights to Property", "or an individual legal act, which sets the rules or restrictions, does not meet the requirements of the law or regulation which is the basis for its adoption" as far as it applies without recognizing the act as invalid in judicial or extrajuditial manner prescribed by law, contradicting the requirements of Articles 1, 5, 91 and 108.1 of the Constitution of the Republic of Armenia and void.

3. In accordance with Article 102(2) of RA Constitution this decision is final and enters into force from the moment of its announcement.

Chaiman **G. Harutyunyan**

4 February 2014
DCC-1137

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE ON CONFORMITY OF ARTICLE 23 OF THE RA LAW ON TAXES AND ARTICLE 1703 OF THE RA CODE ON ADMINISTRATIVE OFFENCES WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE RA HUMAN RIGHTS DEFENDER

Yerevan **18 February 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant: Head of Department of Legal Analysis of the Staff of the RA Human Right Defender A. Vardevanyan, specialist of the same department S. Terzikyan,

Respondent: official representative of the RA National Assembly, Adviser of Expertise Department of the Staff of the RA National Assembly, S. Tevanyan,

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 on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Article 23 of the RA Law on Taxes and Article 1703 of the RA Code on Administrative Offences with the Constitution of

the Republic of Armenia on the basis of the application of the RA Human Rights Defender.

The case was initiated on the basis of application of the RA Human Rights Defender submitted to the RA Constitutional Court on 07.10.2013.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the RA Law on Taxes and the RA Code on Administrative Offences, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Law on Taxes was adopted by the RA National Assembly on 14 April, 1997, signed by the RA President on 12 May, 1997 and came into force on 30 May 1997.

Article 23 of the above-mentioned Code prescribes, "In case of a delay in paying taxes in excess of the set terms, taxpayers (in cases designed by law – tax agents) shall pay fine equal to 0,15 percent of the amount of the tax not paid in time, for each overdue day.

Fines by the day shall be applied at the mentioned rates, unless a lower rate is set by the tax legislation.

The above-mentioned fine shall be applied to the amounts of tax not paid in time (including those not paid by the tax agent - in cases specified by the tax legislation), the amounts of advance payments of taxes, the amount of a tax (reduced) on the object of taxation revealed as a result of a check - for the whole period passed after the payment, but not to exceed 365 days."

The above-mentioned Article in the wording in force has been stipulated in accordance with the Laws ՀՕ-153 of 21.10.1997, ՀՕ-273 of 28.12.1998 and ՀՕ-129 of 26.12.2000.

Article 1703 of the RA Code on Administrative Offences titled "Not payment of the taxes in time" prescribes " Not payment of the taxes in the set terms leads to imposition of a fine in the amount of 10 to 20 minimum salaries."

The above-mentioned Article in the wording in force has been stipulated in accordance with the Laws of ՀՕ-79 of 11.05.1992, 02.09.1993, ՀՕ-133 of 23.06.1997, ՀՕ-499-Ն of 26.12.2002, ՀՕ-241-Ն of 24.10.2007, as well as ՀՕ-264-Ն of 22.12.2010.

2. The Applicant finds that the above mentioned provisions of Article 23 of the RA Law "On Taxes" and Article 1703 of the RA Code on Administrative Offences are not in conformity with the RA Constitution on the following rationale:

"In the domain of tax payment liabilities the legislator, as an act causing liability, considered non-payment of taxes by payers in a timely manner. Analysis of the challenged articles suggests that in both cases prescribed liability is of punitive character rather than preventive or remedial and does not substantially complement each other, but repeat. "

Referring to Article 22 of the RA Constitution, as well as international legal documents and practice of the European Court of Human Rights related to the legal principle of the prohibition of dual punishment in criminal proceedings or dual conviction, the Applicant concludes that the challenged norms provide the legal basis for "subjecting the individuals dual liability for one and the same act "that is" in practice there are many such cases, when the tax authorities, guided by the provisions of the Code and the Law, for the same deed simultaneously apply two separate penalties towards the persons.That is, as a result of regulations envisaged by the RA legislation and established practices, there is a real risk of violation of the right enshrined in Article 22 of the RA Constitution. "In addition, the Applicant also expresses the view that in such cases, in the Republic of Armenia, differentiation of subject wrongdoers is not prescribed legislatively. It is not specified in respect of which subject the tax liability is implemented and in respect of which subject the administrative liability is implemented. Absence of such a regulatory act may serve as a ground for various interpretations, as a result of which the persons may be subjected to double liability.That is, according to the Applicant, "for one offence administrative liability may be applied and for the other - tax liability, the dimensions of which are different, and as a result the principles of equality before the law and the rule of law are violated."

3. The Respondent finds that the presence of the challenged norm in the RA legislation does not refer to the constitutional principle of the prohibition of dual conviction for one and the same act, and is designed to ensure proportionate liability for economic entities attempting to gain illegal profit out of the funds payable to the budget. According to the

Respondent, the principle of non re-prosecution, in the formal aspect, cannot be considered completely applicable when determining measures and types of liability for any offence. Moreover, the principle of non-reconviction is more typical in the field of criminal responsibility and is based on the idea that the person shall not be subjected to physical hardships for the same offence, meanwhile, the challenged provisions, stipulating material responsibility for failure to fulfill the liabilities in the financial domain, pursue an aim to ensure the effectiveness and mission of the punishment, to exclude the situation "when the financial hardships caused to the offender as a result of the violation and incurring liability will be less than the illegal profit, which the offender may receive as a result of deviation from the performance of this duty." Thus, as the Respondent concludes, "taking into consideration the difference of priorities underlying the legal institutions of punishment and responsibility, the principle of prohibition of reconviction can be applied to a wider range of relationships."It is also concluded that "the principle of banning of non re-prosecution for the same offence, in the formal aspect, can not be considered completely applicable when determining measures and types of responsibility provided for any offence."

4. The RA Constitutional Court first considers it necessary to assess the constitutionality of the challenged norms:

- from the perspective of guaranteeing proportionate legal responsibility ensuring constitutionally prescribed provisions and their implementation for the rule of law and democratic state,
- from the perspective of defining their comparability with the constitutional and international principle of the prohibition of dual conviction for the same act.

Based on the issues and conclusions of the Applicant, the Constitutional Court considers it important to reveal the constitutional-legal content provided by the disputed norms of the legal regulations as a result of a comparative analysis of the norms interconnected in a systemic aspect with the norms of the RA Law "On Taxes" and RA Code on Administrative Offences, and norms enshrined in other legislative acts.

5. Pursuant to Part 2 of Article 8 of the RA Constitution, freedom of economic activity and free economic competition is guaranteed in the Republic of Armenia. It guarantees the persons (economic entities)

legally guaranteed freedom to use their capacities and property for economic activities not prohibited by law. At the same time, this principle of freedom is not absolute, and puts specific obligations both on the state and on economic entities. Thus, the main function of the state is to provide the necessary legal and economic conditions to ensure that freedom. It also derives directly from the content of the above mentioned constitutional and legal norms that if necessary in the Republic of Armenia more favorable conditions for the life of the entire economic system based on the principles of freedom of organization and activities of economic entities, with mostly possible clarified role of the state in this process in a free market economy shall be created. On the other hand, the business entities carry a liability to perform their activities in accordance with the manner and the framework prescribed by legislation including payment of the of taxes, duties and other mandatory payments in the size and the manner prescribed by the law.

This is a constitutional and legal obligation (Article 45 of the Constitution), which is conditioned by its vital importance and signification for the society and the state. The tax legislation of the Republic of Armenia, in particular the RA Law "On Taxes", the subject of which is also to establish liability for the violations of legal acts regulating tax relations is aimed to ensure proper performance of that duty. In particular, Articles 21 and 22 of the mentioned Law envisage that violation of the tax law (i.e. the wrong calculation of taxes, non-payment of taxes in time and failure to comply with other requirements of the tax law) implies liability for the tax payers and the officials of companies, institutions and organizations prescribed by the RA legislation.

Due to gravity of adverse effects caused for the society and the state for its and damage caused to the public relations the norms establishing the tax offences are prescribed not only in the tax laws, but also in the RA Code on Administrative Offences and the Criminal Code. In addition to administrative liability prescribed in the challenged norms of the RA Code on Administrative Offences, Articles 189, 205 and 328 of the Criminal Code prescribe liability for specific offences and appropriate penalties in case of evasion of taxes and duties. So, with the purpose to guarantee the fulfillment of the constitutional duties of persons in the payment of taxes and duties, the legislator prescribed specific types of legal liability (tax, administrative, criminal), the severity, the legal effects of implementation which are directly determined by the degree of

public danger of non-performance (improper performance) of a tax liability. In particular, if by the RA Law "On Taxes" or the RA Code on Administrative Offences, non-fulfillment (improper fulfillment) of tax obligations involves financial liability (correspondingly tax and administrative responsibility), the same action, by the subjective grounds, is criminally punishable in cases of intent or other aggravating circumstances.Consequently, by its essence and contents, evading tax liability is in non-conformity with not only the principles of the legal, democratic state, enshrined not only in Article 45 of the Constitution, but, above all, in Articles 1, 3 and other articles of the Constitution, therefore, the punishment for this offence prescribed by law pursues a legitimate goal.

6. Referring to the issue of assessment of the constitutional and legal content of the challenged provisions, the Constitutional Court considers it necessary, first, to consider the issue from the perspective of necessity of the choice of appropriate type of description of the normative act and legal liability. It is necessary to determine to what extent the presence of different legal characteristics of qualifying the deed which contains attributes of non-performance (improper performance) of the tax liability prescribed in the RA Law "On Taxes" and the RA Code on Administrative Offences is justified, as well as the fact, by legal-descriptive sense, to what extent they are identical from the aspect of combination with the constitutional and legal content of Part 7 of Article 22 of the RA Constitution.

As a result of the comparative analysis of both the challenged provisions of the aforementioned acts of legislation and norms, interrelated with them in the systemic aspect, the Constitutional Court states:

a/ in the issue of qualifications and legal assessment of the actions (if there are no signs of composition of a crime), containing signs of failure (improper completion) of the tax liability, the legislator, by merits, separated the kinds of administrative and fiscal liabilities, bearing in mind that:

- The RA Law "On Taxes", among others, prescribes liability for violation of the RA tax legislation and other rules regulating tax relations (Article 1 of the Law). Article 2 of the aforementioned Law, The tax relations in the Republic of Armenia shall be regulated by RA Law on Taxes, as well as by the decisions

of tax inspectorate and other bodies of the state governance, i.e. issues of regulation of all relations by the Law connected with the tax liability, are exclusively decided by the abovementioned normative acts;

- The RA Code on Administrative Offences (in accordance with Article 9 of the latter) regulates the relations connected with the involvement of the persons called to accountability "in the case of the wrongful, guilty (deliberate or careless) action or inaction, which infringes on the state and public order... property, rights and freedoms of citizens, established order of governance", for which the law prescribes administrative responsibility, and" if these violations by their nature do not entail criminal liability;"
- The purpose of the administrative responsibility is not to restore the violated rights, but "to nurture the person who committed an administrative offence in the spirit of observance of the laws... respect towards the rules of human cohabitation and to prevent committing offences by both the offender and other persons" (Article 22 of the Code);
- The purpose of tax liability is the compensation of damage caused to the state and public property; it is the legal responsibility of property (financial) nature, which is conditioned by the nature of property relations (tax relations) existing between the taxpayer and state. In addition, the person who did not perform (performed improperly) tax liability may voluntarily restore the damage subsequently caused by his actions (inaction) till ensuring its enforced (in a judicial manner) performance. This damage shall be fully refunded, regardless the circumstances, whether the taxpayer is subject to administrative or criminal liability or not (Articles 20, 26, 29 and 30 of the RA Law "On Taxes"), furthermore, bringing to liability does not relieve the taxpayer from fulfillment of the tax obligations prescribed by law (Article 28 of the RA Law "On Taxes");
- In the area of administrative liability, relations related to property damage, as a rule, are resolved in the order of civil procedure (Article 39 of the Code);
- In the area of administrative liability, such legal institutions are envisaged, as mitigating and aggravating circumstances, the

limitation period of imposition of administrative fines, extreme necessity, necessary self-defense and insanity (Articles 33, 34 and 38 of the Code);

b/ the legislator **separated also coercive measures (liability):** the penalty and fine, taking into consideration that:

- The administrative penalties are applicable in the case of an administrative offence (misdemeanor) (Articles 9 and 22 of the Code) and by its legal content are a set of administrative measures listed in Chapter 3 of the Code of the Republic of Armenia on Administrative Offences, meanwhile, "fine" is a concrete measure of administrative liability (Articles 23, 40.1, 40.2, 40.3, 40.4, 40.6, 40.7 and others of the Code), which is applicable in cases of particular administrative violations;
- In the sphere of fiscal responsibility, legal content of "fine" " and "penalty" is different, they are concrete and cohesive types of liability provided for the cases of infringement of certain tax obligations, they are included in the unified tax liability as a part of them, they are expressed in specific amounts to be paid to budget (Articles 13, 16, 16.1, 16.2, 17, 23, 24, 25, 25.1, 25.2, 26 and others of the RA Law "On Taxes");

c/ **the structure of the subjects of tax and administrative liability is differentiated,** taking into consideration that:

- Persons subject to administrative liability, are both physical persons and legal entities, meanwhile, some features of administrative liability are conditioned by administrative legal capacity of physical persons. Regarding legal entities, limited liability measures may be applied. **Besides, the comprehensive list of administrative liability measures applicable exclusively to legal entities, is not precise.**

Peculiarities of liability of physical persons and their separate groups are prescribed in Articles 12-16 of the RA Code on Administrative Offences (minors, officials, military personnel and others), thus, the means of administrative liability applicable towards a particular group of people is differentiated. In the sense of the challenged norm of the Code persons of the age of eighteen and public officials are subject to administrative responsibility,

- The scope of the persons subject to tax liability is prescribed in Articles 3, 5, 6, 6.1 of the RA Law "On Taxes". Moreover,

within the meaning of the challenged norm, both physical persons and legal entities, a tax agent (in the cases when acting as an individual entrepreneur or a notary), manager of an investment fund, the manager of joint ventures, the person entitled to a written form by the members of the joint venture are subject to tax liability.

Thus, by the RA Law "On Taxes", the participants of public - financial (tax) relations are separated from the subjects of administrative relations, which carry special constitutional and legal responsibilities towards the state and society, therefore, are liable not on general grounds, but in cases of committing offences of strictly specified character.

Based on the above, the Constitutional Court of the Republic of Armenia states that the legislator, guided by its discretionary powers, has separated fiscal and administrative liability, bearing in mind the special constitutional and legal importance and the need for regulation of tax relations, in the context of adherence to the constitutional order and rule of law. This separation itself pursues a specific legal purpose and does not raise the issue of constitutionality.

As for the comparative assessment of the features of the objective side of the actions ("non-payment of taxes in time" and "delay in the payment of tax in excess of the time") prescribed by the challenged legal regulations, then, in spite of the fact that,formally, they can be interpreted as homogeneous, however, these actions as well as the prescribed measures of liability, in accordance with the existing legal regulations legally differ both in goal and feature aspects. If Article 1703 of the Code on Administrative Offences prescribes liability for non-payment of taxes by the due date, due to the power of fact, considering it as the completed misconduct, in the narrative of the challenged provision of the RA Law "On taxes" the fact of the delay of payment of the tax is taken into account, which is of continuous nature, prescribing payment of the fine for each day of delay until the end of the full implementation of tax liability. An attempt is made to solve legislatively the following issues of legal regulation; first, to prevent such offences, to ensure compensation for material damage caused to the state budget as a result of delayed payment of taxes, as well as to oblige the wrongdoer to undertake measures to comply with the tax obligations.

7. Referring to the issue of comparability of the challenged norm with the constitutional norms and international legal principle of "not be convicted twice for the same act" (non bis in idem), the Constitutional Court considers it necessary, first:

a/ to disclose the legal content of the principle and the permissible scope of its applicability in the tax law and the law on administrative offences;

b/ to assess the comparability of the challenged norms and systemically interrelated other norms with the provisions of Part 7 of Article 22 of the RA Constitution.

The requirement (principle) of impermissibility of dual conviction that provided for in Part 7 of Article 22 of the Constitution, prescribed in a number of international agreements, including Paragraph 7 of Article 14 of the International Covenant on Civil and Political Rights, Article 4 of Protocol 7 to the European Convention on Human Rights. By its content (interpretation), this principle implies the obligation of the state to eliminate the person's re-sentence and conviction and criminal prosecution for the same action. According to its constitutional and legal content,the notion that no one can be tried twice for the same offense lies in the basis of this principle (in the sense of criminal law).This principle also excludes the qualification of the same offence by more than one article of the Code, also prohibits taking into account the same circumstance in the qualification of the crime, as well as choosing the type and size of the penalties (Articles 10, 63, 104 of RA Criminal Code). Thus, the fact of commitment of the crime in the past, if a person has already been convicted shall not serve as a ground for the criminal legal assessment of his/her subsequent behaviour, "unless," as the European Court of Human Rights decided, " where a case is reopened following the emergence of new evidence or the discovery of a fundamental defect in the previous proceedings" (Paragraph 45 of the Decision of 20 July 2004 on the CASE OF NIKITIN v. RUSSIA (Application no. 50178/99).

Comparative analysis of the legal content of the above-mentioned principle and the challenged norms and the Applicant's questions state that, nevertheless, the relevant regulations of the Code on Administrative Offences in the field of tax liabilities do not conclusively (at least theoretically) exclude the possibility of dual conviction for the same ac-

tion in the sphere of fiscal obligations (fiscal and administrative), (especially by the example of the subject who acts as a private entrepreneur), despite the fact that the Applicant has not submitted any fact of dual responsibility according to the criteria laid down in the above mentioned legal acts and judicial practice, and has substantiated his arguments in the framework of the possible "risks". The argument presented in the application, according to which, the issue of separation of the subjects due to responsibility is **"not clarified both in the RA Law "On Taxes" and the RA Code on Administrative Offences**, deriving from the notions that the entire legal concept of the Code does not meet the general logic of the social, economic and legislative developments of the Republic of Armenia, which also stated by the Decision DCC-1059 of the Constitutional Court of the Republic of Armenia. It should be taken into consideration that, although, by the subject of legal regulation, the domains of fiscal and administrative liability are not objectively differentiated by the law (both in the sense of methods of goal and legal regulations), from the perspective of prevention of fiscal violations (establishment of budget order) and legal consequences of the remedies of applied liability are tightly correlated.

The Constitutional Court finds that in the tax and administrative legal relationship, competent entities, based on the content and features of the relationship, necessarily (objectively) may act in several legal statuses, at the same time acting as subjects of tax and administrative legal relationships, and in respect of which, application of simultaneous measures of tax and administrative liability may be interpreted as a dual liability for one and the same act. In particular, if an individual entrepreneur delegated his/her obligation to calculate the taxes deriving from his/her activity by the order prescribed by law to another liable person, then that entrepreneur may carry administrative liability only as a subject to rights equaled to legal entity, meanwhile, other legal regulation is prescribed for the cases when an individual entrepreneur simultaneously undertakes responsibility to calculate the taxes due to his/her activity and to pay the taxes. According to Article 1703 of the RA Code on Administrative Offences, person subject to liability can only be the individual entrepreneur, who, in accordance with the law, in person carries the responsibility for the calculation and payment of taxes, otherwise, when this duty provided to another person, shall be liable on the basis of Article 23 of the RA Law "On Taxes".

At the same time, the Constitutional Court finds that, although the challenged norms do not directly cause the issue of constitutionality, however, the Applicant's position is justified according to which in the challenged legal acts while prescribing remedies of liability, the legislator **should provide more precise legal regulation for any subject of law subject to fiscal and administrative liability to eliminate the possibility of dual liability conditioned by his/her legal status.**

In the framework of these legal regulations also such an approach should be in the basis of the law enforcement practice.

Based on the results of consideration of the Case and being governed by Point 1 of Article 100 and Point 8, Part 1 of Article 101 and Article 102 of the Constitution of the Republic of Armenia, Points 1 and 2 of Article 32, Point 1 o Article 60 and Articles 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. Article 23 of the RA Law on Taxes is in conformity with the Constitution of the Republic of Armenia.

2. Article 1703 of the RA Code on Administrative Offences is in conformity with the Constitution of the Republic of Armenia in the framework of the legal positions expressed in this Decision.

3. 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 February 2014
DCC-1139

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE OF CONSTITUTIONALITY OF ARTICLES 5, 7, 8, 37, 38, 45, 49 AND 86 OF THE LAW OF THE REPUBLIC OF ARMENIA ON FUNDED PENSIONS ON THE BASIS OF THE APPLICATION OF THE DEPUTIES OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA

Yerevan **2 April 2014**

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 (Rapporteur), H. Nazaryan, A. Petrosyan, V. Poghosyan,

with the participation of the representatives of the Applicant, the representatives of the Deputies of the National Assembly of the Republic of Armenia: A. Minasyan, Deputy of the National Assembly of the Republic of Armenia, A. Zeynalyan, lawyer, and M. Khachatryan, advocate,

representatives of the Respondent: H. Hakobyan, official representative of the National Assembly of the Republic of Armenia, Chair of Standing Committee on Social Affairs, S. Tevanyan, Advisor to the Department of Expertise of the Staff of the National Assembly,

official representatives of the Government of the Republic of Armenia invited to the examination of the case: A. Asatryan, Minister of Labour and Social Issues of the Republic of Armenia, K. Tamazyan, Head of the Staff of the Ministry of Finance of the Republic of Armenia,

K. Hakobyan, Deputy Head of the Staff of the Ministry of Justice of the Republic of Armenia,

official representatives of the Central Bank of the Republic of Armenia invited to the case examination: N. Yeritsyan, Deputy Chair of the Central Bank of the Republic of Armenia, M. Abrahamyan, Head of the Department of Financial Regulation of the Central Bank of the Republic of Armenia, V. Shahnazaryan, Specialist of the Division of Regulation of Stocks of Financial system regulation Department of the Central Bank of the Republic of Armenia,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 3 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by an oral procedure the Case on Constitutionality of Articles 5, 7, 8, 37, 38, 45, 49 And 86 of the Law of the Republic of Armenia on Funded Pensions on the Basis of the Application of the Deputies of the National Assembly 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 36 deputies of the National Assembly of the Republic of Armenia on December 16, 2013.

Having examined the combined report of the Rapporteurs on the Case, the explanations of the Applicants and the Respondents, clarifications of the official representatives of the Government of the Republic of Armenia and the Central Bank of the Republic of Armenia, as well as having studied the Law of the Republic of Armenia on Funded Pensions, other laws and normative legal acts systematically related to the latter, international practice of pension reforms, and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Law of the Republic of Armenia on Funded Pensions was adopted by the National Assembly of the Republic of Armenia on December 22, 2010, signed by the President of the Republic of Armenia on December 30, 2010 and came into force on 9 January, 2011 in accordance with Article 86, Part 1 of the Law.

In accordance with Article 86, Part 2 of the Law, the provisions herein concerning the obligation on making mandatory funded contributions entered into force on January 1, 2014.

Article 5 of the Law on Funded Pensions, titled "Mandatory participants of mandatory funded component" **prescribes**:

"1. The following persons born on and after 1 January 1974 shall mandatorily participate in mandatory funded component:

a/ Hired employees;

b/ Notaries;

c/ Individual entrepreneurs.

Meanwhile, the persons mentioned in this Part shall be obligated to make funded contributions also from contractual income by the rate prescribed by this law.

2. Part 1 of this Article shall be applicable also with respect to foreign citizens and stateless persons, who were born on January 1, 1974 and after, and gain basic income in the manner prescribed by the legislation of the Republic of Armenia or, in accordance with Article 7, Part 1, Point 3, Paragraph 1 of this Law, carry out any activity taxed by the fixed payments as prescribed by the Law of the Republic of Armenia on Fixed Payments or included in the list of Appendix 7 of the Law of the Republic of Armenia on Patent Payments or by the turnover tax of the Law of the Republic of Armenia on Turnover Tax.

Article 5 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012 and the RA Law ՀՕ-67-Ն adopted on 10.06.2013.

Article 7 of the Law titled "Rates of the Mandatory Funded Contributions" **prescribes**:

"1. Funded contributions for persons provided in Article 5, Part 1 of this Law, except for the persons mentioned in Paragraph 1 of Point 3 of Part 1 of this Article, shall be paid at the rate of 10% from the basic income as follows:

1) a hired employee, a foreign national and a stateless person participating in the scheme, who is in receipt of basic income in the manner prescribed by the legislation of the Republic of Armenia and whose monthly income does not exceed AMD 500.000, shall make a monthly funded contribution in his/her pension account in the amount of 5% of the basic income, while the remaining 5% shall be paid for (in favor of) the participant from the state budget to secure 10% of the required contributions;

2) a hired employee, a foreign national and a stateless person participating in the scheme who is in receipt of basic income in the manner as envisaged by the legislation of the Republic of Armenia and whose monthly income exceeds AMD 500.000, shall receive AMD 25.000 on monthly basis in his/her pension account from the state budget, while the remaining contributions shall be paid by such persons each month to secure 10% of the required contributions;

3) an individual entrepreneur or a notary, who participates in the scheme and who carries out any activity taxed by the fixed payments as prescribed by the Law of the Republic of Armenia On Fixed Payments, or included in the list of Appendix 7 of the Law of the Republic of Armenia On Patent Payments, or by the turnover tax of the Law of the Republic of Armenia On Turnover Tax, shall be obligated to make a monthly funded contribution in the amount of AMD 5.000, which is considered as final obligation in respect of calculated funded contribution received from the incomes from the types of activity taxed by the circulated tax in accordance with the Law of the Republic of Armenia On Fixed Payments, or included in the list of Appendix 7 of the Law of the Republic of Armenia On Patent Payments, or by the turnover tax of the Law of the Republic of Armenia On Turnover Tax, and AMD 5.000 shall be paid for (in favor of) the participant from the state budget on monthly basis.

An individual entrepreneur or a notary, not included in Paragraph 1 of this Point who participates in the scheme and whose basic annual income does not exceed AMD 6.000.000, shall be obligated to make monthly funded contributions in his/her individual pension account in the amount of 5% of the basic income, while the remaining 5% shall be paid for (in favor of) the participant from the state budget to secure 10% of the required contributions;

4) in case if an individual entrepreneur or a notary participates in the scheme and whose basic annual income exceeds AMD 6.000.000, annually AMD 300.000 shall be paid for (in favor of) the participant from the state budget to the pension account, while the remaining annual contributions shall be annually made by such a person to secure 10% of required contributions.

2. Funded contribution from contractual income and income from self-employed activities shall be made by participants, as referred to in Article 5 of this Law, at the rate of 5%, without additional contribution from the state budget. Moreover, the participant shall voluntarily make funded contribution from the gained incomes as a self-employed person.

3. According to Article 6 of this Law, the participant who voluntarily joined the mandatory funded component shall make funded contributions at the rate of 5% of basic income and contractual income, and, as a self-employed person − 5% of income. No additional contributions shall be made for (in favor of) him/her from the state budget. Meanwhile, as a self-employed person the participant shall voluntarily make funded contribution from the income.

3.1. An individual entrepreneur or a notary, who carries out any activity taxed by the fixed payments as prescribed by the Law of the Republic of Armenia On Fixed Payments, or included in the list of Appendix 7 of the Law of the Republic of Armenia On Patent Payments, or by the turnover tax of the Law of the Republic of Armenia On Turnover Tax, and who voluntarily joined the mandatory funded component according to Article 6 of this Law, shall make a monthly funded contribution at the rate of AMD 5.000, which is considered as final obligation in respect of calculated funded contribution received from the incomes from the types of activity taxed by the circulated tax in accordance with the Law of the Republic of Armenia On Fixed Payments, or included in the list of Appendix 7 of the Law of the Republic of Armenia On Patent Payments, or by the turnover tax of the Law of the Republic of Armenia On Turnover Tax.

4. If persons born after 1974 who gain contractual income as well as self-employed persons who voluntarily joined the mandatory funded component, become hired employees, notaries, or individual entrepreneurs, they shall pay funded contribution as provided by Part 1 and 2 of this Article. If a hired employee, notary or individual entrepreneur as a participant of mandatory funded component becomes a self-employed person or a person who gains contractual income, he/she shall pay funded contribution as provided by Part 2 of this Article.

5. In the event the participant is in receipt of basic income simultaneously from several sources, as prescribed by this Law, the obligation for making funded contributions and the rate of the funded

contributions shall be applied in each certain case by the procedure defined by this Law. Moreover, the overall contributions made from the state budget for (in favor of) the participants as prescribed in Article 5 of this Law, who are in receipt of income simultaneously from several sources, may not exceed the rates in regard to contributions made from the State, as prescribed in Part 1 of this Article. A participant in receipt of income simultaneously from several sources shall be obligated to make additional funded contribution before May 31 of the year following the calendar year at the rate of the difference of 10 percent of his/her annual basic income, as well as at the rate of the difference of funded contributions already withheld by fiscal agents and at the rate of the respective contributions made by the State.

The participant mentioned in this Part may pay the amount of additional funded contribution each month at the rate of the difference of 10 percent of his/her monthly basic income and at the rate of the difference of funded contributions already withheld by fiscal agents, as well as at the rate of the respective contributions made by the State.

6. Once the retirement age is reached, the participant shall carry on making funded contributions until he/she submits an application as provided by Part 7 of this Article.

7. The participant having reached retirement age shall cease paying funded contribution in case:

1) he/she submits an application to the Tax Authority on ceasing of payment of funded contribution; or
2) he/she submits an application to the Registrar of participants on receiving funded pension.

8. Application (and the form thereof) to the Tax Authority on ceasing of payment of funded contribution by the participant having reached retirement age, shall be defined by the Government of the Republic of Armenia. The hired employee and the person who gains contractual income shall submit the application to the Tax Authority through the employer.

9. The Registrar of participants shall notify the Tax Authority about the submission of an application by the participant on receiving funded pension, and the Tax Authority shall notify to the employer by the procedure defined by the Government of the Republic of Armenia.

10. The participant having reached retirement age shall cease making funded contributions:

1) on the 1st of the month following the submission of an application (to cease contributions from salary, other contributions equated to the salary and income) to the employer for submitting it to the Tax Authority, or submission of the application to the Registrar of participants;
2) on January 1 of the year following the submission of an application (to cease contributions from entrepreneurial and notarial activity, as well as from income from self-employed activities) to the employer for submitting it to the Tax Authority, or submission of the application to the Register of Participants.

11. Once the retirement age of the participant is reached, the rate of funded contribution shall be 5% of the basic income, and no funded contributions shall be made for (in favor of) the participant from the state budget."

Article 7 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012, the RA Law ՀՕ-67-Ն adopted on 10.06.2013 and the RA Law ՀՕ-132-Ն adopted on 12.12.2013.

Article 8 of the Law titled "Mandatory Funded Contributions" **prescribes:**

"1. Acting as fiscal agents, employers shall bear the obligation to calculate and transfer funded contributions for (in favor of) hired employees and persons who gain contractual income.

2. Employers shall electronically register hired employees and persons who gain contractual income (with whom employers are in labor or civil legal relations) at the Tax Authority within the period and in the manner specified in the law; and according to the rate stipulated by this Law, acting as fiscal agents, employers shall also calculate and transfer funded contributions of hired employees and persons who gain contractual income within the period set for calculation and transfer of income tax as provided by the Law of the Republic of Armenia On Income Tax.

Non-resident organizations in the Republic of Armenia acting as fiscal agents according to the procedure envisaged in the Law of the Republic of Armenia On Income Tax, shall calculate and transfer funded contributions of hired employees and persons who gain contractual income for the employer within the period stipulated by this Point and within the rate prescribed by this Law. In this case, fiscal agent shall submit an annual personalized electronic report on mandatory funded contri-

bution to the Tax Authority within the period set forth by the Law of the Republic of Armenia On Income Tax.

3. Employers shall submit a personalized electronic report to the Tax Authority within the period set forth by the Law of the Republic of Armenia On Income Tax.

4. Notaries, individual entrepreneurs and self-employed persons, as well as hired employees and persons who gain contractual income, as participants of mandatory funded contribution component, shall be responsible for annually calculating and transferring funded contributions from the income on their own and within the period defined by the Law of the Republic of Armenia On Income Tax.

In case the employer is exempt from a fiscal agent's responsibility, the participant of mandatory funded contribution component and the hired employee shall calculate and transfer funded contributions on their own and within the period envisaged for the employer.

5. Notaries, individual entrepreneurs and self-employed persons shall submit a personalized electronic report to the Tax Authority within the period set forth by the Law of the Republic of Armenia On Income Tax.

Hired employees and persons who gain contractual income, as stipulated by Part 4, Paragraph 2 of this Article, shall monthly submit a personalized electronic report (simplified) to the Tax Authority for the employer.

6. Relations concerning the registration of hired employees and persons who gain contractual income, as well as submission of personalized reports of the latter to the Tax Authority shall be regulated by the Law of the Republic of Armenia On Income Tax and Personalized Funded Contribution Record.

7. Employers, as well as hired employees and persons who gain contractual income as stipulated by Part 4, Paragraph 2 of this Article, may exceptionally electronically submit corrected calculations to the Tax Authority in case errors are detected in calculations of mandatory funded contribution submitted for previous accounting periods, and based on it, recalculation of mandatory funded contributions for the mentioned periods shall be made.

8. Notaries, individual entrepreneurs and self-employed persons shall have the right to make corrections to the data in calculations after submission of annual report on mandatory funded contribution for the accounting period.

9. No corrections to calculations of mandatory funded contributions shall be made in regard to the periods in the process or after inspection of persons making mandatory funded contributions (employers) carried out by the Tax Authority.

Article 8 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012.

Article 37 of the Law titled "Obligation of participants to select mandatory pension fund" **prescribes:**

"1. Participants of mandatory funded contribution component are obliged to select any pension fund. Meanwhile, in each case participant may select only one fund. Funded contribution(s) made for (in favor of) the participant shall not be simultaneously directed to more than one pension fund.

2. Complete and updated information on pension fund managers and their pension funds must be available for the Registrar of participants (including the website) and the account operator."

Article 37 of the Law was not amended since adoption.

Article 38 of the Law titled "Selection of pension fund" **prescribes:**

"1. Participant must submit an application to the Registrar of participants for selection of pension fund by the means stipulated by Article 12, Part 5, Paragraph 2 of this Law or via the account operator. Form of application and order of submission are defined by the regulation of the Central Bank.

2. Application stipulated by Part 1 of this Article must comprise the following information:

1) participant's name and surname, serial number of passport and date of birth;
2) Public Service Number or number of the statement on non-possession of Public Service Number;
3) contact information of participant /telephone number, electronic mail address (if available), place of residence, etc./;
4) preferred means of receipt of information (statement of pension account, letter, electronic message, etc.) from Registrar of participants;
5) name of selected pension fund manager and pension fund;
6) confirmation of consent on pension fund manager's management fees and rules of fund;
7) statement of being aware of the obligation on making funded contributions;

8) date of submission of application (year/month/day);

9) signature of participant (authorized representative of participant) except for the cases when the application is filed electronically, which ensures identification of the person.

3. Participants shall inform the Registrar of participants, in a manner stipulated by the Registrar of participants, about changes in personal data provided in the application stipulated by Part 1 of this Article."

Article 38 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012.

Article 45 of the Law titled "Contributions made in the account of participant of mandatory pension fund and fees levied from mandatory pension fund assets, and expenses" **prescribes:**

"1. For management of pension fund, pension fund manager shall levy fee (manager's bonus) from mandatory pension fund assets in the amount stipulated by Article 47 of this Law.

In addition to the bonus stipulated by Paragraph 1 of this Part, for management of the given pension fund, pension fund manager may also cover expenses from pension fund assets, composition and maximum level of which shall be defined by the Central Bank by arranging it with the state authorized body of financial sector of the Government of the Republic of Armenia.

Deductions from assets of mandatory pension funds other than fees and expenses provided by this Law shall be prohibited.

2. Except for the cases provided by Part 3 of this Article, pension fund rules may stipulate fee for redemption of mandatory pension fund shares, which shall not exceed 1% of book value of redeemable shares.

3. Fee for redemption of mandatory pension fund shares shall not be levied in case of receipt of cumulated means upon retirement as an annuity, programmed payment or lump-sum payment, as well as in the following cases:

1) when the participant exchanges his/her pension fund shares with other pension fund shares of the same manager;

2) when exchanging pension fund shares as provided by the grounds stipulated by Article 32, Part 7 of this Law;

3) when the participant for the first time in the course of 12 months exchanges the given pension fund shares with other pension fund shares, except for the cases of exchanging the shares of the fund where the shares (a part thereof) have been purchased as a re-

sult of exchange of shares in the course of the last 12 months. Meanwhile, according to the given Point:

a) exchange for the first time also means the exchange of pension fund shares with the shares of more than one pension funds in the course of 12 months, provided that the application (applications) for the exchange of shares has/have been submitted to the Registrar of participants within the same day,

b) calculation of exchange of pension fund shares does not include the transactions of exchange of the pension fund shares managed by the same pension fund manager;

4) according to this Law, when exchanging pension fund shares for the first time selected by the participant (for the participant) for the first time after opening pension account for the person by the procedure stipulated by Article 38 or 39 of this Law;

5) when the heir arranges the first exchange deal of inherited shares in accordance with Chapter 12 of this Law;

6) when acquiring shares of other mandatory pension fund at the expense of the participant's assets in the event of termination of the pension fund."

Article 45 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012.

Article 49 of the Law titled "Guarantying of recurrence of mandatory funded contributions made by participants" **prescribes:**

"1. As provided by Article 5 of this Law, recurrence of the total amount of mandatory funded contributions due to annual inflation made by participants shall be guaranteed. The procedure for adjustment of the amount of funded contributions due to annual inflation stipulated by this Part shall be stipulated by the Government of the Republic of Armenia.

2. Guarantee Fund established on the basis of this Law shall secure recurrence of 20 percent of the amount stipulated by Article 1 of this Law, and the remaining 80 percent shall be recovered by the Republic of Armenia."

Article 49 of the Law was amended pursuant to the RA Law ՀՕ-207-Ն adopted on 12.11.2012.

Article 86 of the Law titled "Final provisions" **prescribes:**

"1. This Law enters into force on the tenth day following its official publication, except for the obligation on making mandatory funded contributions stipulated by this Law.

2. Provisions relating to the obligation on making mandatory funded contributions enter into force on January 1, 2014.

3. Participants of mandatory funded component must select pension fund and pension fund manager by the procedure stipulated by this Law until January 1, 2014 otherwise selection is made by the procedure stipulated by Article 10, Part 1 and 2, and Article 39 of this Law.

Article 86 of the Law was not amended since adoption.

2. Challenging the constitutionality of Articles 5, 7, 8, 37, 38, 45, 49 and 86 of the Law of the Republic of Armenia on Funded Pensions, the Applicant finds that the latter contradict Articles 1, 3, 6, 8, 14, 14.1, 31, 34, 36, 37, 42, 45, 48 and 117 of the Constitution of the Republic of Armenia.

Grounding his position and referring to the position expressed in the Decision DCC-649 of the Constitutional Court of the Republic of Armenia, according to which the salary is the citizen's property, as well as insisting that based on the commentary to Article 31 of the Constitution of the Republic of Armenia, mandatory funded contribution has no relation to the prevailing public interest, and that no restriction shall be legitimate except for the grounds stipulated by the Constitution, the Applicant states: "Defining mandatory funded contribution at the rate of 5-10 percent from non-taxed salary of the person, the constitutionally protected right to property of the person is violated by Article 7 of the Law and Article 45 of the Law correlated with the latter."

Examining Article 8 of the Law from the aspect of Article 45 of the RA Constitution and referring to the position expressed in the Decision DCC-753 of the Constitutional Court of the Republic of Armenia, according to which mandatory contributions possess public legal nature and intended to be paid into state or community budget, the Applicant finds that "Defining, levying and transferring mandatory funded contribution to private pension funds as provided by the Law contradict the requirements of Article 45 of the Constitution." Simultaneously, the Applicant expresses his concern that "... in case the mentioned demand is beyond the regulations of the given Article of the Constitutions, it is not clear which norm of the Constitution obligates to make funded contribution."

As regards to the constitutionality of the norms of the Law defining the scope of those who make mandatory funded contributions, the Ap-

plicant finds that those norms contradict Articles 3, 14.1 and 42 of the Constitution of the Republic of Armenia. To substantiate this position the Applicant notes the following: "... linking the application of binding norm to the age and property status, the person is often obligated to take actions inconsistent with his/her consent. We believe that the establishment of such a norm is also a manifestation of disrespectful and improper interference in current labor relations, which is prohibited by Article 42 of the Constitution, according to which the laws and other legal acts exacerbating the legal status of an individual shall not be retroactive."

As regards to the constitutionality of the norms of the Law defining the mandatory funded component, referring to the Law of the Republic of Armenia on Subsistence Minimum Basket and Subsistence Minimum Budget and the Law of the Republic of Armenia on Minimum Monthly Wage, the Applicant finds that those norms contradict the idea of social state stipulated by Article 1 of the Constitution of the Republic of Armenia, as well as Articles 34, 37, 48 and 117, since Article 48 of the Constitution stipulates that "... proper implementation of the state's obligation in the social sector assumes not only making explicit actions to improve the living conditions, but also the requirement to refrain from actions that worsen the living standards of citizens. Meanwhile, levying mandatory contribution at the rate of 5-10 percent from non-taxed salary is not only disproportionate, as it shall be 6.61-13 percent from taxable income, but also discriminatory, and essentially reducing the person's income, it actually restricts the constitutional right of a person to improve personal living conditions. ...Besides, in the case of those who receive minimum wage, levying mandatory funded contributions will also lead to gaining less income by the person as prescribed by the Law of the Republic of Armenia on Minimum Monthly Wage, since, in accordance with Article 4 of the Law, mandatory funded contribution plays no role in defining the minimum wage.

Meanwhile, according to the requirement of Part 3 of Article 117 of the Constitution, after the amendments to the Constitution come into force ... the social rights provided in the Constitution shall be valid to the extent specified by appropriate laws."

The Applicant also finds that in the mandatory funded component stipulated by the Law mandatory transition occurs from distributive

pension system or the system of consent of the generations to an individual or "self-financing" funded system, which, according to the Applicant, contradicts Article 36 of the Constitution of the Republic of Armenia, since the latter, based on the preamble of the Constitution, "... shall protect the idea of civic harmony of generations in each family and society, which is applied as a distribution system developed on the basis of the principle of harmony of generations in the field of pensions as a system of social protection of disabled persons."

Furthermore, noting that the conditions stipulated by the Decision No. 1487-Ն of November 13, 2008 of the Government of the Republic of Armenia were annulled by the Decision No. 1491-Ն of November 11, 2011 of the Government of the Republic of Armenia, the Applicant finds that "... without providing current pensioners decent pensions, mandatory funded component in its enactment does not also guarantee the possibility for future generations to receive decent pension."

The Applicant also finds that Article 49 of the Law, which guarantees that the Republic of Armenia shall secure recurrence of 80 percent of the total amount of mandatory funded contributions, contradicts Article 11 of the RA Law on the Budgetary System, which stipulates that the total amount of the guaranteed obligations for the current budget year may not exceed 10 percent of the revenues of the state budget for the previous budget year. Moreover, the Applicant expresses his concern that even the simplest calculations show that the accumulating resources will several times exceed the limit provided by the Law.

Touching upon the introduction of mandatory funded component from the viewpoint of the issues of socio-economic, moral and spiritual, informational and infrastructural compliance, and stating the fact that a number of activities stipulated by the program approved by the Decision No. 1487-Ն of November 13, 2008 of the Government of the Republic of Armenia were not taken in a timely manner, the Applicant tried to prove that by virtue of Part 3 of Article 86 of the Law, the obligation of selecting a pension fund and a fund manager up to January 1, 2014 were not fulfilled, meanwhile, according to the Applicant, in accordance with Part 3 of Article 45 of the RA Law on Legal Acts, "normative legal acts shall not use norms which implementation is impossible or for noncompliance of which no legal consequences are provided."

3. Objecting to the arguments of the Applicant, the Respondent finds that the norms in dispute do not contradict the Constitution of the Republic of Armenia.

Touching upon the importance and necessity of pension reforms, submitting the main conclusions of research and discussions on different approaches and options, the Respondent emphasizes that the main task is to obligate persons by the force of law to save up to support themselves additional income in retirement.

The Respondent notes that the principle of mutual responsibility of the state and the individual is also stipulated by the RA Constitution, and by the analysis of certain provisions of which it becomes clear that stipulating the principle of mutual responsibility of the state and the individual is not an end in itself and is aimed at ensuring full-fledged and timely solution of assigned social problems of the state. In other words, in the given relations the State not only performs obligations, but also it is endowed with certain rights in so far as necessary to the aim pursued, as well as to ensure decent living standards of older people. The Respondent finds that first of all it is necessary to examine the RA Law on Funded Pensions namely from this point of view.

In contrary to the arguments of the Applicant, the Respondent also specifically produces the legal positions of the RA Constitutional Court expressed in the Decision DCC-1073 of January 30, 2013 from the viewpoint of legal regulations of the law in dispute, and concludes that:

- exercise of the right to property of the person is guaranteed, but it is not an absolute right;
- restriction of the right to property is permissible if stipulated by the law, pursues constitutionally reasonable aim, i.e. it is aimed to ensure reasonable balance between the rights of owners and other individuals and public interests, and it does not anyhow go beyond international commitments assumed by the Republic of Armenia.

The Respondent emphasizes that by making mandatory funded contributions, the person still retains the right to property ownership over those resources, and the state shall guarantee recurrence of mandatory funded contributions due to annual inflation made by the person.

Referring to Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as several Judgments of the European Court of Human Rights, the

Respondent concludes that "... restriction of the right to property must be considered in the context of the following issues:

1. how (at what extent) the given restriction pursues legitimate aim (also necessary for fulfillment of the obligations of the state as provided by the RA Constitution);

2. at what extent the size of the given restrictions is equivalent to the aims pursued."

Based on the above mentioned, the Respondent concludes that it is more than obvious that pension reforms are based on public interest, and the restriction of the property (a part of salary) of the person stipulated by the law is necessary to ensure decent living standards of older people.

As for the proportionality (or the rate of funded contribution) of the restrictions stipulated by the RA Law on Funded Pensions, the Respondent notes that the expression "... decent living standards of older people" or in other words "effective pension" is not abstract in the sense of its extent." According to the Respondent, invasion factor, i.e. the ratio of labor incomes /salary/ and the extent of pension of the person are the main criteria for evaluating the effectiveness of the pension system.

Touching upon the Applicant's approach in the aspect of age discrimination, the Respondent refers to Article 14.1 of the RA Constitution and finds that "In this case prescribing by the Law that only the persons born on and after January 1, 1974 shall participate in mandatory funded component, the legislator took as a basis the actual possibility of the state to ensure pensions. Taking into account the given circumstance, objective criterion of separation by age was stipulated by the Law, based on the real possibility." Simultaneously, it is noted that "... the power to define the capacity and forms of social security as a key element of social state is at the discretion of the legislator according to the Constitution."

The Respondent also considers legitimate the functions provided to the Government of the Republic of Armenia by the Law of the Republic of Armenia on Funded Pensions, and finds that the latter "... cannot be considered as restrictions of the rights and freedoms of individuals and legal entities, or determination of responsibilities for the latter by force of the normative legal act adopted by the RA Government." According to the Respondent, the mentioned responsibilities are in fact

stipulated by the RA Law on Funded Pensions, and the RA Government is entitled to stipulate procedures to achieve the objectives set forth by the Law.

The Respondent finds that the RA Law on Funded Pensions also entitled the RA Central Bank to regulate similar procedural issues, i.e. the form of registration of the rules of pension funds, the form of reports submitted by pension fund managers for the participants (in the case of voluntary pension funds), as well as the form of published reports, the form of stipulating the procedure for its submission and the form of stipulating the procedure for the activities of account operators etc.

Touching upon the arguments of the Applicant on Subsistence Minimum Budget, the Respondent finds that "... the minimum wage in the Republic of Armenia is higher than the minimum consumer basket, hence funded contributions made from minimum wage cannot exert an impact on the requirement of stipulating minimum salary equivalent to the minimum consumer basket guaranteed by the Constitution."

The Respondent considers mandatory funded pension component in the framework of constitutional legal criteria of restriction of the right to property, compares the latter and draws a parallel with the institution of securing the action as provided by the RA Civil Procedure Code, as well as with the institution of arrest on the property as provided by the legislation.

4. Based on the necessity of ensuring the supremacy and direct effect of the Constitution of the Republic of Armenia, the Constitutional Court of the Republic of Armenia, within the framework of its constitutional powers, stresses the importance of revealing the constitutional legal content of the norm in dispute of this Case, taking into account:

a/ the necessity of effective implementation of the functions of the state on the basis of the fundamental values and principles of the Constitution;

b/ the constitutional provisions concerning the right to property and its protection, as well as the legal positions expressed in the decisions of the Constitutional Court of the Republic of Armenia concerning the latter;

c/ the constitutional approaches in regard to guaranteeing, ensuring and protecting the right to social security;

d/ the constitutional legal requirements to the legal acts and the

scopes of legal regulation prescribed by the latter, as well as to the margin of appreciation of the authorities;

e/ the requirements of consistent implementation of the principles of legal certainty and proportionality, based on the necessity of ensuring the rule of law.

5. The Constitutional Court of the Republic of Armenia states that in international aspect especially in the last twenty years the implementation of major reforms in the domains of social protection and especially social security became a very topical issue. The latter is conditioned by many objective factors and amongst others, in particular, the circumstances of ageing population, reduction in the number of working population, qualitative change in reproductive performance of the population and the total demographic picture. For example, when in 1889, in Germany Otto von Bismarck for the first time introduced the institution of state pensions for those who reached the age of 70, the average life expectancy in the country was 45 years. Today, in many countries it exceeded the level of 80 years. The circumstance that in recent decades traditional social relations gradually acquire new quality is also considered to be an important factor.

Taking into account also the large gap between the levels of social security and the tendency of deepening of the latter, as well as the rise in unemployment, significant decrease in the number of actual working population, who reached retirement age, many countries raised the issue of qualitative reform of the social security system of the most vulnerable segments of society. In particular, the European countries also introduced the funded system in the field of pension reforms together with the previously existing distributive system, without which it was impossible to foresee any positive result in the given domain.

The study of experience of more than fifty countries shows that due to the introduction of funded pension system life support of the person in the retirement age becomes more guaranteed and stable, as it is not directly depended on demographic, socio-economic and other situational changes. Moreover, the mentioned stability is incommensurably more than distributive pension system. In addition, most positive results regarding the issue of social security of the population were recorded in those countries where the state-distributive, mandatory funded and voluntary funded pension systems were most correctly compared.

Along with emphasizing the introduction of funded pension system, even the Member States of the European Union chose different ways regarding its forms and the choice of methods of its introduction (enactment).

Comparative analysis of international practice states that:

a/ there is almost no country where no reforms have not been taken over the past decades in the domains of social security, insurance and assistance of the population have not been undertaken;

b/ the experience of different countries shows that migration processes, fertility decline of the population, rising life expectancy, aging tendencies, rate of unemployment, high level of poverty and many other factors may lead to an even more difficult situation in the near future concerning the issue of guaranteeing a stable living wage for the most vulnerable segments of the population;

c/ countries more socially advantaged than Armenia, a long time before took reforms in this domain and gained some experience, that can be useful for us. Simultaneously, every experience is valuable provided that reasonably combined with special social realities of the certain country and does not presume mechanical imitation, especially when nearly all countries for many years made significant amendments to own pension systems;

d/ the Republic of Armenia also has to resolve this issue, as it is the obligation of the sovereign, democratic, social state governed by the rule of law to provide preconditions for ensuring the well-being not only for the current working population, but also for ensuring overall well-being and civic harmony of future generations. The latter is a norm-objective stipulated by the Constitution of the Republic of Armenia, and it needs target, consistent and effective implementation of the functions of the state for guaranteeing the latter, being based on the fundamental values and principles of the Constitution of the Republic of Armenia and deeply taking into account certain legal, economic, social and general demographic peculiarities in the country. Guaranteeing effective exercise of the right to social security of people for decades is possible only this way.

6. The Constitutional Court of the Republic of Armenia in its Decision DCC-649 of October 4, 2006 held that "Ratifying the International Covenant on Civil and Political Rights, the Republic of Armenia recognized the fundamental position of its Preamble, according to which "human rights are derivative from the inherent dignity of the human person." Article 3, Part 1 of the Constitution of the Republic of Armenia stipulates that "The human being, his dignity and the fundamental human rights and freedoms are an ultimate value." The notion "ultimate value" is not abstract here and it has certain legal content. "Ultimate value" means that no any other value may be ranked above, including any system called to resolve state and public issues. The norm stipulated by Part 3 of the given Article of the Constitution, according to which "The state shall be limited by fundamental human and civil rights as possessing direct effect," follows from the above mentioned.

Similar legal position was expressed regarding the pension issue and, therefore, the Constitutional Court also stated in the same decision that "In practice, the payment of pensions is a mean of transfer of the property to the owner. As a mean of social security, the pension, however, is a form of ownership also according to the case law of the European Court (the case Burdov vs. Russia)."

The Constitutional Court of the Republic of Armenia finds that disputed legal norms of this case must firstly be subject to review from the viewpoint of constitutional approaches of recognition, safeguarding and protection of the right to property.

In a number of decisions, the Constitutional Court of the Republic of Armenia touched upon the issue of protection of the right to property. In particular, the Constitutional Court stated in its Decision DCC-630 of April 18, 2006 that the Law of the Republic of Armenia on the Constitutional Court requires that in determining the constitutionality of laws and other legal acts, the Constitutional Court should, among other circumstances, take into account the necessity of protection and free exercise of constitutionally stipulated human and civil rights and freedoms, the framework and grounds for the permitted restrictions of the latter and the necessity of ensuring the direct effect of the Constitution.

It was also stressed that "According to Article 31, Part 1 of the Constitution, "Everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him." Article 43 of the Constitution does not consider the right to property as a right restricted by

the grounds of the given Article. This is a specific case of restriction of rights, when the Constitution defines the criteria and limits of the given right, not even vesting it to the competence of the legislator. Firstly, it may be exercised by exceptionally judicially deprivation of property in the cases provided by the law, as an enforcement action following from responsibility. Secondly, it may be exercised by "alienation of property," which is an institution significantly differing from " deprivation of property," and it must be exercised on the grounds of Article 31, Part 3 of the Constitution."

The Constitutional Court of the Republic of Armenia expressed the legal position in the Decision DCC-741 of March 18, 2008, according to which: "The right to property, guaranteed by Article 31 of the Constitution of the Republic of Armenia, shall be granted to the persons whose right to property has already been recognized by the procedure stipulated by the law, or those who have a legitimate expectation of the acquisition of the right to property by the force of law."

The Constitutional Court stated in its Decision DCC-930 of July 13, 2010 that: "Article 31 of the Constitution of the Republic of Armenia envisages four distinct from each other circumstances of **restriction on exercising** the right to property:

a) restriction on exercising the right to property conditioned with the ban to cause damage to the environment or infringe on the rights and lawful interests of other persons, the society and the state (second sentence of Part 1 of Article 31);
b) deprivation of property (Part 2 of Article 31);
c) alienation of property for the needs of the society and the state (Part 3 of Article 31);
d) restriction on the right to land ownership for foreign citizens and stateless persons.

As it follows from the content of the above mentioned sub-point a), the legislator conditions **enjoyment of the right** to property with the demand for observance of certain public values. Those are as follows: the environment, the rights and lawful interests of **other persons**, the society and the state. Such approach is aimed to ensure reasonable balance between the rights of owners and other individuals and public interests..." In this context, the demand for laying down certain legitimate conditions for the process of implementation of certain right, and not its restriction is constitutionally stipulated.

Taking into consideration the direct relation of the issue in dispute with the right to property, the Constitutional Court of the Republic of Armenia also draws attention to the legal positions expressed in the Decision DCC-1009 of February 24, 2012. In particular, the Constitutional Court of the Republic of Armenia stated that "While recognizing the right to property as fundamental right of everyone as prescribed in the first sentence of Part 1 of Article 31 of the Constitution, the content of the given right is revealed, i.e. the powers to own, use, dispose of and bequeath his/her property, simultaneously defining the **discretion of the owner** as precondition for the realization of the latter." In this constitutional norm the emphasis of the wording "at his/her discretion" means that the realization of right of ownership is based on the precisely expressed will of the owner; the latter is considered as 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**."

The Constitutional Court also stated in the same Decision that Article 163 of the Civil Code of the Republic of Armenia 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 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 does not violate the rights and interests of other persons protected by the law, including to alienate his/her property to the ownership of other persons, transfer them the rights of use, possession and disposition of the property, put in pledge the property or dispose it in other manner."

The following circumstance was also emphasized: **"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 factual 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 au-**

tonomy of will in respect of the destiny of the property within the scopes prescribed by Part 1 of Article 31 of the Constitution of the Republic of Armenia, and in the conditions and by the procedure stipulated by the law. Emphasizing that "The mentioned discretion is of subjective nature, and must be manifested by a will of the certain person", the Constitutional Court concluded that "The stipulation of other conditions for realization of the right to propery than it is defined by Article 31 of the Constitution, will inevitably lead to the blockage of that right."

The Constitution of the Republic of Armenia also stipulates that "Limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia" (Article 43). In this regard, the provision of Article 1 of the Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms is worthy of attention, according to which "Every natural or legal person is entitled to the peaceful enjoyment of his possessions."

Summarizing the above-mentioned and assessing the explanations and clarifications of the participants of trial within the framework of this Case, the Constitutional Court of the Republic of Armenia states that:

Firstly, Article 8 of the Constitution of the Republic of Armenia stipulates that "The right to property is recognized and protected in the Republic of Armenia," and the equivalent public legal obligation of the state follows from it.

Secondly, the precondition for the implementation of the mentioned obligation is that 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."

Thirdly, the mentioned constitutional right may not be limited by the law, since Articles 31, 43 and 44 of the Constitution do not provide necessary grounds for it.

Fourthly, under such constitutional legal regulation certain articles of the considered law /in particular, Articles 5, 7, 13, 76/ directly or indirectly stipulate restrictions of the right to property that do not correspond to the requirements of Article 31 of the Constitution of the Republic of Armenia and legal positions of the Constitutional Court of the Republic of Armenia.

Five, Article 89 of the Constitution of the Republic of Armenia entitles the Government of the Republic of Armenia to manage **exceptionally state property**. According to the law, managing the property of persons or self-government bodies, as a function, shall not be included in the scopes of exercise of that right.

Six, on one hand, the above mentioned legal positions of the Constitutional Court of the Republic of Armenia indicate their precise and coherent nature, and the latter also served as basis for declaring several legal norms contradicting the Constitution of the Republic of Armenia and void. From the other hand, it is obvious that the latter were not thoroughly taken into account when adopting the considered law. Meanwhile, Article 9, Part 2 of the Law of the Republic of Armenia on Legal Acts definitely states: "The laws shall conform the Constitution and shall not contradict the decisions of the Constitutional Court of the Republic of Armenia." In addition, conformity of the laws with the Constitution is a constitutional legal requirement (Article 6, Part 2 of the Constitution).

7. The concept "pension" is not anyhow stipulated by the Constitution of the Republic of Armenia. However, the term "social" is considered as a characteristic of the social nature of the state /Article 1/, circumstance excluding discrimination /Article 14.1/, manifestation of interests of employees /Article 32/, characteristic of the right to social security /Article 37/, field determining the scopes of main issues of the state /Article 48/, sphere of policy exercised by the Government /Article 89/. In all cases it is essential that the state, which also proclaimed itself as social, constitutionally assumes precise positions with regard to the issues concerning the social life of people. *Inter alia*, the right to social security was recognized as one of underlying rights of citizens of the Republic of Armenia, and by virtue of Article 3 of the Constitution the state shall be also limited by this right as possessing direct effect.

Ratifying the International Covenant of 16 December 1966 on Economic, Social and Cultural Rights, the Republic of Armenia also assumed international commitment to recognize the right of everyone to social security according to Article 9 of the latter.

According to the constitutional provision /Article 37/, the extent and types of social security shall be stipulated by law, which is one of the basic peculiarities of guaranteeing, ensuring and protecting the given

right. Constitutional legal regulations precisely indicate that both the issues on the extent (quantitative definiteness) and types of social security are left to the legislator's discretion. **In this field, based on the requirements of fundamental principles of adequacy and proportionality, the margins of discretion shall be conditioned by socio-economic facilities of the state on one hand and constitutional requirements of the social state on the other.**

It is essential how the above mentioned circumstances are taken into account in course of pension reforms in our country from the viewpoint of revealing the constitutional content of the norms in dispute.

The grounds for developing the present pension system in the Republic of Armenia was laid in 2005, namely, on 28 April of that year the Government of the Republic of Armenia adopted the Decision No. 666-Ն on approving conceptual approaches of reforms of social security system of the Republic of Armenia. It was stated that keeping the present pension system as it was, would not only result in deep systemic crisis, but also impede socio-economic development of the country. "Generation of a pension security system equivalent to the changes in economic domain" was considered as strategic issue. Such oncoming system was based on the following principle: "the state must offer facilities for all members of society to "earn" pension." "...Taking care of those who could not manage to "earn" pension" was also considered as the issue of the state. Within the framework of the given methodological approach the following issue was put forward: "to pass into multilayer pension system supplied by different sources taking into account international practice," and mandatory funded pension insurance was one of essential components of the latter. It was also stipulated that the sense of the latter results in the fact that the participant "...shall have individual account and gain pension based on the reckoning of mandatory social contributions paid (made) into that account until attainment of the pension age and reckoning of the average life expectancy." One of important accentuations of the given Decision of the Government was not only the fact that mandatory funded component, like in many countries, should **be developed at the expense of mandatory social contributions**, but also it stressed the importance of "tough control," and the following issue was put forward: " to pass into the new system comprehensively prepared and smoothly, up to providing for "holding public discussions, namely, round-tables, seminar conferences, TV debates etc."

After a year, on 26 May 2006, the Government of the Republic of Armenia adopted the Decision No. 796-Ն on approving the concept of reforms of social security system of the Republic of Armenia. In practice, the Government of the Republic of Armenia issued approaches concerning the oncoming pension system and put forward sequence of actions to ensure introduction of the system. Namely, it was accentuated that the approaches were developed in the result of broad public discussions and consultation with international organizations. Nevertheless, there was uncertainty in this document concerning methodological approach of development of mandatory funded pension. In particular, Paragraph 7 of the part concerning "Income Tax and Social Contributions" stipulated that "Anyway, citizens joined the new system shall via the employer pay the current 3% from their salary and additional social payment at the rate of 7% /in total 10 percent/ and the latter shall be transferred to personal accounts in pension funds the citizens select." In this statement (wording) the term **"social contribution"** is worthy of special attention. It possesses precise legal content and concerns the relations regulated within the framework of legal regulation of Article 45 of the Constitution of the Republic of Armenia.

Nevertheless, the given concept puts forward the notion of "integration of income tax and the system of social contributions," and, according to the Constitutional Court, the latter is supposed to be a mechanical combination of dissimilar phenomenon, and later on the mentioned starting point served as ground for the reforms of pension system. Moreover, the section on "Mandatory Funded Pension" of the given Decision does not mention social contributions and it emphasizes that "Persons who joined the new system shall be obligated to monthly transfer the amount of 10 percent of salary to individual accounts in pension funds they select." In this case, not only social contributions are not mentioned, but also bearing the responsibility of 5 percent of funded contributions by the state are not referred. By the way, the given Decision stipulated that "Introduction of the system shall start on January 1, 2008."

As a matter of fact, the ideology of the present system of funded pension was based on the Decision No. 796-Ն of May 26, 2006 of the Government of the Republic of Armenia, which was ratified by the President of the Republic of Armenia on June 17, 2006. It was developed by further decisions of the Government of the Republic of Armenia.

In particular, the Decision No. 1487-Ն of November 13, 2008 of the Government of the Republic of Armenia approved the project of pension reforms and stipulated that "The rate of mandatory funded contributions for persons who became participants in the mandatory funded pension system on a mandatory basis on January 1, 2014, shall be defined at the rate of 10 percent of salary and incomes equated to the salary, and the half of the latter or 5 percent of salary and incomes equated to the salary, but not more than AMD 25000 shall be paid by the state." Afterwards, the given conceptual approach entirely served as a ground for the Law of the Republic of Armenia on Funded Pensions dated December 22, 2010.

In practice, in 2006-2010 the internationally and generally accepted concept of resolving social security issue via social contribution was gradually replaced with the concept of developing mandatory funded pension component via additional deductions from salary. Consequently, as a direct participant in resolving social security issues of own employees the employer was extruded from these legal relations, the state obtained additional responsibilities due to tax-payers, ambiguity was introduced with regard to the issue of ensuring the right to social security stipulated by Article 37 of the Constitution of the Republic of Armenia and with regard to the issue of embodying the constitutional legal approaches of ensuring prerequisite and guarantees for the right to social security stipulated by Article 45 of the Constitution of the Republic of Armenia.

Afterwards, the mentioned situation also got into legislative field. The National Assembly of the Republic of Armenia adopted the Law on Income Tax on December 22, 2010. Due to the final provisions of Part 2 of Article 28 of the given Law, from the moment of entry of this Law into force /on January 1, 2013/, the Law of the Republic of Armenia ՀՕ-183 on Income Tax dated December 27, 1997 and the Law of the Republic of Armenia ՀՕ-179 on Mandatory Social Security Contributions dated December 26, 1997 were revoked.

The problem is not only that the term "tax on income" was replaced with "income tax." The essential fact was that the concept "mandatory social security contribution" ceased to exist; it was pulled out from the scopes of the given legal **relations replacing mandatory social security contribution with tax.**

Researches prove that such experience is almost unique particularly in Pan-European legal area.

Nevertheless, the issue was not resolved only by technical solutions, namely, due to replacing two contributions with one regardless of the circumstance of incompatibility of contents. The circumstance that besides budgetary domain, the employer, as it was mentioned, was in practice pulled out from the given legal relations is more typical for this issue. As a result, budgetary revenues decreased at the rate of social security contributions, and tax burden of employees was increased. Concerning budgetary employees tax burden increase was compensated with equivalent wage increase due to amending the Law of the Republic of Armenia on Remuneration of Civil Servants dated November 12, 2012 and the Law of the Republic of Armenia on the Rates of Official Salaries of Senior Officials of Legislative, Executive and Judicial Authorities. Simultaneously, Article 25, Part 6 of the Law of the Republic of Armenia on Income Tax stipulates: "...at the moment this Law enters into force, the employer shall at his/her own expense assume additional responsibility at the rate of full amount of Income Tax withheld and paid from the calculated salaries of hired employees for each month of the year, if after entry of this Law into force withholding of income tax from hired employees has led to reduction of the amount stipulated by the Government of the Republic of Armenia and payable to the latter based on salaries after taxation."

In the conditions of such legal regulation, the institution of **social security contributions** still operates in many other laws of the Republic of Armenia. In particular, according to Article 32 of the Law of the Republic of Armenia on Profit Tax: "In the process of deductions from gross income in respect of expenses concerning taxpayers, social security contributions shall also be considered in line with funded contributions made in respect of voluntary funded pensions, and, as it was mentioned, the latter ceased to exist."

8. The Constitutional Court of the Republic of Armenia states that in international practice, percentage ratio of social security contributions made by employers and employees is such that from half to two-thirds of overall target social security contributions are developed mainly at the expense of employers. Regardless of peculiarities of pension system, experience of many countries /Sweden, USA, Great Britain, France, Singapore, Poland, Hungary, Slovenia, Croatia, Slovakia etc./ indicates that the states where the three main subjects, namely, the state, em-

ployer and employee participate in solution of the issue of pension security, have relatively more success.

Besides, in many countries even the burden of mandatory funded contributions is also distributed between the employee and employer. Unlike the above mentioned, in our country the burden of employers of non-state system working in the field of social security, is also on the state /particularly, due to 5 percent subsidy/.

In practice, Armenia is one of the unique countries that established the constitutional principle of social and legal state, where individual target contributions of pension fund are not developed from social security contributions and the latter are developed via additional mandatory deductions and taxes from salary.

There are many other certain examples of countries following other methodology. The Federative Law No. 424-ФЗ on Funded Pension in Russian Federation dated December 28, 2013 is the latest example yet, according to which people were provided with the opportunity to make a choice between insurance and funded pensions, and the rate of their participation **within the framework of social insurance**. And for example, in Sweden, where pension shall be approximated to 60-80 percent of salary, social security contribution shall be 18.5 percent, and the latter shall be equally distributed between the employer and hired employee. Moreover, 16 percent of overall contribution shall be directed to distributive system and 2.5 percent to funded system.

The Constitutional Court also emphasizes the circumstance that replacing social security contribution with tax essentially expands the margin of appreciation of authorities in regard to exercise of the latter. Social security contributions not only have target addressing, but they are also made even by the employer on the principle of individualization, that is, for each hired employee. The following is worthy of attention: in the first Report on Social security around the world (November 6, 2010) of the Bureau of International Labor Affairs /the Permanent Secretariat of the International Labor Organization/, the following issue was highlighted: the countries move in the direction of reducing social security resources especially conditioned by economic crisis, as well as to reduce national debt or budget deficit. Such risk increases in our country, when social security resources are not developed from target contributions, and have been replaced with tax.

9. The Constitutional Court states that in legal practice perception of the constitutional term "social security" is not precise. Social security is not only the person's right, but also a target function conditioned by positive obligation of the state, as it is aimed to secure the subsistence of the stratums of the society, who are not able to do that for reasons independent of them. Social protection is a broader concept, which includes not only social security, but also social insurance and social aid provided by the state and society.

Article 37 of the Constitution of the Republic of Armenia states that everyone shall have the **right to social security** during old age, disability, loss of breadwinner, unemployment and other cases prescribed by the law. This Article also obligates to prescribe the extent and forms of social security by the law. It is obvious that social security issues need differentiated solution, and the latter shall not be mixed with the issues of social insurance and social aid.

It is also indisputable that social security system must thoroughly take into account the peculiarities of issues the current social society faces, as well as approaches and opportunities of resolving these issues. Nevertheless, there are issues that were generally resolved in international practice, and taking the course of correcting own mistakes concerning the mentioned issues is not the proper approach. Particularly, all over the world, pensions have initial place among the types of social security. And, for example, Pan-European practice states that even if voluntary and mandatory personal accounts are opened, the transfers shall be made from social security contributions. **Social security system, based on stabile social contributions, is more reliable and, from the viewpoint of social expectations of people, more secure.** This model is more characteristic for market economy relations which have social objectives, as well as **for the countries, which constitutionally declare themselves as social states.** Unlike social legal states, there are several methodological peculiarities in the countries that took the course of a **liberal legal state**. The European Union, in particular, within the framework of Lisbon Agreement assumed the concept of social market economy, and it is not by chance that introduction of both distributive and funded pension joint and supplemental systems at the expense of social security contributions, is typical for the member states of the European Union.

It follows that the contribution made for social security is initially of

target nature, and stipulating it by the law makes the social perspective more predictable. Subjects endowed with the obligation of making contribution are also definite, namely, the employer and the employee himself/herself. The state's obligation is to make the given relations consistent and guaranteed via legislative regulation, and take measures for effective and target solutions of social security issues. Based on the mentioned peculiarities, Article 3 of the Law of the Republic of Armenia on Mandatory Social Security Contributions stated that "Social contributions are resources mandatory paid into state budget of the Republic of Armenia by insurants." In regard to income tax both the previous Law on Tax on Income and the current Law on Income Tax /Article 2/ the latter is considered to be "... a direct tax paid into state budget ... by tax-payers," that is, a tax directly levied by the state from the income of tax-payers. Direct tax paid by the tax-payers and social security contribution made by insurants are not identical in respect of both legal nature and content, as well as pursued aims.

The requirement of precise implementation of constitutional legal content of Article 45 of the Constitution of the Republic of Armenia is important in this respect. To resolve national issues, as well as to ensure material guarantees of social security of the people, the mentioned Article of the Constitution stipulates that "Everyone shall be obliged to pay taxes, duties and other compulsory fees in conformity with the procedure prescribed by the law." The legal regulations stipulated by the Law of the Republic of Armenia on Mandatory Social Security Contributions and the Law of the Republic of Armenia on Income Tax pursued the given aim, and the latter, as it was mentioned, were combined in the Law of the Republic of Armenia on Income Tax, which was adopted in December 2010.

Within the framework of revealing the legal content of Article 45 of the Constitution of the Republic of Armenia, the Constitutional Court of the Republic of Armenia expressed legal position in the Decision DCC-753 of May 13, 2008, and the Applicant also touched upon the latter. In particular, the Constitutional Court stated that "... in the given Article the mentioned taxes and duties are also compulsory fees and, therefore, other compulsory fees mentioned in the given Article differ from taxes and duties, and must have common characteristics with the latter."

Based on the results of analysis of tax legislation, the Constitutional

Court stated that "the mentioned mandatory contributions stipulated by Article 45 of the Constitution:

a/ have public legal nature, namely, shall be stipulated and contributed within the framework of social relations, which are of public nature;

b/ are intended to be paid into state or community budget."

It follows from the given common logic that if mandatory funded contributions acted as social contributions, were in reasonable correlation with other fees pursuing the aim of non-social security, **were transferred to the special account of state budget and were passed to management with precise guarantees stipulated by the law and by the responsibility of the state:**

a/ within the scopes of budget control, the system would also get under direct control of the National Assembly of the Republic of Armenia, and such circumstance would increase reliability of ensuring reasonable management and reimbursement of resources;

b/ the obligation of the Government of the Republic of Armenia in respect of public legal responsibility would be substantive;

c/ public confidence towards reliability of the system would essentially increase;

d/ such system would provide with the opportunity to stipulate by the law additional mechanisms of encouragement also in regard to the participants in voluntary funded component.

10. The circumstance that the employee shall first pay income tax from salary, and then pay funded contribution from nominal /and not real/ salary, is typical for mandatory funded pension system introduced in the Republic of Armenia. In practice, mandatory funded contribution shall also be calculated from contributed tax. In international practice, the following approach is most common: funded contributions shall be free of all kinds of taxes.

It follows from the legal regulation of Article 6 of the Law of the Republic of Armenia on Income Tax that even calculating income tax, mandatory funded contributions of the tax-payer shall not be reduced from the tax base of income tax. It is noteworthy that, according to Parts 3 and 5 of the given Article, voluntary funded contributions and, in the scopes of mandatory funded contributions, funded contributions made for the tax-payer only by the state, shall be accordingly considered

as reducing incomes. Within the framework of this Case the Constitutional Court is not empowered to assess also the constitutionality of the provisions of the Law of the Republic of Armenia on Income Tax, nevertheless, the Court finds that such legal regulation can be problematic.

The issue of choosing the interest rate of contributions made into pension funds is very important, and it is not an end in itself. It must first correspond to the principle of legal equality. In this case, the issue leads to **stipulating reasonable correlation between current and prospective subsistence of the person**. The equivalent participation of the employer can act as significant factor of balancing the latter. Hence, once again international practice states that more balanced solution is possible due to providing opportunities of social security with joint participation of the state and the employer, as well as non-state enterprises-organizations and employers, when, the employee participates with social security contributions regarding the issue of developing from one side, pension, including pension funds, harmonized both with existence in time and tax burden, and from the other side, all employers and not the state budget shall act as participants of relevant funds and warrant of target use.

The Constitutional Court of the Republic of Armenia is not empowered to suggest certain solutions to the National Assembly of the Republic of Armenia or the Government of the Republic of Armenia concerning quantitative correlation of developing pension funds, as it is in the discretion of the latter. Nevertheless, international practice and socio-economic, demographic and other peculiarities of our country state that it is possible to make all employers participate in the reform process of social security system by the procedure and scopes provided by the law, namely, to find the correlation decreasing the burden of individual participation of employees.

11. Legislative regulations in regard to the part of mandatory funded component do not precisely solve the issue of key importance how to act in regard to those who receive minimum wage, and this is a constitutional issue. According to Article 32 of the Constitution, in the Republic of Armenia the amount of minimum wage shall be stipulated by the law. By the procedure stipulated by Article 10 of the Law of the Republic of Armenia on Income Tax, in case the amount of monthly taxable income is up to AMD 120000, the amount of income tax shall

make 24.4 percent of the latter. No inner bound is specified. According to Article 1 of the Law of the Republic of Armenia on Minimum Monthly Wage, minimum wage in the Republic of Armenia shall be AMD 45000. Article 4 of this Law stipulates that "the amount of minimum monthly wage shall not include taxes, supplements, premiums, rewards and other incentive payments paid from salary." Such wording is problematic from the viewpoint of the principle of legal certainty. On the one hand, taxes are not included in the amount of minimum monthly wage, and on the other hand, according to Article 10 of the Law of the Republic of Armenia on Income Tax, in case the amount of income is up to AMD 120000, the amount of tax shall make 24.4 percent. It can only be assumed from the latter that all the mentioned contributions shall be made at the expense of the employer or shall not be contributed. Nevertheless, any obligation must be precisely stipulated and any discretionary approach concerning this issue must be eliminated by the Law.

The Constitutional Court finds that according to the principle of legal certainty and based on the requirements of Article 32 of the Constitution of the Republic of Armenia, as for minimum wage, the issue of contribution of mandatory funded pension has not received adequate legislative solution. The requirements of the Law of the Republic of Armenia on Subsistence Minimum (Basket) and Subsistence Minimum Budget have not been taken into account.Article 4 of the Law on Subsistence Minimum Budget precisely states that definition of Subsistence Minimum (Basket) and Subsistence Minimum Budget shall be aimed, in particular, to substantiate the rate of defined minimum wage, pensions, scholarship, and also benefits and other social contributions, as well as **to determine the rate of non-taxable income**. Nevertheless, the latter, as it was mentioned, ceased to exist according to the Law of the Republic of Armenia on Income Tax.

Article 32 of the Constitution of the Republic of Armenia states that every employee shall have the right to fair remuneration (wages) at the rate **no less than the minimum** set by the law. The constitutional legal content of constitutional term "minimum wage" assumes that **the real salary of the employee shall not be less than the minimum set by the law**, as the latter must ensure the solution of certain issues of subsistence minimum. The Law of the Republic of Armenia on Funded Pensions did not substantiate this constitutional legal approach by leg-

islative regulation of the given main issue, and the real legal regulation is not in harmony with the requirements of Article 32 of the Constitution.

12. Taking into account the systemic complexity of pension domain and influence of time factor, almost in all countries **public confidence towards that system and fulfilled measures were the success of reforms**. The mentioned confidence cannot be abstract. **The latter is developed due to the guarantees of functional and institutional capability of the system, reliability of control system, transparency and the level of predictability of expectations of people**. First of all, the legal regulation must first ensure such guarantees and, regarding this issue, also stipulate effective exertion of parliamentary and other control levers.

To ensure the supremacy of the Constitution, the Constitutional Court of the Republic of Armenia considers it necessary to touch upon the mentioned main issue from the viewpoint of constitutional requirements and necessity of consistent implementation of the latter.

Article 83.5, Point 1 of the Constitution of the Republic of Armenia stipulates that terms and procedures for the exercise and protection of the rights of natural and legal persons shall be determined exclusively by the laws of the Republic of Armenia. It is precise, that the given constitutional provision concerns all rights of persons. At the same time, as it was mentioned, Article 8 of the Constitution, set forth in Chapter 1 (The Foundations of Constitutional Order), stipulates that the right to property is recognized and protected in the Republic of Armenia. Taking into account that, according to the Constitution of the Republic of Armenia, the right to property is not limited by the law, hence **terms and procedures for its protection, can be stipulated exceptionally by the law.**

The mentioned logic is not observed by the Law in dispute. In particular, according to Article 13, Part 1 of the Law, shares of pension funds shall be the personal property of the participant. The main guarantee for its protection is stipulated by the terms and procedures for **disposing** of an equivalent fund. The issue of defining terms and procedures for the exercise and protection of the rights of persons exists. The fact that the latter must become a subject of regulation of the law is a constitutional requirement. Meanwhile, according to Article 2,

Part 1, Point 6 and Article 44 of the Law in dispute, within the scopes of stipulating quantitative and currency restrictions, as well as in regard to the part of disposing of guarantee fund and stipulating the terms and procedures for management, the Government of the Republic of Armenia was vested with the mentioned power. In this case, the fact that the Government shall stipulate the terms for disposing of the mentioned fund is also worthy of attention. Disposing also assumes the right to determine the legal status or the faith of the property. The law stipulates that the resources of the fund shall be the property of citizens, nevertheless, terms for disposing property shall not be stipulated by the law, and the latter shall be stipulated by the Government. Such regulation does not follow from the requirements of Article 83.5, Point 1 and Article 89, Point 3 of the Constitution of the Republic of Armenia.

In international practice, restrictions for investment of pension fund assets, as guarantee of ensuring and protecting the mentioned resources, shall also be stipulated by the law /for example, Chapter 25 of Social Security Code, Bulgaria; Chapter 4 of the Law on Private Pensions, Romania; Chapter 15 of the Law on Organization and Functioning of Pension Funds, Poland; Chapter 13 of the Law on Mandatory Financed Pension Security, Macedonia. Similar acts are in force also in Hungary, Croatia, Slovakia and other countries/.

The mentioned issue is of key importance from the viewpoint of effective management of fund resources, risk reduction, guaranteeing repayment and strengthening confidence towards the system. Article 44, Part 2 of the Law of the Republic of Armenia on Funded Pensions stipulates the domains the pension fund assets cannot be invested in. Rather abstract responsibilities are also stipulated for the fund manager. Nevertheless, the following is essential in the mentioned legal relations: legislative clarification of the scopes of quantitative and currency restrictions in the mentioned legal relations to the extent that the discretion of executive power was not absolute. International practice also prompts it. For example, in Bulgaria it is stipulated that no less than 50 percent of investments in mandatory pension funds must be invested via buying securities issued and guaranteed by the Government. Similar demand is put forward also in Croatia and several other countries. In Romania it is stipulated that up to 70 percent of investments by pension funds can be invested in securities issued by Romania, European Union

member states and European Economic Area member states. The law precisely limits the quantity of foreign investments, as well as investments made in money market instruments, unregistered securities, transactions connected with real-estate and several other domains.

By the Decision No. 1685-Ն dated December 27, 2012 the Government of the Republic of Armenia also stipulated quantitative and currency restrictions of investment in financial instruments of mandatory pension fund assets. In particular, the latter stipulated that investments made in bank deposits and accounts may not exceed 40 percent of fund assets. The amount of investments in securities issued by the Central Bank of the Republic of Armenia, foreign bank or central bank of foreign state cannot exceed 60 percent of fund assets. Other restrictions are also stipulated. Nevertheless, the issue concerns not only the fact how the latter are grounded from the viewpoint of current policy of the Government and guaranteeing reliability of the system regarding great perspective. It is also essential to find out at what extent the mentioned regulation by sub-legislative act provides stable, controllable and reliable prerequisites for economic and social relations. Simultaneously, the sense of the very legal issue is to find out whether the Government is reliable to manage in this way the resources of share participants in pension funds as non-state property, which is stipulated by the law. Legal clarification of margin of appreciation of the Government is the issue of agenda again.

13. Risk management is one of essential guarantees of reliability of the system. The requirements to the risk management system of pension funds are not also stipulated by the law, and the latter are exceptionally left to the discretion of the Central bank of The Republic of Armenia. Article 41 of the Law of the Republic of Armenia on Funded Pensions states: "Requirements to the risk management system shall be stipulated by the normative legal act (regulation) of the Central Bank." Besides, Article 25 of this Law, titled "Requirements and Restrictions to Pension Fund Managers," stipulates: "Requirements and restrictions with respect to Investment Fund Managers stipulated by the Law of the Republic of Armenia on Investment Funds shall be applicable to Pension Fund Managers, unless otherwise stipulated by this Law. Chapter 5 /Articles 35-37/ of the RA Law on Investment Funds concerns the mentioned legal relations, and article 36, Part 2 of the latter stipulates:

"Requirements to risk management system shall be stipulated by the Central Bank." Besides, Article 41, Part 1 of the instant Law stipulates: "Restrictions on investing fund assets in the instruments defined by Article 40 of this Law shall be stipulated by normative legal acts (regulations) of the Central Bank."

Decision No. 324-Ն of December 27, 2013 of the Central Bank of the Republic of Armenia stipulated: "Minimum requirements with respect to internal control of Investment Fund Managers and the risk management system" (Regulation 10/16). Regardless of the circumstance that the sub-legislative act restricted the **"requirements"** stipulated by the law with the scope of **"minimum requirements,"** the content the given document is also far from the requirements of the Law of the Republic of Armenia on Legal Acts, particularly, Article 45, it is based on wishes following from the phrases "must" and "it is important," and it does not include any certain guarantees for reliability of the system.

By the way, according to Article 83.3 of the Constitution of the Republic of Armenia, the **main objective** of the Central Bank of the Republic of Armenia **shall be to ensure the stability of prices** in the Republic of Armenia. Moreover, Article 4, Part 2 of the Law of the Republic of Armenia on Central Bank of Armenia stipulates: "In case other objectives of the Central Bank contradict its main objective, the Central Bank grants priority to the main objective and is governed by the necessity of its implementation." Furthermore, in the conditions of such legal regulation, legal control of the main scope of requirements to risk management system, main principles, as well as restrictions of investment of pension fund assets is important.

The following circumstance is no less important: providing the Central Bank of the Republic of Armenia with rulemaking, control and organizational powers, the Law of the Republic of Armenia on Funded Pensions did not stipulate any remedies of equivalent public legal responsibility of the Central Bank for guaranteeing normal activity of the system.

The law does not also clarify terms and procedures for the exercise of the function of state authorized body of financial sector of the Government of the Republic of Armenia, according to which the latter "... shall develop and ensure the consistent policy of the funded pension component" /Article 17, Part 1, Point 3/.

The Constitutional Court of the Republic of Armenia also finds that based on the nature and peculiarities of legal relations in dispute, and according to the principle of legal certainty, requirements and restrictions to Pension Fund Managers must also be a subject of regulation of the Law in dispute. Hence, Article 25 of the Law of the Republic of Armenia on Funded Pensions also needs review.

14. The issue on indexing the shares of pension funds or due to annual inflation adjustment is of essential importance for pension funds. Initially, in international practice, the following was considered as an essential issue: **pensions must not loose purchasing power**. The question is that influence of time factor exists between developing resources for pension and exercising the right to social security. In case the latter is not taken into account, accumulating equivalent resources and guaranteeing the exercise of the right to social security is impossible. Besides, **adjustment of the total amount of funded contributions due to annual inflation pursues the aim of protection of the right to get the mentioned money back, and the latter is a subject of regulation of the law**. Simultaneously, in this regard, existence of guarantees stipulated by the law is one of the essential safeguards of reliability of the system. The Law of the Republic of Armenia on Funded Pensions almost bypassed the given main issue and did not provide equivalent legal guarantees by the law for ensuring adjustment of the total amount of funded contributions due to annual inflation. Instead, the issue of vesting the Government with certain /in this case it is also absolute/ discretion. For example, Article 49, Part 1 of the Law simply stipulated that "... procedure for adjustment of the amount of funded contributions due to annual inflation shall be stipulated by the Government of the Republic of Armenia." The legislator not only neglected **the necessity of ensuring the guarantees (stipulated by the law)** for adjustment of the amount of contributions due to annual inflation, **and harmonizing the latter with the legal regulations stipulated by several legislative acts /particularly, by the RA Law on the Budgetary System/** as a guarantee for exercising the right to social security, but also did not anyhow clarify the margins of discretion of executive power in this regard.

The Constitutional Court of the Republic of Armenia finds that such legal regulation does not also correspond to the principle of legal certainty. **The principles of legal certainty, legal security and protection**

of the right to legitimate expectations are the integral elements of legal state and guaranteeing the rule of law. The Constitutional Court in particular stated in its Decision DCC-630 of April 18, 2006 that "... the law must also be in conformity with the legal position stipulated by a number of judgments of the European Court for Human Rights, according to which no legal norm can be considered as a "law" unless it is in conformity with the principle of legal certainty *(res judicata)*, namely, it is not enough precisely worded to let the citizen to reconcile behavior with the latter." Moreover, within the framework of assuming the principle of the rule of law the legal regulations stipulated by the law must make the legitimate expectations of the person predictable. Besides, as one of underlying principles of legal state the principle of legal certainty also supposes that the actions of all subjects of legal relations, including the bearer of authority must be predictable and legitimate.

The issue is urgent as not precise legislative regulations of recalculating of funded contributions due to inflation resulted in serious problems in many countries, where the first steps were done towards introducing funded pension system.

15. The Constitutional Court of the Republic of Armenia finds that Article 49, Part 2 of the Law in dispute must also be observed from the viewpoint of the principle of proportionality of rights and obligations. The latter stipulates that "Guarantee Fund established on the basis of this Law shall secure recurrence of 20 percent of the amount stipulated by Article 1 of this Law, and the remaining 80 percent shall be recovered by the Republic of Armenia." In many countries fund managers participate in development of guarantee funds at their own expense, and such participation is solid. For example, in Croatia, in case the pension fund does not manage to ensure the minimum rate of the amount to be recovered, the mentioned minimum amount shall be recovered at the expense of own reserve fund. In case the given resources are also insufficient, 20 percent of own fund of the organization exercising the management of pension fund shall be used. In case the mentioned two resources are insufficient, the state shall be obliged to ensure contribution of the rest part.

It follows from the logic of Article 49, Part 2 of the Law of the Republic of Armenia on Funded Pensions that, providing fund managers with the power to carry out the given activity, and, in the face of the

Government of Republic of Armenia, **not entering into precise contractual relations with the latter or not laying down precise conditions supposing equivalent liability stipulated by the law,** the Republic of Armenia undertakes the main liability of recurrence of the amount /at the extent of 80 percent/ in case of possible failure of the latter, and such fact increases the risk of management of fund resources.

The Constitutional Court finds that balancing the rights and obligations, and stipulating equivalent liability for failure of fulfillment of obligations are one of paramount terms of legal regulation and law making activity, and the latter need consistent implementation.

16. Bearing in mind the special nature and level of difficulty of the legal relations regulated by the Law of the Republic of Armenia on Funded Pensions, and taking into account the opportunity of entire assessment of final results just for decades in regard to ensuring appropriate guarantees for the protection of constitutional rights of people, it was necessary to stipulate certain and differentiated approaches of legal liability /criminal, civil and administrative/ for violations typical to the legal regulations of this law. International practice states that in general, public confidence level towards private pension funds is low. In several countries of the European Union, public inquiries state that the level of the mentioned confidence is between 5-8 percent. Such situation makes necessary to safeguard legal guarantees of liability of especially competent authorities.

The Law in dispute mainly touched upon the given issues within the framework of ensuring control powers of the Central Bank of the Republic of Armenia /Articles 77-84/. Nevertheless, together with enforcement of the Law, no equivalent amendments were made also in other legal acts stipulating legal liability. Particularly, Criminal Code and Code of Administrative Offences of the Republic of Armenia, in practice, bypassed the given main issue. The provision stipulated by Article 968.9, Part 1 of the Civil Code of the Republic of Armenia states that "Damage caused to the participants of Pension Fund shall be compensated by the procedure stipulated by the law and other legal acts," and the latter is rather abstract. Meanwhile, precise regulation of liability in this domain could be an important guarantee for confidence towards this system. The given issue is of key importance also in international practice. In particular, Slovenian and Romanian examples

are worthy of attention. As for the USA, financial violations in regard to pension funds are considered as **particularly grave crimes**, and punishment is assigned for 20 years and more imprisonment.

It must be taken into account that Article 45, Part 3 of the Law of the Republic of Armenia on Legal Acts directly stipulates that "The norms ... for non-fulfillment of which no legal consequences are stipulated, shall not be applied in normative legal acts."

17. In many countries illegal and shadow labor also result in serious problems, when employers make not properly formulated contributions for de facto employees to hide taxes and social security contributions. This phenomenon is also widely spread in our country, and has a tendency of development. Especially within the scope of pension reforms, equivalent legislative solutions and possible exception of the given violations regarding this issue are also urgent issues of agenda.

International practice also states that complicated administration and necessity of big administrative expenses are serious problems for funded pension systems. In the conditions of low living standards of population, high level of unemployment and shadow economy, target use of funded pensions and ensuring reliability of the system require more operative legal guarantees for ensuring proper reliability of the subjects of law involved in the system and guaranteeing the protection of constitutional rights of people. In particular, Chapter 9 of the Law of the Republic of Armenia on Funded Pensions, titled "Fees charged for services" regulates the given legal relations. Nevertheless, the Central Bank of the Republic of Armenia shall be entitled to stipulate the maximum amount of expenses related to management of pension fund /Article 45, Part 1/. In certain countries, the maximum amount of expenses related to management of pension fund is also stipulated by the law. In the Republic of Armenia, the latter can also be stipulated by the law, or it can be a subject of regulation within the framework of contractual obligations between the Government of the Republic of Armenia and the pension fund.

The law must at least stipulate precise criteria also for assessment of pension fund activity, and the results of assessment must be transparent and available for people.

In 2013 an extensive report was released by the experts of the Organization for Economic Co-operation and Development (OECD) con-

cerning the above-mentioned issues, in particular, the peculiarities of development of funded pension system in international practice, and the existing tendencies. The research of the latter states that in all countries where there were gaps especially regarding the issue of legal regulation of recalculating of funded contributions due to inflation, fund management process and introduction of operating mechanisms for the control of administrative expenses, reliability of the system and guaranteeing transparency, stipulating equivalent measures of liability by the law, as well as regarding other issues inevitably resulted in serious negative consequences.

18. After taking this Case into examination, by the Decision PDCC-3 of January 24, 2014 the Constitutional Court of the Republic of Armenia, based on the requirements of Article 34 of the Law of the Republic of Armenia on the Constitutional Court, suspended the action of Article 76 and Part 3 of Article 86 of the Law in dispute before completion of trial as a means of ensuring the Application. The attempts of various interpretations of the Decision of the Constitutional Court by the Central Bank of the Republic of Armenia and other bodies of state government partly decreased the efficiency of the means of ensuring the Application. Taking into account that the case was at the stage of preparation for trial, and no institution of clarification of decisions of the Constitutional Court was stipulated by the law, by the Decision PDCC-6 of February 11, 2014 the Constitutional Court of the Republic of Armenia stated the necessity of touching upon the situation regarding the case trial.

The Constitutional Court finds that the issues of ensuring and protecting human rights may not be subordinated to technical and other type of organizational circumstances, and, in regard to the mentioned issues, law enforcement practice must be guided by the requirements of direct implementation of constitutional norms and, in particular, by the requirements of Article 3 of the Constitution of the Republic of Armenia.

At the process of case trial it was established that according to calculation data from January to March of this year, 5337 citizens selected pension funds and fund managers due to their application. About 1000 people entrusted their choice to computer. As of March 27, 2014, employees made contributions for 127007 people, individual accounts were

open for the latter; nevertheless, no selection of funds and fund managers for the participants was made by software module yet, as, according to Article 39, Part 1 of the Law of the Republic of Armenia on Funded Pensions, after the accounts are open, the participants shall have the right to select the fund themselves within 30 days.

Based on the current situation, it is important that to make the processes correspond to the requirements of this Decision and legal positions of the Constitutional Court of the Republic of Armenia, the Government of the Republic of Armenia and the National Assembly of the Republic of Armenia, within the framework of their powers, fulfill appropriate legal regulations to protect people's right to property, not subordinating the mentioned right to various technical terms, as well as not admitting retroactivity of the current law, and, while taking steps, to be based on unconditionally ensuring the principle of the rule of law and the international legal obligations of the Republic of Armenia in regard to the latter.

The Constitutional Court also finds necessary to state that Article 68, Part 8 of the Law ՀՕ-58 of the Republic of Armenia on the Constitutional Court dated1 June 14, 2006 lays imperative claim to the operative part of the decision of the Constitutional Court. The essence of the latter is the following: in the result of the case trial concerning the issue of constitutionality of the law or certain provisions therein the Constitutional Court is competent to make the following decisions:

1) on declaring the challenged act or its challenged provision in conformity with the Constitution;
2) on declaring the challenged act or its challenged provision in conformity with the Constitution by the constitutional legal content revealed by the decision of the Constitutional Court;
3) on declaring the challenged act fully or in part /within the scopes of challenged norms/ contradicting the Constitution and void.

After the Constitutional Court made the Decision within the framework of the powers stipulated by the Constitution of the Republic of Armenia and the procedural norms stipulated by the Law of the Republic of Armenia on the Constitutional Court, with due regard for the requirements of the given Decision, **the resolution of the issues in regard to further equivalent amendments to the law in dispute, as well as its enforcement is within the framework of competence of the legislative power.**

Simultaneously, taking into account the provision stipulated by Article 42, Part 4 of the Constitution of the Republic of Armenia, according to which "The legal acts improving the legal status of an individual, eliminating or mitigating his/her liability shall be retroactive if so prescribed by the acts in question," it is necessary that, within the framework of the mentioned constitutional provision, the new legal regulations following from the requirements of this Decision and the legal positions of the Constitutional Court apply to all the subjects participant to the legal relations concerning the considered law without time limit.

Based on the review of the Case and being governed by Article 100, Point 1, Article 101, Part 1, Point 3, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 68 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare the provisions of Article 5, Part 1, Article 7, Parts 1 and 11, and Article 13, Part 2 of the Law of the Republic of Armenia on Funded Pensions systemically interrelated with the latter, in regard to the part that do not ensure the right of everyone to freely own, use and dispose of the wage belonging to him/her, and entail restriction of the people's right to property regardless of their free will, contradicting the requirements of Article 8, Part 1, Articles 31 and 43 of the Constitution of the Republic of Armenia and void.

2. To declare Article 49, Part 1 of the Law of the Republic of Armenia on Funded Pensions contradicting the requirements of Article 1, Article 3, Part 2 and Article 83.5, Point 1 of the Constitution of the Republic of Armenia and void, based on the circumstance of not stipulating certain guarantees for protection of rights equivalent to the principles of the rule of law and legal certainty and not clarifying the margins of discretion of executive power in the given legal relations.

3. To declare the provision "... terms and procedures for disposing of the latter ... shall be stipulated by the Government of the Republic of Armenia" stipulated by Article 2, Part 1, Point 6 of the Law of the Republic of Armenia on Funded Pensions, which is systemically interrelated with the articles in dispute, and Article 44, Part 1 of the given Law, contradicting the requirements of Article 83.5, Point 1 of the Constitution of the Republic of Armenia and void.

4. To declare the provision "Requirements to the risk management system shall be stipulated by normative legal acts (regulations) of the Central Bank" stipulated by Article 41, Part 4 of the Law of the Republic of Armenia on Funded Pensions, which is systemically interrelated with the articles in dispute, contradicting the requirements of Article 83.5, Point 1 of the Constitution of the Republic of Armenia and void.

5. To declare the provision restricting the right to property by seizure on the ground of an administrative act by limiting the right to own, use or dispose of the property, stipulated by Article 76, Part 2 of the Law of the Republic of Armenia on Funded Pensions, which is systemically interrelated with the articles in dispute, contradicting the requirements of Article 8, Part 1, Articles 31 and 43 of the Constitution of the Republic of Armenia and void, also taking into account that in respect of the Law in dispute, the legal relations concerning the given provision do not refer to fulfillment of direct tax liabilities of those who make mandatory funded contributions /fiscal agent/.

6. Within the framework of legal positions in the instant Decision, the disputed provisions of Article 7, Parts 2-10, Articles 8, 37, 38, 45, Article 49, Part 2 and Article 86 of the Law of the Republic of Armenia on Funded Pensions are in conformity with the Constitution of the Republic of Armenia by the constitutional legal content, according to which, legal regulations stipulated therein **cannot be based, interpreted and applied in the context of legal regulation supposing restrictions of the right to property regardless of people's discretion, and the rights of pension fund managers must be exercised in accordance with the principle of balancing only with equivalent obligations.**

7. Taking into account that the Law of the Republic of Armenia on Funded Pensions, in particular, the legal provisions declared contradicting the Constitution the Republic of Armenia by Points 1-5 of the operative part of the instant Decision, are systematically interrelated with legal regulations stipulated by more than 50 laws and more than eighty other normative legal acts (regulations) of the Republic of Armenia, and, based on the instant Decision, many provisions therein are subject to review by the procedure stipulated by the law, as well as bearing in mind the requirement of the law on systematically not jeopardizing legal security, based on Article 102, Part 3 of the Constitution

of the Republic of Armenia and Article 68, Part 15 of the Law of the Republic of Armenia on the Constitutional Court, due to the instant Decision the deadline for invalidating the legal norms declared contradicting the Constitution the Republic of Armenia shall be September 30, 2014, providing the National Assembly of the Republic of Armenia and the Government of the Republic of Armenia with the opportunity, within the framework of their powers, to make the legal regulations of the Law of the Republic of Armenia on Funded Pensions and other laws and normative legal acts (regulations) systemically interrelated with the latter, correspond to the requirements of the instant Decision.

Based on the new legal regulations following from the requirements of the instant Decision and taking into account the requirements of Article 42, Part 4 of the Constitution the Republic of Armenia, previously made contributions shall be subject to recalculation.

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

Chairman **G. Harutyunyan**

2 April 2014
DCC - 1142

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

THE CASE ON CONFORMITY OF THE SECOND PARAGRAPH OF PART 1 OF ARTICLE 37 OF THE CODE OF THE REPUBLIC OF ARMENIA ON ADMINISTRATIVE OFFENCES 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 **8 April 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant: Head of Department of Legal Analysis of the Staff of the RA Human Right Defender A. Vardevanyan, specialist of the same department S. Terzikyan,

Respondent: official representative of the RA National Assembly, Adviser of Expertise Department of the Staff of the RA National Assembly, S. Tevanyan

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 on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Second Paragraph of Part 1 of Article 37 of the Code of the Republic of Armenia on Administrative Offences with the Constitu-

tion 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 application of the RA Human Rights Defender submitted to the RA Constitutional Court on 22.11.2013.

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

1. The RA Code on Administrative Offences was adopted by the Supreme Council of the ArmSSR on December 6, 1985 and entered into force on 1 June 1986.

Part 1 of Article 37 of the RA Code on Administrative Offences titled "Time terms of imposing administrative penalty" prescribes, "The administrative penalty shall be imposed not later than two months after the commitment of the offence and in case of continuous and lasting offences within two months after its disclosure except for the cases prescribed by this Article."

The mentioned Article was amended by the RA National Assembly by the Laws of 18.08.93 ՀՕ-73, 23.06.97 ՀՕ-133, 13.06.06 ՀՕ-138-Ն, 11.05.11 ՀՕ-155-Ն, 09.02.12 ՀՕ-11-Ն, 05.12.13 ՀՕ-143-Ն.

2. The Applicant substantiated his position by the statement that the challenged norm of the Code contradicts the principle of legal certainty, as it does not prescribe which is lasting and continuous offence. According to the Applicant, the RA legislation has not revealed the contents of the terms "lasting and continuous offence." In such conditions, according to the Applicant, the absence of clear legislative definitions, certain binding standards and/or grounds (which the administrative body will rely for qualifying the offence as lasting or continuous) block the right to effective exercise of person's legal protection as there are no mechanisms for presentation of anti-arguments against the mentioned decisions.

Meanwhile, the Applicant, by clarifying his arguments in the written explanations submitted to the Constitutional Court and stating the fact that doctrinal sources on lasting and continuous offences are available,

admits that the contents of the terms "lasting and continuous offence" shall be enshrined by the RA legislation and in his further arguments does not substantiate the necessity to define the contents of the above-mentioned terms in the challenged norm of the Code.

The Applicant also finds that in the terms of non compliance with the principle of legal certainty of the challenged norm of the Code the principle of ban to perform unequal approach towards identical factual circumstances prescribed in Article 7 of the RA Law on Fundamentals of Administration and Administrative Procedure and Article 5 of the same Law may also be violated as in case of the latter, from the perspective of qualifying the offence as lasting or continuous, the authorities of the administrative bodies are not distinct.

According to the Applicant, in such terms the law enforcement body may qualify the simple offence as long-term or continuous offence and impose administrative liability during two months from the date of disclosure by not implementing the time term restriction prescribed by Part 1 of Article 37.

3. The Respondent objected the arguments of the Applicant and states that absence of legislative definition of the contents of the notions "lasting offence" and "continuous offence" prescribed in Part 1 of Article 37 of the RA Code on Administrative Offences is not sufficient for considering that norm as anti-constitutional.

The Respondent substantiated his position that both from the perspective of linguistics as well as legislation, the terms "lasting" and "continuous" are clear and mainly are comprehensive. The Respondent, as an argument, mentions the relevant glossary as well as relevant special sources where the linguistic and legal meanings of the terms "lasting" and "continuous" are envisaged. According to the Respondent, in the case of availability of the relevant doctrinal interpretations, the legislative stipulation of the considered notions would not change the essence of the legislative regulation as in case of making decision in every concrete administrative offence the law enforcement body will have to make a decision whether the mentioned offence is covered by the relevant notions or not. According to the Respondent, the problem in this case is not mainly in the legislative stipulation of the considered notions, but in stipulation of the nature of each administrative offence in the disposition of the norm prescribing liability for it.

Simultaneously, the Respondent states that in the judicial practice there are no diverse interpretation concerning the challenged norm of the Code and in case of their availability, the RA Court of Cassation may play its essential role by its mission to ensure the identical implementation of the Law.

Summarizing the Respondent finds that, on one hand, the current regulations allow to ensure the identical implementation of the law, and, on the other hand, the doctrinal approaches, which serve as the sources of law, may be of not imperative nature, but may have the identifying effect on the legal consciousness on the law enforcement body in the issue of comprehension and implementation of the relevant norms.

Deriving from the priorities dictated by the practice, the Respondent also expresses opinion about the possibility to make the issue of appropriateness of legislative stipulation of the standards and features of the lasting or continuous offences within further legislative reforms.

4. Comparing the positions of the parties, the RA Constitutional Court states that the issue pointed out by the RA Human Rights Defender mainly comes to the fact that in the case of current regulations of Part 1, Article 37 of the RA Code on Administrative Offences "...the person, who was subject to administrative liability, does not have possibility to counter the circumstance qualifying the offence as lasting and continuous by the administrative body because it cannot be comprehended distinctly that in what case the committed offence is qualified as lasting or continuous."

It is also fact that the definitions of the terms "lasting and continuous offence" are not provided in the RA Code. Part 1 of Article 42 of the RA Law on Legal Acts prescribed "If new or ambiguous concepts or terms or such concepts or terms are used in a regulatory legal act that are not understood unambiguously without clarification, the legal act concerned shall provide their definitions."

It also becomes evident from the materials of the case that the efforts of the RA Human Rights Defender to receive clarifications on Part 1 of Article 37 of the RA Code on Administrative Offences and its implementation from the Committee of State Incomes adjunct to the RA Government and RA Ministry of Justice were in vain. The mentioned bodies do not consider themselves competent to provide with the official clarification.

According to the certificate JD-1 E-1703 of 27.03.2014 provided by the RA Judicial Department to the Constitutional Court judicial practice concerning the challenged legal provisions is not formed, the Court of Cassation has not adopted any precedential decision likewise.

5. Part 1 of Article 41 of the RA Law on Legal Acts prescribes, "...Headings of articles must conform the content of the articles." The challenged provision of the RA Code on Administrative Offences is headed "Time-limits for imposing administrative penalty." It derives from the analysis of the relevant Article that the latter is not called upon to define the concepts of the types of the administrative offences. The study of the international practice states that even in the case of legislative stipulation of lasting or continuous administrative offences, the latter and the time-limit for imposing administrative penalties are envisaged in different articles of the relevant act. Thus, the absence of this concept in the challenged article by itself does not contradict the principle of legal certainty.

6. In the framework of the given case, the Constitutional Court considers it necessary to state that the issue raised by the Applicant is not conditioned by the legal regulations prescribed by Part 1 of Article 37 of the RA Code on Administrative Offences but by the absence of the concepts of "lasting" and "continuous" offences in the RA Code on Administrative Offences in general.

In such conditions the Constitutional Court considers it necessary to discuss the correlation of legislative gap and absence of legal regulation of the definitions of legal terms. Regarding the mentioned, the RA Constitutional Court considers it necessary to state that the legislative gap cannot be mechanically identified merely with the absence of legislatively stipulated definition of this or that term. The legislative gap exists in the case, when due to absence of the element ensuring the completeness of legal regulation or incomplete regulation of that element, the complete and normal implementation of legislatively regulated legal regulations is distorted. Meanwhile, the absence of definition of lasting and continuous offences in the text of the RA Code on the Administrative Offences is the absence of legislative regulation of the legal notion.

The RA Constitutional Court, in a number of its decisions, in particular, DCC-864, DCC-914 and DCC-933 expressed legal position con-

cerning the issue of competence of consideration of the constitutionality of the gap of the law according to which the normative legal solution of the gap of legal regulation is the competence of the legislative power. In particular, pursuant to the legal positions expressed in the mentioned decisions, considering the competences of the legislator and the Constitutional Court in overcoming the gap in law in the context of the principle of separation of powers scope, the Constitutional Court considers it necessary to state that in all cases, when the gap in the law is conditioned by the absence of normative commandment concerning the certain circumstances in the sphere of legal regulations, then overcoming such a gap is within the competence of the legislative body.

The Constitutional Court states that the current issue is not conditioned not by the diverse interpretations of the challenged norm. The legislator, simply, has not clarified the concepts defined by the law. The current situation is the gap of legal regulation, which shall be overcome within the competence of the RA National Assembly.

Based on the results of consideration of the Case and being ruled by Article 100, Point 1, Article 101, Part1, Point 8 and Article 102 of the Constitution of the Republic of Armenia, Article 32, Point 1, Article 60, Point 1 and Articles 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To dismiss the proceeding of the case of conformity of Article 37, Part 1 of the RA Code on Administrative Offences with the Constitution of the Republic of Armenia on the basis of the application of the RA Human Rights Defender.

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**

8 April 2014
DCC-1143

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

THE CASE ON CONFORMITY OF PART 1 OF ARTICLE 45.6 OF THE LAW OF THE REPUBLIC OF ARMENIA ON ADVOCACY WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN GEVORG SLOYAN

Yerevan **18 April 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant: G. Sloyan

Respondent: official representative of the RA National Assembly, Adviser of Expertise Department of the Staff of the RA National Assembly, S. Tevanyan,

Invited Acting Minister of the Education and Science of the Republic of Armenia, A. Ashotyan

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 Part 1 of Article 45.6 of the Law on Advocacy of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Gevorg Sloyan.

The Case was initiated on the basis of the Application of the citizen Gevorg Sloyan submitted to the Constitutional Court on 14.04.2013.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the RA Law on Advocacy and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on Advocacy was adopted by the RA National Assembly on December 14, 2004, signed by the President of the Republic of Armenia on January 13, 2005 and entered into force on January 22, 2005.

Part 1 of Article 45.6 of the Law titled "Status of the attendee of the School of Advocacy" prescribes, "A natural person with legal capacity who possesses a higher legal education with bachelor degree or certified specialist with diploma and a higher legal education may attend the School of Advocates, unless he/she has been convicted for an intentional crime and his or her conviction has not been set aside or removed."

The abovementioned provision was added in the RA Law on Advocacy on the basis of the Law ՀՕ-339-Ն on Making Amendments and Addendum in the Law of the Republic of Armenia on Advocacy which was adopted by the RA National Assembly on December 8, 2011, was signed by the President of the Republic of Armenia on December 29, 2011 and entered into force on January 19, 2012.

2. The procedural prehistory of the case is as follows: on 23.06.2012 the Applicant applied to the Foundation of the School of Advocacy of the Republic of Armenia to take the entrance examinations.

On 17.07.2012 the Applicant received the decision of the chair of the entrance examination commission of the School of Advocacy of 09.07.2012 on "Depriving the candidate Gevorg Sloyan of the status and not allowing him to take the exam."

The Applicant appealed the abovementioned decision at the Council of the Trustees of the Foundation of the School of Advocacy of the Republic of Armenia, which by its decision of 26.07.2012 declined the Applicant's application/complaint.

The Applicant submitted a claim to the court against the foundation

of the School of Advocacy of the Republic of Armenia requesting to oblige the Respondent to confirm his status of attendee and permit him to take the entrance examinations of the RA School of Advocacy.

By the decision EACD/2103/02/12 of civil case of 27.02.2013 the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan City declined the Applicant's claim.

By the decision of 29.05.2013 the RA Civil Court of Appeal declined the Applicant's appeal leaving in force the decision of the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan City.

By the Decision of 31.07.2013 the Court of Cassation returned the Applicant's cassation complaint.

3. The Applicant finds that the challenged provisions of the law contradict the Articles 14.1, 32 and 39 of the RA Constitution.

The Applicant's arguments on contradiction of the challenged articles to Article 14.1 of the Constitution are the following: pointing out a number of judicial acts of the European Court of Human Rights, Constitutional Court of the Republic of Armenia and the Constitutional Court of the Russian Federation, the Applicant states that for obtaining the status of attendee of the RA School of Advocacy Part 1 of Article 45.6 of the RA Law on Advocacy prescribing the requirement of availability of one of the two (bachelor or certified specialist) of the three grades of qualification of the higher education envisaged in the Republic of Armenia, without any objective and reasonable justification has envisaged discriminative approach towards the persons with master's qualification degree, and even if such discrimination has objective and reasonable justification, the remedies exercised by law (differentiation, discrimination) are not proportionate to the challenged goals, and there is no reasonable correlation of proportionality between the implemented remedy and challenged goal.

Applicant's arguments on contradiction of the challenged norms to Article 32 of the RA Constitution are the following: presenting the interpretation of the contents of freedom of choice of occupation prescribed in Article 32 of the Constitution, the Applicant presented the following point of view, "...the Applicant by his qualification is considered as a person with higher legal education which means that he may freely choose the type of occupation (activity). In this case, the Appli-

cant, as a person with higher legal education, wants to profess advocate activity. Freedom of choice of profession (the specialization within it) and certain types of work is exclusively this person's right. Meanwhile the law applied regarding the Applicant restricts his right to profess advocate activity, thus this norm of the law contradicts Article 32 of the RA Constitution so far blocks the Applicant's right to choose freely the occupation of the Advocate."

Simultaneously, pointing out the text of the former edition of the RA Law on Advocacy and stating that in contrast to the current legal regulation, in the past higher legal education, including the availability of master's degree in law, was prescribed for getting the license of advocate, the Applicant also finds that due to the current legal regulation his legitimate expectations are distorted so far that he by receiving higher legal education, among the rest, expected also possibility of free choice of advocate activity.

Applicant's arguments on contradiction of the challenged articles to Article 39 of the RA Constitution are the following: referring to the RA Law on Higher and Post-Graduate Professional Education and stating that pursuant to this law persons with bachelor degree in law and master degree in law and qualification of certified specialist in law are considered as the persons with higher legal education and points out that the relevant provisions of the same Law on getting additional education and a graduation document as a result, the Applicant concludes that due to relevant provisions he was deprived of his rights to get additional professional education and appropriate graduation documents as the challenged norm of the RA Law on Advocacy exposes groundless discrimination/differentiation which does not have reasonable and fair justification.

4. The Respondent finds that Article 45.6 of the RA Law on Advocacy is in conformity with Articles 14.1, 32 and 39 of the RA Constitution.

For substantiating his position, the Respondent, on the basis of analysis of the provisions of Article 3 of the RA Law on Education concerning the educational programme and Points 17.1, 20, 21 and 22 of the same Article, Parts 2 and 5 of Article 9 of the RA Law on Higher and Post-Graduate Professional Education, presents the standards which substantiate the segregation of the systems of qualification of higher

education of 1st and 2nd level, i.e. the grounds on the basis of which the higher professional education will be continued, the time term during which the person shall receive education relevant to the appropriate educational system, and the educational programme, on the basis of which organization of education of the appropriate level is being realized.

On the basis of the above-mentioned standards the Respondent finds that education by the educational programme of the bachelor or certified specialist in the context of different forms of higher education may be considered as the "main" or "basic" professional education on the basis of which the person later may continue his/her education for receiving degree of qualification of the master degree after which in the sphere of post-graduate professional education as well.

Stating the provisions of Part 1 of Article 5 of the RA Law on Advocacy which reveal the content of the advocatory activity, the doctrinal position expressed in the interpretations of the RA Constitution, according to which, the state guarantees the right to legal aid, is responsible for its proper quality and in this concern is obliged to define the professional and moral requirements and standards presented to the advocates, stating that the School of Advocacy does not perform transmission of the preliminary professional knowledge and conduct of the preliminary professional education, the Respondent considers it natural that for performance of the advocatory activity availability of "basic" higher professional education of the relevant sphere is required rather than availability of higher qualification degree such as master degree or scientific degree of candidate of sciences and doctor of sciences of the respective sphere.

Simultaneously, the Respondent finds that for enjoyment of any right certain preconditions, standards and requirements shall be prescribed and that the rights and freedoms cannot be absolute and unconditional. In this regard, the Respondent finds that the challenged provisions of the law do not prescribe discrimination and do not violate the person's rights to free choice of education and occupation.

5. Taking into consideration the Applicant's arguments, in the framework of the examination of this case, firstly it is necessary to reveal the requirements presented to the candidates to the positions for which pursuant to the RA legislation legal education is required.

Taking as grounds Point 4, Article 115 of the RA Judicial Code, Article 32 of RA Law on Prosecution, Paragraph 1, Point 1, Article 10 of the RA Law on Notaries, Point 1, Article 6 of the RA Law on the Special Investigative Service, Paragraph 5, Part 3, Article 14 of the RA Law on Service in the Police, and combining them with the challenged norm of the RA Law on Advocacy, the Constitutional Court states that the legislator presents common educational standard to the candidates to the positions of the judge, prosecutor and investigator or to a person for working as the notary or advocate, i.e. availability of qualification of the higher legal education of the bachelor degree or certified specialist degree. It is not an end in itself as it derives from the logics of provisions of Points 20, 21 and 22 of Article 3 of the RA Law on Education, defining the content of the notions "bachelor", "certified specialist" and "master degree", from Article 3 of the RA Law on Higher and Post-Graduate Professional Education prescribing the content of the notion of "higher professional education" and Article 9 prescribing two-degree system of qualification of the higher professional education, that in the framework of any higher educational speciality the master's degree acts as the system of deepening that specialization. On the other hand, Bologna educational system permits the person with a bachelor degree or a certified specialist with other specialization to start a master degree in other specialization. Although the law prescribes that education in the given specialization is not considered as a second higher education.

The Constitutional Court states that the credit system introduced as a result of the Bologna process requires compilation of appropriate amount of credits for receiving appropriate professional qualification by a certain educational program. Thus, the master's degree qualification shall be considered as an educational higher degree in that specialization only in the case when compilation of the necessary credits prescribed for that specialization is available. In this case only the person may be considered *as the holder of master's qualification degree of the second degree of the certain specialization* by the appropriate educational program.

This issue is not distinctly regulated by the RA legislation, which contains high risk for wide discretionary approaches and human rights violations. In particular, it derives from Paragraph 2, Part 5, Article 9 of the RA Law on Higher and Post-Graduate Professional Education that "The persons who have received graduation document of the appropriate degree of higher professional education are entitled to continue the studies

upon the educational program of the next level according to the defined procedure. Education received for the first time through the educational programs of the higher education of different levels shall not be regarded as second higher professional education." On the other hand, in the above-mentioned laws and other sub-legislative acts (especially in the decisions of the RA Government respectively Decision No.-24 of January 16, 2001, No.-2307-ն of December 22, 2005, No.-332-ն of March 31, 2011 on confirming the general standards of the education, investing credit system, national framework of qualification of education, as well as appropriate department acts adopted by the Minister of Education and Science of the Republic of Armenia) clear approach towards the legal content of different levels of education, continuity of education, balance of system of credit compilation and appropriate qualification on establishing unique standards in this sphere is not available. In such a case, the institutions, which provide master's degree, interpret the RA legislation in their own way, deriving from their own interests and goals and define diverse orders both for entering master's degree and for qualification of magistrates. In such conditions, the person after receiving paid education in the state owned educational institutes does not enjoy the right to work in the profession obtained, as well as does not get right to professional education.

The RA Constitutional Court finds that the legislative inaccuracies cause a situation when, on one hand, the person takes the exam guided by legitimate expectations, studies at magistrate level, gets state sample diploma, but later it appears that pursuant to the restrictions prescribed by different legal acts he/she cannot work by that specialization, on the other hand, he/she in one or two years may get another profession by professional programme of the master's degree, get an appropriate diploma confirmed by the state without compilation of necessary credits. Such a situation demands systemic and consistent legislative clarifications, first, at the level of the RA Law on Education and RA Law on Higher and Post-Graduate Professional Education, harmonizing the levels of higher professional qualification with the credits defined by the state for that certain profession.

The Constitutional Court acknowledged the clarifications of A. Ashotyan, the Acting Minister of Education and Science, that up to the end of 2014 the conceptual approaches will be clarified and appropriate legal regulations will be undertaken.

6. The Constitutional Court states that in the rule of law state the legal regulations stipulated in the law shall make the legitimate expectations predictable for the person. The legal regulations and the law enforcement practice shall be based on the fundamental approach, according to which the principle of defense of right of legitimate expectations is one of the integral elements of ensuring of legal state and rule of law. It is a fact that within the legal relations in question the person's right to legitimate expectations is violated. In Part 1 of Article 45.6 of the RA Law on Advocacy in the case of availability of necessary credits, by the interpretation provided by the law enforcement practice, in practice the right of the person with higher professional qualification (master's degree) to become an attendee of the school of advocacy is blocked. Such a situation is mainly conditioned by the abovementioned imperfect legal and systemic solutions present in the sphere of higher and post-graduate professional education. Due to this, in particular, the link between higher professional appropriate qualification and the certificate (diploma) verifying its legal fact has not been specified from the perspective of the state common standards. Such a situation, in its turn, has led to that, as it has been mentioned, that the challenged provision is problematic from the perspective of protection of human rights; it is not in conformity with the principle of proportionality of restriction of rights and does not ensure realization of constitutional-legal guarantee of immunity of the essence of right.

Based on the results of consideration of the Case and being governed 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 Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare Part 1 of Article 45.6 of the RA Law on Advocacy by the part and interpretation according to which the right of a person with higher level professional appropriate qualification to become an attendee of the School of Advocacy is blocked, to be in contravention with Articles 1, 3, 43 (Part 2) 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 April 2014

DCC-1148

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

ON THE CASE CONCERNING DETERMINATION OF THE ISSUE OF CONFORMITY OF THE PROVISION "IRRESPECTIVE OF THE OWNERSHIP" OF ARTICLE 224 OF THE CUSTOMS CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE ADMINISTRATIVE COURT OF APPEAL OF THE REPUBLIC OF ARMENIA

Yerevan **3 June 2014**

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

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

official representative of the RA National Assembly, advisor to the Department of Expertise of the RA National Assembly Staff: S. Tevanyan,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 7 of the Constitution of the Republic of Armenia, Articles 25, 68 and 71 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on the conformity of the provision "irrespective of the ownership" prescribed in Article 224 of RA Customs Code with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of Appeal of the Republic of Armenia.

The examination of the case was initiated on the basis of the application of the RA Administrative Court of Appeal submitted to the RA Constitutional Court on 27.12.2013.

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

1. The Customs Code was adopted by the RA National Assembly on 06.07.2000, signed by the RA President on 09.08.2000 and came into force on 01.01.2001. Article 224 of the RA Customs Code was amended by the Law ՀՕ-25-Ն on Making Amendments and Additions in the RA Customs Code which was adopted by the RA National assembly on 22.12.2010, signed by the RA President on 15.01.2011 and entered into force on 05.02.2011 and the Law ՀՕ-125- Ն on Making Amendments and Additions in the RA Customs Code which was adopted by the RA National assembly on 11.12.2013, signed by the RA President 27.12.2013 and entered into force on 07.01.2014.

Article 224 of the RA Customs Code (hereinafter Customs Code) is challenged by the Applicant at the RA Constitutional Court by edition adopted by the National Assembly on 22.12.2010 by the Law ՀՕ-25-Ն on Making Amendments and Additions in the RA Customs Code.

The challenged edition of Article 224 of the Customs Code prescribes: "The person from whom goods were taken by the order prescribed by Article 212 of the Code or to ensure payment of the fine and customs payments irrespective of the ownership, may receive them within 15 days after payment of the fine, custom payments and performance of obligations."

2. The background of the considered case is the following: The goods supplied to "Dino Gold Mining Company" LLC were examined in the customs storehouse on June 1, 2010 and it was revealed that Kamo Petrosyan, the authorized representative of "Dino Gold Mining Company" LLC had made a wrong declaration of the goods. Pursuant to Article 203 of the RA Customs Code a protocol was filed against Kamo Petrosyan on violation of the customs rules and the imported goods were seized and stored in "Trans Alliance" LLC customs store-

house. On 12.08.2010 by decision of the Head of the Investigation Department of the State Income Committee of the Republic of Armenia Adjunct to the Government was found guilty in violating the customs rules prescribed by Article 203 of the RA Customs Code and was fined.

"Dino Gold Mining Company" LLC applied to the RA State Income Committee Adjunct to the Government on 09.02.2012 with the request to release the seized goods. The latter replied to the Applicant's application stating that "…in accordance with Article 224 of the RA Customs Code irrespective of the ownership the goods seized for ensuring the payment of the fine may be returned within 15 days after payment of the fine."

"Dino Gold Mining Company" LLC applied to the RA State Income Committee Adjunct to the Government with the demand to recognize the abovementioned administrative act as invalid and release the goods. The Appeal Commission of the State Income Committee Adjunct to the Government left the complaint without examination and the challenged administrative act was left without changes.

The Administrative Court rejected the submitted claim based on Article 224 of the Customs Code.

At present the Administrative Court of Appeal carries out the administrative case No. AC/6421/05/12 on the basis of "Dandy Precious Metals Kapan" CSC (at the moment of submitting the claim "Dino Gold Mining Company") against the Administrative Act No.13-2/1350-12 of 17.02.2012 of the RA State Income Committee Adjunct to the Government on recognizing the part "Simultaneously, it is declared that for ensuring the recovery of the fine irrespective of the ownership the seized goods, pursuant to Article 224 of the RA Customs Code they may be returned after the payment of the fine within 15 days" as invalid and changing the demands of the part "To permit "Dino Gold Mining Company" CSC to release the air conditioning pipes produced by the FLEXADUX PLASTICS British company with total weight of 854 kg and imported to the RA from the Great Britain ".

On 23.12.2013 the Administrative Court of Appeal held a decision to terminate the proceeding of the case and apply to the RA Constitutional Court to decide the conformity of the provision of "irrespective of the ownership" of Article 224 of the RA Customs Code with the RA Constitution.

3. The Applicant states that the challenged provision "irrespective of the ownership" contradicts Articles 8 and 33 of the RA Constitution as it deprives the owner of the property in constitutional legal meaning by hampering the possibility of the owner, carrying no obligations, to use the property without the possibility to achieve the goals of the customs policy of the Republic of Armenia defined by law. The Applicant also finds that the challenged provision causes legal uncertainty. To the Applicant, according to the principles of responsibility in accordance with guilt and personal responsibility, as well as in the context of the goal of administrative fine, the fine shall be paid exclusively on the expense of property of the wrongdoer meanwhile, by the force of the challenged provision, for ensuring payment of fine, customs payments and obligations the release of those goods is restricted which are seized according to the order subscribed by Article 212 of the Customs Code from the subjects who do not have any obligations.

The Applicant also mentions that in this case the interference with the right to property cannot be considered as an effective and necessary mean for achieving the goals pursued by the RA customs policy as by interference with the right to property not any behavior is required from the owner for achieving those goals. Payment of the fine by the third party who is considered as an independent subject is defined as a prerequisite for elimination of restriction to this right.

4. The Respondent, objected the Applicant's arguments and finds that the discussed regulation "is the mean which ensures implementation of the sanction by the power of which besides calling the offender to *personal liability*, the company, by which this subject is authorized, becomes the subject to the negative consequences of the illegal actions of the latter." According to the Respondent, "...in the condition, when due to the illegal actions of the person authorized by the company, fine is imposed by the competent bodies which, the person, who committed the violation, shall pay in person, and the company, by making the appropriate formulations, shall be authorized to implement its right to property without any hindrance and the latter will not only assist the payment of the fine by the representative and not undertake means for ensuring the performance of the sanction but also later not to undertake means for evading these situations. Meanwhile, in the case of the current legal regulations, the importing company, as an owner, is inter-

ested in ensuring the payment of the fine for restoring the right to dispose completely the good which it possesses by the right to property."

Touching upon the Applicant's arguments on depriving the right to property, the Respondent mentioned that "...restrictions of the implementation of the owner's powers, meanwhile, shall be differentiated from legal depriving of the right to property, and take into consideration the differences of the legal consequences deriving from them..."

5. For resolving the issue of constitutionality of the challenged provision, the Constitutional Court finds it necessary to consider the challenged regulation in the light of combination with the relevant provisions of the RA Customs Code, which are systemically correlated with the challenged provision, in order to find out:

- to what extent the completeness of the legislative mechanisms of exercise of the challenged regulation is ensured;
- what is the constitutional legal content of the notion "deprivation of the right to property";
- to what extent the challenged legal regulation prescribed by the challenged provision is included in the contextual scopes of the institute of "depriving the right to property" prescribed by Article 31 of the RA Constitution;
- does the challenged provision cause restriction to the right to property? Does it pursue legitimate goal? Is it proportionate and necessary for achieving the legitimate goal in the democratic society?
- does the RA legislation prescribe necessary and sufficient guarantees in the framework of ensuring effective defense of human rights?

6. As a result of the combined analysis of the challenged regulation and the relevant provisions of the Customs Code systemically correlated with the challenged provision, the RA Constitutional Court states that the institute of seizure of the goods during the customs proceedings is stipulated in Chapter 38 of Customs Code. Part 1 of Article 212 prescribes that the goods which are considered as direct object of violation of the customs rules, the means of transportation used for shipment of the goods across the customs boarder, caches constructed for the shipment of the goods across the RA customs boarder, as well as documents

necessary for the examination of the proceeding of the case on violation of the customs rules are subject to seizure.

It derives from the mentioned regulation that the legislator authorizes the customs body to seize exclusively the following subjects:

- goods considered as direct object of violation of the customs rules,
- means of transportation used for shipment of the goods across the customs boarder;
- caches constructed for the shipment of goods across the RA customs boarder;
- documents necessary for the examination of the proceeding of the case on violation of the customs rules.

In the same article the legislator prescribes the procedure of seizure of the goods which, in this case, ensures the right of effective means of legal defense of the physical person or legal entity before the state body. As a result of the observation of the Customs Code, the Constitutional Court states that the mentioned article is the only one in the Customs Code, which defines the list of the goods which can be seized by the customs body and the order of their seizure. No other norm is prescribed according to which other goods can be seized by the same or other procedure.

Simultaneously, the Constitutional Court states that the institute of seizure of the goods is called to ensure the effectiveness of the proceeding of the cases on violation of the customs rules which provides the customs body with the possibility to find and prevent customs violations. The latter is public interest which justifies the necessity of restriction of the rights of the persons who transfer goods. The Constitutional Court, taking into consideration the circumstance that the article, titled "Time limit of returning the seized goods" prescribes that alleged goal of this article shall be directed towards ensuring the logical development of exercise of the institute of seizure of the goods prescribed by the Customs Code by the means of prescribing the time limits for returning the goods. Such a conclusion derives from the compared analysis of the norms concerned and requirement of the regulation prescribed by Part 1, Article 41 of the RA Law on Legal Acts, according to which "...Headings of articles must conform to the content of the articles..." This implies that in the framework of the challenged article not only the time limits for returning the goods in case of implementation of the regulation prescribed by Article 212 of the Customs Code are defined, but also another institution is stipulated,

i.e. institution of seizure of the goods for ensuring the fees and customs payments, though no any norm of the Customs Code regulates the relevant authority of the customs body or the procedure of performance of that authority. As a result, an article including a procedural norm dedicated to the regulation of a certain concrete legal regulation stipulates a procedural norm regulating another legal relation in case of absence of the material legal regulation of that relation. As a result, on one hand, the situation of interference with the right to property of a person occurs without the relevant authority of the customs body, and on the other hand, it is exercised in the terms of absence of the necessary structures. The Constitutional Court states that in such terms the person, in the process of interference with his/her right to property, is deprived of the possibility of effective defense of his/her right.

7. Pursuant to Article 8 of the RA Constitution, "The right to property is recognized and protected in the Republic of Armenia." Pursuant to Article 31 of the RA Constitution, " Everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him. The right to property shall not be exercised to cause damage to the environment or infringe on the rights and legitimate interests of other persons, the society and the state.

No one shall be deprived of property except for cases prescribed by law in conformity with judicial procedure.

Private property may be alienated for the needs of the society and the state only in exceptional cases of prevailing public interests, in the manner prescribed by the law and with prior equivalent compensation."

The RA Constitutional Court in its decision DCC-903 stated that "Article 31 of the RA Constitution prescribes four circumstances of differentiation of restriction exercising the right to property:

a) restriction of exercise of the right to property, by causing damage to the environment or infringe on the rights and legitimate interests of other persons, the society and the state (Second sentence of Part 1 of Article 31);
b) deprivation of property (Part 2 of Article 31);
c) alienation of private property for the needs of society and the state (Part 3 of Article 31);
d) restriction of the right to land ownership for the foreign citizens and stateless persons ..."

In its decisions, the RA Constitutional Court expressed also legal positions on the institution of "deprivation of the property" (DCC-903, DCC-1073, DCC-1142). In particular, in its decision DCC-903 of 13 July 2010, the Constitutional Court touched upon characteristic elements of "deprivation of the property" and, in particular, stated that "...the Constitutional Court states that the following obligatory elements are distinctive/typical for the institution of deprivation of the property:

- in case of deprivation of property suspension of right to property towards certain goods is being executed beyond the will of the owner and without any compensation;
- deprivation of the property is implemented as a means of responsibility;
- in case of deprivation of property simultaneous and complete termination of owner's authorities of possession, disposal and maintenance of the given property takes place without guaranteeing their continuity."

For assessment of the challenged provision from the perspective of deprivation of the property the Constitutional Court considers it necessary to examine it in systemic correlation with other provisions, as well as to reveal the goal pursued by the legal norm which involves the challenged provision. Thus, the challenged edition of Article 224 of the Customs Code prescribes, that, in accordance with the procedure prescribed by Article 212 of the Code or for ensuring payment of customs fees and customs payments, a person, from whom the goods have been seized, regardless the ownership of property, may get them back within a period of fifteen days after payment of fee, customs payments and performance of obligations. In the context of the challenged regulation, the aim of seizure of goods directly derives from the same regulation; in particular, the goods are seized for ensuring the levy of fee and customs payments. It is obvious from the definition that it is not a means of responsibility though it is performed beyond the person's will as an obligatory action (i.e. means of coercion implemented by the state) as the goals of deprivation of property and the challenged institution differ. Deprivation of property is considered as a means of responsibility which causes undesirable consequences to the owner in case if he/she does not behave in accordance with the requirements of the law. The challenged legal regulation is not a means of responsibility. It is intended to ensure the performance of the person's obligations prescribed by law.

Besides, the circumstance that seizure of goods is performed for ensuring the fulfillment of the obligation, states that as a result of it the restrictions of right to property will be abolished, i.e. in case of seizure of goods restoration of the right to property is ensured, meanwhile, deprivation of property is unconditional/definitive. The provision prescribed in Article 224 also states it, according to which, "... it can be received within a period of fifteen days after payment of fees and customs payments and performance of obligations."

On the basis of the above mentioned, the Constitutional Court states that the discussed interference with the right to property by its essence is not a deprivation of property in the sense of Article 31 of the RA Constitution.

8. By its decision DCC-1073, the RA Constitutional Court examined the issue of restriction of the right to property of a person and mentioned that Article 1 of the Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms envisages that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. It is also highlighted that the preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The European Court, in its turn, in Case of Sporrong and Lцnnroth v. Sweden, (CASE OF SPORRONG AND LЦNNROTH V. SWEDEN, Application no. 7151/75; 7152/75) has envisaged that "Article (P1-1) comprises three distinct rules. The first rule, which is of a general nature, stipulates the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognizes that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purposes stated in the second paragraph."

The RA Constitutional Court states that although the challenged provision does not lead to deprivation of property, absence of possibilities

to enjoy the authorities which comprise the content of the right to property occurs as it is obvious that the seized goods, as an object of property, in a certain time limit cannot be disposed, used or administered by the owner. The Constitutional Court finds it necessary to consider the challenged regulation in the light of logics of the constitutional legal principle of the harmonious exercise of right to property of protection of environment, rights of other persons, society and state and their legitimate interests. As it is mentioned, the challenged regulation pursues an aim to ensure payment of fine and customs payment within customs legal relations, i.e. it is called to ensure performance of payment of fine and customs payment by the person responsible for the payment of fine and customs payments. By examining the institution of arrest applied within tax relations, which is called to ensure fulfillment of tax obligations in the decision DCC-1073 the RA Constitutional Court considered restriction of right to property as legitimate in certain circumstances pursuant to fulfillment of obligations prescribed in Article 45 of the RA Constitution.. Although, the challenged provision prescribes restriction to right to property without the legal terms mentioned in the above mentioned decision and simultaneously does not differentiate the property of the wrongdoer and other persons. The challenged restriction to right to property considered by the decision DCC-1073 is realized for ensuring fulfillment of the duties by the person on the account of his own property in size of not performed obligation while the regulation prescribed by Article 224 of the Customs Code not always ensures the restriction of the right to property of the wrongdoer as a a guarantee for performance of duties prescribed by Article 45 of the RA Constitution. In the terms of the challenged regulation two situations are possible: in first case, when the person transfers the goods which belong to him/her, in second case, the goods which belong to another person or persons. In particular, such a situation occurs when the transporter of goods enjoys the service of the customs broker in the framework of the civil-legal obligations. If in first case the interference with right to property may be considered as legitimate as the person due to the fault committed by him/her is subjected to administrative fine and as guarantee of its implementation his/her right to property is restricted, in the second case it carries negative consequences regardless his/her fault due to improper behavior (action, inaction) of another person, i.e. as a result of improper performance of the civil-legal responsibilities taken over by the latter.

In the decision DCC-920 of October 12, 2010 the Constitutional Court stated that "The combined research of Articles 9, 32 and 279 of the RA Code on Administrative Offences proves that "responsibility for the fault" is one of the principles of administrative responsibility which means that administrative penalty (responsibility) may be implemented only towards a person who committed an administrative offence. This principle lies also at the basis of the responsibility for infringement of customs rules. In particular, pursuant to Article 189, Part 2 of the RA Customs Code any natural or official person shall incur liability for deliberate or imprudent violation of customs regulations. Consequently, fault as an obligatory element of the subjective side of the composition of administrative infringement is the only precondition and prerequisite of the administrative responsibility. The mentioned principle is tightly linked with another principle of administrative responsibility – the principle of personal responsibility pursuant to which the person is subject to liability only for the infringement committed by himself."

Developing the legal positions expressed in the Decision DCC-920, the RA Constitutional Court finds that as the person, who committed infringement, is considered as the subject of responsibility, consequently, the means for ensuring performance of obligations shall be implemented exclusively on the expense of the person's property who committed infringement and is subjected to responsibility. The Constitutional Court also finds that if the seizure of goods follows the goal of ensuring the performance of obligations to pay the fine and customs payments, it may not be implemented regardless ownership of the good subject to seizure as the offender will be interested in performing consequent obligation properly in the case of the prospective of abolishment of the restriction of his/her right and evading carrying the negative consequences towards his/her personal property; meanwhile the challenged regulation does not ensure logical inter-agreement of the correlation between interest in fulfillment of the obligation and the restriction of the right to property as a correlation between a goal and a remedy. Moreover, due to this legal regulation, in reality the public-legal principles (individualization, presence of guilt, etc) of realization of the institution of legal responsibility are violated and as a result it cannot effectively serve the aims pursued by them.

Based on the aforementioned the Constitutional Court finds that the restriction of the person's right to property conditioned by another person's illegitimate behavior (action or inaction) to ensure the performance of the obligation by the offender is an illegitimate interference with the right to property of the person who has not committed an offence and has no relevance to necessity to ensure the due/normal process of the preceding on the violations of custom rules.

9 Considering the issue of legislative guarantees necessary for application of the challenged regulation, the Constitutional Court states that the guarantees, in the light of which the RA Constitutional Court recognized the restriction of possibility of performance of the right to property to be in conformity with the RA Constitution as a form of the constitutional-legal principle of performance of the right to property prescribed by Article 31 of the RA Constitution directed to guarantee the fulfillment of the obligation stipulated by Article 45 of the Constitution are absent from the Customs Code. The guarantees pointed out in the Decision DCC-1073 mainly mean that arrest/seizure of goods for guaranteeing the performance of obligations could be implemented after exhausting all possibilities to ensure the fulfillment of obligation by other means. Meanwhile, in the examined case the property is seized immediately regardless ownership of the property, consequently, by illegitimate manner. Besides, alternative structures of seizure of property are absent from the Customs Code, although in the framework of the tax legal regulations, while discussing the issue of constitutionality of the institution of arrest, the Constitutional Court considered the availability of the latter as a productive structure in ensuring protection of human rights. The list of the property, the arrest of which is banned, is also absent from the Customs Code. Meanwhile, the availability of such a regulation in the RA Law on Taxes is also recognized as a significant guarantee of performance of arrest by the RA Constitutional Court in the Decision DCC-1073.

The Constitutional Court considers it necessary to mention that the challenged provision of the Customs Code does not clarify whether in case of imposing fine the owner of the property can pay the fine instead of the subject who committed violation or not. The Constitutional Court states that in case of absence of such possibility the risk of violation of human rights increases as abolishment of the restriction of the person's right to property is conditioned with the other person's behavior and

in case of non-payment of the fine for a long-lasting time period by the subject who committed offence, the owner of property may bear financial and other losses.

The Constitutional Court finds that, although enjoyment of the right to property may be temporarily suspended for ensuring payment of fines and customs payments but on this grounds the legislative regulations of interference with the right to property shall endow the person with possibility to protect his/her rights. Interference with the right to property shall derive from the necessity of ensuring payment of the fine and customs payment, must be sufficient and necessary for achieving the goal; the competent body's authority and procedure of this authority must be envisaged legislatively taking into account the necessity of envisaging guarantees for the protection of the right to property stated in this decision.

The Constitutional Court concludes:

First, the challenged legal regulation is not in conformity with the requirements of the RA Law on Legal Acts (particularly, Article 41, Part1, Article 36, Part 4),

Second, The Customs Code does not prescribe procedure of seizure of the goods for performance of the customs fines and obligations and the term "seizure" in Article 224, opposed to action concerning the direct objects of violation of customs rules prescribed by Article 212, refers not to revealing and preventing the customs legal violations but to ensuring performance of the payment of fines and customs payments and obligations,

Third, in case of implementation of the challenged legal provision, such a situation may occur when the seized goods will later not become the subject of confiscation in case of which seizure of the goods may not follow the goal to ensure the obligation of the customs fines and payments,

Fourth, the challenged provision, as far as it does not differentiate the property of different owners and causes adverse consequences for those subjects, whose behavour does not cause the fact of legal violation brings to illegitimate interference with their right to property.

Based on the results of consideration of the case and being governed by Article 100(1), Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64, 68 and 71 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To recognize the provision "irrespective of the ownership" of Article 224 of the RA Customs Code contradicting Articles 8 and 31 of the RA Constitution and void.

2. In accordance with Article 102(2) of RA Constitution this decision is final and enters into force from the moment of its announcement.

Chairman **G. Harutyunyan**

3 June 2014
DCC-1153

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

THE CASE ON CONFORMITY OF THE SECOND PARAGRAPH OF PART 3 OF ARTICLE 36 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 **14 October 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant: the RA Human Rights Defender, K. Andreasyan,

Respondent: official representative of the RA National Assembly, head of the Legal Department of the RA National Assembly Staff, H. Sargsyan,

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

examined in a public hearing by a written procedure the Case on conformity of Second Paragraph of Part 3 of Article 36 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.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the Law on State Pensions of the Republic of Armenia 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 December 22, 2010, signed by the RA President on December 30, 2010 and entered into force on 1 January, 2011.

Challenged in the present case Second Paragraph of Part 3 of Article 36 of the Law of the Republic of Armenia on State Pensions, titled "Payment of the outstanding amount of pension", provides: "The amount shall be paid upon submitting the application and necessary supporting documentation to the unit granting pensions within six months after the death of the a pensioner. Where the application is not filed within the set timeframe, the pension amount shall be subject to inheriting if the application and necessary documents are submitted to the unit of granting pension within twelve months after the death of a pensioner."

The challenged provision in the current edition was envisaged on March 19, 2012 by the Law LA ՀՕ-100-Ն "On Making Amendments and Addendum to the RA Law on State Pensions."

2. Challenging the constitutionality of the Second Paragraph of Part 3 of Article 36 of the RA Law "On State Pensions", the Applicant finds that the provision contradicts Articles 31 and 37, as well as Part 3 of Article 42 of the RA Constitution.

The Applicant states that concerning the inheritance of outstanding amount of pension, the RA Civil Code, unlike the challenged provisions, prescribes other regulations. According to the Applicant, from the regulations of the RA Civil Code it may be concluded that although law prescribes six months period for the acceptance of the inheritance it also prescribes that the inheritance may be accepted without applying to the court after the deadline of the prescribed time period if the consent of the other heirs who have accepted the inheritance is available, as well as possibility for applying to the court for recognizing the reasons

for missing the deadline for accepting the inheritance respectful. The challenged provision, by its regulation, restricts the right to receive the outstanding amount of the pension in case of death of a pensioner, and, therefore, contradicts both the regulations of the RA Civil Code and provisions of the RA Constitution.

The Applicant states that, although Article 64 of the former RA Law of 2002 "On State Pensions" prescribed six month period, it did not refer to inheriting the outstanding amounts, from which it becomes obvious that, in the case of inheritance, the legal relationship is regulated by general regulations of hereditary relations of the RA Civil Code. The new regulation of the challenged provisions of RA Law "On State Pensions" of 2010 leads to deterioration of the legal status of the person, and,therefore, also contradicts the provisions of Part 3 of Article 42 of the RA Constitution.

The Applicant considers that the challenged legal regulation blocks the effective enjoyment of the right to property of the person, as well as it does not derive from the requirements of the rule of law and gives rise to the issue of contradiction with both the constitutionality and international obligations of the Republic of Armenia.

3. The Respondent, opposing the arguments of the Applicant considers that the second paragraph of Point 3 of Article 36 of the RA Law "On State Pensions" complies with the requirements of Articles 31 and 37 and Part 3 of Article 42 of the RA Constitution.

According to the Respondent, the challenged provision for the inheritance of the mentioned amounts establishes terms not prescribed by the Civil Code of the Republic of Armenia, namely: a written request to the unit which grants pension for receiving the corresponding amount, which is beyond the regulation of the subject of the Law "On State Pensions".

The Respondent states that this issue does not contradict the Constitution of the Republic of Armenia, but there is a contradiction between the Civil Code of the Republic of Armenia and the RA Law "On State Pensions". Furthermore, according to the Respondent, this issue results in not unified enforcement practice, which should be corrected by removing existing contradiction between the challenged provision and the Civil Code of the Republic of Armenia as draft of the legislative amendment is already put in circulation.

According to the Respondent, in so far, as the challenged provision, by merits, contradicts the regulations prescribed by the RA Civil Code in the aspect of correlation of the law and the Code, the observations on its retroactive effect must be viewed in this context.

4. Stating within the constitutional legal dispute raised by this case that the challenged legal regulation concerns the legal relations related to inheritance of the unpaid amount of pension due to the death of a pensioner, also taking into account the legal position of the Constitutional Court expressed in its Decision DCC-649 of 4 October 2006 according to which "pension, as a means of social welfare, is also a form of property in accordance with the case-law of the European Court", the Constitutional Court finds it necessary to disclose the constitutional and legal content of the disputed legal regulation, especially in view of:

a) The constitutional provisions on the right to property, its implementation, restriction and protection, as well as the legal positions expressed in the decisions of the Constitutional Court of the Republic of Armenia;
b) The presence of specific guarantees for protection of the right to property and guaranteeing the legitimate expectations conditioned by the need to ensure the rule of law.

The Constitutional Court states that, in accordance with Paragraph 1 of Article 8 of the Constitution, "the Republic of Armenia recognizes and protects the right to property." The implementation of this constitutional provision is guaranteed by the Constitution of the Republic of Armenia, in particular, by Articles 31 and 43.

According to Parts 1-3 of Article 31 of the Constitution, " Everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him. The right to property shall not be exercised to cause damage to the environment or infringe on the rights and lawful interests of other persons, the society and the state.

No one shall be deprived of property except for cases prescribed by law in conformity with judicial procedure.

Private property may be alienated for the needs of the society and the state only in exceptional cases of prevailing public interests, in the manner prescribed by the law and with prior equivalent compensation."

Article 43 of the RA Constitution envisages, "Limitations on fundamental human and civil rights and freedoms may not exceed the scope

defined by the international commitments assumed by the Republic of Armenia." In particular, Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms envisages, "Every natural or legal person is entitled to the peaceful enjoyment of his possessions", Part 2 of Article 17 of the Universal Declaration of Human Rights prescribes, **"No one shall be arbitrarily deprived of his property."**

The Constitutional Court of the Republic of Armenia referred to the issue of the right to property, to the issues of its implementation, restriction and protection in a number of its decisions. In particular, the legal positions expressed in the Decisions DCC-630 of 18 April 2006, DCC-741 of March 18, 2008, DCC-903 of July 13, 2010, DCC-1009 of February 24, 2012, are also applicable for the present case.

5. The Constitutional Court states that the second paragraph of Point 3 of Article 36 of the RA Law ՀՕ-243-Ն "On State Pensions" of December 22, 2010 in the edition of the RA Law on March 19, 2012 ՀՕ-100-Ն in force prescribes:

"This amount will be paid if the application and necessary documents are submitted to the unit granting a pension, within six months after the death of the pensioner. In the case of not submitting an application in this period the outstanding amount of the pension is subject to the inheritance." It derives from the mentioned past legal regulation that the relationship related to inheritance is governed by the Civil Code of the Republic of Armenia. It is worth noting that a similar regulation was provided in Part 7 of Article 64 of the RA Law on November 19, 2002 ՀՕ-519-Ն "On State Pensions".

The amended above-mentioned regulation of the RA Law "On Making Amendments and Addenda to the RA Law on State Pensions" of March 19, 2012 ՀՕ-100-Ն the second paragraph of Part 3 of Article 36 was redrafted as follows:" This amount is paid if the application and the necessary documents are submitted to the unit which grants the pension within six months period after the death of the pensioner. In case of not applying within six months, the unpaid amount of pension due to the death of the pensioner is subject to the inheritance, if the application and the necessary documents are submitted to the unit which grants the pension within twelve months period after the death of a pensioner."

Analysis of Part 3 of Article 36 of the RA Law "On State Pensions" shows that it regulates legal relations concerned with the payment of unpaid amount of pension due to the death of the pensioner, with the right of inheritance of this sum, as well as with the implementation of this law.

The Constitutional Court reiterates its legal position expressed in its Decision DCC-917 of 18 September 2010, which states that "by virtue of Part 1 of Article 42 of the RA Constitution, the State recognizes the right to inheritance, which includes not only the right to give it, but also the right to accept it. The right to inheritance protects the rights of the owner and, after his/her death, allows the continuity of its proprietary powers. At the same time for the heir it creates the constitutionally protected possibility of succession to the property of the deceased."

With regard to the legal regulation stipulated by the challenged legal provision concerning the right to inherit the unpaid pension due to the death of the pensioner, the Constitutional Court finds that in Law ՀՕ-100-Ն of 19.03.2012 the legislator prescribed new legal term according to which the exercise of the right of inheritance is being conditioned with the submission of the application and required documents to the unit which grants the pension, within twelve months after the death of the pensioner.

Any, especially new legal condition shall seek the legitimate goal to create more effective guarantees, which can not be realized due to the neglect of the constitutional and legal norms and principles. In case of this legal regulation, the new legal term of twelve month period restriction excludes the possibility to get the unpaid amount of pension due to the death of the pensioner in the case of missing this deadline for a good reason. By establishing a new legal term, the legislator does not provide an opportunity for recognizing the reasons of missing of the twelvemonth period justifiable, including in a judicial manner. The Constitutional Court considers **that the absence of such a legal regulation impedes the full exercise of the constitutional right to property, in particular, protection of this right in the relations connected with the terms of acceptance of the inheritance envisaged by Articles 18 and 19 of the RA Constitution.**

Governed by the above-mentioned and taking as the basis the legal

position of the Constitutional Court regarding the right to property, its restrictions, exercise and protection, as well as taking into account the legal regulation of the RA Law "On State Pensions", the results of the written explanation of the RA National Assembly engaged in the present case as a respondent, the Constitutional Court finds that the twelve-month time period limitation prescribed by the challenged legal regulation is not conditioned by the requirement of protection of the public values and as a result is not aimed at ensuring a reasonable balance between the rights of the owner and the others and the public interest. Clarification of the fate of the inheritance may serve as a justification for such a restriction, the legal regulation of which is, however, envisaged by the RA Civil Code.

6. In the framework of examination of the present case, the Constitutional Court finds it necessary to consider the issue of correlation of the challenged regulation and the regulations of the RA Civil Code relating to inheritance.

According to Part 2 of Article 1184 of the Civil Code of the Republic of Armenia "inheritance is regulated by this Code, and by other laws in cases prescribed by it." The analysis shows that despite the fact that the RA Civil Code does not contain any provision concerning stipulation of any regulation by the RA Law "On State Pensions", nevertheless, the challenged legal provision of the RA Law "On State Pensions" prescribes legal regulations which are not consonant with the legal regulations of the Civil Code. According to Part 3 of Article 1249 of the Civil Code, dedicated to the inheritance of amounts of unpaid salaries, pensions, allowances and the compensation payments for the caused damages, "In case of absence of the persons authorized to receive the unpaid amount of sum of the deceased in accordance with Point 1 of this Article or in case if they do not make a claim for the payment of such amounts within the prescribed period, the corresponding amounts shall be included in the inheritance and inherited on the general grounds prescribed by this Code. "That is, in the case of non-compliance with the special procedure prescribed by the Civil Code of the Republic of Armenia, general rules of inheritance are applied. According to Part 1 of Article 1226 and Part 1 of Article 1227 of the RA Civil Code, acceptance of an inheritance is made within six months after the date of opening the inheritance by submission to a notary at

the place of opening of the inheritance of a statement of the heir on the acceptance of the inheritance or his request for the issuance of a certificate of the right to inheritance..However, this period is not absolute, and the heir may accept the inheritance without any time limitation in case of satisfying certain conditions. Thus, in accordance with Part 1 of Article 1228 of the Civil Code of the Republic of Armenia 1.An inheritance may be accepted by an heir after the expiration of the time period limit established for accepting without applying to court, on the condition of the consent thereto of all the remaining heirs who have accepted the inheritance." The legislator does not envisage any time limits for exercising it. According to Part 2 of the same article, "On request by an heir who has let pass the time period for acceptance of an inheritance, a court may declare that he has accepted the inheritance, if the court finds the reasons for letting pass the time period to be compelling, in particular if it establishes that this time period was passed because the heir did not know and should not have known of the opening of the inheritance and on the condition that the heir who had let pass the time period for the acceptance of the inheritance applies to the court in the course of six months after the reasons for letting this time period pass have ceased to exist. "The legislator also does not set any time limit for the period of time between the expiration of the acceptance of inheritance and the time period for abolishing the reasons for missing this deadline. That is, no matter how much time has passed since the expiry of acceptance of the inheritance, still in the case of applying to court within six months after the reasons for passing this deadline are abolished, the reasons for missing the deadline may be considered as valid, and the succession may be accepted by the heir.

The other way of the succession is provided by Part 3 of Article 1226 of the Civil Code, according to which "It shall be recognized, unless proved otherwise, that an heir has accepted an inheritance when he has in fact entered into possession or management of the inherited property, in particular when the heir:

1) has taken measures for the preservation of the property and for the protection of it from incursions or claims of third persons;
2) has made expenses at his own expense for the maintenance of the property;
3) has paid at his own expense the debts of the donor by inheri-

tance or has received sums due to the donor by inheritance from third persons.

The above-mentioned legal provision does not condition acceptance of the inheritance by filing any statement to the notary. A person does not have to apply to any body, and just shall actually take possession or control of the inherited possession. The analysis of this legal provision and Part 3 of Article 1225 of the Civil Code of the Republic of Armenia shows that by the force of actual ownership, it is considered that the heir has also accepted the unpaid amount of pension due to the death of the pensioner.

Summing up the analysis, the Constitutional Court finds that the challenged legal provision ignores not only the ways of acceptance of the inheritance envisaged by the Civil Code of the Republic of Armenia, without providing an opportunity to the heir by virtue of the actual ownership to receive also the outstanding amount of pension due to the death of a pensioner, but provides a time restriction on the right to inheritance, which contradicts the terms stipulated by the Civil Code of the Republic of Armenia.

The study of law enforcement practice regarding the challenged issue shows that in the legal relationships associated with inheritance of unpaid amount of pension due to the death of the pensioner, the administrative law enforcement agencies, in fact, adhere to the challenged legal provision.

The Constitutional Court, based on Part 6 of Article 9 of the RA Law "On Legal Acts", according to which “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 on the requirement of Part 1 of Article 1 of the RA Civil Code, according to which "Norms of Civil Law contained in other laws must correspond to the present Code” states that the disputed legal provision can be applied insofar as it does not contradict the legal regulations of the Civil Code. In order to ensure a legitimate law enforcement practice, the Constitutional Court highlights the need to ensure a harmonious legal regulation of the relations concerning the inheritance regulated by the RA Law "On State Pensions" with the Civil Code of the Republic of Armenia, which is the responsibility of the legislator.

Based on the results of consideration of the Case and being governed by Point 1, Article 100 and Point 8 of Part 1 of Article 101 of the Con-

stitution of the Republic of Armenia and Articles 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare the provision of Second Paragraph of Part 3 of Article 36 of the Law of the Republic of Armenia on State Pensions "The amount shall be paid upon submitting the application and necessary supporting documentation to the unit granting pensions within six months after the death of a pensioner" contradicting the requirements of Articles 18, 19 and 31 of the RA Constitution 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**

14 October 2014
DCC-1167

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

THE CASE ON CONFORMITY OF THE OBLIGATIONS STIPULATED IN THE TREATY ON "THE ACCESSION TO THE TREATY OF MAY 29, 2014 ON "THE EURASIAN ECONOMIC UNION" SIGNED BY THE REPUBLIC OF ARMENIA" SIGNED ON OCTOBER 10, 2014 IN MINSK WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

Yerevan **14 November 2014**

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

with the participation of the official representative of the President of the Republic, Deputy Minister of Finance of the Republic of Armenia: S. Karayan,

pursuant to Article 100, Point 2, Article 101, Part 1, Point 1 of the Constitution of the Republic of Armenia, Articles 25, 38 and 72 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 the obligations stipulated in the Treaty on "the Accession to the Treaty of May 29, 2014 on "Eurasian Economic Union" signed by the Republic of Armenia" signed on October 10, 2014 in Minsk with the Constitution 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 President of the Republic on October 27, 2014.

Having examined the Application, the written report of the Rapporteurs on the Case, the written explanation and clarifications of the official representative of the President of the Republic, having studied the Treaty and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Treaty on "the Accession the Treaty of May 29, 2014 on "the Eurasian Economic Union" (hereinafter "Treaty") was signed on October 10, 2014 in Minsk between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation, on the one part, and the Republic of Armenia, on the other part. The Treaty contains 5 Annexure.

By the Treaty in subject the Republic of Armenia joins (accedes) the Treaty on "the Accession the Treaty of May 29, 2014 on "the Eurasian Economic Union," as well as, as a component of law of Single Economic Space and other international treaties signed in the scopes of the instituted legal Treaty framework, in accordance with the list prescribed by Annex 1 of the Treaty, and becomes the member of the Eurasian Economic Union from the date of entry into force of the Treaty.

Article 1 of the Treaty prescribes that implementation of certain norms of the Treaty on "The Accession to the Treaty of May 29, 2014 on "the Eurasian Economic Union" by the Republic of Armenia and Annex 1 of the Treaty on "The Accession to the Treaty of May 29, 2014 on "the Eurasian Economic Union" by the Republic of Armenia is exercised by the Republic of Armenia in accordance with the terms and transition provisions prescribed by Annex 3 of the Treaty concerning the issues on the Accession to the World Trade Organization. Consistencies on implementation of common customs tariffs of the Eurasian Economic Union (EEU) regarding the goods prescribed by the list envisaged by Annex 4 of the Treaty shall be taken into consideration.

Annex 2 of the Treaty sets the amendments, which are made in the Treaty on EEU and the international treaties signed in the scopes of the instituted legal Treaty framework of the Customs Union and the Single Economic Space, which concern acceding of the Republic of Armenia to the EEU.

Annex 3 of the Treaty prescribes the terms of implementation by the Republic of Armenia and transition provisions of certain norms of the

Treaty on EEU and norms of other international treaties stipulated by the Treaty under consideration.

Annex 4 of the Treaty defines the list of the goods regarding which at the transition stage the Republic of Armenia shall exercise import customs duties other than EEU custom tariffs rate.

Inasmuch as the Republic of Armenia does not have common boarders with the EEU member states and transmission of goods and means of transportation shall be exercised (shall pass) through the territory of third states, the peculiarities of transmission of the goods and means of transportation is defined by Annex 5 of the Treaty.

The Republic of Armenia shall undertake the obligation from the date of entering the Treaty into force in its territory to implement the acts of the Eurasian Economic Union bodies, as well as the decisions of the Eurasian Economic Highest Council (Interstate Council of Eurasian Economic Community) Highest Body of the Customs Union)), decisions of the Eurasian Economic Commission (Customs Union Commission) taking into consideration the provisions envisaged in Annex 3 of the Treaty.

The disputes concerning interpretation and/or implementation of the provisions of the Treaty shall be solved in accordance with Article 112 of the Treaty on Eurasian Economic Union.

2. According to the subject of the examination Annex 1 of the Treaty, the Republic of Armenia within the framework of formation of the legal basis of The Customs Union and Single Economic Space joins the following international legal documents:

- "Agreement on Uniform Rules on Determination of the Country of Origin of Goods" of January 25, 2008.
- "The Agreement on Determining the Customs Value of the Goods Transported by the Customs Border of the Customs Union" of January 25, 2008 (with the protocol wording on making amendments and addendums to the Agreement on Determining the Customs Value of the Goods Transported by the Customs Border of the Customs Union, as of 23 April, 2012).
- "The Protocol on the Customs Union Tariff Preferences Uniform System" of December 12, 2008.
- "The Agreement on the Rules Determining the Origin of the Goods from Developing or Least Developed Countries" of December 12, 2008.

- "The Agreement on the Customs Union Code", of November 27, 2009 (with the protocol edition of April 16, 2010 on making additions and addendums to the "Treaty on the Customs Union Code" of November 27, 2009).
- "The Agreement on the Mutual Administrative Assistance of the Customs Bodies of the Customs Union Member States" of May 21, 2010.
- "The Agreement on United Customs Registry of the Intellectual Property Objects of the Customs Union Member States" of May 21, 2010.
- "The Agreement on Certain Issues Related to the Order of Enforcement of Customs duties, Taxes Imposed on Goods Transported in accordance with the "Customs transit" Customs Procedure, the Characteristics of the Enforcement of Customs Duties, Taxes and the Transfer of Seized Money in regards of the Mentioned Goods'' of May 21, 2010 (with the protocol edition of December 19, 2011 on making amendments and addendums to ''The Agreement on May 21, 2010 "On Certain Issues Related to the Order of Enforcement of Customs Duties, Taxes Imposed on Goods Transported in accordance with the "Customs transit" Customs Procedure, the Characteristics of the Enforcement of Customs Duties, Taxes and the Transfer of Seized Money in regards of the Mentioned Goods".
- "The Agreement on the Exchanging and Presenting the Preliminary Information about the Transport Vehicles and Goods Transported by the Customs Border of the Customs Union" of May 21, 2010.
- "The Agreement on the Requirements for the Information Exchange between the Customs Union Member States' Customs Authorities and Other State Bodies" of May 21, 2010.
- "The Agreement on Changing the Bases, Conditions and Procedures of the Customs Payments Terms" of May 21, 2010.
- "The Agreement on the Customs Transit Features of the Rail Transported Goods through the Customs Union Customs Territory" of May 21, 2010.
- "The Agreement on the Order of Implementation of the Procedures of the Customs Operations concerning Transportation and Release of Goods for Private Purposes by Individuals through the

Customs Border of the Customs Union", June 18, 2010 (in edition of the Protocol of October 19, 2011 on Making Addendums and Amendments in "The Agreement on the Order of Implementation of the Procedures of the Customs Operations concerning Transportation and Release of Goods for Private Purposes by Individuals through the Customs Border of the Customs Union").

- "The Agreement on Free Warehouses and "Free Warehouse" customs procedure" of June 18, 2010.
- "The Agreement on not Applying Certain Forms of Control by Customs Authorities of Customs Union Member States" of June 18, 2010.
- "The Agreement on the Features concerning the Usage of International Carriage of Passengers, as well as Cargo and (or) Luggage Carrier Trailers, Semi-trailers, Containers and Railway Rolling Stocks in Interior Traffic of the Customs Territory of the Customs Union" of June 18, 2010.
- "The Agreement on the International Post Delivered Goods' Customs Operations Features" of June 18, 2010.
- "The Agreement on Customs Union Customs Territory Free (Special, Unique) Economic Zones and "Free Customs Zone" Customs Procedure Related Issues" of June 18, 2010.
- "The Agreement on the Order of Transportation of Cash or Monetary Instruments by Individuals through the Customs Union Customs Borders" of July 5, 2010.
- "The Agreement on the Order of Transportation of Cash or Monetary Instruments by Individuals through the Customs Union Customs Borders" of July 5, 2010.
- "The Agreement on the Criminal and Administrative Sanction Features for Violation of the Customs Union and Customs Union Member States' Legislation of July 5, 2010.
- "The Agreement on the Cooperation and Legal Assistance between the Customs Union Member Countries Customs Authorities on Criminal Cases and Administrative Offenses" of July 5, 2010.
- "The Agreement on Counteracting the Illegal Labor Migration by the Third States" of November 19, 2010.
- "The Agreement on Customs Union Activities within the Framework of the Multilateral Trading System" of May 19, 2011.

- "The Agreement on the Joint Board of the Customs Service by the Customs Union Member States" of June 22, 2011.
- "The Agreement on the Cooperation and Mutual Assistance on the Customs Union Member states' Customs Service Representatives' Activity Related Customs Cases within the Framework of the Eurasian Economic Committee" of June 22, 2011.
- "The Agreement on Organizing the Information Exchange in order to Implement the Analytic and Supervisory Functions of the Customs Authorities of Customs Union Member states" of October 19, 2011.
- "The Agreement on Providing Counteracting Measures against the Illegal Income Legalization (Money Laundering) During the Cash and (or) Monetary Instruments Transportation Through the Customs Union Customs Border and Financing the Terrorism" of December 19, 2011.
- "The Agreement on Elimination the Technical Barriers of Reciprocal Trade between the Customs Union Member States and the Members of the Commonwealth of the Independent States (CIS) Non-Members of the Customs Union" of December 17, 2012.

"The Agreement on the Order of Transportation of Drugs, Psychotropic Substances and their Precursors through the Territory of the Customs Union." of October 24, 2013.

3. The constitutional legal obligations undertaken by the Republic of Armenia based on the Treaty subject to the examination, the Treaty on the Eurasian Union of May 29, 2014, as well as to the list set by the Annex 1 to the considering Treaty signed within the framework of the formation of the legal base of the Customs Union and being a part of the law of Single Economic Space and provided by the upper-mentioned international treaties particularly, leads to the following:

- before the Treaty subject to the examination is put into the force, in cases when the Republic of Belarus, Republic of Kazakhstan and the Russian Federation sign or put into force an international treaty not mentioned in Annex 1 to the Treaty related to the operations of the Customs Union and Single Economic Space, it is necessary to accede to that international treaty by separate protocol on the date of its entry into the force, but

not earlier than the date when the Treaty is put into force (Article 1, Paragraph 4 of the Treaty);

- from the date of putting into force of the Treaty to apply in the territory of the Republic of Armenia the Eurasian Economic Union bodies' acts, as well as the decisions of the Eurasian Economic Highest Council, Eurasian Economic Community (the Highest body of the Customs Union), the Eurasian Economic Commission (the commission of the Customs Union) effective from the date of entry into force of the Treaty taking into account the provisions of the Annex 3 of the Treaty (Article 2 of the Treaty);
- to ensure that the goods, on which lower rates of import customs duties are applied than the EEU common customs tariff, are used only within the boundaries of the Republic of Armenia and to take measures not to allow the export of such goods to territories of other member-states of Eurasian Economic Union, without paying the difference in the amounts of import customs duties estimated by the EEU and CCT rates and the amounts paid for the import customs duties when imported into the territory of the Republic of Armenia. (Second Indent, Point 40, Paragraph 2 of the Annex 3 of the Treaty);
- to provide the direct application of those decisions of the Eurasian Economic Commission on taking special protective, antidumping and countervailing measures in the territory of the Republic of Armenia, which were made after the enforcement of the Treaty by the results of the exams being passed at the customs territory of the Eurasian Economic Union in the moment of entry into force of the mentioned Treaty (Point 47, Paragraph 4 of the Annex 3 of the Treaty);
- to ensure that at the territory of the Republic of Armenia, as a fundamental component of the single economic space, on the basis of the application of harmonized or unified legal terms and marketing principles, a common infrastructure will be formed and comparable and unique mechanisms of economic regulations will be applied (Paragraph 5, Article 2 of the "Treaty on the Eurasian Economic Union");
- to implement the policy provided by the "Treaty on the Eurasian Economic Union", which supposes a unified legal regulation,

also on the decisions made by the Eurasian Economic Union (Union) bodies within their authorities (Paragraph 6, Article 2 of the "Treaty on the Eurasian Economic Union");

- to implement a systemized policy provided by the "Treaty on the Eurasian Economic Union" and within the frameworks of the limits and scope provisioned by the international treaties, which is to realize a cooperation with other member states within the bases of the approved general approaches by the Union authorities (Paragraph 12, Article 2, Point 2, Article 5 of the "Treaty on the Eurasian Economic Union");
- by the Treaty on the Eurasian Economic Union and within the scope and limits of international treaties should be implemented the agreed policy; that is, to implement such a policy in different fields, which implies a harmonization of the legal process, including on the basis of the decision of the Union authorities. (Paragraph 13, Article 2, Point 2, Article 5 of the "Treaty on the Eurasian Economic Union");
- to create good conditions for the Union to implement its functions and stay aware of measures, which can put into danger the realization of the Union's objectives (Paragraph 7, Article 3 of the "Treaty on the Eurasian Economic Union");
- to provide the implementation of an internal goods' market in the relations with other Eurasian Economic Union member states, the application in the territory of the Republic of Armenia of the Common Custom Tariff of Eurasian Economic Union and other common measures of the external goods trade regulations with the 3rd parties, the application of one common mode of goods trade in the relations with the 3rd parties, the realization of one common customs regulation, the guarantee of free transportation of goods through the territory of the member states without any customs declarations and state control (transport, sanitary, veterinary, phytosanitary quarantine application) except the cases previewed by the "Treaty on the Eurasian Economic Union" (Point 1, Article 25 of the "Treaty on the Eurasian Economic Union;"
- not to apply the import and export customs duties in the reciprocal goods trade between the other member states within the frameworks of the internal market activity, tariff regulation

measures, special protective, antidumping and countervailing measures, except the cases previewed by the "Treaty on the Eurasian Economic Union" (Point 3, Article 28 of the "Treaty on the Eurasian Economic Union;"

- to create an appropriate common pharmaceutical market with other member countries within the framework of the Union corresponding to the appropriate pharmaceutical standards based on the principles set by the "Treaty on the Eurasian Economic Union" (Point 30, Article 28 of the "Treaty on the Eurasian Economic Union;)"
- to create a common market of medical products (medical devices and medical equipment) in association with other member states within the framework of the Union based on the principles set in the "Treaty on the Eurasian Economic Union." (Point 1, Article 31 of the "Treaty on the Eurasian Economic Union;)"
- to implement a common customs regulation within the frameworks of the Union corresponding to the Eurasian Economic Union Customs code and the international treaties and acts regulating the customs legal relations forming a content of the Union law. (Point 1, Article 32 of the "Treaty on the Eurasian Economic Union");
- to create a united board of customs services of the Customs Union member countries in cooperation with the other Parties in order to coordinate the cooperation between the customs services of the member-states of the Customs Union, to provide the realization of goals and objectives of the Customs Union, the application of the customs legislation to the issues related to the customs authorities jurisdiction of the State Parties and to unify the customs regulation (the "Treaty on the United Board of the Customs Services of the Customs Union Member States" of June 22, 2011);
- in cooperation with the Union to participate in those spheres of the implementation of the Union's foreign trade policy, where the Union's bodies by signing international treaties with the 3rd parties, participating in international organizations and applying by themselves certain mechanisms make decisions, which are obligatory for the member countries (Point 3, Article 33 of the "Treaty on the Eurasian Economic Union;)"

- to apply import customs duty rate that is 75 % of duties rates of the common customs tariff of the Eurasian Economic Union, on the goods of the origin from developing countries, which are using the common system of uniform tariff preferences of the Union, which are imported to the territory of the customs union by providing preferences. (Point 2, Article 36 of the "Treaty on the Eurasian Economic Union;)"
- to imply zero customs duty rates of the common import customs tariffs of the Eurasian Economic Union, on those goods of the origin from least developed countries using the common system of tariff preferences, which are imported into the territory of the Customs Union by providing preferences (Point 3, Article 36 of the "Treaty on the Eurasian Economic Union;)"
- to apply the common rules on the determination of the origins of the goods imported into the customs territory of the Union in the territory of the Republic of Armenia (Point 1, Article 37 of the "Treaty on the Eurasian Economic Union:)"
- in the case, when by the international treaty of the Union with the third party and(or) the member states with the third party the possibility of counter-measures possibility is provided, to apply the Commission's decision on taking counter-measures, including increasing rates of import customs duties, defining quantitative restrictions, temporarily suspending granting preferences or the decisions on accepting other means within the framework of powers of the Commission that have an impact on foreign trade with respected state (Point 1, Article 40 of the "Treaty on the Eurasian Economic Union", Article 2 of the "Treaty on Accession of the Republic of Armenia to the "Treaty on the Eurasian Economic Union"" of May 29, 2010;
- in the cases prescribed by international treaties concluded with third parties until January 1, 2015, to implement the right gained by the Republic of Armenia on applying as a counter-measures unilaterally higher customs duty rates than the common customs tariff of the Eurasian Economic Union, as well as on unilaterally suspending the granting of tariff preferences, if the administration mechanisms of such counter-measures will not violate the provisions of the "Treaty on the Eurasian Eco-

nomic Union" (Point 2, Article 40 of the "Treaty on the Eurasian Economic Union);"

- to apply in the territory of the Republic of Armenia the common trade nomenclature of the foreign economic activity of the Eurasian Economic Union and the common customs tariff of the Eurasian Economic Union, approved by the Commission and considered the EU's trade policy instruments (Point 1, Article 42 of the "Treaty on the Eurasian Economic Union;"
- to provide the usage of such products only in the territory of the Republic of Armenia, on which lower import customs duties' rates, than the Eurasian Economic Union`s common customs tariff, were applied, and to take measures for preventing the export of such goods to other member states without paying the difference between the amounts of import customs duties estimated by common customs tariff rates of the European Economic Union and the amount paid for the import customs duties when importing goods (Point 6, Article 42, Point 6, Paragraph 2 of the Treaty on the Eurasian Economic Union);
- regarding of certain spices of agricultural products originating from the third countries and imported into the RA territory, to apply tariff quotas established by the Commission, which are established if similar products are produced (mined, grown) in the Union Customs Territory. (paragraph 1, Article 44 of the Treaty on the Eurasian Economic Union, Paragraph 5, Annex 6 of the Treaty on the Eurasian Economic Union, Article 2 of the Treaty);
- to exercise a coordinated macroeconomic and monetary policies, to form economic policy within such framework of quantitative values of macroeconomic indicators which determine the sustainability of economic development, if the annual deficit of the consolidated general government budget does not exceed 3 percent of the gross domestic product, general government debt does not exceed 50 percent of the gross domestic product; inflation rate (consumer price index) on an annualized basis (December to December of the previous year) does not exceed more than 5 percentage points of the rate of inflation. (Articles 62, 63 and 64 of the Treaty on the Eurasian Economic Union);

- to ensure the official publication of all legal acts of the RA relating to trade in services, establishments, investments, and when applicable also on the corresponding website in the information and telecommunications network "Internet" in the way that any person whose rights and (or) the obligations may be affected by such normative legal acts, is able to access them. (Paragraphs 1-3, Article 69 of the Treaty on the Eurasian Economic Union), ensure legal preciseness of the mentioned legal acts and substantiated expectations of those persons, at least till the date of their entering into force as well as ensure preliminary publication of the mentioned normative legal acts (Paragraphs 1-3, Article 69 of the Treaty on the Eurasian Economic Union);
- not to conclude such bilateral international treaties with Member States which contradict Section 19 of the Treaty on the Eurasian Economic Union, relating to the natural monopoly. (Paragraph 8, Article 78 of the Treaty on the Eurasian Economic Union);
- to conclude an international treaty with the Member States within the Union on the formation of common electric power producing market, based on the provisions of the concept and program for the formation of common electricity market of the Union, approved by the Highest Council (Paragraphs 2-3, Article 81 of the Treaty on the Eurasian Economic Union);
- within the framework of existing technical capacity of the Member States to provide free access to the services of the subjects of natural monopolies in the electric power sector for the Member States, provided the priority use of these services for domestic needs in electricity supply of the Member States in accordance with common principles and rules of the Annex № 21 of the Treaty on Eurasian Economic Union. (Paragraph 1, Article 82 of the Treaty on the Eurasian Economic Union);
- to conclude an international treaty with the Member States within the framework of the Union on formation of common market of gas supply, based on the provisions of the concept and program for the formation of the common gas supply market of the Union, approved by the Highest Council (Paragraphs 2-3, Article 83 of the Treaty on the Eurasian Economic Union);
- to conclude an international treaty with the Member States

within the Union on the formation of common market of oil and petroleum products, based on the provisions of the concept and program for the formation of the common market of oil and petroleum products of the Union, approved by the Highest Council (Paragraphs 2-3, Article 84 of the Treaty on the Eurasian Economic Union);

- to cooperate with other Member States in the field of preservation and protection of the intellectual property and regarding them, ensure protection and enforcement of the rights in the RA territory in accordance with International law, international treaties and acts constituting the Union law, and the laws of the Member States (Paragraph 1, Article 89 of the Treaty on the Eurasian Economic Union);
- to carry out activities in the field of protection and enforcement of intellectual property in accordance with the basic international treaties listed in Paragraph 3 of the Article 90 of the Treaty on the Eurasian Economic Union and to undertake commitments to accede to these treaties if the Republic of Armenia is not party to the mentioned international treaties. (Paragraph 3, Article 90 of the Treaty on the Eurasian Economic Union);
- to recognize as mandatory the Treaty on the Activity of the Customs Union within the framework of the Multilateral Trade System of May 19 2011 (Paragraph 4, Article 99 of the Treaty on the Eurasian Economic Union and Annex 3);
- prior to the entry into force of the Customs Code of the Eurasian Economic Union to exercise the customs regulation in accordance with the Treaty on the Customs Code of the Customs Union of November 27, 2009, which is the part of the Eurasian Union law, and other international treaties of the RA. (Paragraph 1, Article 101 of the Treaty on the Eurasian Economic Union), to ensure that the provisions of the Customs Code, adopted by the mentioned treaty, prevail over other provisions of the RA customs legislation (Article 1 of Treaty on the Customs Code of the Customs Union of 27 November 2009 (pursuant to the wording of the Protocol of 16 April 2010 on Amendments and Addendums to the Treaty on the Customs Code of the Customs Union of 27 November 2009);

- to carry out the unification of the treaties with the other Member states on the basis of which the preferences in trade with third parties are granted (Paragraph 1, Article 102 of the Treaty on the Eurasian Economic Union);
- till 2025 to carry out with the other Member states the harmonization of the RA legislation in the field of financial market in accordance with the international treaties within the framework of the Union and the Protocol on Financial Services, after the harmonization of the legislation in the area of financial markets, adopt a decision with the other Member states on the powers and functions of the supranational authority to regulate financial markets and to institute the mentioned supranational authority in 2025. (Article 103 of the Treaty on the Eurasian Economic Union);
- to conclude the RA international treaties in a manner not to conflict with the goals and principles of the Treaty on the Eurasian Economic Union, to conclude bilateral treaties with other member states, which envisage more profound level of integration with the other Member States compared with the provisions of the Treaty of the Eurasian Economic Union or the provisions of international treaties within the framework of the Union, or provide additional benefits to physical and (or) legal entities, to sign on such terms that it would not affect the rights and fulfillment of the obligations prescribed by the Treaty and by the international treaties in the framework of the Union by any other Member States (Article 114 of the Treaty on the Eurasian Economic Union);
- in the case of not transferring the amount of assessed sum of import customs duties to other Member States to pay to default interest on the entire amount of accumulated debt at the rate of 0.1 percent for each calendar day of delay, including the day on which the assessed sum of the toll was not transferred to the other Member State (Member States). (Paragraph 21, Annex 5 of the Treaty on the Eurasian Economic Union);
- in case of imported (already imported) goods in the RA customs territory from the third countries, to grant the tariff privileges based on the decisions of the Commission. (Paragraph 4, Annex 6 of the Treaty on the Eurasian Economic Union);

- to carry out export and import of goods without the application of bans and quantitative restrictions, except as provided for the cases prescribed by Paragraph 2, Annex 7 of the Treaty on the Eurasian Economic Union (Paragraph 11, Annex 7 of the Treaty on the Eurasian Economic Union);
- in order to ensure equal terms for protection of the consumers' rights and legitimate interests of the citizens of the Member States carry out coherent policies in the domain of consumer protection taking into consideration the RA laws on the protection of consumers' rights and the norms of international law (Paragraph 3, Annex 13 of the Treaty on the Eurasian Economic Union);
- to carry out for the obligatory execution the separate domestic lists on restrictions, exemptions, additional requirements and terms approved by the Highest Council (Point 2, Subparagraph 4, Annex 16 of the Treaty on the Eurasian Economic Union, Article 2 of the Treaty on the Accession of the Republic of Armenia to the Eurasian Economic Union of 29 May 2014);
- except for the cases envisaged in Paragraphs 11-14, Annex 16 of the Treaty on the Eurasian Economic Union, to null the current restrictions and not stipulate new restrictions on transfers and payments in service trade, especially, concerning the incomes, on the funds paid for redeeming the loans and credits recognized by the Member States as an investment; funds received by the investor for the partial or complete liquidation of the business entity or disposal of investments, funds received by the investor as compensation of damages in accordance with Paragraph 77, Annex 16 of the Treaty on the Eurasian Economic Union and the compensation prescribed by Paragraphs 79 – 81, Annex 16 of the Treaty on the Eurasian Economic Union, the salaries and other remuneration received by the investors and citizens, entitled to work in the RA territory for instituting investments. (Paragraph 8, Annex 16 of the Treaty on the Eurasian Economic Union);
- to conclude agreements on international economic integration with the third states so that they meet the following criteria: cover a significant number of service sectors, as well as does not exclude any groundless manner of providing services or issues concerning its establishment and activity, focus on the elimination of existing discriminatory measures and prohibition of the introducing the

new ones; are aimed at liberalization of services trade, its establishment and activities. (Paragraphs 45 and 46, Annex 16 of the Treaty on the Eurasian Economic Union),

- to apply the rules on prohibition of unnecessary obstacles in services trade, establishment and activities, approved by the Highest Council (Paragraph 61, Annex 16 of the Treaty on the Eurasian Economic Union, Article 2 of the Treaty on the Accession of the Republic of Armenia to the Eurasian Economic Union of 29 May 2014);
- to ensure in the RA territory fair and equitable treatment to investments and activities of the investment from the other Member States as the mentioned treatment shall not be less favorable than the investments and activities of the RA (local) investors and regarding treatment of activity of such investments made by the RA (local) investors (Paragraphs 68 and 69, Annex 16 of the Treaty on the Eurasian Economic Union);
- in the same circumstances, for the investors of any other Member State, to ensure such treatment which shall not be less favorable from the treatment provided to investors of any third state, their investments and related activities such investments (Paragraph 70, Annex 16 of the Treaty on the Eurasian Economic Union);
- to apply a zero VAT rate and (or) the exemption from excise duties in case of exporting goods from the RA territory to the territory of another Member State by the RA taxpayer (Paragraph 3 of the Annex 18 of the Treaty on the Eurasian Economic Union);
- to apply a zero VAT rate and (or) the exemption from excise duties in case of exporting goods (leased assets) from the RA territory to the territory of another Member State under the Agreement (Contract) on Leases, according to which the right to property passes to the lessee pursuant to the contract on goods credit (goods loan, loans in rem), under the agreement on the manufacture of goods to exercise a zero VAT rate (if such an operation is subject to payment of excise duties in accordance with the RA legislation) (Subparagraph 2, Paragraph 11, Annex18 of the Treaty on the Eurasian Economic Union);
- to enforce the decisions of the Commission on the necessity to abolish the state price regulation and availability or absence of the necessity to abolish the state price regulation (Subpara-

graphs 1 and 5, Paragraph 87, Annex 19 of the Treaty on the Eurasian Economic Union, Article 2 of the Treaty on the Accession of the Republic of Armenia to the Eurasian Economic Union of 29 May 2014);

- to ensure access to the services of natural monopolies in the sphere of gas transportation through the RA gas transport systems, on equal terms; to ensure access to the transmission system for other Member State, including tariffs for the gas producers, non-owners of the RA gas transportation systems (Subparagraph 1, Paragraph 3 and Subparagraph 2, Paragraph 7, Annex 22 of the Treaty on the Eurasian Economic Union);
- in accordance with international treaties concluded between the Republic of Armenia and Member States, within the existing technical capabilities to provide the following conditions: to ensure the long-term feasibility for transporting the produced oil and oil products by the current transport system in the territories of the Member States, including the system of main oil and product pipelines; for the economic entities registered in the territories of the Member States to ensure access to the transport systems, located in the RA territory, under the same conditions as for the RA economic entities, on territory of which oil and petroleum products are transported, to establish tariffs for transportation of crude oil and petroleum products for economic entities of the Member States at a rate not exceeding the rates established for the RA economic entities, on territory of which oil and petroleum products are transported (Paragraph 6 and Subparagraph 2, Paragraph 7, Annex 23 of the Treaty on the Eurasian Economic Union);
- in case of admitting by the Commission decision on the need to denounce the act of establishing exemptions to ensure the relevant changes in the act (its invalidation) during 2 month period. (Subparagraph 1 and 2, Paragraph 33 of the Annex 25 of the Treaty on the Eurasian Economic Union);
- not to undertake measures, which have the most distorting effect on trade, to apply uniform rules for state support to agriculture concerning the goods of uniform list of goods of the Foreign Economic Activity of the Eurasian Economic Union (LG FEA EEU), which are listed in Article 11, Annex 29 of the Treaty on the Eurasian Economic Union, while undertaking measures, in case

of the most distorting effect on trade to pay the compensation equal to the volume of measures, the most distorting effect on trade or volume measures distorting effects on trade exceeding the allowed amount (Paragraphs 6, 11 and 40, Annex 29 of the Treaty on the Eurasian Economic Union);

- in the RA territory to grant the employees of the Member States and their families the right to receive free emergency medical care (emergency and urgent) in the manner and in the terms provided to the citizens of the State of employment, to guarantee free emergency medical services (urgent and emergency) for the employees of the Member States and their families provided by the RA medical organizations (health care) of state and municipal health systems regardless the availability of documents on health insurance, to reimburse the costs of medical organizations (health care) for the provision of emergency medical services to the employees of Member States and members of their families at the expense of the RA relevant budget system in accordance with the current system of financing of health care (Paragraph 4, Annex 30 of the Treaty on the Eurasian Economic Union);
- to respect strictly the international character of the powers of members of the Board of the Commission, Judges of the Court of the Union, officials and employees, and not affect them during the performance of their duties, guarantee the immunity of the property and assets of the Union bodies from any form of administrative or judicial intervention, to guarantee that the premises of the Union, and their archives and documents, including official correspondence, regardless of location, shall not be subject to search, requisite, confiscation or any other form of interference, which hinders the normal functioning of these bodies, to exempt objects and other property intended for official use by the Union from the customs duties, taxes and customs payments, do not bring the officers to criminal, civil and administrative liability for words spoken or written and for the acts performed by them in their official capacity; to exempt them from taxation of wages and other remuneration paid by the Union bodies; to exempt them from the state service duties (Paragraphs 3, 4, 5, 12 and 19, Annex 32 of the Treaty on the Eurasian Economic Union);
- to undertake measures to amend the legislation which prescribes

the criminal and administrative responsibility for violation of customs legislation of the Customs Union and customs legislations of the Parties, as well as to undertake measures to bring to a uniform definition of the unlawful nature of such acts. (Article 3 of the Treaty on the Features of Criminal and Administrative Responsibility for Violation of the Legislation of the Customs Union and of the Member States of the Customs Union of July 5, 2010).

4. In accordance with Articles 1 and 9 of the RA Constitution, the Republic of Armenia is a sovereign, democratic, social state governed by the rule of law and independent entity of international relations, conducts its foreign policy in concordance with the principles and norms of international law with the aim of establishing good neighborly and mutually beneficial relations with all states.

Article 6, Part 4 of the RA Constitution prescribes, "International treaties shall come into force only after being ratified or approved. International treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. International treaties contradicting the Constitution cannot be ratified."

Article 100, Point 2 of the RA Constitution stipulates that the Constitutional Court shall "prior to the ratification of international treaties determine the conformity of commitments stipulated therein with the Constitution."

Taking into account these constitutional fundamental requirements concerning the subject in dispute, the RA Constitutional Court considers significant to clarify:

a) concordance of axiological approaches of obligations undertaken by the Republic of Armenia by this Treaty with the fundamental principles prescribed in the foundations of the constitutional order in the RA Constitution;
b) concordance of the forms and mechanisms of international cooperation with the principles of sovereignty, equality and mutually beneficial cooperation of member states;
c) adherence to guaranteeing the rule of law and norms and principles of international law;
d) consonance of the undertaken obligations, in particular, with

the norms and principles envisaged in the frames of the UN, Council of Europe and World Trade Organization;

e) procedure of adoption of decisions by the bodies of the Union and their mandatory nature;

f) concordance of the procedures of withdrawal from the Treaty with the norms and principles of international law.

5. The Constitutional Court states that the current international developments, globalization processes, tendencies of interstate integration led to more concise mutual cooperation of the countries for the sake of welfare of the nations and citizens and for reaching solution of economic, environmental, social, security and other relevant issues. Dominance of transnational corporations mainly in economic sphere, globalization of the struggle against global disasters, determination of common standards in the field of human rights, and developing value and systemic integration are typical to 21st century world order. These processes demand new forms of cooperation amongst them active development of various formats of international and regional cooperation.

The main characteristic feature of the new current economic corporation of ensuring free circulation of goods, services, capital and labor force by means of mutual consistence or common policy has become the common tendency of international economic developments. Even developed countries are involved in these processes and there is no alternative in the new millennium. The main issue is to define how expediency and consonance of such integration ensures the principle of constitutional order of the country. Meanwhile, participation of the state in the international units is considered as lawful in case it is in concordance with international treaties and does not lead to restrictions of human and civil rights and freedoms and does not contravene its constitutional order. Such an approach proceeds from the fundamental principles of international law, and it is universal. It is also stated by the circumstance that on the basis of a number of articles of the RA Constitution, norms and principles of international law endow decisive role of diverse legal regulations (particularly, Article 3, Part 2, Article 6, Part 4, Article 9, Article 11, Part 2, Article 18, Part 4, Article 43, Part 2 and Article 44). The Constitutional Court expressed legal position regarding the endowing nature of such articles in particular in the Decision DCC-350 of February 22, 2002.

Taking into consideration the above mentioned circumstance, within the framework of the case under consideration, the RA Constitutional Court finds essential, first to clarify the correlations of the obligations undertaken by the Republic of Armenia and fundamental norms of constitutional order in the RA Constitution.

6. Article 1 of the RA Constitution stipulates, "The Republic of Armenia is a sovereign, democratic, social state governed by the rule of law."

The main features of sovereignty of the country from the constitutional legal perspective are:

First, state sovereignty, which presumes that:

a) state power shall have supremacy and independence in domestic and international relations;
b) only the sovereign state shall have the status of international legal entity;
c) the sovereign state defines and preserves the legal order domestically in case of need implementing means of state enforcement;
d) state sovereignty applies throughout the entire territory of the country, it excludes diarchy and the only legitimate power institutes legislative, executive and judicial functions.

Simultaneously, state sovereignty does not presume absoluteness of power. In the rule of law state it is first restricted by the fundamental human rights and freedoms as possessing direct effect, they have international as well as supranational (international) legal protection. Meanwhile, in accordance with Part 3, Article 3 of the RA Constitution, "The state shall be limited by fundamental human and civil rights as possessing direct effect."

Secondly, national sovereignty, the essence of which is recognition of people as the only carrier and source of the power. Article 2, which may not be amended defines, "In the Republic of Armenia the power belongs to the people."

Thirdly, national sovereignty, which is the right of the nation to decide independently and freely the cultural, socio-economical and political existence. National sovereignty also assumes recognition of the nation's right to political sovereignty, which is constitutionally and legally stipulated in the Preamble of the RA Constitution.

One of the significant realities of guaranteeing and exercising state sovereignty of the Republic of Armenia is that the legislative body of

the country is constitutionally authorized to ratify, suspend or denounce international treaties of the Republic of Armenia (Article 81, Point 2). Meanwhile, the same Article defines that:

The National Assembly shall ratify international treaties:

a) which are of political or military nature or stipulate changes of state frontiers;
b) which relate to human rights, freedoms and obligations;
c) which stipulate financial commitments by the Republic of Armenia;
d) application of which shall bring about legislative amendments or adoption of a new law, or stipulate norms contravening the laws;
e) which prescribe ratification,
f) in other cases defined by the law.

The current Constitution of the RA does not prescribe solution of such issues by the means of referendum with mandatory legal consequences or adoption of the law. Moreover, by the procedure defined by Article 62 of the Constitution, the National Assembly adopts a decision on the issues prescribed in Article 81 of the Constitution as ratification, suspension or denouncement of international treaties of the Republic of Armenia. In its turn, Article 71 and Article 60 of the Law on the Rules of Procedure of the National Assembly prescribe that the resolutions of the National Assembly, except for cases set forth in the Constitution, shall be adopted by the majority of votes of the Deputies having participated in the voting provided that more than half of the total number of Deputies has voted. The RA Constitution does not prescribe any other procedure of adoption of the resolutions of the National Assembly regarding international treaties

Taking into consideration the above mentioned circumstances, the RA Constitution acknowledges the rule of international law for the Republic of Armenia in the following circumstances:

a) "The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of international law." (Article 3, Part 2),
b) Article 9 emphasizes that the foreign policy of the Republic of Armenia shall be conducted in accordance with the principles and norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states;

c) The RA Constitution acknowledges the lawfulness of the international bodies based on Part 4, Article 18, according to which, everyone shall, in conformity with the international treaties of the Republic of Armenia, be entitled to apply to international institutions protecting human rights and freedoms with a request to protect his rights and freedoms;
d) The Constitution (Article 43) authorizes the decisive role of definition of the scopes of limitation of rights.

Taking into consideration the mentioned circumstances, in the scopes of exercising legislative policy prescribed by Part 2, Article 51, of the RA Law on the Rules of Procedure of the National Assembly requires amongst the others in the official conclusion regarding the draft law to state the results of the expert examination concerning its conformity not only to the international treaties ratified by the Republic of Armenia but also to the principles and norms of international law.

7. The RA Constitutional Court also states that internationally recognized axiological fundamental system-value principles of establishment of the rule-of-law, democratic state become the basis of the national legal system. Simultaneously, they cannot be absolute and shall have domestic as well as international legal standards criteria deriving from the fundamental interests of the Nation and state as:

a) adherence to the principles of rule-of-law and democratic state;
b) guarantee of rule of law;
c) acknowledgement and ensuring the sovereignty of people;
d) guarantee of the right of voluntary participation of state in the international and regional integration processes and waiving it based on its will and deriving from the People's interest.

The significant components of International law are:

a) Mutually beneficial arrangements regarding legal regulations;
b) Establishment of mechanisms for their implementation and supervision;
c) Reciprocal acknowledgement of legal procedures for overcoming disagreement.

Although the international integration processes are irreversible and decisive for the sustainable development of each country, they also demand relevant legitimate organizational-structural solutions. As mentioned above, the world economy along with the whole system of

economic relations and their legal regulations is beyond the state frontiers of any country and has acquired supranational features. Worldwide increasing economic interconnections bring to more common, joint and effective efforts for the solutions of such main worldwide problems as nutritional, energetic, resource, monetary and financial issues. This emphasizes the necessity of the new and mutually beneficial international thorough integration, which becomes the guarantee for the sustainable development in all countries. Moreover, **in the new millennium mega economics has become an objective reality and proposes its demands of cooperation** to the states, without consideration of which it is difficult to anticipate success.

Supranational structures are formed for the solution of mutually agreed issues deriving from the objective legal relations of the supranational platform. This is completely a new quality of supranational cooperation. The expression of the will of national participation by the mandate deriving from the national interests and endowed to the participant due to the ratified international treaty is present in the decisions of the supranational body formed on the basis of voluntary participation of each country. National structures exercise their functions taking into consideration legal regulations of international treaties, which have become inviolable part of domestic legal system.

In the preamble of the RA Constitution, testifying its adherence to the panhuman values, based on the foundations of constitutional order and principles and norms of international law grounded on the implementation of foreign policy, endowing supremacy to international law in the establishment of rule-of-law and democratic state, the Constitution of the Republic of Armenia does not stipulate any restriction in the issues of international and regional cooperation and in the structures ensuring its legitimate competence.

Nevertheless, there are precise constitutional requirements, deriving from the axiology and a number of certain provisions of the RA Constitution.

These are:

1) Guaranteeing state, national and domestic sovereignty;
2) Legal equality and mutual expediency of international relations;
3) Prescription of such possible restrictions of human rights which are relevant to the norms and principles of international law;
4) possibility of operation of the decisions of supranational bodies

for Armenia, only in the scopes of concordance to the Constitution of the Republic of Armenia.

The RA Constitutional Court holds that any decision adopted by any supranational body with the participation of the Republic of Armenia which is not in conformity with those requirements, is not applicable in the Republic of Armenia. In the case of following those requirements the cooperation of the Republic of Armenia with any regional or international organization will not raise the issue of constitutionality. This entirely concerns also the considering Treaty and international obligations undertaken by its scope.

8. The RA Constitutional Court, taking into consideration the above mentioned legal positions states in this Case, that in particular the fundamental principles of axiological significance, which underlying the basis of the Treaty in consideration, according to which, within the framework of the Eurasian Economic Union, the axis of interrelations of the states are as following ones are in concordance with the RA Constitution is in concordance with the fundamental principles of axiological significance, which underlying the basis of the Treaty in consideration, according to which, within the framework of the Eurasian Economic Union, the axis of interrelations of the states are as follows:

- respecting of universally recognized principles of international law including the respect to the sovereign equality of the member states;
- respecting peculiarities of political order of the member states;
- ensuring mutually beneficial cooperation, legal equality, taking into consideration the national interests of the parties;
- preserving principles of market economy and diligent competence (Article 3 of the Treaty on Eurasian Economic Union of May 29, 2014).

From the perspective of constitutionality, the aims of the Union (Article 4) stipulated in the Treaty on Eurasian Economic Union do not raise any problems, according to which it is targeted:

- to create conditions for the sustainable development of the economy of the member states deriving from the interests of improving the standards of living;
- to target to formation of the single market of goods, services, capital and labor in the framework of the Union;

- To ensure complex modernization of the national economics, increasing cooperation and competitiveness in the terms of world global economics.

Formation of the bodies prescribed by the Treaty for exercising these goals where the parties have legally equal participatory role and the pivotal questions are solved by consensus preserving the right to veto for each Party thereto.

9. Considering the issue of necessity and expediency of acceding to the European Economics Union as an issue which could be solved in the scopes of the competence of the National Assembly, from the perspective of constitutionality of the subject of the Treaty in consideration, the Constitutional Court also highlights a number of pivotal circumstances.

First, according to the Treaty on Eurasian Economic Union, the activity of the bodies established in the framework of EEU is based on the following:

- to be guided by the principle of sovereign development of the states;
- to be unconditionally guided by the principle of the supremacy of constitutional human and civil rights and freedom;
- to respect national interests of the parties;
- mutually beneficial and legally equal economic cooperation taking into account the norms, principles and rules prescribed in the frames of the World Trade Organization;
- adhesion to the norms and principles of the UN Charter and International law.

Secondly, in the Highest bodies of the Union: in the Highest Council and Intergovernmental Council and Council of Commission the chairmanship is exercised in accordance with rotation principle (Article 8) and the decisions are exclusively adopted only on the basis of consensus (Articles 13, 17 and 18). Decisions of all other bodies are appealable to the Highest bodies of the Union. Meanwhile, the Highest Council of the Union also envisages a list of "sensitive" issues when the Board of the Commission of the Union also adopts decisions on the basis of consensus (Article 18). Besides, the decisions of the Eurasian Economic Highest Council and Eurasian Intergovernmental Council are subject to implementation by the member states in accordance with the order pre-

scribed by their national legislation (Article 6). The principle of equal representation of the Parties in the Union bodies concerns not only the highest bodies but also other officials of the departments of the Commission (Article 9, Point 2), as well as to the Court of the Union (Court Regulation, Chapter 2, Point 7).

Thirdly, precise exceptions are envisaged in the order of activity of the domestic market which are necessary for the preservation of the human life and health; of public morality and legal order; of environment; of animals and plants; of cultural values, fulfillment of international obligations, for ensuring defense of the country and security of the member states (Article 29). Simultaneously, implementation of economic policy directed to increasing trust towards national values of the member states is being prescribed, both in the domestic foreign exchange market as well as in the international exchange markets (Article 64).

Fourth, the requirement to respect international obligations of the parties, being guided by the well-recognized principles of international law are also expressed in the international treaties signed in the scopes of establishment of the legal-treaty base of the Tax Union and Single Economic Space presented in Annex 1 of the Treaty. Eurasian economic integration is entirely based on international treaties, and the obligations of the parties are anchored on principles of voluntariness and expediency.

Fifth, a number of peculiarities inherent to the constitutional legal regulations of the Republic of Armenia are taken into consideration by the Annex 2 of the Treaty on the Accession of the Republic of Armenia, according to the Protocol "On Making Amendments to the Treaty on Eurasian Economic Union of May 29, 2014 and international treaties signed in the framework of the establishment of Legal Treaty Base in the Tax Union and Single Economic Space."

Sixth, amendments and addendums formulated by particular protocols may be done to the Treaty on Eurasian Economic Union and to be considered as the inalienable part thereto.

Seventh, in accordance with Article 118 of the Treaty, the procedure of denouncing the Treaty on Eurasian Economic Union is envisaged in accordance with procedures prescribed for international treaties (in particular, Vienna Convention on the Law of Treaties of May 23, 1969). Meanwhile, if the issue of accession to the Eurasian Economic Union is solved on the basis of Article 1 of the Treaty signed by the Republic of Armenia together with Belarus, Kazakhstan and Russia on

May 29, 2014, nevertheless Armenia may start the process of withdrawal of its membership pursuant to Article 118, Point 1 of the Treaty on European Economic Union signed on May 29, 2014. In concordance with it, the RA Constitutional Court considers as legal grounds that on the basis of the principle of respecting sovereignty of the states, validity of the Treaty regarding the state is terminated after expiry of 12 months from the date of receipt by the depositary of a written notification.

10. For ensuring the implementation of the above mentioned particular obligations, the RA Constitutional Court also states that by the RA Law on International Treaties of the Republic of Armenia the RA National Assembly had already regulated the legal terms of ensuring implementation of the resolutions of international bodies with the participation of the Republic of Armenia. In particular, Article 55 of the mentioned Law envisages:

"1. The international agreement of the Republic of Armenia on establishment of an international organization is instituted in accordance with the general procedure established by the norms prescribed in this chapter.

2. Decisions, resolutions, protocols (hereinafter - decision) of governing and other bodies (hereinafter - the body) of the international organization established under the international treaty of the Republic of Armenia, are performed by the Republic of Armenia in accordance with other international treaties establishing the given international organization and regulating its activities (hereinafter - constituent documents).

The decision of authority of the international organization is not considered as an international treaty and it is carried out by the Republic of Armenia in concordance with other international treaties only so far it is endowed with the appropriate legal force by the constituent documents of the international organization.

3. If the constituent documents of international organizations establish that the decisions adopted by its authority are binding for the member states of the organization or the latter made a commitment to implement those decisions, the responsible authority ensures their implementation, if necessary:

1) adopting appropriate normative, regulatory or other legal act;
2) drafting order of the President of the Republic of Armenia, decision of Government or the Prime Minister and submitting them to the Government for the examination in the due manner.

If it follows from a study based on the decision of the body of an international organization comprising the adoption of the normative legal act that the relevant issues are regulated by the legislation of the Republic of Armenia, the responsible institution shall submit to the Government a substantiated note on the absence of the need for adoption of a normative legal act.

4. If from the comparison of the decisions of the international organization with the current legislation of the Republic of Armenia it follows that the Republic of Armenia should adopt a new law or make addendums and (or) amendments to the current law, the competent authority shall initiate efforts for drafting a relevant law and implementing procedures for its consideration by the Government.

Relevant procedures shall be implemented within the period specified by the decision of the bodies of international organization, and in the case if no term is prescribed, it shall be implemented in the time limits specified by the schedule approved by the decision of the Prime Minister or the Resolution of the Government in the manner prescribed in Article 54 of this Law.

The provisions of the decision of an international organization body, which contradict the Law of the Republic of Armenia, shall not be implemented until necessary amendments and (or) addendums are made in the relevant law of the Republic of Armenia.

5. If the decision of an international institution, pursuant to the constituent documents, is of consultative (recommended) character, the responsible authority shall determine feasibility of its implementation by the Republic of Armenia.

If the responsible authority considers that it is feasible for the Republic of Armenia to implement this decision, it carries out the relevant procedures on request prescribed in Parts 3 and 4 of this Article after having received the opinion the Ministry of Foreign Affairs on this issue beforehand.

6. Decisions made by the international organization on the issues related to the organization and conduct of this institution (organization, sessions or meetings, decision-making) are implemented by the Republic of Armenia, if they are related to providing any regulatory or other legal act, document, information, based on which this body makes a decision on the merits concerning the examined issue."

The RA Constitutional Court also states that the mentioned Law was

adopted by the National Assembly of the Republic of Armenia on February 22, 2007 and, the mentioned norms were not challenged by the Constitutional Court. Those norms exercise on the grounds that by the undertaken international obligations the Republic of Armenia has been the UN member since March 2, 1992, a member of the Council of Europe since January 25, 2001, a member of the World Trade Organization since February 5, 2003.

Therefore, the RA Constitutional Court also emphasizes that deriving from the practice of ensuring, in particular, ratification of the UN Charter and the Statute of the Council of Europe, ratification of the Convention on Protection of Human Rights and Fundamental Freedoms and recognition of the jurisdiction of the European Court of Human Rights, as well as from the practice of ensuring legal precedents of accession to the World Trade Organization, from the perspective of enhancement of the legal guarantees of the Republic of Armenia acceding to the Eurasian Economic Union, the RA National Assembly shall make a subject of examination the issue of making relevant amendments to a number of legislative acts, which, pursuant to the reference provided by the RA Ministry of Justice, are more than twenty.

Proceeding from the results of consideration of the case and being governed by Article 100, Point 2, Article 102, Parts 1 and 4 of the Constitution of the Republic of Armenia, Articles 63, 64 and 72 of the Law of the Republic of Armenia on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. The obligations stipulated in the Treaty on "the Accession to the Treaty of May 29, 2014 on "Eurasian Economic Union" signed by the Republic of Armenia" signed in Minsk on October 10, 2014 with the Constitution of the Republic of Armenia are in conformity with the Constitution of the Republic of Armenia.

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

Chairman **G. Harutyunyan**

14 November 2014
DCC-1175

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION
OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA
ON THE CASE ON CONFORMITY OF ARTICLE 95, PART 1 AND ARTICLE 96, PART 2 OF THE RA CUSTOMS CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN SERGEY GRIGORYAN

Yerevan **2 December 2014**

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

with the participation (involved in the framework of the written procedure) of the Applicant S. Grigoryan,

Involved in the case as a Respondent: official representatives of the RA National Assembly, Head of the Legal Department of the RA National Assembly Staff, H. Sargsyan and Senior Specialist H. Sardaryan,

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 95, Part 1 and Article 96, Part 2 of the RA Customs Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Sergey Grigoryan.

The examination of the case was initiated on the basis of the application of the citizen Sergey Grigoryan submitted to the RA Constitutional Court on June 30, 2014.

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

1. The Customs Code was adopted by the RA National Assembly on 06.07.2000, signed by the RA President on 09.08.2000 and came into force on 01.01.2001. Pursuant to the RA Law ՀՕ-224-Ն on Making Amendments and Addenda in the RA Customs Code, which was adopted by the RA National Assembly on 05.12.2012, entered into force on January 6, 2013, the challenged edition of Part 1 of Article 95 of the RA Customs Code was recognized as invalid and Part 2 of Article 96 of the Code was amended.

The RA Constitutional Court admitted to review the case on the constitutionality of the provisions of Part 1 of Article 95 and Part 2 of Article 96 of the Customs Code which were applied towards the Applicant.

The challenged provision of Part 1 of Article 95 of the RA Customs Code prescribed, "Upon written request of the person transporting goods, the Customs Authorities shall within five days period inform the latter about the amount of Customs value and the methods of its determination."

The challenged Part 2 of Article 96 of the RA Customs Code envisages: "In case Customs Authorities disagree with Customs value declared by the declarant or his method of Customs value determination they shall, on the day of declaration submission, draw up and provide the declarant with a notice of rejection according to the procedure established by superior Customs Authority, substantiating the reason for rejection of the size of Customs value declared by the declarant or method of determination of Customs value and the address of the superior Customs Authority or official to whom the declarant can lodge the appeal."

2. The procedural background of the case, subject to review, is as follows: on 19.05.2012 citizen Sergey Grigoryan (hereinafter - the Applicant) acquired in Japan an automobile issued in 2004 (hereinafter -

the Property). According to the applicant, the transaction was documented in accordance with the requirements of Paragraph a) of Part 1 of Article 87 of the Customs Code concerning the form of the invoice. Then the documents justifying the costs incurred by the Applicant in the course of transportation of property and delivery to the customs border of the Republic of Armenia were presented to the customs authorities.

On 20.07.2012, the Applicant applied for customs clearance to the Department of customs registration where, after the submission of documents, according to the Applicant, he learned that the practice of customs authorities to determine the customs value of the property by the method of the transaction price is excluded.

On the same day the applicant appealed to the Chairman of the State Revenue Committee adjunct to the Government of the Republic of Armenia in the manner prescribed in Article 91 of the Customs Code, to submit documents to the property and carrying out under Article 87 of the Customs Code of the Republic of Armenia the calculation of the customs value of the property by the method of determining the customs value at the transaction price and he asked to apply the statutory calculus prescribed by law.

The State Revenue Committee adjunct to the RA Government by the letter No. 23001 / 8-1 of 25.07.2012 dismissed the Applicant's appeal motivating the refusal by the fact that "in the documents reasonable costs of unloading the vehicle at the port of Poti in Georgia and transporting it by you customs border RA are missing".

The Applicant appealed this letter as an administrative act in the RA Administrative Court asking to annul the mentioned administrative act.

By a decision of 15/03/2013, the RA Administrative Court rejected the claim, motivating that the documents submitted by the applicant to customs authorities did not include the documents confirming the costs of loading and unloading of the property, as well as the document on fuel costs.. The conclusion of the Administrative Court was justified by the fact that the Applicant had not submitted a declaration to the customs authorities, therefore such a declaration could not have been rejected by the customs authorities.

The Applicant appealed against the above mentioned decision to the Administrative Court of Appeal of the Republic of Armenia, which upheld the complaint partially by the decision of 24.09.2013, recognized

the letter No. 23001/8-1 of the State Revenue Committee adjuned to the RA Government of 25.07.2012 invalid and obliged the Committee to implement method of the price for transaction prescribed by Article 87 of the RA Customs Code for determination of the customs value of the property.

As a result of consideration of the appeal of the State Revenue Committee adjunct to the RA Government, the RA Court of Cassation, in its decision of 26.12.2013, partially satisfied the appeal and revoked the decision of the RA Administrative Court of Appeal of 24.09.2013, on recognizing the letter No. 23001 / 8-1 of the State Revenue Committee adjunct to the Government of the Republic of Armenia of 25.07.2012 as invalid, and for obliging State Revenue Committee adjunct to the Government of the Republic of Armenia for calculation of the customs value to apply the method of determining the customs value of the property prescribed by Article 87 of the RA Customs Code at the price of the transaction and terminate the administrative case of the requirement to invalidate the letter No. 23001 / 8-1 of the State Revenue Committee adjunist to the RA Government of 25.07.2012 and upheld the decision of the RA Administrative Court.

3. The Applicant states that the applied norms obviously do not meet the requirements of the legal certainty, as a result, his right to property prescribed by Articles 8 and 31 of the Constitution of the Republic of Armenia is violated, the realization of which constantly runs into obstacles due to inability of customs clearance of the property in the manner prescribed by law.

According to the Applicant, the position of the RA Court of Cassation, according to which, in accordance with Part 1 of Article 95 of the RA Customs Code, the response received from the State Revenue Committee adjunct to the Government of the Republic of Armenia cannot be considered as an administrative act, derives neither from the meaning of the text of the law nor from the meaning given to it by law enforcement practice.

The fact that the response to application, prescribed by Part 1 of Article 95 of the Customs Code of the Republic of Armenia is an administrative act, according to the Applicant, is proved by the fact that only with the help of such administrative acts it is possible to obtain authorization for customs clearance of the property at the price of the

transaction, as provided by Article 87 of the Customs Code of the Republic of Armenia (the RA Administrative Court of Appeal also addressed this issue in its decision). Besides, according to the Applicant, "the letter of the State Revenue Committee of 20/07/2012 confirms that it was legitimate practice to choose the method of customs clearance, and that the answer to the application sent to the State Revenue Committee, at the same time, was an instruction to the chief of the customs... ".

With regard to Article 86, first part of Article 128, Article 134, Part 2 of Article 96, concerning the issue of choosing the method of customs clearance, in the opinion of the Applicant, submission of the declaration of clearance prescribed by these norms is the successive (following) stage for the answer to the application prescribed by Part 1 of Article 95, and not a prerequisite for selecting the method for determining the transaction value.

Moreover, according to the Applicant, neither the administrative practice, nor the entire text of the Customs Code implies that submission of the declaration is a prerequisite in choosing the method of customs clearance. It is also impossible to imagine in practice, as without the positive response received from the State Revenue Committee adjunct to the Government of the Republic of Armenia, the clearance of the property, prescribed by Article 87 of the Customs Code is not possible.

The Applicant considers that contradictory positions of the courts on this issue may serve further proof of this uncertainty. According to the Applicant, the need for adopting the Law ՀՕ-224-Ն by the National Assembly "On Making Amendments and Addenda to the RA Customs Code" on 12.05.2012, was based on the fact that on the basis of the need to ensure legal certainty, it is required to terminate Part 1 of Article 95, by which the legislator also arguments that its action creates legal uncertainty.

The Applicant also draws attention to the basic principles and standards of legitimacy of restrictions on the right to property, reflected in a number of judgments of the European Court of Human Rights.

4. Objecting to the Applicant's arguments, the Respondent considers that the jointly definition of the regulations of the discussed norms in the Customs Code and their application in the legal relations do not

contradict the principle of legal certainty and do not violate right to property envisaged in the Constitution of the Republic of Armenia.

Based on the analysis of Articles 82, 128, 134 and 96 of the Customs Code of the Republic of Armenia, the Respondent finds that the Code clearly prescribed the specific procedure for determination of customs value of the goods by the method of the transaction price, i.e., the form of submission of the declaration and its acceptance by the customs authority. In this case, the customs value of goods transported across the customs border of the Republic of Armenia declares the person transporting the goods, or the person authorized by him/her, after which the customs authorities decide the issue of assessment of the customs value, calculated by the method of the transaction price.

Based on the analysis of Point 1 of Article 95 of the Customs Code of the Republic of Armenia, the Respondent concludes that the written opinion issued by the customs authorities in no way may be regarded as an administrative act, as well as the administrative act of intervention. The mentioned information is purely of advisory value; the person's right is in no way limited and does not create any obligation for him/her. The person may use this information only for the purposes specified in Article 73 of the Code.

5. Referring to the issue of constitutionality of Part 1 of Article 95 of the code challenged by the Applicant, the Constitutional Court finds it necessary to state that the analysis of the text of Articles 86 and 87, Point "a" of Part 1 of Article 88, Point 5 of Article 95, Point 1 of Article 96, Articles 128-134 in the edition which was in force at the time of the legal relationship with the Applicant, it follows that the carrier of the goods across the customs border had to declare the customs value of goods transported across the customs border, and there were no obstacles for the latter to transfer the value of the goods transported across the customs border by the transaction value method or he/she by himself/herself choose another method of determining the customs value without submitting the application to the customs authorities to provide information about the amount of the customs value and the method of its determination in accordance with the text of Point 1 of Article 95 of the Customs Code of the Republic of Armenia by the previous edition.

Another issue is the possible disagreement of the customs authorities

concerning the customs value declared by the declarant or the method for determining the legal relationship which is regulated and is currently governed by the provisions of Parts 2 and 3 of Article 96 of the RA Customs Code.

Moreover, the fact that the car had never been declared and that the Applicant's application was filed on 20-07-2012 pursuant to Point 1 of Article 95 of the RA Customs Code, applicable at the time of the legal relations, was acknowledged by the Applicant himself, which was also confirmed by the final court decision adopted regarding the Applicant's case, namely the decision of the RA Court of Cassation rendered on 26.12.2013 on the administrative case No. CC /5445/5/12.

Comparing the above mentioned Point 1 of Article 60, Point 6 of Article 32, Part 7 of Article 69 of the RA Law on Constitutional Court, as well as the legal positions expressed by the Constitutional Court in the Procedural Decision PDCC-21 of March 17, 2009 regarding the validity of the requirements of the individual complaint, the Constitutional Court finds the arguments about the unconstitutionality of the text of the challenged by the Applicant Part 1 of Article 95 of the Code in the previous version as obviously ungrounded.

At the same time, analyzing the general constitutional and legal content of the norms prescribed by Parts 1 and 2 of Article 87 of the Customs Code of the RA, systematically interrelated with the challenged norms in the context of the commitments made by the Republic of Armenia by the international legal acts, in particular, the General Agreement on Tariffs and Trade 1994 (VII chapter), the UN Convention on the Simplification and Harmonization of Customs Procedures, 1973 and other documents, the Constitutional Court finds that the regulation on transporting goods and vehicles across the customs border is based on the logics that the method of determining the customs value at the transaction price is **a general rule**, and other methods of determining the customs value are **exceptions to the general rule**.

This approach derives from the reasons of legal certainty, legitimate expectations with regard to customs legal regulations, ensuring the human rights and combating abuses by the law enforcement officials.

Based on the above-mentioned, and in the context of the commitments made by the Republic of Armenia on the international legal acts, the Constitutional Court considers that, in accordance with the general rule determining the customs value when performing the method of

price of the bargain, it is necessary to be guided by the logics that, after making a bargain, data on the presented payment documents are accurate and reliable, if the customs authority has not proven their incorrectness or inaccuracy.

6. In the scope of the present case, the Constitutional Court also refers to the need for a comparative analysis of the challenged articles and other systemically interrelated articles of the RA Customs Code, taking into account the fact of their frequent addenda. By the way, studies show that in the Republic of Armenia in most laws regulating customs and tax relations are subject to addenda. So, for example, from 06.07.1998 till 12.05.2013 in the RA Law on Profit Tax addenda or amendments were made 43 times, from 19.06.1998 till 06.21.2014 152 times in the RA Law on State Duty, and from 08.09.1997 till 21.06.2014 70 times in the RA Law on Value Added Tax, etc. The RA Customs Code, which has become the subject of dispute in the present, was changed and amended by 40 different laws from 26.12.2000 till 21.06.2014.

In this regard, the Constitutional Court finds that the legislation is not a static phenomenon; it may be constantly subjected to dynamic changes improving the economic development in the tune with the ongoing process of international integration, transformation of social relations and a number of other factors. At the same time, the Constitutional Court refers to the stability and harmony of the process of legislative amendments, justification and objective need for amendments in the legislation that provides with the opportunity to the subjects of law to behave in accordance with the changing legal regulations, avoiding manifestations of subjectivity and expansion of discretion by the law enforcement bodies.

In particular within this case the Constitutional Court highlights the importance of guaranteeing clarity and certainty of the legislative norms in the context of amendments and addendum of the disputed provisions on issue of regulation of the declaration on the customs value filed by the declarant, of receiving consulting information from the customs authorities, of cases, grounds and procedure of challenging the acts made by the customs authorities.

In the scope of the present case, the Constitutional Court notes that the previous and current legal regulation of Article 96 of the Customs

Code of the Republic of Armenia from the perspective set up by the Applicant on the above-mentioned article are not significantly different. At the same time, guided by respectively stipulated in provisions of Article 19 and Part 9 of Article 68 of the RA Law on Constitutional Court on the official clarification of the circumstances and assessment of the constitutionality of the other provisions of this Act, interrelated with the challenged provisions in the systemic aspect, the Constitutional Court considers it necessary to address to the issues of coherence and harmony of relationships regulated by Parts 2, 2.1 and 3 of Article 96 of the Code in the current edition. The need of the latter is primarily due to the need to overcoming such situation in law enforcement practice when the basic rule for determining the customs value of the goods prescribed by the law actually becomes an exception, and the exception becomes the basic rule.

Thus, according to Part 2 of Article 96 of the Code "In case Customs Authorities disagree with customs value declared by the declarant or his method of customs value determination they shall, on the day of declaration submission, draw up and provide the declarant with a notice of rejection according to the procedure established by the superior Customs Authority, substantiating the reason for rejection of the size of customs value declared by the declarant or the method of determination of customs value and the address of the superior Customs Authority or official to whom the declarant can lodge the appeal."

Pursuant to the RA Law "On Making Amendments and Addenda to the RA Customs Code" of 05.12.2012 ՀO-224-Ն, Article 96 of the Code was supplemented with Part 2.1, which envisages: "The regional, specialized or border customs authorities **before making a final decision**, but not later than within two working days after the submission by the declarant of the documents set forth in Article 87 of this Code, present the declarant in a written form the circumstances hindering adoption of customs value calculated by the method of the transaction value and offer the declarant to submit in written form additional documents and (or) information within five working days, and as a result of the consideration of which within one working day after the submission of the mentioned documents and (or) information **the decision** is adopted **on rejection of determination of the customs value of the transaction by the value method** or accept the customs value submitted by the declarant. "

Part 3 of Article 96 of the Code envisages, "In case of disagreement of Customs Authorities with the customs value declared by the declarant or with the method of Customs value determination, the declarant, may appeal to **the superior Customs Authority** or to **the court** within ten working days after receiving **rejection notice**. The superior Customs Authority shall be obliged to make a relevant decision within 30 days period and inform the declarant about it. The appeal shall not exempt the declarant from fulfilling his liabilities connected with the subject of appeal within specified timeframes. Apart from this, the fact of appeal provided for in this paragraph shall not serve as a base for imposition of penalties other than those specified in RA Legislation for delays in making Customs payments."

Touching upon the legal regulation of these provisions, the Constitutional Court of the Republic of Armenia states that based on the comparative analysis of Parts 2, 2.1 and 3 of the challenged Article, the issues of sequence of submitting the declarant with the rejection in the form prescribed by the higher customs body and the notification to the declarant in written form before adoption of the final decision about the circumstances preventing adoption of the customs value calculated by the method of transaction price,, and the relationship of the notions "the conclusion of rejection" and the "final decision" used in the relevant parts of the Article are unclear. Such a situation may cause illegitimate extension of the boundaries of consideration of administrative bodies and violate human rights.

In this regard, the RA Constitutional Court finds that the current regulation of the challenged Article 2.1, namely, notification of the declarant before adoption of a final decision about the circumstances preventing the adoption of the customs value, determined by the method of the transaction price and offering him/her to submit additional documents and (or) information in written form must precede adoption of conclusion on rejection prescribed by Part 2 of the Article.

Regarding the current legislative regulation of the concepts of **"final decision", "the decision on rejection of the customs value calculation by the method of the transaction price"** and **"the conclusion on rejection"**, it is not clear whether it concerns the same or different acts in form and in substance. In this regard, the Constitutional Court states that in terms of ensuring legal certainty, the concepts used in the leg-

islation shall be clear, specific, and not lead to the varying interpretations and confusion.

The study of the mentioned regulations indicates that prior to making amendments and addendum to the RA Customs Code in 2012, only the concept of **"the conclusion on rejection"** was stipulated by Article 96, and this concept is not mentioned in Part 2.1; the concepts **"final decision" and "the decision on rejection of the customs value calculation by the method of the transaction price"** are used. According to the above-mentioned regulations, the mentioned two acts shall be adopted by the regional customs authorities. Simultaneously, Article 96, Part 3 does not provide the opportunity to appeal against the decisions made by regional authorities stipulated by Part 2.1 of the same Article, only providing the opportunity to appeal against the reason for rejection. Vague regulations stipulated by Article 96, Parts 2, 2.1 and 3 of the Code may lead to blockage of the right of declarants to effective legal remedies.

RA Constitutional Court finds that the constitutionally guaranteed right to judicial protection of human rights can not be violated in any way due to such shortcomings and gaps in legislative technique. The Constitutional Court also considers that by the supremacy or judicial order both **"*conclusion on rejection*"** (possibility of such judicial appeal is provided in Part 3 of the challenged Article of the Code) and ***"final decision"*** or **"the decision on rejection of the customs value calculation by the method of the transaction price"** which, according to Article 53 of the RA Law on the Fundamentals of Administration and Administrative Proceedings, are considered as administrative acts, shall be appealable. Otherwise, the rights stipulated by Part 1 of Article 18 and Part 1 of Article 19 of the Constitution of the Republic of Armenia will be violated.

At the same time, the Constitutional Court arguments that, guided by the rule of law, the customs authority, in case of disagreement with the declared customs value or the method of its determination shall, in the time limits prescribed by the Code, submit a substantiated conclusion and/or decision **regardless the written or oral request of the declarant** so that the latter could undertake appropriate remedies to protect his/her constitutionally guaranteed rights.

Based on the results of the consideration of the case and being governed by Article 100(1) and Article 102 of the Constitution of the Re-

public of Armenia, Articles 19, 32, 60, 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To dismiss the case on conformity of Part 1 of Article 95 and Part 2 of Article 96 of the Customs Code of the RA with the Constitution of the Republic of Armenia on the basis of the citizen Sergey Grigoryan" in terms of the provisions of Part 1 of Article 95 of the Customs Code of the Republic of Armenia.

2. Part 2 of Article 96 of the Customs Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia in the framework of the legal positions expressed in the present decision of the Constitutional Court.

3. In accordance with Article 102(2) of RA Constitution this decision is final and enters into force from the moment of its announcement.

Chairman **G. Harutyunyan**

2 December 2014
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