



**IN THE NAME OF THE REPUBLIC OF ARMENIA**

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

**ON THE CASE OF CONFORMITY OF ARTICLE 404,  
PART 4, ARTICLE 407, PART 5 AND ARTICLE 414.1,  
PART 2, POINT 2 OF THE CRIMINAL PROCEDURE  
CODE OF THE REPUBLIC OF ARMENIA  
WITH THE CONSTITUTION OF THE REPUBLIC  
OF ARMENIA ON THE BASIS OF THE APPLICATIONS  
OF THE CITIZENS VALENTINA MKRTICHYAN  
AND SOFYA TOROSYAN**

**Yerevan**

**March 17, 2015**

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

with the participation (in the framework of the written procedure) of R. Ayvazyan, the representative of the Applicant V. Mkrtchyan and the Applicant S. Torosyan,

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

pursuant to Article 100, Point 1 and 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 404, Part 4, Article 407, Part 5 and Article 414.1, Part 2, Point 2 of the Criminal Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the applications of the citizens Valentina Mkrtchyan and Sofya Torosyan.

The Case was initiated on the basis of the applications submitted to the Constitutional Court of the Republic of Armenia by the citizens V. Mkrtchyan and S. Torosyan on 02.12.2014 and 19.01.2015 accordingly.

By the Procedural Decision PDCC-9 of 24.02.2014 of the Constitutional Court the Case on conformity of Article 404, Part 4 and Article 407, Part 5 of the Criminal Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Sofya Torosyan and the Case on conformity of Article 404, Part 4, Article 407, Part 5 and Article 414.1, Part 2, Point 2 of the Criminal Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Valentina Mkrtchyan were joined.

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

1. The RA Criminal Procedure Code was adopted by the RA National Assembly on July 1, 1998, signed by the President of the Republic of Armenia on September 1, 1998 and came into force on January 12, 1999. Later it has undergone numerous amendments.

Part 4 of Article 404 of the Code, titled “Persons having the right to file a cassation appeal,” prescribes: “The persons prescribed by Point 1 of Part 1 of the Article may file a cassation appeal only through the advocate.” Point 1 of Part 1 of the Article prescribes: “1. Judicial acts of the Court of Appeal on deciding on the merits of the case and not deciding the case on the merits, as well as the decisions rendered by the Court of Appeal as a result of review of ju-

dicial acts not deciding the case on the merits may be appealed against in the Court of Cassation: 1) by the participants to the proceedings, except for criminal prosecution authorities, and the applicants in cases stipulated by law.”

Part 5 of Article 407 of the Code, titled “Cassation appeal,” prescribes: “The cassation appeal shall be signed by the representative of the person having lodged the appeal, Prosecutor General or latter’s deputy. The power of attorney of the representative formulated as prescribed by this Code shall also be attached to the appeal. The electronic version of the cassation appeal (electronic carrier) shall be attached to the cassation appeal.”

Point 2 of Part 2 of Article 414.1 of the Code titled “Returning or dismissal of the cassation appeal” stipulates the following legal regulation: “2. Cassation appeal shall be dismissed if ... 2) the cassation appeal has been filed by a person who does not have the right to lodge a cassation appeal.”

**2. The procedural prehistory of the joint cases is the following:**

On 08.04.2014 the Applicant Valentina Mkrtichyan filed an appeal to the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan on annulling the institution of criminal case by the materials of the decision of 26.03.2013 of the Inspector of Investigation Unit of Arabkir Division of the RA Police on filing a case. The Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan by its decision of 06.05.2014 refused Valentina Mkrtichyan’s appeal of 08.04.2014. On 19.05.2014 the Applicant filed an appeal against the decision of 06.05.2014 of the Court of General Jurisdiction. The RA Criminal Court of Appeal by its decision of 06.08.2014 refused the appeal and left in power the decision of 06.05.2014 of the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan. The Applicant filed a cassation appeal against the decision of 06.08.2014 of the RA Criminal Court of Appeal. The RA Court of Cassation by its decision of 03.10.2014 left the cassation appeal of Valentina Mkrtichyan without consideration.

The Applicant Sofya Torosyan applied to the Court of General Jurisdiction of Shirak Marz to annul the judgment of the investiga-

tor. The Court of General Jurisdiction of Shirak Marz by its judgment of 21.07.2014 satisfied the demand of the Applicant. The prosecutor submitted an appeal against the mentioned decision. The RA Criminal Court of Appeal by its decision of 20.08.2014 satisfied the appeal of the prosecutor of the Prosecutor's Office of Shirak Marz. The Applicant Sofya Torosyan filed a cassation appeal against the decision of 20.08.2014 of the RA Criminal Court of Appeal. By the decision of 22.10.2014 the RA Court of Cassation left the cassation appeal without consideration.

3. According to the Applicant Valentina Mkrtichyan, Part 4 of Article 404, Part 5 of Article 407 and Point 2 of Part 2 of Article 414.1 of the Code contradict Articles 18, 19, 20 and 42 of the RA Constitution.

The Applicant substantiated the contradiction of the abovementioned provisions of the Code and Article 18 of the RA Constitution that, in the presence of Part 5 of Article 407 and Point 2 of Part 2 of Article 414.1 of the Code, additional investments shall be made for preparing the electronic carrier and in such cases the legislator has not envisaged the possibility for assisting socially vulnerable persons.

The Applicant substantiated the contradiction between the abovementioned provisions of the Code and Part 1 of Article 19 of the RA Constitution by stating that the provisions of Part 1 of Article 19 of the RA Constitution do not function in the Republic of Armenia as the provisions of Article 404, Article 407 and 414.1 of the RA Criminal Procedure Code have been changed, and this caused real obstacle for access to court.

The Applicant substantiated the contradiction between the abovementioned provisions of the Code and Part 1 of Article 20 of the RA Constitution by stating that the RA Court of Cassation violated her right to legal assistance ensured by the Constitution as this assistance cannot be obligatory. The Applicant emphasizes also the circumstance that she could not afford to pay for one signature of the lawyer as she had written the cassation appeal herself. According to the Applicant, in the case of the legislative requirement to submit the acts subject to appeal at the RA Court of Cassation only through

the advocate, the law needs to provide a mechanism of providing a free legal assistance basis despite the material conditions of the party. In the conditions of current legislative regulations the right to access to the Court of Cassation is disproportionally restricted.

The Applicant substantiated the contradiction between the above-mentioned provisions of the Code and Part 3 of Article 42 of the RA Constitution by stating that the provisions of Article 404, Article 407 and 414.1 of the RA Criminal Procedure Code “are laws which deteriorate the person’s legal status and these legal acts are not retroactive”.

The Applicant Sofya Torosyan substantiated the contradiction between the provisions of Part 4 of Article 404, Part 5 of Article 407 of the Code and Articles 18, 19 and 20 of the RA Constitution by stating that they restrict the possibility of exercising the right to effective legal protection as prescribed by Article 18 of the RA Constitution and contradict the right to fair examination of the case for the protection of the person’s rights in equal conditions and following all requirements of justice as prescribed by Article 19 of the RA Constitution.

**4.** The Respondent objected to the Applicants’ arguments stating that the challenged norms of the RA Criminal Procedure Code are in conformity with the RA Constitution.

Regarding Part 4 of Article 404 of the RA Criminal Procedure Code, the Respondent adverts to the case law of the European Court of Human Rights and states that the requirement to present the interests of the Applicant at the court of cassation through the certified advocate cannot be considered as contradicting Article 6 of the Convention, and envisaging such a procedure is justified by the necessity to submit more literate appeals.

Referring to the similarities and differences of the advocate and the certified advocate, as well as adverting to the Decision DCC-765 of the RA Constitutional Court, Article 41 of the RA Law on the Profession of Advocate and, particularly, the provision of the Article according to which the right to free legal assistance includes compilation of appeals, the Respondent emphasizes that by the RA Law on the Profession of Advocate the frames of free legal assistance

and range of the persons having the right to free legal assistance significantly expanded. According to the Respondent, each insolvent natural person not included in the categories prescribed by Article 41 of the RA Law on the Profession of Advocate may also enjoy free legal assistance.

Referring to this issue from the perspective of proportionality of the remedy and the aim pursued, the Respondent reiterates that choice of such a remedy is conditioned with the restriction of the grounds for initiating proceeding of a cassation appeal which demands certain legal knowledge.

Summarizing, the Respondent states that, first, the chance to enjoy the rights to defense by the party of proceeding at the court of cassation as well as the legal equality of the parties do not depend on the person's financial capacities, as unlike the institution of certified advocate, in this case the legislation prescribes sufficient guarantees to ensure the possibility for each person to enjoy the advocate's service despite her/his financial capacities, secondly, the challenged legal term is proportionate to the aim pursued.

Regarding Part 5 of Article 407 of the RA Criminal Procedure Code, the Respondent states that the requirements presented to the cassation appeal are not an end in itself but, by their logics, directed to support the effective implementation of the functions of the Court of Cassation and dictated by the development of the science and technique.

Reiterating the RA Law on Electronic Document and Electronic Digital Signature, the Respondent claims that in this Case the electronic carrier is any kind of carrier suitable for preserving and transferring the electronic version of the cassation appeal, and its types have not been specified by the legislation pursuing the aim to provide wide range of choice and to minimize the expenses for purchasing electronic carrier.

The Respondent does not consider substantiated the restriction of the right to access to court by the absence of financial means necessary for purchasing electronic carrier, since, according to the Respondent, the submission of cassation appeal itself demands certain expenses from the appellant in regard to, amongst others, delivering the copies of the state due and the appeal to the adjudicating court

and the participants to the proceeding. And for the financial vulnerable persons the legislator prescribed the right to free legal assistance which, according to Article 41 of the RA Law on the Profession of Advocate, amongst the others, includes the compilation of appeals.

Regarding Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code, the Respondent states that the latter stipulates one of the grounds for dismissing the appeal. Unlike the grounds for returning the appeal, in the case of this substantiation the appeal is not returned and time-term is not provided for correcting the shortcomings in the appeal and resubmitting the appeal. Not following the requirement to submit the cassation appeal through the advocate in this case is considered as breach of the procedure of appeal and hinders the procedure of appealing.

5. Taking into consideration the certain similarity of the constitutional legal disputes raised in DCC-1192 and this Case, the Constitutional Court in the framework of this Case considers necessary to clarify and assess:

- the significance of legal requirements prescribed in Part 4 of Article 404, Part 5 of Article 407 and Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code, taking into consideration ensuring of the necessary structures for fully fledged implementation and guarantees of the rights to access to court as the efficient remedy for judicial defense of the rights of a person and as an element of fair trial as prescribed by Articles 18 and 19 of the RA Constitution, as well as Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- the systemic logics and legitimate significance of the legislative regulation to lodge a cassation appeal to the RA Court of Cassation exclusively through the advocate, also taking into account the legal provisions stipulated by the Decisions DCC-765, DCC-833 and DCC-1192 of the RA Constitutional Court on the issues of the essence and contents of the institution of judicial protection of the rights through the advocate and the issues of legislative regulation of its constitutionality,

- the peculiarities of criminal proceeding regarding the disputed issue.

6. Based on the study of the RA Criminal Procedure Code, the Constitutional Court reiterates that in the criminal proceeding the victim, the civil claimant, their legitimate representatives and representatives, the suspect, the accused, their legitimate representatives, the advocate, civil respondent, her/his representative as well as the applicant, amongst others, are the interested persons. Meanwhile, in the cases provided for by law the suspect, by virtue of law is considered acquitted, and the accused, by virtue of law is considered convicted or acquitted, hence the **convicted and acquitted** are included in the framework of the persons authorized to lodge a cassation appeal.

In accordance with Part 1 of Article 68 of the Code, Defense attorney is the lawyer, representing the legitimate interests of the suspect or the accused at the proceedings of the criminal case and offering them legal assistance by all means not prohibited by the law.

Based on the study of the above-mentioned provisions of the Code, as well as Point 3 of Part 2 of Article 5 of the RA Law on the Profession of Advocate, the RA Constitutional Court also states that in the criminal proceeding, the mandatory condition of representing legitimate interests of persons only through the advocate and providing them with legal assistance exceptionally relates to the suspect and the accused. Meanwhile, according to the Code, the latter, pursuant to Point 4 of Part 2 of Article 63 and Point 3 of Part 2 of Article 65 accordingly, **enjoy the right to defend themselves except for the cases of mandatory participation of the defender when the free legal assistance is provided.**

According to part 1 of Article 78 of the Code, representatives of the victim, civil plaintiff, and civil defendant are the persons, authorized by the mentioned participants of the trial to represent their legitimate interests at the proceedings of the criminal case.

The Constitutional Court considers necessary to state that the Code uses the term “**defender**” exclusively for the suspect, accused, including convicted and acquitted, the term “**representative**” for



other participants of the proceedings and applicants, stipulates by Part 4 of Article 404 the right to lodge a cassation appeal only through the **advocate** and in first and second sentences of Part 5 of Article 407 uses the term “**representative**” in the provisions concerning signing the cassation appeal and the documents attached the cassation appeal. To avoid possible misunderstanding, the Constitutional Court states that the provisions relating to the **representative** as prescribed in the first and second sentences of Part 5 of Article 407 also concern the **advocate**.

7. Touching upon the issue of clarifying and assessing the circumstances mentioned in Point 5 of this Decision, the RA Constitutional Court once again reconfirms the legal positions prescribed in the Decisions DCC-765, DCC-833 and DCC-1192, reiterating that, in particular, the legal positions stipulated in the Decisions DCC-765 and DCC-833 are not fully fledged implemented during further legislative amendments, and the RA Constitutional Court states that the legal positions stipulated in the mentioned decisions are applicable also for the provisions of Part 4 of Article 404 and Part 5 of Article 407 of the RA Criminal Procedure Code. This especially concerns the principal approach that, when the proposed legitimate aim must be implemented in the framework of guaranteeing the principle of rule of law. In this case the latter presumes that the legislative regulation cannot cause disproportionate social burden for the persons depending on their material capacities and, as a result, it does not ensure the fully fledged implementation of the rights of fair trial, effective remedy of judicial protection and access to court.

The RA Constitutional Court states that Article 20 of the RA Constitution definitely recognizes that everyone shall have the right to legal assistance and in cases provided for by law, legal assistance shall be provided at the expense of state funds.

Recommendation No R(2002)21 adopted by the Committee of Ministers of the Council of Europe also proposes the member states to exclude possible blocking of the right to access to court “for the persons in economically weak position”.

8. Touching upon the issue of constitutionality of the provision prescribed in Point 2 of Part 2 of Article 414.1 of the Code, the Constitutional Court states that there is no causative-consecutive link between the disputed provision and the provisions stipulated in Part 4 of Article 404 and Part 5 of Article 407 of the Code. That is, the Applicant V. Mkrtychyan's arguments regarding the provisions of Part 4 of Article 404 and Part 5 of Article 407 of the Code do not concern the provision of Point 2 of Part 2 of Article 414.1 of the Code.

In particular, Article 414.1 and the provision of Point 2 of Part 2 of Article 414.1 regulate the legal consequences which occur in the case of non-observance of certain legal requirements of enjoying the right to access to court as prescribed by the RA Criminal Procedure Code. The constitutional legal dispute, raised within the scopes of this Case regarding Part 4 of Article 404 and Part 5 of Article 407 of the RA Criminal Procedure Code, concerns the constitutionality of the content of certain legal requirements necessary for enjoying the right to access to court as prescribed by the RA Criminal Procedure Code. Furthermore, the challenged Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code in its content does not include the negative consequence of not lodging an appeal only through the advocate, and it also includes, inter alia, the consequences of lodging an appeal by the subjects other than stipulated by Article 404 of the RA Criminal Procedure Code. **Such legal regulation is not only a necessity, but also it is not a direct consequence of envisaging the institution of lodging cassation appeal only through the advocate.** That is, in the case if the requirement to lodge cassation appeal only through the advocate prescribed by Part 4 of Article 404 of the RA Criminal Procedure Code is not prescribed, the challenged Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code could not anyhow restrict the right to access to court and cause certain negative consequences for the Applicant. Consequently, the challenged Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code cannot be considered as a norm restricting the constitutional right to judicial protection, in particular, the right to access to court.

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

1. In regard to the part concerning the participants of the proceeding who do not have an advocate and for whom the ground for providing free legal assistance is not guaranteed by the procedure prescribed by law, to declare Part 4 of Article 404 of the RA Criminal Procedure Code contradicting Article 14.1, Part 1 of Article 18 and Part 1 of Article 19 of the Constitution of the Republic of Armenia and void, taking into account that the implementation of this provision in the conditions of current legal regulations causes disproportionate social burden for the persons depending on their material capacities, also not ensuring the fully-fledged implementation of the person's right to fair trial, effective remedy of judicial protection and the right to access to court.

2. To declare the provisions stipulated in the first and second sentences of Part 5 of Article 407 of the RA Criminal Procedure Code contradicting Part 1 of Article 18 and Part 1 of Article 19 of the Constitution of the Republic of Armenia and void, in regard to the participant of the proceeding who at the moment of signing the cassation appeal did not have an advocate and did not receive free legal assistance by the procedure prescribed by law, taking into account that the implementation of this provision in the conditions of current legal regulations excludes the possibility to lodge a cassation appeal by the mentioned persons in the context of representing their legitimate interests.

3. The provision "The electronic version of the cassation appeal (electronic carrier) shall be attached to the cassation appeal" stipulated in the third sentence of Part 5 of Article 407 of the RA Criminal Procedure Code is in conformity with the Constitution of the Republic of Armenia within the framework of legal positions expressed in the Decision DCC-1192 of the Constitutional Court of the Republic of Armenia.

4. Point 2 of Part 2 of Article 414.1 of the RA Criminal Procedure Code is in conformity with the Constitution of the Republic of Armenia within the framework of legal positions expressed in this Decision.

5. 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**

**March 17, 2015**

**DCC - 1196**