



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

**DECISION**

**OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA  
ON THE CASE OF CONFORMITY OF PARTS 1 AND 4 OF ARTICLE 132,  
POINT 3 OF PART 1 OF ARTICLE 136 OF THE RA ADMINISTRATIVE  
PROCEDURE CODE WITH THE CONSTITUTION OF THE REPUBLIC  
OF ARMENIA ON THE BASIS OF THE APPLICATION  
OF LALA ASLIKYAN**

**Yerevan**

**April 26, 2016**

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

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

L. Aslikyan, the Applicant, and T. Safaryan, representative of the Applicant;

representative of the Respondent: V. Danielyan, official representative of the RA National Assembly, Chief Specialist at the Legal Consultation Division of the Legal Department of the RA National Assembly Staff,

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

examined in a public hearing by a written procedure the Case on conformity of Parts 1 and 4 of Article 132, Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code with the Constitution of the Republic of Armenia on the basis of the Application of Lala Aslikyan.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by Lala Aslikyan on 15 December 2015.

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

1. The RA Administrative Procedure Code was adopted by the RA National Assembly on 5 December 2013, signed by the RA President on 28 December 2013 and entered into force on 7 January 2014.

The challenged Parts 1 and 4 of Article 132 of the RA Administrative Procedure Code, titled “Time limit for lodging an appeal” stipulate:

“1. An appeal against a judicial act deciding on the merits of the case may be lodged prior to the time limit prescribed for the entry into legal force of that act, except for the cases of appealing against a judicial act on the ground provided for in Part 3 of this Article.

...

4. An appeal lodged after the time limits provided for in Parts 1-3 of this Article may be accepted for examination by the Court of Cassation, where a motion for the recognition of the relevant missed time limit as valid has been filed and it has been granted by the Court”.

The challenged Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code, titled “Returning the appeal” stipulates:

“1. The appeal shall be returned if:

...

3) the appeal has been lodged after the expiry of the defined time limit and does not contain a motion for recovering the missed time limit”.

The Articles challenged by this Case were not amended and (or) supplemented.

2. The procedural background of this Case is the following:

the Central Division of Yerevan City Department of the Police submitted a statement of claim to the RA Administrative Court demanding that Lala Aslikyan be subjected to administrative liability. Lala Aslikyan filed a counterclaim to the Court and demanded that the actions of the

Police on 05.03.2014 be recognized as unlawful. By the decision of the Court dated 27.04.2015, the proceeding of the administrative case upon the claim of the Central Division of Yerevan City Department of the Police against the demand of Lala Aslikyan on subjecting to administrative liability was stroked out on the basis of refusal of the claim, and the counterclaim was rejected by the Administrative Court Decision of 16.07.2015.

The representative of Lala Aslikyan lodged an appeal to the RA Administrative Court of Appeal against the said Decision of the RA Administrative Court, and the RA Administrative Court of Appeal returned the appeal by the Decision of 04.09.2015, with the justification that "... the one-month appeal time limit has been missed and no motion for recovering the missed time limit has been lodged. ... In such conditions, considering that the Decision was made on 16 July 2015, and the appeal was submitted to the postal service on 18 August 2015 ... and no motion for recovering the missed time limit has been lodged, the Administrative Court finds that ... the appeal shall be returned".

The representative of Lala Aslikyan filed a cassation appeal against the above-mentioned Decision. On 28.10.2015, the Court of Cassation issued a Decision "On rejecting to accept the cassation appeal for examination".

3. The Applicant finds that Parts 1 and 4 of Article 132, Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code contradict Articles 18 and 19 of the RA Constitution (with Amendments through 2005) insofar as the latter do not provide for the duty of courts to recognize the missed time limit due to reasons independent of the will of the appellant as valid by the force of law.

The Applicant analyzes the challenged provisions of the RA Administrative Procedure Code and notes that, in the cases when the content of the act becomes available to the appellant after a certain time of its announcement, the appellant does not have a real opportunity to appeal against it starting from the moment of announcement of the act until the receipt of the full judicial act, since she/he does not have access to important data necessary for the effectiveness of the appeal. The Applicant also notes that the content of the challenged provisions indicates that even for recognizing the missed one-month time limit for lodging

an appeal due to reasons independent of the will of the appellant (for example, due to the late receipt of the judicial act by mail), as well as for exercise of the right to lodge the appeal within one-month appeal time limit after the receipt of the judicial act the appellant must file a certain motion requesting the Court of Appeal to let her/him exercise her/his right, and the scope and margin of discretion of the latter are not provided by law. The Applicant also considers that a one-month time limit provided for by the law for appealing the judicial act means that the appellant may lodge the appeal on any day of this time limit, including the last day. In this case, in addition to becoming familiar with the appealed judicial act, discussing, developing and agreeing the main theses of the appeal with the principal, the appellant shall determine the possible day of lodging the appeal, depending on her/his workload and other circumstances, as well as based on those circumstances, and in some cases the mentioned day may also be the last day of the set time limit. Meanwhile, the time limit set for lodging the appeal by the appellant is shortened due to reasons independent of the will of the appellant (for example, due to the late receipt of the judicial act by mail), if the time limit for appeal is calculated from the moment of the announcement of the act and not from the moment of its receipt. Moreover, in this case it does not matter how late the appellant receives the judicial act.

Based on the logic of legal positions prescribed by a number of decisions and judgments of the RA Constitutional Court and the European Court of Human Rights respectively, the Applicant considers that establishing a duty to appeal a judicial act deciding on the merits of the case issued by the Administrative Court within a shorter time limit than the one-month time limit provided for by the legislation for the implementation of this process, and imposing such duty on the appellant indicate a disproportionate restriction on the right of access to the court.

4. Objecting to the arguments of the Applicant, the Respondent finds that the provisions of Parts 1 and 4 of Article 132, Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code are in conformity with the RA Constitution.

According to the Respondent, the one-month time limit of appealing established by the challenged legal regulation is reasonable, and it

is quite sufficient, in the ordinary circumstances, for the effective exercise of the right to judicial protection of the person lodging the relevant appeal.

The Respondent notes that in order to assess the circumstances of the missed one-month time limit of appealing due to reasons independent of the will of the person based on this grounds, it is necessary to have certain evidence that will confirm that objectively the person did not have the opportunity to exercise her/his right to appeal independent of her/his will. Moreover, those evidences shall be legally assessed by the court.

For the purpose of ensuring legal certainty, the Respondent attaches importance to the requirement of availability of a motion and stresses that "... without a motion and the underlying evidence, the court may not assess for what reasons the person missed the time limit provided for by the law, and moreover it is impossible by the force of law and without a legal assessment of the court".

According to the Respondent, taking into account the great variety of social relations and the peculiarities of factual circumstances in each particular case, the legislator cannot exhaustively determine in which cases the court is obliged to recognize the missed time limit as valid. In this matter the legislator provided the court with a certain scope of discretion. The Respondent also notes that in any case the motion must be granted if the person proves that the time limit is missed for valid reasons. As a general rule, the court has the discretion to consider the circumstances to be for valid reasons or not; however, the circumstances that are undoubtedly considered for valid reasons - such as the receipt of a written text of a judicial act after a certain period of time limit independent of the will of the person - means there is no alternative for the court, and in any case the court shall be obliged to grant such motions.

The Respondent also considers that the restriction of recognizing the missed time limit as valid through filing a motion pursues a legitimate aim, there is a reasonable relationship between the measure applied and the aim pursued, and "the access to the court is effective in case of availability of the mechanism for filing a motion, since the person has a clear and practical opportunity to appeal against a judicial act affecting her/his rights".

5. Assessing the constitutionality of the legal regulations challenged by this Case, the RA Constitutional Court considers it necessary to be based on:

- the need for effective protection of the fundamental rights and freedoms of individuals and citizens by the public authorities based on international treaties ratified by the Republic of Armenia (Articles 3 and 81 of the RA Constitution with Amendments through 2015);
- the need for guaranteeing the right to effective judicial protection and the right to a fair trial, enshrined in Part 1 of Article 61 and Part 1 of Article 63 of the RA Constitution with Amendments through 2015, taking into account the legal positions expressed in the decisions of the RA Constitutional Court.

At the same time, the RA Constitutional Court considers it necessary to state that:

a) in the present Case, the administrative procedural legal regulations on the time limit for lodging an appeal against a judicial act deciding on the merits of the case, acceptance of the appeal lodged after the mentioned time limit, as well as returning the appeal are challenged. From contextual perspective these legal regulations are equivalent to the administrative procedural legal regulations on the time limit for lodging a cassation appeal against a judicial act deciding on the merits of the case, acceptance of the cassation appeal lodged after the mentioned time limit, as well as dismissal of the cassation appeal, and the issue of their constitutionality was the matter at issue in the Decision DCC-1254 of the RA Constitutional Court;

b) the study of the grounds mentioned in the Application at issue in the present Case states that they, in fact, do not entirely concern Part 1 of Article 132 of the RA Administrative Procedure Code, but only the provision “An appeal against a judicial act deciding on the merits of the case may be lodged prior to the time limit prescribed for the entry into legal force of that act ...” stipulated by the given Part;

c) according to the legal regulations of the RA Administrative Procedure Code, a judicial act deciding on the merits of the case shall be announced within 15 days after the consideration of the case, unless no other time limit is provided for by the RA Administrative Procedure Code (Part 2 of Article 114), immediately after announcement, the ju-

judicial act deciding on the merits of the case **shall be forwarded** to the participants of the proceeding. Where any of the participants of the proceeding has failed to appear, a copy of the judicial act deciding on the merits of the case **shall be sent** to her/him on the day of announcement or the day following it (Part 7 of Article 114), judicial acts of the Administrative Court deciding on the merits of the case shall enter into legal force one month following the announcement, unless otherwise provided for by this Code (Part 1 of Article 127);

d) at the time of registration of the Application at issue in the present Case, the RA Constitution with Amendments through 2005 was in effect, and the Applicant considered disputable the challenged legal regulations from the point of view of their conformity with Articles 18 and 19 of the RA Constitution with Amendments through 2005. Taking into account the fact that Chapters 1-3 of the RA Constitution with Amendments through 2015 came into force on 22 December 2015, the issue of constitutionality of the provisions challenged in the present Case shall be considered in the context of Part 1 of Article 61 and Part 1 of Article 63 of the RA Constitution with Amendments through 2015.

6. Within the framework of this Case, the Constitutional Court considers it necessary to state that:

a) the logic of legal regulation of Part 1 of Article 132 of the RA Administrative Procedure Code is comparable with the logic of legal regulations of Point 3 of Part 1 of Article 379 of the RA Criminal Procedure Code at issue in the Decision DCC-1052 of the RA Constitutional Court, Part 1 of Article 412 of the RA Criminal Procedure Code at issue in the Decision DCC-1062 of the RA Constitutional Court, as well as Part 1 of Article 156 of the RA Administrative Procedure Code at issue in the Decision DCC-1254 of the RA Constitutional Court;

b) the logic of legal regulation of Part 4 of Article 132 of the RA Administrative Procedure Code is comparable with the logic of legal regulations of Parts 1 and 2 of Article 380 of the RA Criminal Procedure Code at issue in the Decision DCC-1052 of the RA Constitutional Court, and Part 5 of Article 156 of the RA Administrative Procedure Code at issue in the Decision DCC-1254 of the RA Constitutional Court;

c) the logic of legal regulation of Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code is comparable with the logic of legal regulations of Point 1 of Part 2 of Article 414<sup>1</sup> of the RA Criminal Procedure Code at issue in the Decision DCC-1249 of the RA Constitutional Court, and Point 1 of Part 1 of Article 160 of the RA Administrative Procedure Code at issue in the Decision DCC-1254 of the RA Constitutional Court.

Considering the contextual equivalence of legal regulations at issue in the Decisions DCC-1052, DCC-1062, DCC-1249 and DCC-1254, and the legal regulations challenged in this Case, the Constitutional Court finds that the legal positions stipulated by these Decisions are applicable also in the aspect of legal regulations at issue in this Case.

7. Taking into account the contextual equivalence of legal regulations of the RA Criminal Procedure Code and the RA Administrative Procedure Code regarding the time limits of appealing judicial acts, acceptance of appeals lodged after the mentioned time limit, returning appeals or dismissal of appeals, as well as the unity of legal positions of the Constitutional Court regarding the constitutionality of these legal regulations, the Constitutional Court considers it necessary to refer to the study of the current situation in judicial practice also in the framework of this Case. As a result of this study, in particular, it is stated:

1) on the criminal case ԵՇԴ/0133/01/14 of 31 March 2016, the RA Court of Cassation issued the decision “On dismissal of the cassation appeal”, noting in particular that the decision of the RA Criminal Court of Appeal was announced on 14 January 2016, the mentioned decision of the RA Criminal Court of Appeal was received on 4 February 2016, and the cassation appeal was lodged on 4 March 2016, i.e. after the expiry of the one-month time limit for lodging cassation appeal stipulated by Part 1 of Article 412 of the RA Criminal Procedure Code. The Court of Cassation also stated that the cassation appeal was lodged with a violation of the 27-day time limit from the moment of receipt of the challenged judicial act, therefore, the grounds presented by the person who lodged the appeal on the receipt of the challenged act on 4 February 2016, may not be considered sufficient for recognizing the missed time limit for lodging cassation appeal as valid, and granting the motion of the person who lodged the appeal for its restoration.



In the mentioned decision, the RA Court of Cassation only stated the fact of receipt of the challenged judicial act by the appellant, and did not state any other fact of forwarding the full text of this act to the appellant and officially making it available to the appellant. It should be noted that the comparison of the date of the announcement of the challenged judicial act (14.01.2016) with the day of receipt of this act by the appellant (04.02.2016) shows that the challenged judicial act was not forwarded (was not available) to the appellant within three- day time limit provided for by Part 2 of Article 402 of the RA Criminal Procedure Code.

By the Decision DCC-1062 the Constitutional Court declared that Part 1 of Article 412 of the RA Criminal Procedure Code is in conformity with the RA Constitution insofar as - in consonance with the legal positions stipulated by the Decision DCC-1052 of the RA Constitutional Court - forwarding the judicial act to the person entitled to lodge an appeal is guaranteed under the procedure and within the terms prescribed by law, and the missed time limit due to reasons independent of the will of the appellant is recognized as valid by the force of law (*ex jure*). By the Decision DCC-1052 the Constitutional Court recognized Article 402 of the RA Criminal Procedure Code as a guarantee insofar as the term “shall be forwarded” - stipulated by Part 2 of this Article - guarantees the forwarding of the full text of the judicial act (its availability) within the three-day time limit to the person entitled to lodge an appeal.

**Due to the legal positions of the Constitutional Court, law enforcement practice should be guided by the perception that the one-month time limit provided for appealing a judicial act is to be calculated from the moment of the announcement of the act in the case when the appellant has received the challenged judicial act or has the full text of the act at her/his disposal (it was available to her/him) within the three-day time limit provided for by the law.**

At the same time, the RA Constitutional Court stipulated in the Decision DCC-1062 and reaffirmed in the Decision DCC-1249 the legal position according to which “... the calculation of the appeal time limit of a judicial act deciding on the merits of the case from the moment of **announcement** of the judicial act does not itself contradict the RA Constitution, if there are guarantees ensuring sufficient **time** for becoming familiar with the judicial act and for effective implementation of the right to appeal. As already noted, the Constitutional Court recognized Article 402 of the

Code as such a guarantee, **and only in the case when a judicial act is forwarded (was available) to the person within the three-day time limit stipulated by Part 2 of this Article. That is, according to the current legislation, a person must have at least 27 days to lodge a reasonable appeal”.**

The said “**at least 27 days**” mentioned in the legal position **should not be regarded as an independent and maximum time limit calculated for lodging an appeal. Only in the case when the appellant had received the challenged judicial act or had the full text of the act at her/his disposal (it was available to her/him) within the three-day time limit provided for by the law, the appellant must have at least 27 days - as a minimum time limit - to lodge a reasonable appeal;**

2) on the criminal case ЁСҮ/0129/01/14 of 25 March 2016, the RA Court of Cassation issued the decision “On dismissal of the cassation appeal”, noting in particular that the motion for recognizing the missed appeal time limit as valid must be rejected, since it is not justified.

The Constitutional Court stipulated in the Decision DCC-1249 and in particular, reaffirmed in the Decision DCC-1254 the legal positions according to which “... in case the cassation appeal is lodged after the expiry of the time limit provided for by the law, **the motion** for recovering the missed time limit **is an objective legal necessity**, it pursues a legitimate aim, i.e. to enable the competent authority to consider the request included in the motion. ... in case the late receipt of the relevant challenged judicial act due to reasons independent of the will of the appellant is the reason for the missed time limit for lodging a cassation appeal to the Court of Cassation, the appellant must file a motion for recovering the missed time limit, attaching evidence confirming and signifying the relevant circumstance, and the Court of Cassation must grant the presented motion taking into account this circumstance. In this case, the missed time limit is recovered by the Court of Cassation by the force of law (*ex jure*), stating this in the relevant judicial act”.

That is, **by the legal positions the Constitutional Court did not provide any other condition for justifying the motion for recovering the missed appeal time limit. The condition arising from the constitutional legal content of this legal regulation is that in the case when the appellant had received the challenged judicial act or had the full text of the act at her/his disposal (it was available to her/him) within the three-day time limit provided for by the law, the appellant must file a motion**

**for recovering the missed time limit, attaching evidence confirming and signifying the relevant circumstance.**

The results of the above-mentioned study show that the legal positions stipulated by the Decisions DCC-1052, DCC-1062, DCC-1249 and DCC-1254 of the RA Constitutional Court are not yet sufficiently taken into account in judicial practice, thus creating a threat of hindering the implementation of the constitutional right to effective judicial protection.

8. The RA Constitutional Court also considers it necessary to emphasize that after the adoption of the Decisions DCC-1052, DCC-1062, DCC-1249 and DCC-1254, the institute of appeals against judicial acts has not yet undergone the relevant comprehensive and uniform legislative regulation, and this circumstance is not reflected in the explanation submitted by the Respondent.

Within the framework of this Case, the Constitutional Court considers it necessary to once again emphasize the legal regulations stipulated by its own decisions, in particular:

a) "... on the one hand, at the legislative level it is objectively impossible to list all cases of valid reasons for circumstances in connection with the missed appeal time limit, and on the other hand, based on the need for a legitimate restriction of judicial discretion, it would be advisable to provide a certain group of valid reasons at the legislative level" (DCC-1249),

b) "... the legal fixing of certain valid grounds for the missed appeal time limit would help to improve the efficiency of these legal relations, as well as the level of predictability of public and legal conduct of courts" (DCC-1249),

c) "... legislative regulations of the matter at issue are necessary, in particular, with the aim of finding equivalent solutions in connection with preconditions for lodging an appeal against judicial acts within the framework of single criminal procedural, civil procedural and administrative procedural policy" (DCC-1254).

Based on the review of the Case and being governed by Point 1 of Article 100 and 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. The provision “An appeal against a judicial act deciding on the merits of the case may be lodged prior to the time limit prescribed for the entry into legal force of that act ...” stipulated by Part 1 of Article 132 of the RA Administrative Procedure Code is in conformity with the Constitution of the Republic of Armenia insofar as - in consonance with the legal positions on the same issue stipulated by the Decisions DCC-1052, DCC-1062 and DCC-1254 of the RA Constitutional Court - forwarding the judicial act to the person entitled to lodge an appeal is guaranteed under the procedure and within the terms prescribed by law, and the missed time limit due to reasons independent of the will of the latter is recognized as valid by the force of law (*ex jure*) in case of availability of relevant motion and evidence.

2. To declare Part 4 of Article 132 of the RA Administrative Procedure Code contradicting the requirements of Part 1 of Article 61 and Part 1 of Article 63 of the Constitution of the Republic of Armenia (with Amendments through 2015) and void in regard to the part that recovering the missed appeal time limit due to reasons independent of the will of the person entitled to lodge an appeal is at the discretion of the court, and it is not recognized as valid by the force of law (*ex jure*) in case of availability of relevant motion and evidence.

3. Point 3 of Part 1 of Article 136 of the RA Administrative Procedure Code is in conformity with the Constitution of the Republic of Armenia insofar as - in consonance with the legal positions on the same issue stipulated by the Decisions DCC-1249 and DCC-1254 of the RA Constitutional Court - recognizing the missed appeal time limit due to reasons independent of the will of the person entitled to lodge an appeal as valid by the force of law (*ex jure*) is guaranteed in case of availability of relevant motion and evidence.

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

**Chairman**

**G. Harutyunyan**

**April 26, 2016**

**DCC-1268**