

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

**ON THE CASE OF CONFORMITY OF POINT 2 OF PART 2.2 OF ARTICLE 407,
POINT 2 OF PART 2 OF ARTICLE 414.2 AND POINT 1 OF PART 1 OF ARTICLE
426.4 OF THE RA CRIMINAL PROCEDURE CODE WITH THE CONSTITUTION OF
THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE RA
PROSECUTOR GENERAL**

Yerevan

March 28, 2017

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), K. Balayan, A. Gyulumyan, F. Tokhyan, A. Tunyan, A. Khachatryan, V. Hovhanissyan (Rapporteur), H. Nazaryan, A. Petrosyan, with the participation (in the framework of the written procedure) of representative of the Applicant: G. Baghdasaryan, Head of the Department for Charge Defense and Appealing of Judicial Acts at the RA Prosecutor General's Office, representatives of the Respondent: official representatives of the RA National Assembly H. Sargsyan, Head of the Legal Department of the RA National Assembly Staff, and S. Tevanyan, Adviser to the same Department, pursuant to Point 1 of Article 100, Point 7 of Part 1 of Article 101 of the RA Constitution (with Amendments through 2005), Articles 25, 38 and 71 of the RA Law on the Constitutional Court, examined in a public hearing by a written procedure the Case on conformity of Point 2 of Part 2.2 of Article 407, Point 2 of Part 2 of Article 414.2 and Point 1 of Part 1 of Article 426.4 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the Application of the RA Prosecutor General.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by the RA Prosecutor General on 2 December 2016.

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 Criminal Procedure Code and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Criminal Procedure Code (hereinafter referred to as the Code) was adopted by the RA National Assembly on 1 July 1998, signed by the RA President on 1 September 1998 and entered into force on 12 January 1999.

The challenged Point 2 of Part 2.2 of Article 407 of the Code, titled: “Cassation appeal” states:

“2.2. In case of filing a cassation appeal on the grounds stipulated by Point 1 of Part 1 of Article 414.2 of this Code, the person who filed the appeal must substantiate that the decision of the Court of Cassation regarding the appeal would contribute to ensuring uniform application of the law, and particularly substantiate in the cassation appeal that

...

2) the interpretation of any norm of the appealed judicial act contradicts the constitutional legal content of the given norm, revealed in the operative part of the decision of Constitutional Court of the Republic of Armenia, attach the decision of the Constitutional Court of the Republic of Armenia, cite the part of the judicial act of the lower court that contradicts the operative part of the decision of the Constitutional Court of the Republic of Armenia, and conduct a comparative analysis of the contradiction between the appealed judicial act and the final part of the decision of the Constitutional Court of the Republic of Armenia.”

The challenged Point 2 of Part 2 of Article 414.2 of the Code, titled: “Accepting the cassation appeal for proceedings” states:

“2. Within the meaning of this Article, the decision of the Court of Cassation regarding the issue raised in the appeal may be of significant importance for the uniform application of the law, in particular if:

...

2) the interpretation of any norm of the appealed judicial act contradicts the constitutional legal content of the given norm, revealed in the operative part of the decision of Constitutional Court of the Republic of Armenia.”

The challenged Point 1 of Part 1 of Article 426.4 of the Code, titled: “Grounds and terms for the review of cases due to new circumstances” states:

“1. Due to new circumstances, judicial acts shall be reviewed in the following cases:

1) The Constitutional Court of the Republic of Armenia declared the provision of the law applied by the court in this criminal case contradicting the Constitution and void, or declared it to be in conformity with the Constitution; however, the Court revealed its constitutional legal content in the operative part of the decision and found that this provision was applied in a different interpretation.”

Part 2.2 of Article 407 was supplemented, and Article 414.2 was set out in the current wording in accordance with the RA Law HO-48-N on Making Amendments and Supplements to the Criminal Procedure Code of the Republic of Armenia, which was adopted by the RA National Assembly on 10.06.2014, signed by the RA President on 21.06.2014 and entered into force on 03.07.2014.

Point 1 of Part 1 of Article 426.4 of the Code was set out in the current wording in accordance with the RA Law HO-270-N on Making Amendments and Supplements to the Criminal Procedure Code of the Republic of Armenia, which was adopted by the RA National Assembly on 26.10.2011, signed by the RA President on 08.11.2011 and entered into force on 21.11.2011.

2. The procedural background of the Case is as follows:

By the Decision of 14 November 2014 made by the investigator of the Violation Detection and Administrative Procedure Implementation Department of the Staff of the RA Ministry of Finance, the initiation of criminal prosecution against J. Yeghiazaryan, manager at “Lekma Shoes” LLC, was dismissed for lack of corpus delicti.

By the Decision of 23 March 2015 made by the RA Prosecutor General, the above-mentioned decision on dismissal to initiate criminal prosecution was cancelled, and a criminal case was initiated under Part 1 of Article 215 of the RA Criminal Code.

On 13 April 2015, the representative of J. Yeghiazaryan brought an appeal to the Court of First Instance of General Jurisdiction of Kentron and Nork-Marash Administrative Districts of Yerevan (hereinafter referred to as the Court), where the Applicant requested to cancel the Decision of 23 March 2015 made by the RA Prosecutor General.

By the Decision of 4 May 2015 the Court ordered the body carrying out proceedings to eliminate the violation of the rights and freedoms of J. Yeghiazaryan, admitted by the Decision of 23 March 2015 made by the RA Prosecutor General.

The appeal of the Prosecutor against the Decision of 4 May 2015 rendered by the Court was rejected by the Decision of 8 July 2015 rendered by the RA Criminal Court of Appeal (hereinafter referred to as the Court of Appeal).

Accepting the cassation appeal for proceedings submitted by the Deputy Prosecutor General against the mentioned Decision was rejected by the Decision of 11 September 2015 rendered by the RA Court of Cassation (hereinafter referred to as the Court of Cassation).

By the Decision DCC-1236 – on the basis of the Application of the RA Human Rights Defender and the RA Prosecutor General – the Constitutional Court held:

“Part 4 of Article 21 of the Criminal Procedure Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia within the framework of legal positions revealed by the Constitutional Court in this Decision.

The constitutional legal content of Part 4 of Article 21 of the RA Criminal Procedure Code is the following:

Firstly: in cases when the supervising prosecutor eliminated the decision on suspension of a criminal case, institution of a criminal case or rejecting the institution of a criminal case, and issued certain instructions and assignments within the powers vested by the Criminal Procedure Code, new decisions on suspension of a criminal case, termination of criminal prosecution or not carrying out criminal prosecution may be rendered only in the case of obligatory implementation of instructions and assignments issued by the competent prosecutor,

Secondly, at the pre-trial proceedings, the prosecutor’s request to provide him with the requested materials and documents – for supervising the criminal case – by the body of inquiry and the investigator must be **immediately** fulfilled,

Thirdly, the decisions rendered as a result of implementation of the powers of the RA Prosecutor General – vested by the Constitution and the law – within the framework of prosecutor supervision at the pre-trial proceedings must be considered as **final and not condition the circumstance of rendering or non-rendering of such a decision by the supervising prosecutor.**”

The RA Deputy Prosecutor General filed a cassation appeal, in which – referring to the aforementioned Decision of the RA Constitutional Court – as a new circumstance he made a motion to review the Decision of 11 September 2015 on rejecting to accept the cassation appeal for proceedings, the cancellation of the Decision of 4 May 2015 rendered by the Court on the criminal case number ԵՄԴ/0060/11/15 and on leaving the Decision of 8 July 2015 rendered by the Court of Appeal in force and the issuance of a new judicial act.

By the Decision of 29 January 2016 rendered by the Court of Cassation, the initiation of proceedings to review the judicial act due to new circumstances was rejected with the motivation that, in the constitutional legal content of Part 4 of Article 21 of the RA Criminal Procedure Code disclosed in the operative part of the Decision DCC-1236 of the Constitutional Court, the Constitutional Court did not interpret the challenged norm so that the RA Prosecutor General is competent after the expiry of the seven-day period, within a six-month period – among other decisions clearly specified in this provision – also to cancel the decision on rejecting to initiate criminal proceedings, and the Constitutional Court also did not state that the norm in question was applied in a different interpretation.

3. In regard to Point 2 of Part 2.2 of Article 407 and Point 2 of Part 2 of Article 414.2 of the Code, the Applicant finds that they contradict Articles 61, 63 and 69 of the RA Constitution (with Amendments through 2015), and Articles 93 and 103 of the RA Constitution (with Amendments through 2005), insofar as they do not allow the person, who filed a cassation appeal, to refer to the legal positions expressed in other parts of the decision of the Constitutional Court (except for the operative part) for the substantiation of her/his position.

In regard to Point 1 of Part 1 of Article 426.4 of the Code, the Applicant considers that it contradicts Articles 61, 63 and 69 of the RA Constitution (with Amendments through 2015) and Articles 93 and 103 of the RA Constitution (with Amendments through 2005), insofar as it does not consider the legal provisions expressed in other parts of the decision of the Constitutional Court (except for the operative part) as a new circumstance.

The Applicant substantiates the alleged contradiction of the challenged norms with Article 93 of the RA Constitution (with Amendments through 2005) in the context of the legal status of the Constitutional Court, the structural integrity of the decisions of the Constitutional Court and the legal nature of the decisions of the Constitutional Court. According to the Applicant, the

challenged provisions – conditioning the occurrence of procedural consequences by legal positions expressed solely in the operative part of the decision of the Constitutional Court – limit the legal significance of legal positions underlying the findings of the Constitutional Court, the interpretations revealing the constitutional legal content of the norm challenged by the Constitutional Court, and thereby exclude their procedural consequences, which are expressed not in the operative, but, for instance, in the descriptive-reasoning part of the decision.

In the Applicant’s opinion, “... legal positions expressed in the decisions of the Constitutional Court – which are an integral part of the conclusions and are subject to assessment in unity with the latter – can be expressed and are mainly expressed in the descriptive-reasoning part of the decision. The establishment of these positions in any part of the decision is not accidental. Legal positions, as motivations for the conclusions made as a result of the decision, should especially be expressed in the descriptive-reasoning part of the decision. As for stating the latter in the operative part of the decision – not excluding this possibility – it should be noted that by their nature and content, legal positions can often not fit and be fully stated in this part of the decision.”

The Applicant also notes that “... due to the scope of the subject matter of constitutional justice, the analysis conducted by the Court and the specific legal positions expressed therein – which in all cases are aimed at disclosing the constitutional legal content of the provision as the subject matter of the constitutional legal dispute – may have a secondary link to subject matter in dispute, which does not exclude their significance laid in the basis of the final conclusion of the Court. In other words, one part of legal positions of the Constitutional Court can directly motivate the conclusions of the Court regarding the issue of conformity of the norm with the Constitution, while the other part – ensuring the systemic nature of the analysis – can be based not directly on the conclusions, but the primary reasonings of the Court. Due to their peculiarities, the second group of legal positions in a regular manner cannot be established in the operative part of the decision, but they are worth to be repeated and they are equally important for disclosing the constitutional legal content of the challenged norm. In all cases, the legal significance of legal positions of the Constitutional Court is solely due to their legal nature and not their technical location.”

The Applicant substantiates the alleged non-conformity of the challenged norms with Articles 61, 63 and 69 of the RA Constitution (with Amendments through 2015) and Article 103 of the

RA Constitution (with Amendments through 2005) with the argument that the challenged provisions “... limit the access to a court without reasonable necessity, i.e. due to public or state needs, they reduce the effectiveness of judicial protection of rights, restrict the right to a review of the sentence and, as a result, deprive the meaning of the possibility of protecting rights through constitutional justice.”

According to the Applicant’s assessment, “... in case of a legal position of the Constitutional Court – according to which the norm of the right was applied to a person in an interpretation contrary to its constitutional legal content – limiting the exercise of these rights solely with the formal reasoning that such a position is not expressed in the operative part of the decision,” does not meet the criteria for limiting these rights, and it does not follow from the interests of justice and distorts its essence.

In the Applicant’s opinion, the challenged provisions creates unnecessary obstacles for implementation of the rights of the person set forth in the above-mentioned Articles of the Constitution, since they restrict the exercise of one of guarantees, namely the constitutional authority of the prosecutor’s office to challenge judicial acts, as an important element of the status of the RA Prosecutor’s Office in the state system and the tools for resolving the assigned issues should not be subject to groundless and unjustified restrictions.

For substantiating the above-mentioned arguments, the Applicant, in particular, refers to a number of provisions of the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, a number of legal positions expressed by the Constitutional Court and the ECtHR, as well as the positions expressed in the relevant recommendation of the Committee of Ministers of the Council of Europe.

4. The Respondent finds that the provisions of Point 2 of Part 2.2 of Article 407, Point 2 of Part 2 of Article 414.2, and Point 1 of Part 1 of Article 426.4 of the Code are in conformity with the RA Constitution.

The Respondent argues his position by the fact that as a result of the Decision DCC-943 of the Constitutional Court, Part 12 of Article 69 of the RA Law on the Constitutional Court and the RA Criminal Procedure Code were amended accordingly by the Law HO-268-N of 26.10.2011 and the RA Law HO-270-N of 26.10.2011 adopted by the RA National Assembly, according to the logic that it becomes possible to file a cassation appeal due to new circumstances also in the

case when the Constitutional Court – declaring the provision of the law to be in conformity with the Constitution – simultaneously stated in the operative part of the decision that it has been applied to the Applicant in a different interpretation.

According to the Respondent, in this sense “disclosure of the constitutional legal content of the provision specifically in the operative part” should be perceived not as the full range of legal analysis of this norm and its application, conducted by the Constitutional Court regarding the conformity of this norm to the Constitution, but at least the remark indicating to the position of the Constitutional Court that, even if the challenged provision is in conformity with the Constitution, however, within the framework of a specific case, the Court has reservations in regard to the practical application and interpretation of that norm, and the legal analysis of the Court regarding those reservations will be mandatory for other law enforcement authorities and the Court of Cassation from the viewpoint of considering it as a new circumstance, restoration of violated rights of a person, as well as ensuring uniform judicial practice in connection with this issue.

In the opinion of the Respondent, the position expressed by the Constitutional Court in the framework of a specific case – which is set forth in the form of a comprehensive and detailed analysis in the descriptive-reasoning part of the decision of the Court, and there is a “reference” in the operative part of the decision – is sufficient for filing a cassation appeal due to new circumstances.

The Respondent also draws attention to the fact that, unlike the RA Criminal Procedure Code, the RA Law on the Constitutional Court does not contain any mandatory provision regarding the separation of the decisions of the Constitutional Court into separate structural parts and regarding the requirements, and in these circumstances the role of the operative part of the decision of the Constitutional Court will be underlined solely in the sense that it allows to form a clear picture of the outcome of the case pending in the Constitutional Court and thereby assess the need for full familiarization with the decision in the framework of a particular case and from the perspective of the further clarifications on possibilities of restoration of a specific right and consideration of the positions expressed by the Constitutional Court during the proceeding of the case.

Referring to Point 9.2 of Part 1 of Article 64 of the RA Law on the Constitutional Court, the Respondent finds that the provision stipulated by the Constitutional Court – according to which:

“the challenged norm is not declared as contradicting the Constitution and void only within the framework of the constitutional legal content revealed by the Constitutional Court – is enough to consider that the rule ‘The constitutional legal content of this provision shall be revealed in the operative part’ is observed and considered as a new circumstance, which is the basis for cassation appeal.”

5. Within the framework of the constitutional legal dispute raised in this Case, the Constitutional Court considers it necessary to address the following issues:

a/ within the framework of the current logic of constitutional legal developments in the Republic of Armenia, what are the essence and content of the legal positions expressed in the decisions of the Constitutional Court, and what is the significance of those legal positions from the perspective of proper legal perception and application of those decisions as coherent official documents?

b/ do the legal consequences differ conditioned by the legal positions of the Constitutional Court depend on the procedural (technical) prescription of these positions in different parts of the decision of the Constitutional Court?

c/ how are in law enforcement practice the legal positions of the Constitutional Court perceived and implemented as a source of law, as a guarantee for ensuring the constitutional principles of direct action of fundamental human and civil rights, and the inviolability of their essence, as well as a guarantee for ensuring the rule of law and legal certainty?

6. In a number of decisions, the Constitutional Court – as a matter of principle – referred to the issues of substance, content, legal force and role of the legal positions of the Constitutional Court. In particular, in the Decision DCC-943, the Constitutional Court stated that:

- the legal positions expressed in the decisions of the Constitutional Court “... are called to ensure more coherent and uniform perception of the RA Constitution and constitutional lawfulness directing the law enforcement practice to the understanding and application of the normative acts in accordance with their constitutional legal content. As an important source of constitutional law, they are essential for the law-making (rule-making) activity following from the decisions of the Constitutional Court. The Constitutional Court – revealing in its

decisions the constitutional legal content of the law (certain provisions of the latter) or the norms of other legal acts – expresses legal positions on the basis of which resolves the issue of the legal force of the given norms or the legal act declaring them void in case the latter contradict the Constitution. This is due to the need for the further regulation of the legal relation, which was previously regulated by this act (norms), therefore, the need for rule-making (law-making) activity of the competent public authority.

Based on the peculiarities of the constitutional legal status of the RA Constitutional Court and the legal effect and nature of its decisions, the Constitutional Court finds that the legal positions expressed in these decisions:

a/ directly follow from the powers of the Constitutional Court, therefore, they are of an official nature;

b/ have specific legal consequence addressed both to the subjects of the certain case, as well as to all subjects of public legal relationships (they are comprehensive);

c/ have unlimited term of legal force and they can be amended only by the decisions of the Constitutional Court;

d/ are designed to promote the elimination of legal uncertainty in the legal system and law enforcement practice of the Republic of Armenia, are the basis for constitutionalization of legal relations and have a precedent character;

e/ prior to the normative regulation of the relation in dispute, in some cases they are also temporary means of legal regulation;

f/ are the official interpretations of the norms of the RA Constitution.”

In a number of decisions, the Constitutional Court has repeatedly referred to the issues of unconditional and consistent implementation of the legal positions of the Constitutional Court in lawmaking and law enforcement practice (DCC-765, DCC-815, DCC-833, DCC-873, DCC-966, DCC-1192, DCC -1254 etc).

The Constitutional Court finds that the aforementioned legal positions shall also be applicable to the legal regulation at issue in this Case.

Touching upon the issue between the location of the legal positions standpoints of the Constitutional Court in different parts of the decision and the legal consequences arising from these legal positions, the Constitutional Court considers it necessary to note that in this regard the Court has also expressed an essential legal position, according to which: “The decisions of the

Constitutional Court must be also perceived in their structural integrity (preface, descriptive-reasoning and operative parts) for ensuring the clarity of the implementation of the content, principles and peculiarities of the legal regulations stipulated in these decisions, as well as the rules of subjective and objective conduct derived from them. This issue is addressed especially through the legal positions expressed in the descriptive-reasoning part of the decisions of the Constitutional Court, and the latter, as a rule, contain conclusions of the Court which are the basis for the operative part of the decision and result from the legal analysis of the subject matters (the raised issues and constitutional legal disputes) of the applications addressed to the Constitutional Court, while ignoring their essence and content cannot ensure the implementation of the decision of the Court” /DCC-943/.

Taking into account the aforementioned legal position, the Constitutional Court finds that **the legal consequence of the legal position of the Constitutional Court - revealing the constitutional legal content of the legal norm - is not due to the fact that the given legal position is stipulated in one or another part of the decision of the Constitutional Court.** According to Part 5 of Article 61 of the RA Law on the Constitutional Court, “The decisions rendered by the Constitutional Court on the merits of the case shall be binding for all state and local self-government bodies, the officials thereof, as well as for natural persons and legal entities throughout the territory of the Republic of Armenia.” In addition, the peculiarity of the legal force of the decision of the Constitutional Court as **an integral** official document is also specified in Article 11 of the RA Law on Legal Acts, which is also a guarantee of the perception and application of Article 102 of the RA Constitution in accordance with its constitutional and legal content. **The mentioned normative regulations are based on the legal principle, according to which, as an official document that causes legal consequences, it is necessary to be guided not only by one or another provision as a structural part of the decision of the Constitutional Court, or solely by its operative part, but by the entire decision,** based on the legal positions expressed both in the operative, and in the descriptive-reasoning part of the decision. The Constitutional Court considers that it does not follow from the constitutional legal content of Part 12 of Article 69 of the RA Law on the Constitutional Court that only the operative part of the decision of the Constitutional Court must be implemented. At the same time, the requirements of Articles 5-6, 167-170 of the RA Constitution (with Amendments through 2015) and Articles 100-102 of the RA Constitution (with Amendments through 2005) do

not imply the establishment by any normative act of another feature of the legal force of the decision of the Constitutional Court.

In the above-mentioned context, the Constitutional Court considers it inadmissible to ignore the legal positions expressed in the reasoning part of the decision of the Constitutional Court and the possibility of reviewing the challenged judicial act due to new circumstances.

The RA Constitutional Court addressed the mentioned issue almost in all the annual reports on the implementation of its decisions, noting that the proper implementation of the decisions of the Constitutional Court is a guarantee of ensuring legal security, and the Court also indicated that it is necessary to ensure at the legislative level that state bodies and officials guarantee the implementation of the decisions of the Constitutional Court in their integrity, taking into account the legal positions set forth not only in the operative but also in the reasoning parts of the decisions, which are the source of constitutional law and, by their nature, are the official interpretation of constitutional provisions. Such constitutional legal approach is manifested in the decisions of the RA National Assembly on ratification of international treaties, which emphasize the legal positions expressed in the decisions of the RA Constitutional Court.

It is also significant that the legal positions expressed in the judgments of the European Court, which are the case law of this Court, are also basically prescribed in the reasoning part of the judgment and must be taken into account in the legal practice.

7. Stressing the importance of the matter at issue also in the context of the constitutional amendments of 2015, the RA Constitutional Court considers it necessary to state that in the international practice of development of both constitutional science as well as constitutional justice, the decisions of the Constitutional Court are no longer perceived solely as documents stating the constitutionality or unconstitutionality of legal acts, and greater emphasis is placed on the precedent nature of the latter, the formation of a unified constitutional doctrine and the fact of their becoming the most important source of development of the Constitution and legislation.

Legal positions are a set of legal opinions of the Constitutional Court, which are of general nature, and the latter are the result of interpretation of the Constitution within the competence of the Court and disclosure of the constitutional legal content of the provisions of laws and other normative acts, adopted in the decisions of the Court, thereby eliminating the uncertainty of their

legal perception and, due to the latter, the possible unconstitutionality of the law enforcement practice.

At the same time the Constitutional Court concludes that the content of the term “legal position” is not specified by the RA legislation. However, the Court considers it necessary to note that, within the framework of the practice of constitutional justice, the features of the legal concept under discussion were analyzed. In particular, by the Decision DCC-652 of 18 October 2006, the RA Constitutional Court stated that “According to the Constitution and the RA Law on the Constitutional Court, the Constitutional Court is empowered to submit a final legal position regarding the provisions of the Constitution, when assessing the constitutionality of normative acts. The content of these legal positions is the official interpretation of the constitutional norm.” By the Decision DCC-674, the Constitutional Court specifically outlined the need to implement the legal positions expressed in the reasoning part of the above-mentioned Decision DCC-652 (Point 5).

Thus, by the Decision DCC-652, the Constitutional Court limited the legal content of its positions to the framework of the official interpretation of the constitutional norm, stating that **by disclosing the legal content of the norm of the Constitution or disclosing the constitutional content of the law**, in its Decision the Constitutional Court **formulates its legal position**, which is binding both for law enforcers and all lawmaking bodies. Therefore, the legal analysis and relevant conclusions for the purpose of interpretation of the Constitution and disclosure of the constitutional legal content of the challenged legal norm (normative act) are objectively substantiated and set out not only in the operative part, but especially in the reasoning part of the decision of the Constitutional Court, and logically in a unified and systematic manner providing their certainty and uniform perception.

The Decision DCC-943 of the RA Constitutional Court dated 25 February 2011 is of pivotal importance from the standpoint of legal analysis of the content, nature and peculiarities of the concept of “legal positions,” as well as from the standpoint of their legal force, role in the legal system and a full resolution of issues of norm making significance. The said Decision also considers the official interpretations of the norms of the RA Constitution as one of the features of the concept under discussion, but at the same time, in connection with the contents of legal positions, the given Decision states that “The legal positions expressed in the decisions of the Court, as a rule, contain legal criteria underlying the resolution of the case, which relate to:

- the disclosure of the constitutional legal content of the norms of the RA Constitution, obligations stipulated in international treaties, laws, as well as other acts of legislation (Points 1 and 2 of Article 100 of the RA Constitution), the perception and application stemming from their constitutional axiology, guaranteeing direct action of constitutional human rights and, as a result of all this, the assessment of the constitutionality of the challenged norm (legal act);
- assessing the law enforcement (including the justice) practice and the need to apply the norms of the RA Constitution, laws and other legal acts in this practice in accordance with their constitutional legal content;
- the resolution of issues of constitutional legal significance and assessing the facts.”

It is obvious that in this Decision the RA Constitutional Court has most fully presented the content of the concept of “legal position,” including the above mentioned legal criteria in addition to the official interpretation of constitutional provisions.

Therefore, the Constitutional Court considers that by confining the essence of the concept of the “legal position of the Constitutional Court” only to the conclusion formulated in the operative part of the decision of the Constitutional Court, the function of guaranteeing the supremacy of the Constitution, in general, and the fact that the decisions of the Constitutional Court are the source of law, in particular, become meaningless. Otherwise, the Constitutional Court will have to move all legal positions of the given decision to its operative part, which is unacceptable in the legal sense.

8. International constitutional legal practice also shows that the legal positions of the Constitutional Court are expressed both in the reasoning and the operative parts of the decision. Moreover, the modern practice of constitutional justice shows that in the operative part of the decisions of the Constitutional Court, not only the fact of conformity or non-conformity of the legal act with the Constitution is often ascertained, but also other conclusions of the Court are prescribed. Obviously, the latter, per se, are the attitude of the referred authority towards the specific constitutional legal issues. The considered circumstance is most emphasized in those decisions of the RA Constitutional Court, within the framework of which the body exercising constitutional justice - declaring the challenged act as contradicting the Constitution - postpones the validity of expiration of the power of the legal act. In this case, the Court expresses its

attitude towards the possible resolution of the specific constitutional legal issue, and whereby this circumstance is reflected only in the operative part of the decision.

In order to guarantee the proper implementation of the decisions of the Constitutional Court, it is necessary to clearly ensure at the legislative level that **the public authorities and officials guarantee the full implementation of the decisions of the Constitutional Court in their integrity, taking into account not only the operative part of the decision, but also the legal positions stated in its reasoning part, which serve as a source of constitutional law and, in their nature, an official interpretation of constitutional norms.**

In the Decision DCC-943 of 25 February 2011, the Constitutional Court also stated that, when declaring the challenged act to be in conformity with the Constitution, the Constitutional Court often reveals the constitutional legal content of the challenged legal norms through their interpretation, and in the operative part of the decision, declares those norms to be in conformity with the Constitution **within the framework of certain legal positions or within the framework of the constitutional legal content revealed in the decision**, indicating thereby:

- the legal limits of understanding and application of the given norm,
- the legal limits, beyond which the application and interpretation of the given norm shall lead to unconstitutional consequences,
- the constitutional legal criteria, based on which the competent authorities are obliged to provide additional legal regulations for the full application of the given norm.

Consequently, the decision of the Constitutional Court cannot be fully implemented without taking into account the aforementioned legal positions, which in turn presupposes that legal provisions expressed not only in the operative but also in the reasoning parts of the decision of the Constitutional Court are subject to mandatory implementation.

In compliance with the Decision DCC-943 of the RA Constitutional Court, on 26 October 2011 the legislator introduced an amendment to Part 8 of Article 68 of the RA Law on the Constitutional Court, providing that the Constitutional Court may not only render decisions on declaring the challenged act or its challenged provision to be in conformity with the Constitution, and on declaring the challenged act as fully or partially contradicting the Constitution and void, but also render a decision on **declaring the challenged act or its challenged provision to be in conformity with the Constitution within the framework of the constitutional legal content revealed in the decision of the Constitutional Court**. Moreover, it was established in Part 12

of Article 69 of the RA Law on the Constitutional Court that, in the cases specified in this Article - if the provisions of the law applied to the applicant are contradicting the Constitution and void, and in the cases when **the Constitutional Court, revealing in the operative part of the decision the constitutional legal content of the provision of the law, declared it to be in conformity with the Constitution and simultaneously stated that this provision was applied to the applicant in a different interpretation** - the final judicial act rendered against the Applicant is subject to review due to new circumstances, in accordance with the procedure provided for by the law.

As a result of the constitutional amendments of 2015, the above-mentioned legal regulations were constitutionally explicitly enshrined. According to Point 8 of Part 1 of Article 169 of the RA Constitution, everyone shall have the right to apply to the Constitutional Court in a concrete case when there is a final act of court, all judicial remedies have been exhausted, and the person challenges the constitutionality of a provision of a normative legal act applied by such act of court in relation to him, which has led to a violation of his fundamental rights and freedoms enshrined in Chapter 2 of the Constitution, **taking into account also the interpretation of such provision in its practical legal application.** It is obvious that **the assessment of the constitutional legal content of “interpretation provided in the law enforcement practice” is assigned to the Constitutional Court, regarding which the Court expresses specific legal positions.**

Consequently, the Constitutional Court finds that one of the main issues of legislative regulation should be the creation of guarantees in the systemic integrity for the formation of a full system of implementation of legal positions expressed in the decisions of the Constitutional Court, which is obligatory from the perspective of fulfilling the requirements of the Constitution.

9. The Constitutional Court also notes that the circumstance of declaring the challenged norm to be in conformity with the Constitution within the framework of legal positions expressed in the decision of the Constitutional Court, together with equivalent legal solutions, also exists in the practice of the constitutional courts of a number of states, including the constitutional courts of Germany, Lithuania, the Russian Federation, Slovenia, Spain, Hungary, Bosnia and Herzegovina. It is common for all these courts that the interpretation presented in the decision becomes mandatory for all public authorities. In this regard, the position of the European

Commission for Democracy through Law (Venice Commission) regarding this issue merits attention, according to which: “An explicit legislative – or even better constitutional – provision obliging all other state organs, including the courts, to follow the constitutional interpretation provided by the constitutional court provides an important element of clarity in the relations between the constitutional court and ordinary courts and can serve as a basis for individuals to claim their rights before the courts. /CDL-AD(2010)039rev, Study on Individual Access to Constitutional Justice, Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010).

10. The Constitutional Court also considers it necessary to state that the criminal procedural institutions for substantiating the cassation appeal **not related to the new circumstance** and the adoption of the cassation appeal to the proceedings regarding the legal consequences due to the legal position revealing the constitutional legal content of the legal norm directly concern the issues of guaranteeing the constitutional provisions, stipulated by Articles 1, 3, 61 and 63, the establishment of the institutional arrangements and procedures stipulated by Article 75, which are necessary for effective implementation of these rights, as well as the issue of effective implementation of the principle of legal certainty stipulated by Article 79 of the RA Constitution (with Amendments through 2015).

It is also noteworthy that in the challenged articles, no restriction is envisaged on solely the operative part of the acts adopted by the Court of Cassation and the European Court of Human Rights in regard to the legal positions of those courts. As a source of law, they are considered in the integrity of the act due to the regulatory sense.

In this regard, the Constitutional Court states that according to Point 2 of Part 2.2 of Article 407, Point 2 of Part 2 of Article 414.2 of the Code challenged in this Case, providing the legal positions revealing the constitutional legal content of the legal norm with the relevant legal consequences - which are prescribed **only in the operative part** of the decision of the Constitutional Court - does not follow from the requirements of Articles 1, 3, 4, 61, 63, 75, 79 and 80 of the RA Constitution (with Amendments through 2015) and Article 93 of the RA Constitution (with Amendments through 2005).

On the subject matter, the authorized representative of the RA Government also expressed a similar viewpoint in his position presented in the letter No. 05/3793-17 of 13.03.2017 which was submitted to the RA Constitutional Court.

From the perspective of such a legal position, the issue will become more important and urgent after the entry into force of Chapter 7 of the RA Constitution with Amendments through 2015, when the unconditional fulfillment of the requirement of Point 2 of Part 2 of Article 171 of the Constitution would become the primary task for the RA Court of Cassation, thus eliminating fundamental violations of human rights and freedoms.

With regard to the cassation appeal **related to the new circumstances**, the Constitutional Court considers the arguments of the Applicant reasonable, according to which the legal regulation prescribed in Point 1 of Part 1 of Article 426.4 of the Code challenged in this Case is an obstacle to the effective implementation of constitutional functions of the RA Prosecutor's Office.

In this regard, the Constitutional Court considers that for the fulfillment of the constitutional legal powers of the RA Prosecutor's Office, the RA Prosecutor General or his deputies may file an appeal for the review of the judicial act **due to new circumstances**, regardless of the circumstance whether the operative part of the decision of the Constitutional Court includes a remark that the legal norm was applied in a different interpretation within the framework of the constitutional legal content revealed by the Constitutional Court with regard to the challenged norm, especially when in the reasoning part of the decision it is stated that the application of the norm in this interpretation leads to the violation of human rights or does not guarantee their direct action.

Based on the review of the Case and governed by Point 1 of Article 100, Point 7 of Part 1 of Article 101, and Article 102 of the RA Constitution (with Amendments through 2005), Articles 63, 64 and 71 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS**:

1. To declare the phrases **“in the operative part”** prescribed in Point 2 of Part 2.2 of Article 407, and Point 2 of Part 2 of Article 414.2 of the RA Criminal Procedure Code contradicting the requirements of Articles 1, 3, 4, 61, 63, 75, 79 and 80 of the RA Constitution /with Amendments through 2015/ and the requirements of Article 93 of the RA Constitution /with Amendments through 2005/ and void, since such wording of those phrases within the framework of their

content in law enforcement practice does not allow the person - entitled to lodge a cassation appeal - to refer to those legal positions revealing the constitutional legal content of the legal norm, which are expressed in other parts (except for the operative part) of the decision of the Constitutional Court for substantiating his position when lodging a cassation appeal not related to the new circumstance, which should be taken into account when considering the appeal.

2. To declare the phrase “in the operative part” stipulated in the provision “or declared it to be in conformity with the Constitution, however, the Court revealed its constitutional legal content in the operative part of the decision and considered that this provision was applied in a different interpretation” prescribed in Point 1 of Part 1 of Article 426.4 of the RA Criminal Procedure Code contradicting Articles 93 and 103 of the RA Constitution /with Amendments through 2005/ and void, insofar as in terms of availability of such a phrase the legal positions - revealing the constitutional legal content of the legal norm – prescribed in the reasoning part of the decision of the Constitutional Court do not serve as ground in the judicial practice for the consideration and adoption of the appeal to the proceedings within the framework of the cassation appeal lodged by the RA Prosecutor General or his deputies due to new circumstances and according to the procedure provided for by the law.

3. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia (with Amendments through 2005) this Decision shall be final and effective upon publication.

Chairman
March 28, 2017
DCC-1359

G. Harutyunyan