

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

**ON THE CASE OF CONFORMITY ARTICLE 221¹ OF THE CIVIL PROCEDURE
CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION
OF THE REPUBLIC OF ARMENIA ON THE BASIS
OF THE APPLICATION “SDA TRAVEL” LLC**

Yerevan

3 April 2018

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

with the participation of the Applicant’s representatives T. Yegoryan and L. Hakobyan (in the framework of the written procedure),

of the Respondent: V. Danielyan, official representative of the RA National Assembly, Senior Specialist of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Paragraph 6 of the Constitution (with amendments of 2005) 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 of conformity of Article 221¹ of the Civil Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of “SDA TRAVEL” LLC.

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

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

1. Positions and arguments of the Applicant

The Applicant challenges Article 221¹ of the RA Civil Procedure Code, titled "Entry of Judgments of the Court of Appeal into Force", which envisages: "Judgments of the Court of

Appeal, by which the case is resolved in substance, come into force one month after their publication."

In the Applicant's opinion, the challenged article contradicts articles 1, 3, 28, 29, article 61 (1), article 63 (1), articles 75, 78, 79 and 80 of the Constitution.

The Applicant claims that, without any reasonable and objective reasons, individuals are discriminated due to the circumstance which specific month the judicial act affecting them is published or becomes accessible to them. Persons who challenge judicial acts issued in the months that have 31 days are in a better position than those who are forced to challenge judicial acts published or accessible to them in months with fewer days.

In addition, the Applicant claims that the challenged provision does not guarantee the effective exercise of the constitutional right of a person to judicial protection by appealing judicially the lower court's judgment and implementing the principle of universal equality before the law.

The one-month period prescribed by the challenged position does not correspond also to the principle of legal certainty, since in each case this period is different in a number of days.

Regarding the application of the challenged provision applied against him, the Applicant, notes that the cassation appeal was filed within 29 days after the publication of the decision of the Court of Appeal, but the Court of Cassation stated that one-month deadline, prescribed by the Law, was missed. Whereas, according to the Applicant, if the judicial act affecting the Applicant's interests had been announced in January or March, the Applicant would have had several days more to appeal the decision of the Court of Appeal and the cassation complaint would not have been considered as outstanding.

2. Positions and arguments of the Respondent

Referring to the position expressed in a number of the judgments of the Constitutional Court regarding guaranteeing the right of access to justice and the right to a fair and effective trial, to the case law of the European Court of Human Rights, and objecting to the Applicant's arguments, the Respondent considers that the challenged appeal of "SDA Travel" LLC, article 221¹ of the RA Civil Procedure Code complies with the requirements of the Constitution.

In the Respondent's opinion, in this particular case, the legislator has prescribed at least 25 days for the revision of judgments, which is enough for compiling and presenting a justified complaint. In addition, the Respondent believes that the legislator has a discretionary power in this matter, but with the restriction that the prescribed term is sufficient to perform the necessary procedural action, so as not to disturb the practical implementation of the latter.

As to the correlation between the principle of legal certainty and the challenged legal position, according to the Respondent, it does not matter in which units the legislator envisages

the period necessary for the performance of any procedural action - in hours, days, weeks, months or years, if the beginning and the end of this period are clearly prescribed.

According to the Respondent, the deadline prescribed by the challenged provision, when considering it with other provisions of the Code on the calculation of deadlines, is more predictable, since the fact that different months have different number of days is well known and recognized, which makes it possible for the citizens to bring their behavior in line with the challenged legal regulations.

The Respondent also notes that by envisaging a sufficient deadline for the procedural action, the legislator takes into account and accepts the possible minimum time-period as grounds.

3. Issues to be clarified in the framework of the case

In order to resolve this constitutional and legal challenge, the Constitutional Court considers it necessary to address the following issues:

- Is the procedure for determining the deadline calculated by the month prescribed in Article 221¹ of the Code in consistence with the principle of certainty prescribed in Article 79 of the Constitution?
- Does not the prescription of a one-month period for appealing the decisions of the court prescribed by article 221¹ of the Code violate the principles of equality before the law and prohibition of discrimination prescribed in articles 28 and 29 of the Constitution simultaneously restricting the right of a person to an effective judicial protection of his/her rights and freedoms?

4. Analysis and positions of the Constitutional Court

4.1. Article 221¹ of the Code is designed to regulate the term of entry into legal force of judicial acts of the Court of Appeal, authorizing the case on its merits, prescribing it as one month. The content of the term "one month" used in this provision, including the procedure for calculating such a period, is disclosed in articles 74 and 75 of the Code.

In particular, the period, calculated in months, expires in the corresponding day of the last month of the established period. At the same time, according to Article 75 (1) of the Code, if the end of the deadline, calculated in months, falls in a month that does not have the corresponding number, then the deadline expires on the last day of that month.

The principle of certainty of the law requires that the legal regulation should be as clear and accessible to the person as possible so that the person is able to demonstrate appropriate behavior.

At the same time the Constitutional Court considers that the degree of certainty depends both on the significance and consequences of legal regulations for people, and on those objective circumstances, how clearly one can formulate linguistically the spheres subject to regulation.

Article 79 of the Constitution imposes stricter requirements of certainty for the restriction of the fundamental rights: "In case of restriction of fundamental rights and freedoms, the preconditions and the scope of restrictions shall be stipulated by law; the latter shall be sufficiently certain for the holders of fundamental rights and the addressees to be able to engage in appropriate conduct."

When applying the principle of certainty, it is necessary to take into account that legal norms, as general abstract regulations, always need a certain interpretation, and it is practically impossible to settle relations in all very different spheres of life by the equivalent legal norms.

Concerning the principle of legal certainty, the Constitutional Court in its Decision DCC-630 of April 18, 2006, expressed the position that the legal norm cannot be considered as a "law" if it does not correspond to the principle of legal certainty, i.e. "it is not formulated clearly enough to permit a citizen to adapt his/her behavior in line with it."

The Constitutional Court also considers it necessary to note that the European Court of Human Rights expressed the following legal position with regard to legal certainty: "... it is necessary the law be sufficiently accessible ... and definite. ... the legal provisions in issue is not defined as the term "law" had neither the quality nor the foreseeability required. He must be able, in case of need, through an appropriate council, in these circumstances to foresee reasonably the consequences to which the said action may lead ... "(Michaud v. France 06.12.2012).

In addition, the European Court of Human Rights considered the applications submitted after the deadline unacceptable, provided that the end of the relevant period should be assessed as a predictable (**Melnik v. Ukraine, 28.03.2006**).

Proceeding from the abovementioned, the Constitutional Court of the Republic of Armenia considers that the "monthly" term envisaged by the challenged provision, according to the normative lexicology, is consonant with the principle of certainty prescribed in Article 79 of the Constitution, since the above-mentioned justification is defined by the content of the term "one month", which lies at the basis of the term of entry into force of the judgments of the Court of Appeal, which resolve the case on the merits, and the procedure for calculating the corresponding terms. Consequently, within the framework of application of the challenged provision, the individual shall be able to conduct in accordance with the prescribed requirements.

The Constitutional Court, stating that the legislator has broad discretion during the definition of the procedural terms, finds that in these circumstances the establishment of a period of appeal

within months and days or the establishment of a specific final term in a judgment will be consonant with the principle of legal certainty prescribed by the Constitution.

4.2 Turning to the statement of the Applicant that, without any reasonable and objective reasons, a discriminatory attitude towards the persons connected with the circumstance in which month the judgment was disclosed or accessible to them, the Constitutional Court states that, regardless the circumstances, how many days will be obtained as a result of calculations of a specific month, this number equally applies to all participants in the trial, and the latter in the legal aspect are given equal opportunities in terms of deadline. This provision does not violate the principle of universal equality before the law stipulated by article 28 of the Constitution, as well as the prohibition of discrimination stipulated by article 29 of the Constitution, since this is not a discriminatory approach, and the approach, conditioned by the number of days of the month is objective, it does not aim at granting undue privileges of any kind, or the creation of more favorable conditions for one of the parties to the proceedings, depending on sex, race, color, ethnicity or social status, genetics, language, religion, ideology, political or other views, belonging to the national minorities, property status, birth, disability, age or other personal or social circumstances. The fact that months have a different number of days is an objective and known reality, and months are used not only in various legislative acts, but also in various foreign and international legal systems.

Based on the review of the Case and being governed by Article 100 (1) and Article 102 of the Constitution of the Republic of Armenia (with Amendments of 2005), 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. Article 221¹ of the RA Civil Procedure Code is in conformity with the Constitution of the Republic of Armenia.
2. Pursuant to Article 102 (2) of the Constitution of the Republic of Armenia (with Amendments of 2005) this Decision is final and enters into force from the moment of the publication.

Chairman

H. Tovmasyan

3 April 2018

DCC-1411