*Non-Official Translation*

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

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# ON THE CASE OF CONFORMITY OF PART 1 OF ARTICLE 20 OF THE LAW OF THE REPUBLIC OF ARMENIA ON STATE PENSIONS WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

Yerevan July 12, 2019

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan (Rapporteur), F. Tokhyan, A. Tunyan, A. Khachatryan, H. Nazaryan, A. Petrosyan,

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

the applicant: Administrative Court of the Republic of Armenia,

the respondent: A. Kocharyan, official representative of the RA National Assembly, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, as well as articles 22 and 71 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of part 1 of article 20 of the Law of the Republic of Armenia on State Pensions with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

The RA Law on State Pensions (hereinafter – the Law) was adopted by the National Assembly on 22 December 2010, signed by the RA President on 30 December 2010 and entered into force on 1 January 2011.

According to part 1 of article 20 of the Law, “Disability military pension shall be assigned to a military serviceman recognized as disabled by the competent state body responsible for conducting medical and social expert examinations, if the competent state body during the military service or within five years after leaving the military service established (determined) the causal link between disability

(illness, trauma, injury) and military service. If the reason for the disability of a military serviceman is related to an injury sustained during the military service, i.e. before leaving the military service in the prescribed manner, then a military disability pension is assigned to a military serviceman, regardless of the period of establishment (determination) of the causal link of disability".

The case was initiated on the basis of the application of the Administrative Court of the Republic of Armenia of 18 April 2019 submitted to the Constitutional Court on 22 April 2019.

Having examined the application, the written explanation of the respondent, as well as having analyzed the relevant provision of the Law and other documents of the case, the Constitutional Court **ESTABLISHES:**

**1. Positions of the applicants**

Analyzing part 1 of article 20 of the Law on State Pensions, the applicant states that the mentioned legal norm can be conditionally divided into two parts. The first part is applicable when during the military service or within five years after leaving the military service in the prescribed manner, the relevant competent authority establishes a causal link between disability and military service, which must be a consequence of illness, trauma, injury (the basis for the occurrence of disability), and the second part is applicable when the reason for the disability of a military serviceman is associated with an injury sustained during the military service, i.e. before leaving the military service in the prescribed manner, and in this case no time period is established. Moreover, the condition for the link between the reason for the disability and the injury included in the second part is also included in the first part.

According to the applicant, there is no legitimate and legislative basis on which injury can be considered more dangerous to human health than illness and trauma, since the danger is not classified on the basis of the reason for the disability, but only on the basis of the category of disability.

Referring to articles 29 and 83 of the Constitution and the legal position expressed by the Constitutional Court in the Decision DCC-1143 of 12 February 2019, the applicant considers that part 1 of article 20 of the Law contradicts the aforementioned articles of the Constitution, since by the challenged provision a differentiated and discriminatory approach is adopted in relation to persons of different groups within the framework of the same legal status, as a result of which these persons are deprived of the right to receive a pension equivalent to the pension of other persons who are on equal terms with them.

**2. Positions of the respondent**

Referring to articles 1, 29 and 83 of the Constitution, the respondent states that the principles of universal equality and prohibition of discrimination are guaranteed both by the Constitution and a number of significant international documents.

The content of the challenged provision established by the legislator, in fact, follows from the principles of the state pension policy and the scope of the subject of regulation; in particular, the Law regulates legal relations in connection with the management of state pension and its financing, establishes the types of state pensions, the terms and the procedure for assigning and paying pensions.

The respondent states that the choice of the scope and forms of social security, in particular the size of the pension, is within the discretion of the state, as long as this does not contradict the requirements of the Constitution or international commitments.

Referring to the Decisions DCC-723 of 15.01.2008, DCC-881 of 04.05.2010, DCC-1426 of 18.09.2018 of the Constitutional Court, as well as a number of decisions of the European Court of Human Rights regarding the right to pension and social security, the respondent states that as a social state the Republic of Armenia, in accordance with the most important constitutional characteristic, has undertaken a certain constitutional obligation, namely to provide social assistance to its citizens. Therefore, the current legal regulations of the social security system of the Republic of Armenia are also generally determined by the financial, economic and material capabilities of the country, which are aimed at guaranteeing the full and decent exercise of the right of the citizens of the Republic of Armenia to social security.

Based on the foregoing, the respondent considers that part 1 of article 20 of the Law of the Republic of Armenia on State Pensions is in conformity with the Constitution.

**3. Circumstances to be ascertained within the framework of the case**

To determine the constitutionality of the provision challenged in the present case, the Constitutional Court considers it necessary, in particular, to address the following issues:

Is there a differentiated approach in cases of assignment of a military disability pension after the establishment of a causal link between disability and military service on the basis of the causes of

disability (on the one hand, illness and trauma, on the other hand, injury), if so, is this consistent with the principle of prohibition of discrimination prescribed in article 29 of the Constitution?

Based on the foregoing, the Constitutional Court considers the constitutionality of the legal regulation challenged in the present case in the context of articles 29 and 83 of the Constitution.

**4. Legal positions of the Constitutional Court**

**4.1.** According to article 1 of the Constitution, the Republic of Armenia is a social state. The right to social security is prescribed in article 83 of the Constitution, according to which, everyone shall, in accordance with law, have the right to social security in cases of maternity, having many children, illness, disability, workplace accidents, need of care, loss of breadwinner, old age, unemployment, loss of employment, and in other cases.

In the Decision DCC-1142 of 02.04.2014 the Constitutional Court states that social security is not only the person's right, but also a target function conditioned by positive obligation of the state, and, inter alia, are aimed to secure the subsistence of the stratums of the society, who are not able to do that for reasons independent of them.

According to part 1 of article 70 of the Law of the Republic of Armenia on Military Service and the Status of Military Personnel, the pension security of military servicemen shall be implemented in the manner prescribed by the law.

Part 2 of article 8 of the Law of the Republic of Armenia on State Pensions prescribes the following types of military pension: 1) long-term service, 2) disability, 3) loss of breadwinner.

According to clause 1 of part 1 of article 17 of the Law, the personnel of the command and non-command staff (commissioned and non-commissioned officers, common staff) of the defense, police, the executive bodies of national security, and the Rescue Service of the Republic of Armenia (hereinafter, referred to as respective authorities) shall be eligible for a military pension.

According to the challenged part 1 of article 20 of the Law, "A disability military pension shall be assigned to a military serviceman recognized as disabled by the competent state body responsible for conducting medical and social expert examinations, if the competent state body during the military service or within five years after leaving the military service established (determined) the causal link between disability (illness, trauma, injury) and military service. If the reason for the disability of a military serviceman is related to an injury sustained during the military service, i.e. before leaving the

military service in the prescribed manner, then a military disability pension is assigned to a military serviceman, regardless of the period of establishment (determination) of the causation of disability".

The interpretation of the above-mentioned legal provision shows that the legislator, **contributing to the incidence of disability** (in one case - illness and trauma, in the other case - injury), **differentiated** the situation of assigning a disability military pension to a serviceman after confirming the causal link between disability and military service. In accordance with this, when disability is not the result of illness or trauma, but injury, a disability military pension is assigned regardless of the time period for establishing (determining) the causal link between disability and military service. Accordingly, in cases where the disability is not consequence to illness or trauma, the time period for establishing (determining) a causal link between disability and the assignment of a disability military pension is limited to the period of five years. Thus, in comparison with the other group, obviously unequal, unfavorable terms for the realization of the right to a disability military pension are established for this group of beneficiaries.

According to article 2 of the Law of the Republic of Armenia on the Social Protection of Persons with Disabilities in the Republic of Armenia, any person, who is in need of social protection due to limited ability to perform daily activities because of health disorder, shall be considered a person with disability.

According to Article $6^2$ of the same Law, "The state body competent in the sphere of medical and social expert examination recognizes a person as disabled based on the results of medical and social examination in accordance with the requirements of this Law, as well as in accordance with the classifiers and criteria established by the Government of the Republic of Armenia for disability groups implemented in medical and social examination.

The causes of disability may be as follows: … **illness, defect or injury sustained during military service**.

This person is recognized as disabled in the case if any limitation of life is revealed due to the relevant causal link specified in this article.

The state body competent in the sphere of medical and social examination shall grant relevant group of disability (1st, 2nd and 3rd) to the person declared as disabled." (Abridged and highlighted by the Constitutional Court).

A disability group is assigned in accordance with the classifiers and criteria used for defining disability groups used in medical and social examination prescribed by the Decision N 780-N of 13 June 2003 of the Government on Approval of Standards of Medical and Social Examination.

These provisions indicate about the general approach in the legislation, according to which the status of persons with disabilities is differentiated or classified only by groups, that is, in accordance with the degree of restriction of a person's life activity and the need for social protection, and not in accordance with the reasons for occurrence of disability (illness, trauma, injury).

**4.2.** Taking into account the circumstance that by the challenged provision the legislator adopted a differentiated approach when a military serviceman is assigned a military disability pension due to a disability (illness, trauma, injury) after the causal link has been established between disability and military service, the Constitutional Court finds it necessary to consider the challenged legal regulations in the light of the provisions prescribed in Articles 29 and 83 of the Constitution regarding the prohibition of discrimination and social security.

Article 29 of the Constitution, titled "Prohibition of Discrimination", states that any discrimination based on sex, race, skin color, ethnic or social origin, genetic features, language, religion, worldview, political or any other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

The Constitutional Court has expressed the following legal positions regarding the discrimination against a person:

1) the positive constitutional obligation of the state is to ensure such conditions that will provide people with the identical status and equal opportunity to exercise, and in case of violation, protect their rights, otherwise not only the constitutional principles of equality and the prohibition of discrimination, but also the rule of law and legal certainty is violated (DCC-731);

2) within the framework of the principle of the prohibition of discrimination, any differentiated approach determined by objectively identifiable basis and legitimate goal is considered acceptable by the Constitutional Court. The principle of the prohibition of discrimination does not mean that any differentiated approach may turn into discrimination for the persons of the same category. Violation of the principle of discrimination is a differentiated approach, devoid of objective grounds and legitimate goals (DCC-881);

3) discrimination occurs when, within the framework of the same legal status, a differentiated approach is undertaken with respect to a person or persons, in particular, they are deprived of certain rights or these rights are limited, or they receive privileges (DCC-1224).

Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) enshrines that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. According to the case-law of the European Court of Human Rights (ECHR), for the emergence of the issue of prohibition of discrimination, there must be a difference in the treatment of persons in similar situations. According to the ECHR, not every differentiation or distinction can be considered discrimination. In particular, in one of its judgments (Andrejeva v. Latvia (GC 18.02.2009, 55707/00, § 81), the ECHR noted: "... No objective and reasonable justification means that the distinction in issue does not pursue a legitimate aim or that there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".

Although, in accordance with article 83 of the Constitution, the legislator is empowered to clarify the content of the right to social security, in particular the right to a pension (for example, the size of the pension, the procedure for assigning and paying it), nevertheless, the Constitution, inter alia, excludes the non-guaranteeing of this right by law, that is, the legislator is obliged to adopt a law guaranteeing the right to pension. In addition, such a law should not violate the requirements of the Constitution, in particular, it should be certain, predictable, not contradict the principles of equality and the prohibition of discrimination.

In the context of the foregoing, the Constitutional Court states that the legislative prerequisites for the realization of the right to social security of military serviceman recognized as disabled, in this case, the right to a disability military pension must be consistent with the general principles of the state social policy regarding military serviceman recognized as disabled, and any deviation from these principles should have an objective basis and pursue a legitimate aim.

In the response submitted by the Agency for Medical and Social Expertise of the Republic of Armenia of the apparatus of the Ministry of Labor and Social Issues of the Republic of Armenia, within the framework of fulfillment of the requirement sent by the judge-rapporteur of the Constitutional Court in the present case, the Agency has informed that "**from the perspective of medical and social examination there are no objective grounds for the exercise of a differentiated approach with**

**respect of illness, trauma or injury,** since clause 1 of the Decision N 780-N of 13.06.2003 of the Government on Approval of Standards of Medical and Social Examination establishes that disability is a social insufficiency caused by persistent dysfunction of the organism caused by illness, trauma or injuries which led to a limited ability to perform living activities and require his/her social protection, that is, the person is not recognized as disabled due to his/her illness, trauma or injuries, but due to person's illness, trauma or injuries which lead to a limited ability to perform living activities or to the degree conditioned with the persistent dysfunction of the organism."

Per se, it follows from the above response that the challenged legal regulation also raised the issue of violation of the fundamental right to universal equality before the law prescribed in Article 28 of the Constitution.

In addition, the Constitutional Court considers it necessary to note that there is no objective basis for a differentiated approach of the challenged legal provision, in one case due to illness or trauma, and in the other case due to injury, and the respondent in the present case also did not refer to it in his explanations, despite the circumstance that he considered the cases of exercising differentiated approach as legitimate on objective grounds.

**That is, no matter on what basis (illness, trauma or injury) a causal link between disability and military service is established (defined), the military servicemen recognized as disabled have the same status, i.e. the need for social protection due to** a limited ability to perform living activities**, conditioned by health disorders.**

The Constitutional Court reiterates that the differentiated approach of the legislator violates the constitutional principle of the prohibition of discrimination, since, as already noted, when assigning a disability military pension after establishing a causal link between disability and military service, there is no objective basis and legitimate aim of a differentiated approach on the one hand on the basis of illness or trauma, and on the other hand on the basis of injury.

In the Decision DCC-1213 of 9 June 2015, the Constitutional Court stated that "...in the framework of the recognition of the principle of the rule of law, the legal regulations prescribed in the law should make predictable the legitimate expectations for a person. In addition, the principle of legal certainty, as one of the fundamental principles of the rule of law, also implies that **the actions of all subjects of legal relations, including the holders of power, must be predictable and legitimate**".

Based on the foregoing, the Constitutional Court states that the phrase "within five years" prescribed in the first sentence of part 1 of article 20 of the RA Law on State Pensions and the second sentence of

the same part fully must be declared contradicting the Constitution and void, thereby prescribing only one, the most favorable legal regulation for all cases (regarding the assignment of a disability military pension **without any restriction in time** after establishing a causal link between disability /illness, trauma, injury/ and military service).

Based on the review of the case and governed by clause 1 of article 168, part 4 of article 169, and article 170 of the Constitution, Articles 63, 64 and 71 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

**1.** To declare part 1 of article 20 of the RA Law on State Pensions in part of the phrase “within five years” and in part of the sentence “If the reason for the disability of a military serviceman is related to an injury sustained during the military service, i.e. before leaving the military service in the prescribed manner, then a military disability pension is assigned to a military serviceman, regardless of the period of establishment (determination) of the causal link of disability.” contradicting article 29 of the Constitution and void.

**2.** Pursuant to part 2 of article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

**Chairman** **H. Tovmasyan**

July 12, 2019

DCC -1475