



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

**ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE
REGARDING THE CONFORMITY OF ARTICLE 426.3, PART 1, POINT 4 AND
ARTICLE 426.4, PART 1, POINT 1 OF THE CRIMINAL PROCEDURE CODE OF
THE REPUBLIC OF ARMENIA, ARTICLE 69, PART 12 OF LAW OF THE
REPUBLIC OF ARMENIA ON THE CONSTITUTIONAL COURT OF WITH THE
CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE
APPLICATIONS OF THE CITIZENS S. ASATRYAN AND A. MANUKYAN**

Yerevan

25 February 2011

The Constitutional Court of the Republic of Armenia composed of the Chairman G. Harutyunyan, Justices K. Balayan, F. Tokhyan, M. Topuzyan, A. Khachatryan, V. Hovhanissyan, H. Nazaryan (Rapporteur), A. Petrosyan, V. Poghosyan, with the participation of the representatives of the Applicants: A. Zeinalyan, K. Mezhlumyan, representative of the Respondent: D. Melkonyan, the Adviser of the Chairman of the National Assembly of the Republic of Armenia,

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

examined in a public hearing by a written procedure the Joint Case concerning the determination of the issue regarding the conformity of Article 426.3, Part 1, Point 4 and Article 426.4, Part 1, Point 1 of the Criminal Procedure Code of the Republic of Armenia, Article 69, Part 12 of the Law of the Republic of Armenia on the Constitutional Court with the Constitution of the Republic of Armenia on the basis of the applications of the citizens S. Asatryan and A. Manukyan.

The Case was initiated on the basis of the applications submitted to the Constitutional Court of the Republic of Armenia by the citizens S. Asatryan and A. Manukyan on 02.07.2010 and 15.12.2010, respectively.

Taking into account that the Cases submitted for consideration based on the applications of the citizens S. Asatryan and A. Manukyan, refer to the same issue, the Court,

according to Article 39 of the RA Law on the Constitutional Court, joined them to consider in the same court session by the Procedural Decision PDCC-1 of the Constitutional Court dated 11.01.2011.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicants and the Respondent, having studied the Criminal Procedure Code of the Republic of Armenia, the Law of the Republic of Armenia on the Constitutional Court, the challenged norms and other documents of the Case, the Constitutional Court of the Republic of Armenia **FOUND:**

1. The RA Criminal Procedure Code was adopted by the RA National Assembly on 1 July 1998, signed by the RA President on 1 September 1998 and came into force on 12 January 1999.

Article 426.3 of the Code is titled "The grounds and time limits for judgments review due to newly revealed circumstances." The Part 1, Point 4 of Article challenged in this case provides the grounds of reviewing the judicial acts due to newly revealed circumstances, if:

"... other circumstances unknown to the court in rendering the judgment, are revealed, which, by themselves or together with previously determined circumstances, prove that a convicted person is not guilty or has committed a lesser or more serious criminal offence than the one for which he or she has been convicted, as well as testify regarding the guilt of the acquitted person or a person in relation to whom the criminal prosecution has been terminated or the proceedings have been dismissed".

Article 426.4 of the RA Criminal Procedure Code is titled "The grounds and time limits for review of the cases due to new circumstances." According to Part 1, Point 1 of Article challenged in this case, the judgments, *inter alia*, are reviewed due to new circumstances, if:

"... the Constitutional Court of the Republic of Armenia declared the law applied by the court in the given criminal case to be fully or partially unconstitutional."

The RA Law on the Constitutional Court was adopted by the RA National Assembly on 1 June 2006, signed by the RA President on 14 June 2006 and came into force on 1 July 2006.

Article 69 of the RA Law on the Constitutional Court is titled "Review of cases brought by natural and legal persons on the constitutionality of the laws implemented by final judgments against those persons regarding concrete cases (review of individual appeals)." The challenged Part 12 of that Article states:

"12. In the cases defined by this Article, when the decision on declaring the provision of the Law challenged by the Applicant as null and contradicting the Constitution, the final judgment made against the applicant is subject to review in accordance with the procedure prescribed by law."

2. The procedural background of the case under consideration is the following. The Court of First Instance of Avan and Nor Nork Communities, having considered the criminal case No. 1-15/2007, found U. G. Wolfson and S.V. Asatryan guilty of crimes under a number of Articles of the RA Criminal Code and sentenced them to imprisonment for 11 and 9 years, respectively. The judgment was appealed. RA Criminal Court of Appeal considered the Case fully and rendered a judgment dated 18.06.2008 on sentencing U. G. Wolfson to imprisonment for the term of 6 years and affirm the judgment relating to S. V. Asatryan. On 21.11.2008 the cassation appeal was filed against the above mentioned judgment of the RA Criminal Court of Appeal based on the reasoning stipulated in Article 414.2, Part 1 of the RA Criminal Procedure Code. The cassation appeal was returned by the Decision No. VB-82/08 of the RA Court of Cassation.

Based on the Decision DCC-818 of the RA Constitutional Court dated 28.07.2009 on declaring Article 414.1, Part 2.1 of the RA Criminal Procedure Code as contradicting the RA Constitution and void, S. V. Asatryan lodged a cassation appeal to the Court of Cassation due to a new circumstance, and the latter returned the cassation appeal by its decision No. VB-28/09 dated 25.09.2009, basing it on the requirements of Article 407 and Article 414.2, Part 1 of the RA Criminal Procedure Code.

On the basis of the legal positions of the RA Constitutional Court expressed in the Decisions DCC-751 dated 15.04.2008, DCC-849 dated 22.12.2009 and DCC-866 dated 23.02.2010, S. Asatryan applied to the RA Court of Cassation requesting to review the decision No VB-28/09 of the RA Court of Cassation dated 25.09.2009 due to a new circumstance. The RA Court of Cassation returned the cassation appeal by the Decision No VB-08/10 dated 30.04.2010 basing it on Article 426.4, Part 1, Point 1 of the RA Criminal Procedure Code, according to which the judgments are reviewed due to new circumstances, if "... the Constitutional Court of the Republic of Armenia declared the law applied by the court in the given criminal case to be unconstitutional," and found no ground stipulated in Article 414.2, Part 1, Point 4 of the RA Criminal Procedure Code.

Based on the decision DCC-872 of the RA Constitutional Court dated 02.04.2010 regarding the constitutionality of Article 309.1, Parts 1 and 2 of the RA Criminal Procedure Code, applied in his respect in the criminal case YKD/0106/01/08, which declared the above mentioned norms in conformity with the Constitution within the framework of the legal positions expressed by the Court, the Applicant A. Manukyan applied to the RA Court of Cassation on 28.04.2010 requesting to review the Decision on "Returning the cassation appeal" concerning the Case YKD /0106/01/08 dated 19.05.2009 due to the newly revealed or new circumstance. By the decision of 07.06.2010 the Court of Cassation rejected to institute the proceedings for reviewing the above mentioned case, finding the decision DCC-872 of the RA Constitutional Court dated 02.04.2010 not to be a "new circumstance" or a "newly revealed circumstance" and stating that according to Article 69, Part 12 of the RA Law on the Constitutional Court and Article 426.3, Part 1, Point 4, Article 426.4, Part 1, Point 1 of the

RA Criminal Procedure Code "... the judgments shall be reviewed due to new circumstances if the Constitutional Court declares the law applied by the Court in the given criminal case as unconstitutional."

3. The Applicant finds that the provisions of Article 426.3, Part 1, Point 4 of the RA Criminal Procedure Code, "in so far they do not stipulate the RA Constitutional Court Decision on the constitutionality of the applied norm, which states the inconformity of the norm-interpretation with the legal positions expressed in its reasoning part, as a ground for judgment review" contradict the requirements of Articles 18, 19 and 101 of the Constitution. The Applicant also challenges the constitutionality of Article 69, Part 12 of the RA Law on the Constitutional Court based on the same reasoning.

The Applicant challenges the constitutionality of Article 426.4, Part 1, Point 1 of the RA Criminal Procedure Code in so far, the norms of that Article, "do not regard the previous application of the challenged law or its provision in the interpretation contradictory to the legal positions expressed in the reasoning part of the decision of the Constitutional Court, as a ground for judgment review due to a new circumstance," and therefore, it contradicts Articles 3, 18 and 19 of the RA Constitution. According to the Applicant, that contradiction is in the fact that even though in its numerous decisions the Constitutional Court has confirmed the constitutionality of judicially applied legislative provision within the scopes of its legal positions, it also affirms, whether directly or not, the application of those norms by the court in a diametrically opposite interpretation, which has not derived from the corresponding constitutional provisions. That is, the directly applicable constitutional right of a person was obviously violated, however, such a Decision of the Constitutional Court does not become an effective remedy for judicial protection of the person's right, as it is not a ground for judgment review due to a new circumstance and the elimination of the violation of the right, which does not result in the restitution of the violated right. Meanwhile, the reasoning part of the Constitutional Court Decision causes legal consequences and shall be regarded as a new circumstance. Otherwise, as the Applicant finds, the RA legal and political security can be jeopardized, inasmuch as there may be cases where the courts interpret and apply the legislative provisions in conformity with the Constitution in the meaning contradictory to the one deriving from the Constitution. The applicant states that current legal regulation lacking the provision on judgment review does not provide the full execution of the legal positions expressed in the Constitutional Court decisions and makes the implementation of the person's right to constitutional justice "an end in itself and ineffective". At the same time, the Applicant insists that the legal norms in question are formulated so vaguely that has led to their interpretation and application in the law enforcement practice in a way that violates the rights guaranteed by Articles 18, 19 and 101 of the Constitution.

4. Objecting to the arguments of the Applicant, the Respondent finds that Article 426.4, Part 1 of the RA Criminal Procedure Code is in conformity with the RA Constitution, because the Constitutional Court, as a result of evaluation of the

constitutionality of the challenged norm, shall only make one of the decisions stipulated in Article 68, Part 8 of the RA Law on the Constitutional Court, from which only the decision on declaring the challenged act as fully or partially contradicting to the Constitution and void may be deemed a new circumstance.

As the Respondent states similar legal regulation is typical for the legislations of number of countries, such as Estonia, Bosnia and Herzegovina, Serbia, Latvia, etc.

The Respondent also argues the conformity of Article 69, Part 12 of the RA Law on the Constitutional Court with the Constitution based on the same above mentioned reasoning.

Regarding the constitutionality of Article 426.3, Part 1, Point 4 of the RA Criminal Procedure Code, the Respondent expresses the viewpoint that the Applicant "has not provided any arguments on unconstitutionality of the challenged legal provisions and makes only general propositions."

Simultaneously, the Respondent files a motion to dismiss the case regarding Article 426.3, Part 1, Point 4 of the RA Criminal Procedure Code.

5. Having studied the positions and arguments of the Applicants and the Respondent on the constitutionality of the challenged norms, the Constitutional Court finds no ground to dismiss the Case regarding Article 426.3, Part 1, Point 4 of the RA Criminal Procedure Code, and hence, it is subject to full consideration.

The Constitutional Court also states that by the decision DCC-751 dated 15.04.2008 the RA Constitutional Court declared the provisions of Article 69, Part 12 of the RA Law on the Constitutional Court as contradicting to the requirements of Article 19 of the RA Constitution and void "in regard to the part which limits the possibility to restore the rights due to new circumstances for the persons, in case, when the time period between the delivery of final judgment in relation to them and the starting date of case consideration by the Constitutional Court on the constitutionality of the legislative provision applied to those persons based on the application(s) of another person (other persons) or the date of making a decision by the Constitutional Court on that issue, does not exceed 6 months."

Stating that the RA National Assembly has not yet made necessary amendments deriving from the Decision DCC-751 to the above mentioned Article of the RA Law on the Constitutional Court, simultaneously, the RA Constitutional Court finds that the proceeding regarding Article 69, Part 12 of the Law is to be dismissed on the grounds stipulated in Article 68, Part 14 and Article 60, Point 1 of the RA Law on the Constitutional Court.

6. Within this case, while challenging the constitutionality of the legal norms, the Applicants, in essence, propounded the following issues:

a / What is the essence and content of the legal positions expressed in the decisions of the Constitutional Court?

b / What is the legal effect of the legal positions and the legal consequences caused by those positions in the context of judgment review due to a new circumstance?

In the framework of the above mentioned issues the Constitutional Court necessitates to evaluate the constitutionality of the challenged norms deriving from:

- the constitutional legal content of the powers of the RA Constitutional Court, as the body of the constitutional justice which provides supremacy and direct application of the Constitution in the RA legal system,

- the legal content of the legal effect of the decisions of the Constitutional Court, as the normative acts aimed to the protection of objective and subjective rights in public-legal disputes, and their place and role in the RA legal system,

- the necessity of unified legal understanding of the decisions of the Constitutional Court including the legal positions expressed therein as the key source for development of the law, including branch-law,

- the necessity of clarification of the conditions for mandatory enforcement of the Constitutional Court decisions by the subjects of law, including courts of general jurisdiction and specialized courts, regarding them as a new circumstance for judicial appeal,

- the approaches formed in the RA legal practice regarding the legal positions of the RA Constitutional Court,

- the necessity of further legislative assurance of the legal conditions for mandatory enforcement of the legal positions of the Constitutional Court.

Based on the subject matter of applications in this Case, the Constitutional Court necessitates evaluating the constitutionality of enforcement of the legal positions expressed in its decisions, regarding as a ground the peculiarities of the **decisions made on the cases determining the constitutionality of the legal norms**, whether within the abstract norm-control or based on the individual applications.

7. The Constitutional Court touched upon the content of constitutional legal status and its peculiarities in number of its decisions, such as DCC-652, and DCC-665 etc. Reaffirming its legal positions expressed in relation with that issue and proceeding from the functional and structural principles of establishment and operation of the bodies of constitutional justice articulated in the international practice, as well as from the scopes of specific powers, the Constitutional Court necessitates highlighting the peculiarities through a comprehensive analysis of the appropriate norms of the RA Constitution and the RA Law on the Constitutional Court, the evaluation of which makes possible to clarify the constitutionality of the challenged norms in this case.

8. The RA Constitutional Court is endowed with a special constitutional legal status, which is conditioned by its place and role in the system of state bodies and by its powers accordingly (Articles 92 and 100 of the RA Constitution). According to Article 93 of the RA Constitution, the Constitutional Court, as a judicial body, is authorized with exclusive power to administer constitutional justice. The Constitutional Court shall ensure the supremacy and direct application of the Constitution, which results in the adoption of decisions and conclusions. These acts have a special place and role in the RA legal system due to their content, legal-regulatory meaning and the caused legal consequences. The relations regulated by them concern all the spheres of public life and all the subjects of legal relations. The decisions of the Constitutional Court are subject to implementation immediately or within the time limits stipulated by the Court, throughout the whole territory of the Republic of Armenia and they are not discussable, challengeable or examinable by any state or local government body or an official, an organization or an individual.

The decision of the Constitutional Court is an official written document, adopted in the framework of its powers in cases and according to the procedure provided by the RA Constitution and law, which defines imperatively recognizable, protectable and applicable rights, duties, responsibility and limitations subject to maintenance and observance, legally undisputable and unreviewable normative rules, i.e. **rules of conduct** subject to observance unconditionally, implicitly and immediately, unless another time limit is stipulated. It conditions the normative nature of the Constitutional Court decisions and special legal consequences immediately following them, that are connected with the loss of legal effect of the legal norm declared unconstitutional, declaring the legal norm in conformity with the RA Constitution within the scopes of interpretation of the constitutional norms, i.e. legal positions, as well as resolving vital constitutional legal issues and assessing the facts (Article 100, Points 3-9 of the RA Constitution).

The legal nature of the decisions of the Constitutional Court, from the viewpoint of comprehending the role and place of these acts in the **RA legal system**, is as follows:

-in the hierarchy of the RA legal acts the decisions of the RA Constitutional Court follow the Constitution and the RA Law on the Constitutional Court, thus it also determines the legal effect of these acts. According to Articles 9, 12, 13, 13.1, 14, 15, 16, 17, 18, 19 and 20 of the RA Law on Legal Acts the laws, as well as other acts of the RA legislation shall not contradict the decisions of the Constitutional Court, therefore, the decisions of the Constitutional Court have a higher legal force than any other legal act;

- as final judgments of the court these decisions are adopted on behalf of the Republic of Armenia, and their enforcement, as for a legal act, is guaranteed by law and backed by state coercion (Article 66 of the RA Law on the Constitutional Court);

- the Constitutional Court decisions on the merits are mandatory for all the state and local self-government bodies, their officials as well as for the natural and legal persons in the whole territory of the Republic of Armenia (Article 61 of the RA Law on the Constitutional Court).

The Constitutional Court decisions have also a special legal nature in **the system of the acts of the courts of general jurisdiction and specialized courts of the Republic of Armenia**. The comparative analysis of the nature, content and legal effect of the Constitutional Court decisions and other judgments indicates that:

- as it was mentioned, the RA Constitutional Court has the exclusive power to administer constitutional justice and in the framework of that function adopts decisions on the merits (Article 92, Part 2 and Article 93 of the RA Constitution);

- considering constitutional cases of public-legal nature, the Constitutional Court adopts decisions subject to mandatory enforcement by the other judicial bodies i.e. by all the courts of general jurisdiction and specialized courts of the Republic of Armenia;

- determining the constitutionality of the legal acts and proceeding from the requirements of Articles 19 and 63 of the RA Law on the Constitutional Court, the Constitutional Court shall also assess the general jurisdictional and specialized justice practice, as well as disclose the constitutional legal content of the laws and their certain provisions implemented, inter alia, in the judicial practice, developing both constitutional law and branch law;

- the Constitutional Court decision on unconstitutionality of the legal acts leads to legal consequences, that is, new circumstances, which compulsorily result in judgment review according to the procedure prescribed by the law;

- the Constitutional Court, in essence, interprets the RA Constitution in its decisions;

- the decisions of the Constitutional Court are not disputable before domestic or any international court.

The above mentioned peculiarities are also resulted from the constitutional legal content of the relations regulated by the acts of the Constitutional Court. Article 102 of the RA Constitution stipulates the entry into force of these acts from the moment of announcement, as well as the guaranteed immutability, i.e. finality, usually unreviewability of the norms set forth by them, which is highlighted on the following basis:

- the decisions of the Constitutional Court resolve the cases of public-legal importance, which are directly connected with the interpretation and application of the norms of the RA Constitution, the legal and political security, continuity (succession) of the public authority, implicit fulfillment of the constitutional functions by those authorities and public officials, as well as with determination of constitutionality of the powers endowed them, therefore, the norms set forth in these acts are applicable indisputably and immediately;

- governed by the fundamental principles of the RA Constitution through its decisions and in the framework of its powers the Constitutional Court ensures both remedies for restoration of violated rights and freedoms of the natural and legal persons, the direct application of the constitutional rights of the persons, the limitation of the state by these rights (Article 3 of the RA Constitution) and the stability of the foundations of constitutional order, namely the constitutional lawfulness, thereby it obligates all public authorities and officials to take effective measures to fulfill the requirements of the decisions of the

Constitutional Court, it also obligates the RA courts of general jurisdiction and specialized courts to interpret and apply the laws in accordance with their constitutional legal content, as well as to review the judgments rendered against the persons due to new circumstances.

9. Proceeding from the constitutional legal status of the RA Constitutional Court, the legal nature of the Court decisions and their above mentioned legal consequences, the Constitutional Court states that its acts, their nature and legal effect, as for any other state body with the authority to adopt normative legal acts, must be understood and evaluated in comparison and unity of the "**functional and institutional status**", and in the given case within the framework of the norms stipulated by Articles 92 (Part 2), 93, 94 (Part 3), 100 and 102 of the RA Constitution and their interpretations stated in Point 8 of this decision.

Simultaneously, the Constitutional Court decision, as well as any legal act, complies with common rules of legal technique considering the peculiarities stipulated by the RA Law on the Constitutional Court, which is aimed to provide their uniform and complete understanding by the individuals and law enforcement entities (the Constitutional Court touched upon that issue in a number of its decisions, such as DCC-630, DCC-720, DCC-723, DCC-780 etc.)

The Constitutional Court decisions must be also understood in their structural integrity, (introduction, descriptive-reasoning and the 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 Constitutional Court decisions, which usually contain conclusions of the court which are the basis of 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, and disregard of their essence and content can not ensure the implementation of the court decision.

The RA Constitutional Court states that the RA Law on the Constitutional Court does not clearly disclose the content of the term "legal position". The law has not yet fully regulated the issues concerning the Constitutional Court legal position, its legal force, the role and the rule-making significance in the legal system. In the annual reports on the state of implementation of its decisions the Constitutional Court has emphasized that the law enforcement entities shall imperatively consider the legal positions of the Constitutional Court, which is also an established rule in the international practice of constitutional justice. However, the institution of legal position, as means of regulation of public-legal relations, is brought in the RA legal system, particularly in the field of administrative justice, (Article 114, Part 3 of the RA Administrative Procedure Code), and applied in the practice of the RA Constitutional Court especially after the institution of individual complaints was brought in

since 1 July, 2006. Currently, the legal nature of the legal positions of the RA Constitutional Court has also got some certainty in the decisions of the RA National Assembly, when the international treaties are ratified based on the legal positions expressed in each specific decision of the RA Constitutional Court.

In a number of decisions, namely DCC-652, DCC-701 and DCC-833, the Constitutional Court touched upon the legal nature of the positions expressed in its decisions, particularly noting that, "according to the Constitution and the RA Law on the Constitutional Court the Constitutional Court is entitled to establish final legal position on the constitutional provisions, while assessing the constitutionality of the regulations. The content of these legal positions is the official interpretation of the constitutional norm ...", "... the approach to the further application of the norms declared as unconstitutional and postponed must not be mechanical, but considering the legal position of the Constitutional Court following from the fundamental constitutional principles and the above mentioned priorities underlying postponement and stipulated by law, also ruling out the possibility of reproduction of the unconstitutional provisions in any legal act." It was also emphasized that "... the international practice of constitutional justice definitely indicates that the legal positions, expressed in the decisions of the bodies of constitutional justice through the disclosure of the legal content or the interpretation of the constitutional or legislative norm, are binding both the for law-enforcers and the law-making bodies."

The practice of the RA Constitutional Court indicates that the Court expresses legal positions in the decisions on the merits of the case, as well as the decisions denying the consideration of the case or dismissing the proceedings, under Articles 32 and 60 of the RA Law on the Constitutional Court. The legal positions expressed in the decisions of the Court generally contain legal criteria underlying the adjudication of the given case, which regard to:

- the assessment of the constitutionality of the challenged norm or the legal act, which results in the disclosure of the constitutional legal content of the norms of the RA Constitution, commitments stipulated by the international treaties, laws and other acts of the legislation (Article 100, Points 1 and 2 of the RA Constitution), understanding and application deriving from their constitutional axiology, assurance of the direct application of the constitutional rights of the person;

- the evaluation of the law enforcement practice, including the justice practice, and the necessity to practically apply the norms of the RA Constitution, laws and other legal acts in accordance with their constitutional legal content;

- the resolution of the issues of constitutional legal importance and evaluation of the facts.

The Constitutional Court states that the legal positions expressed in the Court decisions shall ensure more complete and uniform understanding of the RA Constitution and constitutional lawfulness in the law enforcement practice, and purposefully directing the law enforcement practice to the understanding and application of the normative acts in accordance with their constitutional legal content. Being an important source of constitutional law,

they are essential for the law-making or rule-making activity following from the decisions of the Constitutional Court. In its decisions revealing the constitutional legal content of the law (it's certain provisions) or other legal acts, the Constitutional Court determines their legal effect based on the expressed legal positions and declares them void, if contradictory to the Constitution. The necessity for further regulation of the legal relation previously regulated by that act or those norms, hence, the necessity of rule-making (law-making) activity by the competent public authority emerges from this fact.

Proceeding from 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 officialized;

b / have specific legal consequence, they are addressed to the subjects of the concrete case and to all subjects of public legal relationships, i.e. they are universal;

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

d / are called to promote the elimination of the legal uncertainty in the RA legal system and law enforcement practice, they are a basis for constitutionalization of legal relations and have precedential nature;

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 interpretation of the norms of the RA Constitution.

10. International practice also explicitly states that the main prerequisite for ensuring the rule of law, hence, the supremacy of the Constitution is to guarantee the enforcement of obligatory, final and *erga omnes* judgments, namely, judgments that are deprived of legal content if not considering the legal positions expressed therein.

In particular, the research of the existing case law of the European Court of Human Rights (Philis v. Greece, para. 59, Golder v. the United Kingdom, paras. 34-36, Hornsby v. Greece, p. 40, Di Pede v. Italy, paras. 20-24, Zappia v. Italy, paras. 16-20, Immobiliare Saffi v. Italy, p. 66) within the scopes of Article 6, Part 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, indicates that the European Court approaches to the enforcement of the decisions of domestic courts, namely: "The right to the court would be illusory, if a Contracting State's domestic legal system allowed a final and binding judicial decision to remain inoperative to the detriment of one party," "the execution of a judgment given by any court must be regarded as an integral part of the "trial", for the purposes of Article 6."

The positions of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe, with respect to the structural role of the bodies of

constitutional justice and legal nature of their decisions, lead to the conclusion that the national system of individual complaint must be full and complete and includes all the legal acts; the decisions on these applications must effectively stimulate the courts of general jurisdiction for resumption or termination of the proceedings against persons, as well as effective legal remedies shall be provided to require fair compensation from the respondent (Cocchiarella judgment (ECtHR, GC, Cocchiarella v. Italy, March 29, 2006, paragraphs 76-80 and 93-97, ON INDIVIDUAL ACCESS TO CONSTITUTIONAL JUSTICE. Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010), paragraphs 79, 94).

11. The arguments of the Applicants on the constitutionality of the challenged norms within this Case are similar in content, according to which, the corresponding judgments must be reviewed due to new circumstances if the Constitutional Court adopts a decision on declaring the challenged legal norm as in conformity with the RA Constitution within the framework of certain legal positions expressed therein, and if it has been judicially interpreted otherwise.

As mentioned, in a number of decisions and annual reports the Constitutional Court emphasized the importance of mandatory enforcement of the legal positions expressed in the Constitutional Court decisions, stating the cases of their enforcement or evasion both in law enforcement and rule-making practices. According to the Constitutional Court the incomplete enforcement of the legal positions expressed in its decisions, as also for this Case, is conditional on the current shortcomings of the law enforcement practice, as well as on the lack of the necessary legislative regulations.

The Constitutional Court, within the framework of this case, while assessing the constitutionality of the challenged norms necessitates emphasizing the applicability of legal remedies for the solution of those problems that concerns with:

a) the mandatory enforcement of the legal positions of the Constitutional Court by the law-enforcers, based on the principles of the rule of law, of protection of fundamental human rights and freedoms in accordance with the principles and norms of International Law and on other constitutional legal principles, as well as on legal regulations stipulated by the current legislation;

b) the necessity of further legislative assurance of additional legal conditions aimed at mandatory enforcement of the legal positions of the Constitutional Court.

The Constitutional Court, on the cases concerning the determination of constitutionality of the legal norms whether within abstract norm-control or based on individual applications, adopts one of the following decisions:

- 1) on declaring the challenged act as in conformity with the Constitution;
- 2) on declaring the challenged act as fully or partially contradicting to the Constitution and void.

Based on the circumstances of admissibility of the application submitted to the Constitutional Court, *ratione materie* jurisdiction and other circumstances stipulated by the RA Law on the Constitutional Court, with regard to the above mentioned cases the Constitutional Court also adopts decisions on the dismissal of the case consideration or termination of the proceedings.

Declaring the challenged act as in conformity with the Constitution, as, for example, with regard to DCC-872, DCC-890, DCC-903, DCC-906, DCC-918, DCC-920, DCC-923 and other cases, the Constitutional Court often reveals the constitutional legal content of disputed legal norms through their interpretation and in the operative part of the Decision, declares those norms as in conformity with the Constitution or as in conformity with the Constitution within the framework of certain legal positions or partially within the framework of certain legal regulation, thus indicating:

- the legal limits of understanding and application of the given norm;
- the legal limits beyond which the application or 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 norm in question.

The Constitutional Court proceeds from the fundamental provision according to which the essence of constitutional justice is to ensure the supremacy and direct application of the Constitution, and no procedural norm or its inaccurate wording can hinder the implementation of the constitutional function.

Consequently, the Constitutional Court finds well-grounded the assertions of the Applicants, according to which, the norm, declared as in conformity with the Constitution within the framework of legal positions, **may not be applied in the content divergent from the interpretation provided by the Constitutional Court**. Otherwise, the actions and the acts of the competent public authorities, including the court, will obviously contradict the fundamental principles of the constitutional order, guaranteed by Articles 1, 3, 5, 6 and by a number of other articles of the RA Constitution. During the application of normative legal acts within the consideration of a case on merits and in the framework of judicial appeal, the RA Courts of general jurisdiction and specialized courts are obliged to consider the legal positions regarding those acts, expressed in the Constitutional Court Decisions, in particular, they are bound to do so while **assessing the existence of judicial error** in accordance with the current procedural legislation, if there is a Constitutional Court legal position on the constitutional legal understanding of any substantive or procedural norm applied to the persons within the concrete case. The competent courts must consider the similarly reasoned applications of the concerned persons for reviewing a judgment, and the denial to consider that kind of application without reasonable motivation will provide a person with the

opportunity for international judicial protection of his/her rights and freedoms. Such ongoing practice will contradict not only the fundamental principles of the RA constitutional order, but also a number of international commitments assumed by the RA.

The RA Constitutional Court also necessitates referring to the Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19.01.2000 at the 694th meeting of the Ministers' Deputies. The latter, particularly, states: "The Committee of Ministers of the Council of Europe ... bearing in mind that the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum*." At the same time, it invites the Contracting States to ensure that there exist at national level adequate possibilities to achieve *restitutio in integrum*.

The Constitutional Court finds that the review of the judgments in accordance with necessary legislative procedures based on the legal positions expressed in the cases of determining the constitutionality of the legal acts, is an effective remedy to ensure the supremacy and direct application of the Constitution, therefore, it is also a constitutional legal requirement.

However, whereas from the standpoint of protecting an objective right it is unconditional that **no legal norm can be interpreted and applied avoiding the legal positions of the Constitutional Court**, the problem from the subjective right perspective shall be solved otherwise.

Firstly: the fact is that, the judicial practice, proceeding from the current legislative formulations, does not recognize as a new circumstance the Constitutional Court Decisions on declaring the norm as in conformity with the Constitution within the framework of the expressed legal positions, and does not provide an opportunity for restoration and protection of violated rights and freedoms of the person. **Secondly:** the implementation of the principle of guaranteeing the rule of law, and thus, the supremacy of the Constitution is deadlocked. **Thirdly:** this situation is conditional not only on imperfection of separate provisions of the procedural codes, but also the RA Law on the Constitutional Court.

The current legal regulation and law enforcement practice are obviously in contradiction with the requirements of Articles 1, 3, 6, 18, 19, 92, 93 and a number of other Articles of the RA Constitution.

The Constitutional Court finds that the recognition of the legal positions expressed in the Constitutional Court decisions on the constitutionality of the legal acts as a new circumstance by the RA courts of general jurisdiction and specialized courts needs to be **comprehensively and urgently** regulated both in criminal, civil and administrative proceedings, considering the legal positions expressed in this Decision.

Proceeding from the results of consideration of the case and ruled by the provisions of Articles 100(1), Part 1, Point 6, Article 101 of the RA Constitution, Articles 63, 64 and 69 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Article 426.3 Part 1, Point 4 of the RA Criminal Procedure Code is in conformity with the Constitution of the Republic of Armenia within the framework of legal positions expressed in this decision.

2. To declare, Article 426.4, Part 1, Point 1 of the RA Criminal Procedure Code in regard to the content used in law-enforcement practice, that does not provide an opportunity to restore the violated human rights that were resulted from the applying of a law (other legal norm) with an interpretation other than the legal positions of the Constitutional Court, through the review of the case due to new circumstances within the scopes of judicial appeal, to be incompatible with the requirements of Articles 3, 6, 18, 19 and 93 of the Constitution of the Republic of Armenia and invalid.

3. To dismiss the case in regard to Article 69, Part 12 of the RA Law on the Constitutional Court.

4. To determine 1 November, 2011 as the deadline for the invalidation of the provision that is declared incompatible with the Constitution of the RA and invalid, considering the fact, that the declaration of the norm mentioned in Part 2 of the operative part of this Decision, to be in conformity with the Constitution and invalid from the date of announcement of the decision, shall inevitably give rise to unfavorable effects in the sense of complex solution of the issue of human rights protection and guaranteeing the necessary legal security, on the basis of Article 102, Part 3 of the RA Constitution and Article 68, Part 15 of the RA Law on the Constitutional Court.

5. Pursuant to Article 102, Part 2 of the RA Constitution this decision is final and enters into force from the date of announcement.

Chairman

G. Harutyunyan

25 February 2011
DCC-943