



IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

**THE CASE ON CONFORMITY OF PART I
OF ARTICLE 45.6 OF THE LAW OF THE REPUBLIC
OF ARMENIA ON ADVOCACY WITH THE CONSTITUTION
OF THE REPUBLIC OF ARMENIA ON THE BASIS
OF THE APPLICATION OF THE CITIZEN GEVORG SLOYAN**

Yerevan

18 April 2014

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan, M. Topuzyan (Rapporteur), A. Khachatryan, V. Hovhanissyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,

with the participation (involved in the framework of the written procedure) of the Applicant: G. Sloyan

Respondent: official representative of the RA National Assembly, Adviser of Expertise Department of the Staff of the RA National Assembly, S. Tevanyan,

Invited Acting Minister of the Education and Science of the Republic of Armenia, A. Ashotyan

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution 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 on conformity of Part I of Article 45.6 of the Law on Advocacy of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Gevorg Sloyan.

The Case was initiated on the basis of the Application of the citizen Gevorg Sloyan submitted to the Constitutional Court on 14.04.2013.

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

1. The RA Law on Advocacy was adopted by the RA National Assembly on December 14, 2004, signed by the President of the Republic of Armenia on January 13, 2005 and entered into force on January 22, 2005.

Part 1 of Article 45.6 of the Law titled “Status of the attendee of the School of Advocacy” prescribes, “A natural person with legal capacity who possesses a higher legal education with bachelor degree or certified specialist with diploma and a higher legal education may attend the School of Advocates, unless he/she has been convicted for an intentional crime and his or her conviction has not been set aside or removed.”

The abovementioned provision was added in the RA Law on Advocacy on the basis of the Law ՀՕ-339-Ն on Making Amendments and Addendum in the Law of the Republic of Armenia on Advocacy which was adopted by the RA National Assembly on December 8, 2011, was signed by the President of the Republic of Armenia on December 29, 2011 and entered into force on January 19, 2012.

2. The procedural prehistory of the case is as follows: on 23.06.2012 the Applicant applied to the Foundation of the School of Advocacy of the Republic of Armenia to take the entrance examinations.

On 17.07.2012 the Applicant received the decision of the chair of the entrance examination commission of the School of Advocacy of 09.07.2012 on “Depriving the candidate Gevorg Sloyan of the status and not allowing him to take the exam.”

The Applicant appealed the abovementioned decision at the Council of the Trustees of the Foundation of the School of Advocacy of the Republic of Armenia, which by its decision of 26.07.2012 declined the Applicant’s application/complaint.

The Applicant submitted a claim to the court against the foundation

of the School of Advocacy of the Republic of Armenia requesting to oblige the Respondent to confirm his status of attendee and permit him to take the entrance examinations of the RA School of Advocacy.

By the decision EACD/2103/02/12 of civil case of 27.02.2013 the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan City declined the Applicant's claim.

By the decision of 29.05.2013 the RA Civil Court of Appeal declined the Applicant's appeal leaving in force the decision of the Court of General Jurisdiction of Arabkir and Kanaker-Zeytun Administrative Districts of Yerevan City.

By the Decision of 31.07.2013 the Court of Cassation returned the Applicant's cassation complaint.

3. The Applicant finds that the challenged provisions of the law contradict the Articles 14.1, 32 and 39 of the RA Constitution.

The Applicant's arguments on contradiction of the challenged articles to Article 14.1 of the Constitution are the following: pointing out a number of judicial acts of the European Court of Human Rights, Constitutional Court of the Republic of Armenia and the Constitutional Court of the Russian Federation, the Applicant states that for obtaining the status of attendee of the RA School of Advocacy Part 1 of Article 45.6 of the RA Law on Advocacy prescribing the requirement of availability of one of the two (bachelor or certified specialist) of the three grades of qualification of the higher education envisaged in the Republic of Armenia, without any objective and reasonable justification has envisaged discriminative approach towards the persons with master's qualification degree, and even if such discrimination has objective and reasonable justification, the remedies exercised by law (differentiation, discrimination) are not proportionate to the challenged goals, and there is no reasonable correlation of proportionality between the implemented remedy and challenged goal.

Applicant's arguments on contradiction of the challenged norms to Article 32 of the RA Constitution are the following: presenting the interpretation of the contents of freedom of choice of occupation prescribed in Article 32 of the Constitution, the Applicant presented the following point of view, "...the Applicant by his qualification is considered as a person with higher legal education which means that he may freely choose the type of occupation (activity). In this case, the Appli-

cant, as a person with higher legal education, wants to profess advocate activity. Freedom of choice of profession (the specialization within it) and certain types of work is exclusively this person's right. Meanwhile the law applied regarding the Applicant restricts his right to profess advocate activity, thus this norm of the law contradicts Article 32 of the RA Constitution so far blocks the Applicant's right to choose freely the occupation of the Advocate."

Simultaneously, pointing out the text of the former edition of the RA Law on Advocacy and stating that in contrast to the current legal regulation, in the past higher legal education, including the availability of master's degree in law, was prescribed for getting the license of advocate, the Applicant also finds that due to the current legal regulation his legitimate expectations are distorted so far that he by receiving higher legal education, among the rest, expected also possibility of free choice of advocate activity.

Applicant's arguments on contradiction of the challenged articles to Article 39 of the RA Constitution are the following: referring to the RA Law on Higher and Post-Graduate Professional Education and stating that pursuant to this law persons with bachelor degree in law and master degree in law and qualification of certified specialist in law are considered as the persons with higher legal education and points out that the relevant provisions of the same Law on getting additional education and a graduation document as a result, the Applicant concludes that due to relevant provisions he was deprived of his rights to get additional professional education and appropriate graduation documents as the challenged norm of the RA Law on Advocacy exposes groundless discrimination/differentiation which does not have reasonable and fair justification.

4. The Respondent finds that Article 45.6 of the RA Law on Advocacy is in conformity with Articles 14.1, 32 and 39 of the RA Constitution.

For substantiating his position, the Respondent, on the basis of analysis of the provisions of Article 3 of the RA Law on Education concerning the educational programme and Points 17.1, 20, 21 and 22 of the same Article, Parts 2 and 5 of Article 9 of the RA Law on Higher and Post-Graduate Professional Education, presents the standards which substantiate the segregation of the systems of qualification of higher

education of 1st and 2nd level, i.e. the grounds on the basis of which the higher professional education will be continued, the time term during which the person shall receive education relevant to the appropriate educational system, and the educational programme, on the basis of which organization of education of the appropriate level is being realized.

On the basis of the above-mentioned standards the Respondent finds that education by the educational programme of the bachelor or certified specialist in the context of different forms of higher education may be considered as the “main” or “basic” professional education on the basis of which the person later may continue his/her education for receiving degree of qualification of the master degree after which in the sphere of post-graduate professional education as well.

Stating the provisions of Part 1 of Article 5 of the RA Law on Advocacy which reveal the content of the advocacy activity, the doctrinal position expressed in the interpretations of the RA Constitution, according to which, the state guarantees the right to legal aid, is responsible for its proper quality and in this concern is obliged to define the professional and moral requirements and standards presented to the advocates, stating that the School of Advocacy does not perform transmission of the preliminary professional knowledge and conduct of the preliminary professional education, the Respondent considers it natural that for performance of the advocacy activity availability of “basic” higher professional education of the relevant sphere is required rather than availability of higher qualification degree such as master degree or scientific degree of candidate of sciences and doctor of sciences of the respective sphere.

Simultaneously, the Respondent finds that for enjoyment of any right certain preconditions, standards and requirements shall be prescribed and that the rights and freedoms cannot be absolute and unconditional. In this regard, the Respondent finds that the challenged provisions of the law do not prescribe discrimination and do not violate the person’s rights to free choice of education and occupation.

5. Taking into consideration the Applicant’s arguments, in the framework of the examination of this case, firstly it is necessary to reveal the requirements presented to the candidates to the positions for which pursuant to the RA legislation legal education is required.

Taking as grounds Point 4, Article 115 of the RA Judicial Code, Article 32 of RA Law on Prosecution, Paragraph 1, Point 1, Article 10 of the RA Law on Notaries, Point 1, Article 6 of the RA Law on the Special Investigative Service, Paragraph 5, Part 3, Article 14 of the RA Law on Service in the Police, and combining them with the challenged norm of the RA Law on Advocacy, the Constitutional Court states that the legislator presents common educational standard to the candidates to the positions of the judge, prosecutor and investigator or to a person for working as the notary or advocate, i.e. availability of qualification of the higher legal education of the bachelor degree or certified specialist degree. It is not an end in itself as it derives from the logics of provisions of Points 20, 21 and 22 of Article 3 of the RA Law on Education, defining the content of the notions “bachelor”, “certified specialist” and “master degree”, from Article 3 of the RA Law on Higher and Post-Graduate Professional Education prescribing the content of the notion of “higher professional education” and Article 9 prescribing two-degree system of qualification of the higher professional education, that in the framework of any higher educational speciality the master’s degree acts as the system of deepening that specialization. On the other hand, Bologna educational system permits the person with a bachelor degree or a certified specialist with other specialization to start a master degree in other specialization. Although the law prescribes that education in the given specialization is not considered as a second higher education.

The Constitutional Court states that the credit system introduced as a result of the Bologna process requires compilation of appropriate amount of credits for receiving appropriate professional qualification by a certain educational program. Thus, the master’s degree qualification shall be considered as an educational higher degree in that specialization only in the case when compilation of the necessary credits prescribed for that specialization is available. In this case only the person may be considered *as the holder of master’s qualification degree of the second degree of the certain specialization* by the appropriate educational program.

This issue is not distinctly regulated by the RA legislation, which contains high risk for wide discretionary approaches and human rights violations. In particular, it derives from Paragraph 2, Part 5, Article 9 of the RA Law on Higher and Post-Graduate Professional Education that “The persons who have received graduation document of the appropriate degree of higher professional education are entitled to continue the studies

upon the educational program of the next level according to the defined procedure. Education received for the first time through the educational programs of the higher education of different levels shall not be regarded as second higher professional education.” On the other hand, in the above-mentioned laws and other sub-legislative acts (especially in the decisions of the RA Government respectively Decision No.-24 of January 16, 2001, No.-2307-Ն of December 22, 2005, No.-332-Ն of March 31, 2011 on confirming the general standards of the education, investing credit system, national framework of qualification of education, as well as appropriate department acts adopted by the Minister of Education and Science of the Republic of Armenia) clear approach towards the legal content of different levels of education, continuity of education, balance of system of credit compilation and appropriate qualification on establishing unique standards in this sphere is not available. In such a case, the institutions, which provide master’s degree, interpret the RA legislation in their own way, deriving from their own interests and goals and define diverse orders both for entering master’s degree and for qualification of magistrates. In such conditions, the person after receiving paid education in the state owned educational institutes does not enjoy the right to work in the profession obtained, as well as does not get right to professional education.

The RA Constitutional Court finds that the legislative inaccuracies cause a situation when, on one hand, the person takes the exam guided by legitimate expectations, studies at magistrate level, gets state sample diploma, but later it appears that pursuant to the restrictions prescribed by different legal acts he/she cannot work by that specialization, on the other hand, he/she in one or two years may get another profession by professional programme of the master’s degree, get an appropriate diploma confirmed by the state without compilation of necessary credits. Such a situation demands systemic and consistent legislative clarifications, first, at the level of the RA Law on Education and RA Law on Higher and Post-Graduate Professional Education, harmonizing the levels of higher professional qualification with the credits defined by the state for that certain profession.

The Constitutional Court acknowledged the clarifications of A. Ashotyan, the Acting Minister of Education and Science, that up to the end of 2014 the conceptual approaches will be clarified and appropriate legal regulations will be undertaken.

6. The Constitutional Court states that in the rule of law state the legal regulations stipulated in the law shall make the legitimate expectations predictable for the person. The legal regulations and the law enforcement practice shall be based on the fundamental approach, according to which the principle of defense of right of legitimate expectations is one of the integral elements of ensuring of legal state and rule of law. It is a fact that within the legal relations in question the person's right to legitimate expectations is violated. In Part 1 of Article 45.6 of the RA Law on Advocacy in the case of availability of necessary credits, by the interpretation provided by the law enforcement practice, in practice the right of the person with higher professional qualification (master's degree) to become an attendee of the school of advocacy is blocked. Such a situation is mainly conditioned by the abovementioned imperfect legal and systemic solutions present in the sphere of higher and post-graduate professional education. Due to this, in particular, the link between higher professional appropriate qualification and the certificate (diploma) verifying its legal fact has not been specified from the perspective of the state common standards. Such a situation, in its turn, has led to that, as it has been mentioned, that the challenged provision is problematic from the perspective of protection of human rights; it is not in conformity with the principle of proportionality of restriction of rights and does not ensure realization of constitutional-legal guarantee of immunity of the essence of right.

Based on the results of consideration of the Case and being governed by Article 100, Point 1 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare Part 1 of Article 45.6 of the RA Law on Advocacy by the part and interpretation according to which the right of a person with higher level professional appropriate qualification to become an attendee of the School of Advocacy is blocked, to be in contravention with Articles 1, 3, 43 (Part 2) of the Constitution of the Republic of Armenia and void.

2. Pursuant to Article 102, Part 2 of the RA Constitution this Decision is final and enters into force from the moment of its announcement.

Chairman

G. Harutyunyan

18 April 2014

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