Non-Official Translation

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

ON THE CASE CONCERNING THE CONSTITUTIONALITY OF PART 1 OF ARTICLE 157 OF THE CONSTITUTIONAL LAW OF THE REPUBLIC OF ARMENIA "ON THE JUDICIAL CODE", RAISED BY THE APPLICATION OF DAVIT HARUTYUNYAN

City of Yerevan 29 July 2025

The Constitutional Court, composed of:

Presiding	Arman Dilanyan,
Justices	Artak Zeynalyan,
	Hrayr Tovmasyan,
	Yervand Khundkaryan,
	Hovakim Hovakimyan,
	Edgar Shatiryan (rapporteur),
	Seda Safaryan,
	Arthur Vagharshyan,

with the participation of (within the framework of written procedure):

The applicant:	Davit Harutyunyan (hereinafter referred to as "the Applicant"),
The respondent:	the National Assembly (hereinafter referred to as "the Respondent"),
The representative:	Mari Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly,

According to point 1 of Article 168 and point 8 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 69 of the Constitutional Law "On the Constitutional Court",

Examined in an open session through the written procedure the "Case concerning the constitutionality of part 1 of Article 157 of the Constitutional Law of the Republic of Armenia "On the Judicial Code", raised by the application of Davit Harutyunyan".

Having examined the application, the attached documents in the Case, and the written explanation of the Respondent, as well as having analyzed the contested law and other provisions of laws interrelated with the latter, the Constitutional Court **ESTABLISHED:**

Proceedings at the Constitutional Court

1. The Constitutional Law of the Republic of Armenia "On the Judicial Code" (hereinafter also referred to as "the Code") was adopted by the National Assembly on 7 February 2018, was signed by the President of the Republic on 10 February 2018, and entered into force on 9 April 2018.

2. Part 1 of Article 157 of the Code, titled *"Revision by the Supreme Judicial Council of the decisions on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances"*, stipulates as follows:

"1. The Supreme Judicial Council shall be entitled to revise its decision on the issue of holding a judge disciplinary liable based on newly emerged or new circumstances".

The contested provision of the Code has not been amended and/or supplemented.

3. This Case was initiated by the application of Davit Harutyunyan, which was submitted to the Constitutional Court on 21 April 2025.

Brief background of the Case

4. On 14 April 2023, the press secretary of the Minister of Justice submitted Report No. N//9734-2023 to the Acting Minister of Justice, requesting an examination of the grounds for initiating disciplinary proceedings against Judge Davit Harutyunyan (hereinafter also referred to as "the Judge") of the First Instance Criminal Court of General Jurisdiction of Yerevan, in response to a publication in the mass media.

5. By Decision N 31-A of the Acting Minister of Justice dated 20 April 2023, disciplinary proceedings were initiated against the Judge.

6. On 24 May 2023, the Acting Minister of Justice submitted a motion by Decision N 42-A to the Supreme Judicial Council (hereinafter also referred to as "the Council"), requesting that the Judge be held disciplinarily liable, and noting that the basis for initiating disciplinary proceedings was the apparent violation by the Judge of the rules of conduct for judges, as stipulated in points 1, 6, and 8 of part 1 of Article 69 of the Constitutional Law, and that the reason for initiating the proceedings was the relevant publication in the mass media.

7. By Decision No. SJC-57-Vo-K-16 of the Council dated 3 July 2023, the motion of the Acting Minister of Justice, Levon Balyan, to hold Judge Davit Harutyunyan of the First Instance Criminal Court of General Jurisdiction of Yerevan disciplinarily liable was granted. The powers of Judge Davit Harutyunyan of the First Instance Criminal Court of General Jurisdiction of Yerevan were terminated due to a significant disciplinary violation (point 1 of the operative part of the decision).

8. The judicial panel of the Constitutional Court, having examined the admissibility of the individual application of Davit Harutyunyan submitted to the Constitutional Court on 3 January 2024, decided on 18 January 2024, as follows:

"1. To accept for consideration the 'Case concerning the constitutionality of point 2 of part 1 of Article 101 of the RA Administrative Procedure Code and the related part 2 of Article 50 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code', part 6 of Article 90 of the

Constitutional Law of the Republic of Armenia 'On the Judicial Code' and the related part 2 of Article 11 of the same Constitutional Law, also taking into account the interpretations given to the mentioned provisions in law enforcement practice, raised by the application of Davit Harutyunyan'.

2. (...)".

9. By the Procedural Decision PDCC-88 of the Constitutional Court dated 21 May 2024, the proceedings in the above case were partially terminated, in part of part 2 of Article 11 and part 2 of Article 50 of the Constitutional Law of the Republic of Armenia "On the Judicial Code".

10. The operative part of Decision DCC-1729 of the Constitutional Court dated 21 May 2024, reads as follows:

"**1.** Part 6 of Article 90 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code' is in conformity with the Constitution in the interpretation that the wording 'interest of justice' refers to the effective and unhindered administration of justice in the specific disciplinary case examined by the Supreme Judicial Council.

2. Point 2 of part 1 of Article 101 of the Administrative Procedure Code of the Republic of Armenia is in conformity with the Constitution in the interpretation that, within the framework of disciplinary proceedings against a judge, the judicial sanction of 'removal from the courtroom' can be imposed under the conditions where the Supreme Judicial Council makes all possible and necessary efforts to ensure the right to be heard for the judge to be removed from the courtroom.

3. According to part 10 of Article 69 of the Constitutional Law 'On the Constitutional Court', the final judicial act issued against the Applicant shall be subject to revision based on a newly emerged circumstance as prescribed by the Law, considering that part 6 of Article 90 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code', and point 2 of part 1 of Article 101 of the Administrative Procedure Code of the Republic of Armenia had been applied against the Applicant in the interpretation other than given by this Decision.

4. (…)".

11. According to subpoint 1.4 of point 1 (titled "Background of the Case") of the Supreme Judicial Council's Decision No. SJC-82-Vo-K-13 dated 18 October 2024, regarding the issue of revising the Supreme Judicial Council's Decision SJC-57-Vo-K-16 dated 03.07.2023 "Regarding the issue of holding Judge Davit Harutyunyan of the First Instance Criminal Court of General Jurisdiction of Yerevan disciplinarily liable" based on a newly emerged circumstance, Davit Harutyunyan applied to the Council on 20 August 2024, requesting a revision of the Council's Decision SJC-57-Vo-K-16 dated 03.07.2023, in the manner prescribed by Article 157 of the Code.

12. By Decision No. SJC-82-Vo-K-13 dated 18 October 2024, the Council decided:

"**1.** To refrain from revising the Supreme Judicial Council's Decision No. SJC-57-Vo-K-16 dated 03.07.2023 'Regarding the issue of holding Judge Davit Harutyunyan of the First Instance Criminal Court of General Jurisdiction of Yerevan disciplinarily liable'.

2. (...)".

13. The Council's Decision No. SJC-82-Vo-K-13 dated 18 October 2024, specifically states as follows:

"A comparative analysis of parts 1 and 7 of Article 157 of the Code, titled 'Revision by the Supreme Judicial Council of the decisions on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances', indicates that the right (prescribed at constitutional law-level) of the Council to revise its decision on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances found its logical continuation in the legislative possibility of refraining from revising the decision or of revoking its own decision and adopting a new decision as a result of assessing the presence or absence of grounds for revising the decision on holding a judge disciplinarily liable; therefore, under conditions where a provision of the law or other normative legal act applied in the disciplinary proceedings has been declared by the Constitutional Court as contradicting the Constitution and invalid, or where it has been declared as complying with the Constitution in the interpretation other than applied, the legislator has reserved the right for the Supreme Judicial Council under part 1 of Article 157 of the Code, as well as under parts 7 and 8 of the same article, to revise or to refrain from revising its decision.

Such an approach by the legislator is conditioned by the peculiarities of the constitutional status of the Supreme Judicial Council, taking into account the circumstance that the Council is an independent state body with a constitutional mission to guarantee the independence of courts and judges.

In the opposite interpretation, the legal regulation on the assessment of the presence of grounds for revising the decision on holding a judge disciplinarily liable based on newly emerged or new circumstances, as delegated to the Council by part 7 of Article 157 of the Code, and on refraining from revising the decision on holding a judge disciplinarily liable would be deprived of any substantial content, which in turn would inevitably lead to the practical impossibility of implementing the right stipulated in part 1 of Article 157 of the Code for the Supreme Judicial Council to revise its decision on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances. It should also be noted that the Council was guided by the same logic in Decision No. SJC-4-Vo-K-1 dated 27.02.2020, regarding the issue cited by the Applicant of revising the Supreme Judicial Council's Decision No. SJC-8-Vo-K-04 dated 14.02.2019, 'Regarding the issue of holding Judge Arayik Melkumyan of the First Instance Court of General Jurisdiction of Yerevan disciplinarily liable' based on new circumstances. Specifically, referring to part 1 of Article 157 of the Code and noting that the Supreme Judicial Council **shall be entitled to** revise its decision on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances, the Council stated that in that case there is a necessity for revision, since the Constitutional Court had declared point 2 of part 6 of Article 142 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code' as unconstitutional and invalid, which served as the basis for terminating the judge's powers.

In this case, it should be noted that under the Council's Decision No. SJC-57-Vo-K-16 dated 03.07.2023, ***the basis for terminating the Applicant's powers was the significant disciplinary violation prescribed by point 2 of part 6 of Article 142 of the Code, which manifested in***

violations of the requirements of the general rules of conduct for judges stipulated in points 1, 6, and 8 of part 1 of Article 69 of the Code, whereas the consideration of the Application is conditioned not by the aforementioned norms being declared unconstitutional and invalid, or applied in the interpretation other than given by the Constitutional Court as the direct basis for terminating the Applicant's powers under Decision No. SJC-57-Vo-K-16 dated 03.07.2023, but by the existence of other interpretations given by the Constitutional Court to part 6 of Article 90 of the Code and point 2 of part 1 of Article 101 of the RA Administrative Procedure Code, relating to the procedure for considering the motion.

Based on the above, and conditioned by the circumstance of the Constitutional Court's interpretation differing from the Council's interpretation regarding part 6 of Article 90 of the Code and point 2 of part 1 of Article 101 of the RA Administrative Procedure Code, the Council – within the framework of consideration of this case – has created an opportunity for the Applicant to submit in writing positions not expressed as a result of the application of the sanction of "removal from the courtroom", within the framework of which the written positions submitted to the Council by the Applicant during the consideration of this case do not contain arguments that would provide the Council with sufficient grounds to revise (based on new circumstances) the Council's Decision No. SJC-57-Vo-K-16 dated 03.07.2023, within the meaning of Article 157 of the Code.

Applicant's position

14. The Applicant argues that the interpretation given to the contested legal provision in law enforcement practice has led to a violation of their rights to effective judicial protection and a fair trial, as prescribed by Chapter 2 of the Constitution, referencing the legal positions expressed in certain decisions of the Constitutional Court regarding the institution of revising judicial acts based on new circumstances.

15. Specifically, the Applicant states as follows: "(...) The provision contained in part 10 of Article 69 of the Constitutional Law 'On the Constitutional Court' has been established by the legislator in an imperative manner, excluding any possibility for the body that issued the judicial act to exercise any discretion.

- At the same time, (...) the revision of a judicial act based on a newly emerged circumstance does not presume that the authority that has adopted the act due to the revision of the judicial act must necessarily reach a different conclusion; for example, if the Supreme Judicial Council has held a judge disciplinary liable through a final judicial act, the revision of that act based on a newly emerged circumstance does not presume that the Supreme Judicial Council, upon revision of that act, must necessarily decide to reject the motion to hold a judge disciplinary liable. (...) If a final judicial act is not revised in the presence of a newly emerged circumstance, it results in a situation where two judicial acts (the final judicial act and the decision of the RA Constitutional Court) continue to exist in the state's legal system, which, in essence, contradict each other, and such a situation directly contradicts the principle of legal certainty.

(...)

(...) The revision of a final judicial act based on a newly emerged circumstance (...) aims to restore the violated fundamental right of a person; in other words, through the revision of a final judicial act, the state ensures the person's right to judicial protection of their rights, since the revision of the judicial act provides the person with another opportunity to exercise their right to access to a court. Therefore, in all cases where a final judicial act is not revised despite the existence of a newly emerged circumstance, the essence of the institution of constitutional control is entirely undermined, since, in such cases, the authority that issued the final judicial act refuses to restore the state of affairs that existed before the violation of the person's right; and in such circumstances, there can be no question of restoring the person's violated right.

16. Quoting point 3 of the operative part of the Constitutional Court's Decision DCC-1729 dated 21 May 2024, the Applicant states as follows: **"That is to say, according to the meaning of Article 157 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code', a new circumstance existed, which means that the RA Supreme Judicial Council's Decision No. SJC-57-Vo-K-16 dated 03.07.2023, should have been revised in the manner prescribed by law; however, the RA Supreme Judicial Council, citing the formulation *'shall be entitled'* defined in part 1 of Article 157 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code' and combining part 1 of Article 157 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code' with the other parts of the same article, rejected the application for revision on the merits of the final judicial act, noting that the RA Supreme Judicial Council is an independent body with a special constitutional-legal status, and for that purpose, the RA Supreme Judicial Council itself decides whether to revise or to refrain from revising the final judicial act based on a new circumstance.**

The interpretation by the RA Supreme Judicial Council of the norm 'shall be entitled' defined in part 1 of Article 157 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code' contradicts the RA Constitution (...), since such an interpretation undermines the essence of constitutional control and excludes the direct effect of the RA Constitution as a norm with supreme legal force".

17. The Applicant emphasizes that the decisions of the Constitutional Court are binding on all state bodies, including the Council, and that the revision of a final judicial act by state bodies, including the Council, based on a decision of the Constitutional Court cannot be interpreted in a way that undermines the independence of that body or its special constitutional-legal status, since the constitutional justice has a specific mission that is neither conditioned by nor related in any way to the issues to be resolved by other courts.

The Applicant asserts that the interpretation given by the Council to the contested provision not only contradicts the principle of legal certainty but also creates additional risks from the perspective of legal security by artificially provoking a "conflict" between two judicial bodies.

The Applicant concludes that the Council had no discretion in the matter of revision and was bound by the decision of the Constitutional Court, whereas the subsequent proceedings were conducted, and the decision on refraining from revision was adopted based on an erroneous interpretation of the applicable legal regulations and by disregarding the decision of the Constitutional Court.

18. The Applicant requests:

"1. To grant this application and declare part 1 of Article 157 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code', as interpreted in judicial practice, as contradicting Articles 1 and 3, part 1 of Article 6, part 1 of Article 61, part 1 of Article 63, and Articles 75 and 79 of the RA Constitution and invalid, insofar as that norm allows for refraining from revising a final judicial act issued against the applicant based on new circumstances".

Respondent's position

19. The Respondent, in particular, notes as follows: "Part 1 of Article 157 of the Constitutional Law stipulates that the Supreme Judicial Council **shall be entitled** to revise its decision on holding a judge disciplinarily liable based on newly emerged or new circumstances. The formulation 'shall be entitled to revise' in the context of this article implies that the respective body **shall be authorized and empowered to revise** the relevant decision, **provided that there are legal or factual grounds prescribed by the legislation**.

The purpose of this provision of the Constitutional Law is to establish the competence of the Supreme Judicial Council to revise decisions adopted in disciplinary proceedings **in cases where new or previously unknown circumstances arise** that may **significantly affect the outcome of the case**. The provision simultaneously serves as a mechanism to ensure the effectiveness of disciplinary proceedings and public confidence in the administration of justice, acting as a restrictive norm to prevent the possibility of unfounded or arbitrary revisions.

The relevant legal grounds are set out in point 1 of part 3 of the same article. Such grounds include, among others, cases where the Constitutional Court has declared a provision of a law or other normative legal act applied in disciplinary proceedings as contradicting the Constitution and invalid, or has declared it as complying with the Constitution but, in its interpretation, found that it was applied to a person with a different interpretation.

According to part 7 of Article 157 of the Constitutional Law, if the Supreme Judicial Council finds that **there are no grounds for revising a decision on holding a judge disciplinarily liable based on newly emerged or new circumstances**, it adopts a decision on **refraining from revising** the decision on disciplinary liability".

20. The Respondent also notes as follows: "Taking into account the specifics of the constitutional status of the Supreme Judicial Council and its status as an independent constitutional body, the legislator has granted the Supreme Judicial Council the opportunity to assess – for the purpose of revising its decision on holding a judge disciplinarily liable – the extent to which the recorded newly emerged or new circumstance is substantial and relevant in substance to serve as a basis for revision; in other words, whether the unconstitutional interpretation indeed served as the basis for the judicial act, or whether the incorrect resolution of the dispute was caused by that unconstitutional interpretation.

The basis for revision of a decision of the Supreme Judicial Council must not only formally meet the criterion of 'new circumstances' but also be substantively relevant to the factual and legal circumstances on which the previous decision of the Supreme Judicial Council was based, and in the context of the revision process under consideration, the subject of assessment is whether there is a need for revision in the specific case, and the assessment focuses on the presence or absence of grounds for revision".

21. The Respondent concludes as follows: "The examination of the possibility and necessity of revising a decision on disciplinary liability by the Supreme Judicial Council based on new circumstances, as well as the process of assessing the presence or absence of grounds for revision, stem from the logic of the above-mentioned legal norms regulating these legal relations, the guarantees of the independence of the Supreme Judicial Council, and its status as an independent constitutional body".

22. The Respondent finds that the Applicant's assertion that the refraining by bodies with a special constitutional mission to revise final judicial acts based on new circumstances in essence neutralizes constitutional control, and is entirely baseless, since the requirement of part 3 of Article 157 of the Code is imperative and serves as an enabling norm that establishes the Council's competence to revise its own decisions. However, at the same time, the regulation stipulated in part 7 of Article 157 of the Code provides the Council with the opportunity to assess the presence or absence of grounds for revision, as well as the possibility and necessity of revision, which derives from the principles of legal certainty, fair trial, and the guarantees of the Council's independence.

23. The Respondent requests that a decision be adopted in this case declaring the contested provision as complying with the Constitution.

Scope of consideration of the constitutional dispute

24. The constitutional dispute in this case concerns the constitutionality of part 1 of Article 157 of the Code, taking into account the interpretation given to this provision by the Council; and, according to this interpretation, *the formulation "shall be entitled" defined in part 1 of Article 157 of the Code implies discretion to either revise or refrain from revising the Council's decision regarding the disciplinary liability of a judge based on new circumstances, and this is in the context where the provision of the law applied to the Applicant through that decision was declared by the Constitutional Court as complying with the Constitution, with the Constitutional Court's interpretation; in other words, the relevant provision of the law was applied to the Applicant in the interpretation differing from that specified in the Constitutional Court's decision.*

Considerations to be clarified in the Case

24. To determine the constitutionality of the contested provision of the law, the Constitutional Court deems it necessary to address, in particular, the following question:

– Does the contested provision of the Code – considering the interpretation given by the Council as mentioned in point 24 of this decision, in the context of the Constitutional Court's decision declaring the provisions of laws applied to the Applicant in disciplinary proceedings as complying with the Constitution, and accordingly, in terms of point 1 of part 3 of Article 157 of the Code regarding the grounds for revising the Council's decision on the disciplinary liability of a judge based on new circumstances – stem from the essence of constitutional control, and does it ensure the effective realization of a person's rights to judicial protection and a fair trial, as guaranteed by part 1 of Article 61 and part 1 of Article 63 of the Constitution, respectively?

Legal positions of the Constitutional Court

26. As a distinct judicial form of constitutional control, constitutional justice is characterized by its specialized and comprehensive system, which fulfils its functions through constitutional litigation mechanisms, aimed at upholding the supremacy and stability of the Constitution, strengthening the foundations of constitutionality in the activities of public authorities, restoring disrupted constitutional balance, and guaranteeing the *constitutional protection of fundamental human rights and freedoms*.

27. According to part 1 of Article 167 of the Constitution, *constitutional justice shall be administered by the Constitutional Court, ensuring the supremacy of the Constitution*.

Pursuant to part 1 of Article 170 of the Constitution, *the Constitutional Court shall adopt decisions and opinions*. Their role, significance, and place in the state governance system determine the effectiveness of applying constitutional norms and ensuring their supremacy.

In light of establishing and strengthening constitutionality and trends of ongoing development, the decisions of the Constitutional Court should be considered not only as legal indications assessing the constitutionality of legal provisions but also as means that – through the **legal positions** enshrined therein – foster the systematic formation of a unified constitutional doctrine, the development of constitutional thinking, and the institutional advancement of constitutionality.

The decisions of the Constitutional Court, as the outcome of constitutional justice, must be perceived and regarded by public authorities as a vital axis of the state governed by the rule of law and one of its foundational pillars, aimed also at guaranteeing the supremacy of fundamental human rights and freedoms; so, an opposing approach implies the need for a reinterpretation and reassessment of the essence of constitutional justice in public life.

28. According to part 2 of Article 170 of the Constitution, *decisions and opinions of the Constitutional Court shall be final and shall enter into force upon publication.*

The mandatory execution of the Constitutional Court's decisions is one of the fundamental principles of the state governed by the rule of law. In this regard, pursuant to part 4 of Article 61 of the Constitutional Law "On the Constitutional Court" (hereinafter also referred to as "the Constitutional Law"), *the decisions adopted on the merits by the Constitutional Court shall be binding on all state and local self-government bodies, their officials, as well as natural and legal persons throughout the territory of the Republic of Armenia*.

Regarding the legal nature of the Constitutional Court's decisions, the Constitutional Court's Decision DCC-943 of 25 February 2011, specifically states as follows: "A decision of the Constitutional Court is an official written document adopted within the scope of its powers in cases and procedures prescribed by the RA Constitution and the law, which establishes rights subject to mandatory recognition, observance, protection, execution, or application, as well as normative rules that are indisputable from a legal perspective (not subject to revision), unconditional, and subject to unequivocal and immediate execution (unless another timeframe is specified), i.e. **rules of conduct**. This determines the normative nature of the Constitutional Court's decisions, as well as the specific legal consequences directly resulting from these acts, related to the loss of legal force of a norm declared as unconstitutional, the recognition of a norm as complying with the RA Constitution within the framework of the interpretation of constitutional norms (legal positions), and the resolution and assessment of issues of constitutional-legal significance (...)" (point 8).

The aforementioned decision of the Constitutional Court also states as follows: "'(…) International practice also unequivocally confirms that the primary prerequisite for ensuring the rule of law, and consequently the supremacy of the Constitution, is guaranteeing the execution of judicial acts that are binding, final, and have an erga omnes nature; and these acts lose their legal substance without taking into account the legal positions expressed therein'.

In particular, within the framework of part 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, an analysis 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; Imobiliare Saffi v. Italy, p. 66) indicates that the European Court has noted regarding the enforcement of decisions by domestic jurisdictions as follows: 'The right to a court' would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial act to remain inoperative to the detriment of one party's interests', and 'the execution of any decision adopted by a court must be regarded as an integral part of the trial within the meaning of Article 6'.

(...)

The RA Constitutional Court also deems it necessary to refer to 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 by the Committee of Ministers on 19 January 2000 at the 694th meeting of the Ministers' Deputies). This recommendation, in particular, stipulates as follows: 'The Committee of Ministers of the Council of Europe ... bearing in mind, however, that the practice of the Committee of Ministers in supervising the execution of the Court's judgements 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, the Committee of Ministers invites the Contracting Parties to ensure that there exist at the national level adequate possibilities to achieve, as far as possible, restitutio in integrum.

The Constitutional Court finds that revising judicial acts through necessary legislative procedures based on the legal positions expressed in cases concerning the determination of the constitutionality of legal acts is an effective means of guaranteeing the supremacy and direct application of the Constitution, and thus also a constitutional-legal requirement" (points 10 and 11).

29. Thus, *the implementation of constitutional justice, including, in particular, determining the conformity of legal acts with the Constitution as outlined in Article 168 of the Constitution, is the exclusive competence of the Constitutional Court; consequently,* ***the respective acts adopted as a result of constitutional justice are also of exceptional public importance****, as they aim not only to protect the fundamental right/freedom of an individual in a specific case but also to safeguard the interests of the entire public, uphold the rule of law, and ensure the constitutional order. This imperative unequivocally necessitates the establishment and implementation of an effective system of mechanisms for enforcing the decisions of the Constitutional Court; moreover, considering the enforcement of the decisions of the Constitutional Court solely from a formal-legal perspective is impermissible. The relevant decisions of the Constitutional Court must be unconditionally enforced to ensure the supremacy of human rights in the Republic of Armenia as a state governed by the rule of law*.

30. The Constitutional Court considers it necessary to examine the raised issue within the framework of this constitutional dispute in the context of the decisions of the Constitutional Court serving as an effective guarantee for restoring the violated fundamental rights of persons through the implementation of constitutional justice, particularly in light of the institution of revising judicial acts based on new circumstances.

According to part 1 of Article 61 of the Constitution, *everyone shall have the right to effective judicial protection of their rights and freedoms*.

According to part 1 of Article 63 of the Constitution, *everyone shall have the right to a fair and public hearing of their case within a reasonable period by an independent and impartial court*.

The fundamental rights and freedoms stipulated in Chapter 2 of the Constitution, as directly applicable rights, can be guaranteed, ensured, and effectively protected in a state governed by the rule of law, inter alia, *through the provision of constitutional and legislative guarantees equivalent to the realization of a person's opportunity to seek constitutional justice in accordance with point 8 of part 1 of Article 169 of the Constitution*.

Part 10 of Article 69 of the Constitutional Law serves as an effective mechanism aimed at implementing the relevant decisions of the Constitutional Court in cases based on individual applications, which reads as follows: *"Where a provision of a normative legal act applied to the applicant in cases specified in this article is declared as contradicting the Constitution and invalid, as well as where the Constitutional Court has by own interpretation declared that provision as*

complying with the Constitution, and has simultaneously found that it had been applied to the applicant with a different interpretation, the final judicial act issued against the applicant shall be subject to revision based on a newly emerged circumstance as prescribed by the Law".

An analysis of the above-cited provision of the Constitutional Law reveals that as a result of examination of the case – raised by an application by a natural/legal person – on the constititutionality of the normative legal act (the provision thereof) applied to the applicant in a specific case, by the decision of the Constitutional Court the final judicial act issued against the applicant shall be subject to revision *based on a newly emerged circumstance* as prescribed by the Law, *where:*

(1) the provision of the normative legal act applied to the applicant is declared as contradicting the Constitution and invalid;

(2) the Constitutional Court, declaring the provision of the normative legal act applied to the applicant as complying with the Constitution in its interpretation, simultaneously considers that it was applied to the applicant with a different interpretation.

The regulation governing the revision of judicial acts based on a new circumstance, based on the respective decision of the Constitutional Court, is designed to fully ensure the restoration of the violated rights of natural and legal persons resulting from the application of a norm declared as contradicting the Constitution and invalid, or from the application of a norm in the interpretation differing from that specified by the Constitutional Court, thus guaranteeing the effective exercise of the rights to judicial protection and a fair trial, as guaranteed by part 1 of Articles 61 and part 1 of Article 63 of the Constitution, respectively.

31. The Constitutional Court has thoroughly addressed in a number of its decisions (DCC-701, DCC-751, DCC-758, DCC-767, DCC-833, DCC-984, DCC-1099, DCC-1573, DCC-1645, DCC-1769, and others) the issues of the constitutional-legal content of the institution of revision of judicial acts that have entered into legal force (exceptions to the principle of finality of judicial acts that have entered into legal force and their structural features related to the consideration of constitutional disputes), including based on new circumstances, as an exclusive judicial remedy for restoring violated human rights in accordance with Articles 61 and 63 of the Constitution, as well as problems of its uniform perception and application.

In particular:

– "The concrete control exercised by the Constitutional Court is particularly characterized by the extension of the decision on the constitutionality of a legal act to the legal relations related to the given case. In the case of concrete control, the issue of protecting individual interests is also brought to the forefront. In accordance with these characteristic features, the domestic legislation of the Republic of Armenia provides for the possibility of revising the judicial act issued in relation to the given applicant as a result of the Constitutional Court's decision adopted based on an individual application by an interested person, which imparts fullness and effectiveness to the protection by the Constitutional Court (based on an individual application) of a person's constitutional rights as directly applicable rights" (Decision DCC-751 of 15 April 2008, point 6);

– "The entire content of the institution of revision of judicial acts based on the decision of the Constitutional Court boils down to ensuring the restoration of violated constitutional rights through that institution. The restoration of violated rights requires the elimination of negative consequences arising for the given person as a result of the violation, which in turn requires restoring as much as possible the state that existed before the offence (restitutio in integrum).

(…)

– In the presence of new circumstances, that is, where there is an objective necessity for the application of the right conditioned by the legally established fact of the application of the normative provision declared as unconstitutional, initiating the 'procedure for revising a judicial act' and starting the process of revising the judicial act by the competent court is a legal necessity and the constitutional obligation of that court aimed at the restoration of the person's violated constitutional rights;

– **The scope and framework for revising the** relevant judicial act that has entered into legal force **based on new circumstances are determined by the subject of regulation of the normative provision declared as unconstitutional, the nature and features of the relations, the scope of application, and, conditioned thereby, also the fact of violation of the person's specific rights"** (Decision DCC-984 of 15 July 2011, point 7);

– "The Constitutional Court notes that the ultimate purpose of submitting an individual constitutional application (complaint) is the restoration of the person's violated fundamental rights and freedoms based on the Constitutional Court's decision, which can be guaranteed by the Constitutional Court's decisions, through the revision of final judicial acts based on new circumstances".

(…)

(…) The Constitutional Court states that the revision of judicial acts through necessary legislative procedures, based on the decisions issued in the cases determining the constitutionality of legal acts, is an effective means of ensuring the supremacy of the Constitution and, consequently, a constitutional-legal requirement aimed at guaranteeing the effectiveness of judicial protection of persons' rights. The necessity of revising a judicial act in the presence of the respective decision of the Constitutional Court also stems from the essence and significance of the institution of constitutional control in specific cases. Therefore, in the cases where a final judicial act against a person has been issued via the application of a provision declared as unconstitutional by the Constitutional Court (as well as a provision declared as constitutional according to the Constitutional Court's interpretation but applied to the applicant with a different interpretation), the consequence of such a case must be the revision of the mentioned judicial act based on new circumstances, in accordance with the procedure prescribed by law" (Decision DCC-1645 of 29 March 2022, point 5.2).

32. In light of all the above, *the Constitutional Court emphasizes that within the framework of concrete constitutional control, where the provision of a normative legal act applied to the applicant is declared as contradicting the Constitution and invalid by a decision of the Constitutional Court, raised by an individual application, as well as where the Constitutional*

Court has by own interpretation declared that provision as complying with the Constitution, and has simultaneously found that it had been applied to the applicant with a different interpretation, ***the final judicial act issued against the applicant shall be unconditionally subject to revision based on a new circumstance****.*

The Constitutional Court underscores that no legal regulation or interpretation in law enforcement practice can bypass this constitutional-legal requirement, thereby obstructing the revision of a judicial act based on the decision of the Constitutional Court. Moreover, it is impermissible to consider the procedure for the revision of a judicial act as a matter of discretion for the competent court by applying any interpretive instrumentarium, given the idea that a judicial act – based on a provision declared as contradicting the Constitution and invalid, or on an interpretation of a provision other than given by the Constitutional Court – shall have no right to exist. An opposite approach distorts the very essence of constitutional justice, leading to the violation of a person's fundamental rights guaranteed by part 1 of Article 61 and part 1 of Article 63 of the Constitution, and undermining confidence in the institution of constitutional justice.

33. In the context of the above, the Constitutional Court states as follows:

Point 3 of the operative part of Decision DCC-1729 of the Constitutional Court dated 21 May 2024, directly states as follows: "According to part 10 of Article 69 of the Constitutional Law 'On the Constitutional Court', the final judicial act issued against the Applicant shall be subject to revision based on a newly emerged circumstance as prescribed by the Law, considering that part 6 of Article 90 of the Constitutional Law of the Republic of Armenia 'On the Judicial Code', and point 2 of part 1 of Article 101 of the Administrative Procedure Code of the Republic of Armenia had been applied against the Applicant in the interpretation other than given by this Decision".

In the presence of the aforementioned decision of the Constitutional Court, the Council, by its Decision No. SJC-82-Vo-K-13 dated 18 October 2024, decided to refrain from revising its Decision No. SJC-57-Vo-K-16 dated 3 July 2023 "Regarding the issue of holding Judge Davit Harutyunyan of the First Instance Criminal Court of General Jurisdiction of Yerevan disciplinarily liable", particularly stating as follows: **"A comparative analysis of parts 1 and 7 of Article 157 of the Code, titled 'Revision by the Supreme Judicial Council of the decisions on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances', indicates that the right (prescribed at constitutional law-level) of the Council to revise its decision on the issue of holding a judge disciplinarily liable based on newly emerged or new circumstances found its logical continuation in the legislative possibility of refraining from revising the decision or of revoking its own decision and adopting a new decision as a result of assessing the presence or absence of grounds for revising the decision on holding the judge disciplinarily liable; therefore, under conditions where a provision of the law or other normative legal act applied in the disciplinary proceedings has been declared by the Constitutional Court as contradicting the Constitution and invalid, or where it has been declared as complying with the Constitution in the interpretation other than applied, the legislator has reserved the right for the Supreme Judicial Council under part 1 of Article 157**

of the Code, as well as under parts 7 and 8 of the same article, to revise or to refrain from revising its decision".

34. From the above, it is clear that ***the formulation "shall be entitled" used in the contested legislation has been interpreted by the Council as a discretion***. In this regard, the Constitutional Court states as follows:

Part 1 of Article 157 of the Code stipulates that the Council *shall be entitled to revise its decision on the issue of holding a judge disciplinary liable based on* newly emerged or *new circumstances*.

In accordance with point 1 of part 3 of Article 157 of the Code, *new circumstances shall serve as grounds for the Council to revise its decision on holding a judge disciplinary liable where the Constitutional Court:*

(a) has declared a provision of a law or other normative legal act applied in the disciplinary proceedings as contradicting the Constitution and invalid, or

(b) has declared a provision of a law or other normative legal act applied in the disciplinary proceedings as complying with the Constitution, but, in its interpretation, found that it was applied to a person with a different interpretation.

According to part 7 of Article 157 of the Code, *if the Council finds that there are no grounds for revising a decision on holding a judge disciplinarily liable based on* newly emerged or *new circumstances, it adopts a decision on refraining from revising the decision on disciplinary liability.*

It follows from the above that *the Council shall adopt a decision on refraining from revision of its respective decision if it finds that there are no grounds for revision based on new circumstances, as prescribed by part 3 of Article 157 of the Code (in this case, point 1 of part 3).*

35. The Constitutional Court attaches importance to the distinction between the formulations *"initiation of proceedings for revision based on new circumstances"* and *"revision of a decision based on new circumstances"*. In this regard, the Constitutional Court's Decision DCC-1114 of 18 September 2013, states as follows: "(...) it is necessary to distinguish between the terms 'initiation of proceedings for revision based on new circumstances' and 'revision of a judicial act based on new circumstances'. Thus, the initiation of proceedings for the revision of a judicial act based on new circumstances occurs when addressing the admissibility of a complaint for revision based on new circumstances, during which (...) the impact of an unconstitutional norm applied to the applicant in the case cannot be assessed based on the court's conclusion. In this case, by virtue of the legal positions expressed in the Constitutional Court's Decision DCC-984, where there are no grounds for returning the complaint, the court revising the judicial act is obliged **not only to initiate revision proceedings but also, as a result, to annul the judicial act under revision;** otherwise, the judicial act would continue to be based on a legal norm that has been declareded as contradicting the Constitution and invalid or applied in the interpretation differing from that specified by the Constitutional Court. As for the revision of a judicial act based on new circumstances, **this is a procedure that takes place after the annulment of the judicial act under review, during which the impact of the new circumstance on the outcome of the case**

can be assessed, which determines the necessity of amending or not amending the operative part of the judicial act under review. Otherwise, the essence of constitutional control in specific cases and the institution of revising judicial acts based on new circumstances, which is systematically interconnected with the latter, would be undermined" (point 7).

36. Taking into account the above, the existence of a relevant decision of the Constitutional Court, as a new circumstance, serves as a basis ***for initiating proceedings to revise a decision*** on holding a judge disciplinary liable. As a logically subsequent regulation, part 8 of Article 157 of the Code stipulates that *in the presence of grounds for revising the Council's decision based on newly emerged or new circumstances, the Council shall annul its decision and adopt a new decision*.

In this case, the Council is obliged to annul its respective decision and adopt a new decision, taking into account that the Council's decisions must be consistent with the Constitution and the constitutional axiology enshrined therein; otherwise, the Council's respective decision will continue to be based on a legal norm that has been declared as contradicting the Constitution and invalid or applied in the interpretation differing from that specified by the Constitutional Court; and this is incompatible with both the essence of constitutional justice and the right to revision of a judicial act based on new circumstances, which derives from the person's fundamental rights guaranteed by part 1 of Article 61 and part 1 of Article 63 of the Constitution.

37. The Constitutional Court emphasizes that **the decision, particlularly the conclusion of the Council – issued as a result of revision of its own decision based on the Constitutional Court's respective decision on holding a judge disciplinary liable based on a new circumstance – is not predetermined or guided by the Constitutional Court's respective decision that served as the basis for the revision,** for the following reasons:

According to point 7 of part 1 of Article 175 of the Constitution, *the Council shall have the exclusive authority to resolve the issue of holding a judge disciplinary liable*.

According to part 2 of Article 175 of the Constitution, in cases of considering the issue related to holding a judge disciplinary liable, as well as in other cases prescribed by the Code, *the Council shall act as a court*.

In Decision DCC-1488 of 15 November 2019, the Constitutional Court has stated as follows: "(…) in the context of the current constitutional-legal regulations, there is no legal possibility to appeal the decisions of the Supreme Judicial Council regarding the disciplinary liability of a judge in any of the courts operating in the Republic of Armenia, as this would contradict the status of the Supreme Judicial Council as an independent constitutional body" (point 4.6).

The aforementioned decision of the Constitutional Court states as follows: "In particular, the rationale for the 2015 constitutional amendments clearly expresses the idea that the powers previously reserved to the President of the Republic under the 2005 constitutional amendments – not only regarding the termination of a judge's powers but also concerning their arrest or involvement as an accused – have been **exclusively** granted to the Supreme Judicial Council. Furthermore, the same rationale specifically emphasizes that '(…) the [Supreme Judicial] Council is assigned a decisive role in the appointment of judges, including court presidents. At the same

time, a format has been adopted that partially limits the Council's independent powers in the appointment of judges, while ensuring full independence in matters of secondment, transfer, and especially disciplinary liability of judges. **This is particularly important from the perspective of structuring the Council as the highest disciplinary body, the decisions of which must be final and non-appealable**' (…).

Thus, summarizing the above, particularly the analysis and citations regarding the powers, formation procedure, and operational principles of the Supreme Judicial Council, the Constitutional Court finds that in cases where the Supreme Judicial Council acts as a court in matters related to the disciplinary liability of a judge, the Constitution and other laws provide for procedural guarantees characteristic of courts, including but not limited to, the examination of a case within a reasonable timeframe, equality of all before the law and the court, the publicity of judicial proceedings, and the binding nature of judicial acts, which collectively aim to ensure the realization of the rights stipulated by Articles 61 and 63 of the Constitution (point 4.8).

In accordance with part 1 of Article 156.1 of the Code, a judge's appeal against a decision on holding a judge disciplinary liable shall be examined by the Council where significant evidence or circumstances arise that the appealing party could not previously present due to circumstances beyond their control and that could reasonably have influenced the decision.

38. In the context of the above, addressing the interpretation given by the Council in its Decision SJC-82-Vo-K-13 dated 18 October 2024 – regarding the formulation *"shall be entitled"* defined in part 1 of Article 157 of the Code (taking into account the relevant other provisions of the said article), according to which, *due to the peculiarities of the Council's constitutional status, considering the circumstance that the Council is an independent state body with the constitutional mission of guaranteeing the independence of courts and judges, the legislator has reserved for it the right to revise or refrain from revising its own decision* – the Constitutional Court states that *the legislative formulation "shall be entitled", in one case, may indicate the discretion of a public authority or the limits of that discretion;* meanwhile, the discretion of a public authority is the power to choose from possible solutions established by law. It follows from the above that a public authority has discretion exclusively in cases where, in relation to the exercise of any power, the lawmaker has granted it the opportunity to choose among the possible solutions, which stems from its constitutional-legal status. In another case, *the said formulation implies a mandatory power reserved to a public authority in accordance with Article 6 of the Constitution*.

In Decision DCC-1708 of 19 December 2023, the Constitutional Court has stated as follows: **"In general, it is necessary to take into account that legislative structures ensuring the implementation of mandatory requirements established by norms prescribed by the Constitution cannot be based on absolute discretionary powers, ignoring the consequential impact on the scope envisaged by the Constitution for such powers. The powers of public authorities derive from their constitutional functions and are aimed at their implementation; therefore, powers directed at ensuring the implementation of the functions of public authorities cannot be interpreted in a way that undermines the essence of the actual constitutional function and the purpose of its implementation. The Constitutional Court states that the implementation of a constitutional function of a public authority cannot**

depend on the absolute discretion of any public authority. Even in cases where legislative formulations are such that the powers reserved to a public authority by law can be interpreted as discretionary, they must be understood as mandatory powers exercised for the purpose of implementing the constitutional functions and mission of the respective body, and must be exercised in accordance with the spirit of the constitutional functions of that body" (point 4.2).

39. In light of the foregoing, *taking into account the constitutionally grounded ideas and axiology underlying constitutional justice, the constitutional-legal content and legal effect of the Constitutional Court's decisions also in the context of guaranteeing constitutional rights of a person, the Constitutional Court emphasizes that it is impermissible for any public authority to disregard or selectively implement the Constitutional Court's decisions under the pretext of "discretion".*

Furthermore, in the context of the above, also considering the constitutional-legal status of the Council and the fact that the Council shall act as a court when addressing issues related to holding a judge disciplinary liable, the Constitutional Court finds that, *in the case of revising a decision on holding a judge disciplinary liable based on a new circumstance, the formulation "shall be entitled" stipulated in part 1 of Article 157 of the Code indicates the Council's discretion to assess and determine the existence of sufficient grounds established by law for initiating a revision procedure; however,* ***when the existence of such grounds is established, in the case of revising on the merits the decision on holding a judge to disciplinary liable based on a new circumstance (which implies the annulment of a decision containing a legal norm that has been declared as contradicting the Constitution and invalid or applied in the interpretation differing from that specified by the Constitutional Court, and the adoption of a new decision), the formulation "shall be entitled" stipulated in part 1 of Article 157 of the Code unequivocally signifies a mandatory authority reserved to the Council***. In this regard, the Constitutional Court notes that *the exercise of the right reserved to the Council cannot be interpreted in a way that leads to the violation of the essence of persons' constitutional rights and freedoms or their undue restriction. In cases where a relevant decision of the Constitutional Court serves as the basis for revising a judicial act based on a new circumstance, the Council cannot interpret the mandatory authority reserved to it by law as a discretionary authority, conditioning its exercise on its own discretion. Such an interpretation undermines the foundations of the constitutional order, jeopardizes the assurance of the rule of law and the institutional effectiveness of constitutional control, and calls into question the fundamentally binding nature of the Constitutional Court's decisions, ultimately leading to the violation of a person's fundamental rights guaranteed by part 1 of Article 61 and part 1 of Article 63 of the Constitution*.

In view of the above, the Constitutional Court considers that part 1 of Article 157 of the Code complies with the Constitution in the interpretation that revising on the merits the decision regarding the issue of holding a judge disciplinary liable based on the Constitutional Court's decision as a new circumstance (i.e., annulling the decision and adopting a new decision) is a mandatory authority of the Council.

Based on the results of an examination of the Case and guided by part 1 of Article 167, point 1 of Article 168, parts 1 and 4-5 of Article 170 of the Constitution, as well as Articles 63, 64, and 69 of the Constitutional Law “On the Constitutional Court”, the Constitutional Court **DECIDED:**

1. Part 1 of Article 157 of the Constitutional Law of the Republic of Armenia “On the Judicial Code” complies with the Constitution in the interpretation that revising on the merits the decision regarding the issue of holding a judge disciplinary liable based on the Constitutional Court’s decision as a new circumstance (i.e., annulling the decision and adopting a new decision) is a mandatory authority of the Supreme Judicial Council.

2. According to part 10 of Article 69 of the Constitutional Law “On the Constitutional Court”, the final judicial act issued against the Applicant shall be subject to revision based on a newly emerged circumstance as prescribed by the Law, considering that part 1 of Article 157 of the Constitutional Law of the Republic of Armenia “On the Judicial Code” had been applied against the Applicant in the interpretation other than given by this Decision.

3. According to part 2 of Article 170 of the Constitution, this Decision shall be final and enter into force upon its promulgation.

PRESIDING JUDGE **A. DILANYAN**

29 July 2025

DCC-1791