

**ON BEHALF OF THE REPUBLIC OF ARMENIA
DECISION OF THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA**

**THE CASE ON CONFORMITY OF ARTICLES 1 AND 4 OF THE LAW OF THE
REPUBLIC OF ARMENIA
ON VETERANS OF THE GREAT PATRIOTIC WAR AND THE DECISION #207-Ն OF
THE GOVERNMENT OF THE REPUBLIC OF ARMENIA DATED 5 FEBRUARY 2004
WITH
THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE
APPLICATION
OF THE DEFENDER OF HUMAN RIGHTS OF THE REPUBLIC OF ARMENIA**

Yerevan

3 June 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. Hovhannisyan, H. Nazaryan (Rapporteur), A. Petrosyan, V. Poghosyan,

With the participation of the Representative of the Applicant: *A. Mashinyan*,
the Respondent: the National Assembly of the Republic of Armenia, officially represented by D. Melkonyan, the Adviser to the Chairman of the National Assembly of the Republic of Armenia pursuant to Article 100, Article 101, Part 1, Point 8 of the RA Constitution, Articles 25, 38 and 68 of the RA Law on the Constitutional Court,

examined in a written procedure in a public hearing the Case on conformity of Articles 1 and 4 of the RA Law on Veterans of the Great Patriotic War, Decision #207 – Ն of the Government of the Republic of Armenia dated 5 February 2004 with the Constitution of the Republic of Armenia on the basis of the application of the RA Defender of Human Rights.

The Case was initiated on the basis of the application submitted to the Constitutional Court by the RA Defender of the Human Rights on 13.01.2011.

Having examined the written report of the Case Rapporteur, the written explanations of the Applicant and Respondent, having studied the RA Law on Veterans of the Great Patriotic War, Decision #207 – Ն of the Government of the Republic of Armenia dated 5 February 2004, other RA legislative acts, as well as other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on Veterans of the Great Patriotic War was adopted by the National Assembly of the Republic of Armenia on 2 December 1998, signed by the President of the Republic of Armenia on 30 December 1998 and came into force on 1 January 1999.

Currently challenged Articles 1 and 4 of the RA Law on Veterans of the Great Patriotic War state accordingly:

“Article 1. The concept of Veterans of the Great Patriotic War

According to this Law, Veterans of the Great Patriotic War (hereinafter – Veterans) are citizens of the Republic of Armenia and persons permanently residing in the Republic of Armenia who participated in the Great Patriotic War, as well as participants of the siege of Leningrad during the war and former underage prisoners of Nazi concentration camps. The status of foreign citizens and stateless persons temporary residing or staying in the Republic of Armenia, who took part in the Great Patriotic War, shall be established by international treaties of the Republic of Armenia.

Article 4. The right of Veterans to social protection

Social protection of Veterans is exercised in accordance with the procedure prescribed by this Law and other legal acts.

Veterans are entitled to free health care and services under government support, as well as to get vouchers with privileged conditions for sanatorium-resort therapy in accordance with the procedure legislatively prescribed for military personnel.

Monthly financial allowance is provided to Veterans for covering the electricity and transportation costs, and to war veterans with disabilities - for covering also the charges for gas supply, water supply, sewerage and heating services in accordance with the procedure and amount established by the Government of the Republic of Armenia.

Veterans with disabilities also have the right to:

- a) (Point "a" was annulled by the Law ՀՕ-224- Ն dated 11.29.06);
- b) pay the charges for flat maintenance, recycling services, telephone and radio with 50 percent discount;
- c) receive free prosthetic appliances and restorative supplies in accordance with the procedure prescribed by the Government of the Republic of Armenia.

The Veteran is granted monthly reward in accordance with the procedure prescribed by the Government of the Republic of Armenia.

The amount of the reward is non-taxable and shall not be calculated while determining the index of social means testing of the veterans or their families.

The expenses for implementation of the privileges prescribed in this Article shall be covered from the state budget of the Republic of Armenia, as well as from other means not prohibited by the legislation of the Republic of Armenia."

The Decision No. 207- Ն of the Government of the Republic of Armenia was adopted on 5 February 2004 and confirmed by the President of the Republic of Armenia on 2 March 2004. This decision prescribes the procedure for granting and payment of financial allowance to the war veterans and persons equated with them and families of the fallen militaries.

The Decision No. 207- Ն of 5 May 2011 was annulled by the Decision No. 672- Ն of the Government of the Republic of Armenia. Simultaneously, the RA Government adopted the Decision

No. 668-Ն on Determining the Amount of Monthly Financial Allowance Provided to Military Personnel and the Members of their Families by the Categories of Persons Entitled to Receive Financial Allowance, the Procedure for Granting and Payment of Monthly Financial Allowance dated 5 May 2011, and re-regulated the relations concerning the procedure of granting and payment of financial allowance to the veterans of the Great Patriotic War, the persons equated with them and the families of the Fallen Militaries, including also the persons of other categories stipulated in the Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries, signed in the frames of CIS, in the list of persons entitled to receive such allowance.

2. The Applicant, arguing with regard to the constitutionality of the challenged provisions, finds that in accordance with Article 43, Part 2 of the Constitution limitations of the fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments of the Republic of Armenia. The CIS Agreement of 1994 on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries ratified by the Republic of Armenia, applies to the disabled and the participants of the Civil and the Great Patriotic Wars, participants of the Military Operations in the Territory of other States, Families of the Fallen Militaries and the categories of the persons, who, in accordance with Annex 1 to the Agreement, were granted the privileges under the legislation of the former USSR. Thus, as the Applicant concludes, the privileges prescribed by the RA Law on Veterans of the Great Patriotic War and other legal acts shall not be less than the privileges and guarantees prescribed by Annex 2 to the mentioned Agreement.

At the same time, according to the Applicant, as it follows from the system analysis of the aforementioned Agreement, for the assurance of the enforcement of the majority of the prescribed privileges it is necessary to adopt an appropriate national legal act prescribing the procedure of the application of the privilege. In addition, Annex 2 to the Agreement prescribes a number of privileges that were not found in the RA legislation at all or were partially prescribed for the certain groups of citizens, thus violating the principle of equality and contradicting the requirements of the Agreement. According to the Applicant, the normative provisions which establish appropriate privileges, contradict the international obligations assumed by the Republic of Armenia also from the perspective of conformity of the contents of privileges.

The Applicant also finds that there are also lots of legislative gaps and contradictions in the sphere of implementation of the Agreement, in particular, persons of numerous categories, listed in Annex 1 to the CIS Agreement of 1994, including Point 2.3 of Annex 1 to the CIS Agreement of 1994, were not included in Article 1 of the RA Law on Veterans of the Great Patriotic War, as well as in the list of persons equated with the Veterans of the Great Patriotic War by the Decision # 207-Ն of the RA Government dated 5 February, 2004. At the same time, in the law enforcement practice these persons are considered as persons equated with the veterans or disabled veterans of war, and enjoy the same privileges prescribed by the RA legislation as the latter persons do (except for the monthly award, which is granted only to the persons who participated in the Great Patriotic War in accordance with law).

3. According to the position of the Respondent, the RA National Assembly, the legal regulation, stipulated in Article 4 of the RA Law on Veterans of the Great Patriotic War, may not contradict the principle of everyone's equality before the law prescribed in Article 14.1 of the RA Constitution, as "it is necessary to consider the constitutional principle of equality of all persons before the law as not only a formal equality but also a constitutional criteria for the assessment of the legislative regulation of the rights and freedoms, and, in this concern, the possibility of implementing this principle in various manifestations shall not be excluded, when the endorsement of the formal equality may lead to the material inequality. In particular, in case of the formal equality of the economic and social rights and freedoms certain categories of people may be found in unequal conditions. It would be considered a breach of the principle of equality before the law, when the person enjoying the same status, deprives from the privileges and benefits based on any ground prescribed in Article 14.1, Part 2 of the RA Constitution. Meanwhile, the law defines privileges and benefits for the persons of same categories, without any exception.

According to the Respondent, i.e. the RA National Assembly, the challenged provision of the abovementioned Law does not contradict the right to social security for old age, disability, loss of breadwinner, unemployment and other cases prescribed by Article 37 of the RA Constitution neither, as "in this case the law prescribes the benefits and privileges for the persons of certain category. Moreover, the ways and mechanisms of implementation of social security are prescribed by other laws...." According to the position of the RA National Assembly, the challenged provisions of the RA Law on Veterans of the Great Patriotic War may not contradict Article 42, Part 2 of the RA Constitution, as in the terms of the challenged provisions of the Law the permissible and impermissible limitations of the rights may not be spoken about, whereas in this case not the guaranteed right and its limitation, which shall be in conformity with the internationally defined scope of limitation, but the privilege prescribed by the law for persons of certain category, is a point.

According to the position of the Respondent, the RA Government, the challenged provisions of the RA Law on Veterans of the Great Patriotic War and the Decision # 207- Ն of the RA Government dated 5 February 2004, do not contradict Articles 14.1, 37, 40 and Article 43, Part 2 of the RA Constitution, as "the relevant decision of the RA Government defines certain privileges equally to all those who have the status of the disabled veterans and persons equated with them," and that Article 37 of the RA Constitution is fully reflected in the abovementioned legal acts. In regard to the inconformity of the challenged provisions with Article 43, Part 2 of the RA Constitution, the RA Government finds that these legal acts do not set limitations, but grant privileges to the persons of certain categories, and they may not be considered as restrictions of the fundamental rights and freedoms.

4. Within the consideration of this Case, while assessing the constitutionality of the provisions of the challenged normative acts, the Constitutional Court necessitates being based on:

- the content of the constitutional legal regulation of the RA international treaties' legal force and the implementation of the norms stipulated therein;

- the constitutional principle of the necessity to guarantee other human and civil rights and freedoms stipulated in the international treaties and laws;

- the requirement of Article 83.5 of the Constitution regarding the determination of the terms and procedure of implementation and protection of human rights (including privileges) exclusively by law;

- the requirement of Article 60 of the RA Law on the Constitutional Court regarding the legal consequences of cancellation or invalidation of the challenged legal act or its provisions before or during the case consideration at the Constitutional Court.

Within the subject matter of this Case, the relations concerning the social protection of the Veterans is internationally regulated by the Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries signed in the frames of the CIS on 15 April 1994, which entered into force for the Republic of Armenia on 26 February 1996. The comparative analysis of this Agreement, the RA Law on Veterans of the Great Patriotic War and the challenged Decision # 207-Ն dated 5 February 2004 adopted by the RA Government for guaranteeing their implementation, as well as other acts of the RA legislation in the sphere of social security certifies, in particular, that, the persons stipulated in Annex 2.3 to the abovementioned Agreement, for whom, in accordance with abovementioned international Agreement (Article 2), privileges would be prescribed, remained out of the scopes of such a legal regulation. The RA legislation also partially addressed the entire scope of privileges prescribed in the abovementioned Agreement.

5. In accordance with Article 6, Part 4 of the RA Constitution, international treaties are the constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

As it appears from the constitutional legal content of the norm, the international treaties of the RA are normative legal acts, which are constituent part of the legal system of the RA, i.e. contain mandatory rules of behavior for the subjects of relevant sphere of the legal regulation, have a higher legal force over the laws and other legal acts of the RA, shall be binding for all state and local self-government bodies and the public officials of the RA throughout the entire territory of the RA.

The constitutional principle of the priority of international treaties of the RA over the laws is enshrined in a number acts of the current legislation of the RA, as well as in Article 3 of the Law on Veterans of the Great Patriotic War, which directly states that **"if the RA international treaties stipulate the norms other than the ones prescribed in this Law, then the norms of international treaties are applicable"**.

According to Article 83.5, Point 1 of the RA Constitution, the terms and procedure for the implementation and protection of human rights shall be determined exclusively by the laws of the Republic of Armenia. The Constitutional Court finds that the content of that normative provision is based on the constitutional legal requirement to regulate the relations concerning the implementation and protection of human rights not only by the very law, but also comprehensively, and firstly, **in accordance with the principles of law**.

According to Article 42 of the RA Constitution, the fundamental human and civil rights and freedoms, stipulated by the Constitution, do not exclude other rights and freedoms prescribed by the laws and international treaties. According to Article 44 of the Constitution, the mentioned legal regulation is not subject to limitation. The Constitutional Court finds that the enjoyment of such rights and freedoms (including privilege) is also a human right which is subject to assurance and protection by domestic law. **Simultaneously, the rights and freedoms (including privileges) prescribed by any international Treaty, may not be excluded or restricted by the law and other legal acts.**

In parallel with disclosure of the constitutional-legal content of the aforementioned norms of the RA Constitution and the necessity to ensure their homogeneous understanding in the law-

enforcement practice, the Constitutional Court also highlights the fundamental requirement of Article 6, Part 1 of the Constitution regarding the direct effect of the constitutional provisions and the necessity to implement them unconditionally.

6. Addressing the issue of the constitutionality of the challenged provisions of the Law on Veterans of the Great Patriotic War, the Constitutional Court states that the legislator's duty is to prescribe the necessary legal regulations in the framework of the international obligations assumed by the Republic of Armenia, for assurance of the implementation of these obligations in accordance with the principles and norms of the international law, consequently with the principle prescribed in Article 9 of the Constitution as well, which should be aimed not only to the establishment of good-neighborly and mutually beneficial relations with the states, but also for the guaranteed protection of human rights. The Constitutional Court considers that the incomplete implementation of the provisions of the Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries signed in the frames of CIS on 15 April 1994 **is conditioned not with the issue of the constitutionality of the challenged provisions of the abovementioned Law, but ignorance of the normative requirement of Article 3 of this Law in law-enforcement practice.**

In its Decision DCC – 668 (Point 5), the RA Constitutional Court stated that the RA Law on Veterans of the Great Patriotic War, while prescribing the concept "Veterans of the Great Patriotic War" did not cover the persons prescribed in Point 2.3 of Annex 1 to the Agreement, and in the law enforcement practice the interpretation of the concept "War Veterans" shall be unconditionally based on the provisions of Point 3 of Annex 1 to the Agreement. The Constitutional Court states that, according to the law enforcement practice, the mentioned requirement of the Decision DCC-668 is not fulfilled. At the same time, the Constitutional Court finds that in the law-enforcement practice the normative requirement of Article 3 of the mentioned Law shall be considered not only in the aspect of the concept "war veterans", but also in relation to the application of the privileges within the entire scope prescribed for the persons by the Agreement. Touching upon the position of the Respondent (the RA Government), according to which "it is not necessary to reconsider the legal positions of the Constitutional Court prescribed in Point 5 of the Decision DCC-668 dated 28.11.2006", the Constitutional Court states that re-establishing the legal positions expressed in Decision DCC-943, the law enforcement practice shall consider the legal positions expressed by the Constitutional Court regarding the constitutional-legal content of the legal acts (their particular provisions). The Constitutional Court finds that the establishment of a different practice would contradict the fundamental principles of the constitutional order prescribed by the RA Constitution.

7. Pursuant to Article 85, Part 2 of the RA Constitution, the Government adopts decisions also for ensuring the implementation of the international treaties and laws in the entire territory of the Republic of Armenia.

The Government has a constitutional obligation to determine the procedure and terms for the implementation of the provisions stipulated in Agreement on Mutual Recognition of Privileges and Guarantees for the Participants and Disabled of the Great Patriotic War, the Participants of Military Operations in the Territories of other States, Families of Fallen Militaries of 15 April 1994 signed in the framework of the CIS , as well as the RA Law on Veterans of the Great Patriotic War to the extent and content directly deriving from these acts and the powers granted to it by the

Constitution and laws, taking also into account the position of the Constitutional Court expressed in Point 5 of Decision DCC-668.

The comparative analysis of the provisions of the abovementioned Agreement and the Law, as well as other legislative acts regulating the relations concerning the social security of veterans, shows that in its Decision # 207-Ն of 5 February 2004 the RA Government has not envisaged exhaustive terms for ensuring the full implementation of privileges and guarantees for the Veterans of the Great Patriotic War, Persons Equated with Them, Families of the Fallen Militaries prescribed by international treaty and the Law on Veterans of the Great Patriotic War. The RA Government has ensured the enforcement of the Decision DCC-668 of the Constitutional Court neither. In particular, a number of people, who are considered as disabled veterans of the war by the international Treaty of the RA (Point 2 of Annex 1 to the mentioned Agreement) and used to enjoy the privileges, prescribed for the disabled veterans of the war, have been left out of the scope of the mentioned legal regulation of the Decision of the Government. The blockage of the right prescribed by the RA international obligations has been occurred because of the annulment of previous decisions and not defining financial compensation for the abovementioned persons by the Decision # 207- Ն of the RA Government dated 05.02.2004. Moreover, the RA judicial practice also confirmed that the demand of the citizens concerning the recognition of the disabled war veterans has been precisely solved in the framework of the Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries” on 15 April 1994 signed in the frames of CIS, but the lawsuit of the citizens to preserve their privileges or payment of monetary compensation was not satisfied based on the Decision of the Government in dispute.

The RA Constitutional Court finds the position of the Applicant concerning the constitutionality of the Decision #207- Ն of the Government of Armenia dated 5 February 2004 to be well-grounded, considering that governed by Articles 6 (Parts 1 and 4), 42 (Part 1), 44, 85 (Part 2) of the Constitution, as well as the requirements of Article 4 of the RA Law on Veterans of the Great Patriotic War, the RA Government was obliged to adopt a decision ensuring the implementation of social-economic privileges of the veterans and persons equated with them or pay them monetary compensation also for the persons of the categories, prescribed in Point 2.3 of the Annex 1 to the mentioned Agreement.

At the same time, the Constitutional Court considered that by its Decision # 672- Ն of 5 May 2011 the RA Government annulled challenged Decision # 207- Ն. By its Decision # 668- Ն of 5 May 2011 on Determining the Amount of Monthly Financial Support Provided to Military Personnel and the Members of their Families by the Categories of Persons Entitled to Receive Financial Support, the Procedure for Granting Monthly Financial Support and its Payment dated 5 May 2011, the RA Government re-regulated the relations, arisen since 1 January 2011, connected with the procedure of granting financial support and its payment to the veterans, persons equated with them, and the families of the fallen militaries. The persons, prescribed by Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries signed in the frames of CIS are also included in the list of the persons entitled to receive such support.

Proceeding from the results of consideration of the case and being ruled by Article 100(1), Article 102 of the Constitution of the Republic of Armenia, Article 60(2), Articles 63, 64 and 68 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Articles 1 and 4 of the RA Law on Veterans of the Great Patriotic War are in conformity with the Constitution of the Republic of Armenia.

2. To declare Decision N 207-Ն of the Government of the Republic of Armenia dated 5 February 2004 as contradicting Article 3, Part 2, Article 85, Part 2, Article 43, Part 2 of the Constitution of the Republic of Armenia in regard to non-stipulation of the rights' implementation procedure and blocking of the rights of the persons mentioned in Point 2.3. of the Annex to the Agreement on Mutual Recognition of the Privileges and Guarantees of the Participants and the Disabled of the Great Patriotic War, Participants of Military Operations in the Territory of Other States and the Families of the Fallen Militaries of 15 April 1994, signed within CIS, and entered into force for the Republic of Armenia on 26 February 1996, considering the legal positions expressed in Points 6 and 7 of the Reasoning Part of this Decision and the Decision #668-Ն of the RA Government dated 5 May 2011.

3. 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

3 June 2011

DCC-966