

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

**ON THE CASE OF CONFORMITY OF PARAGRAPH 1 OF PART 6 OF ARTICLE 9 OF
THE RA LAW ON SUPPORT, SERVICE AND SOCIAL GUARANTEES OF THE
ACTIVITY OF THE OFFICIALS IN PART OF THE WORDING “MINIMUM OF 10
YEARS” WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE
BASIS OF THE APPLICATION OF THE ADMINISTRATIVE COURT OF THE
REPUBLIC OF ARMENIA**

Yerevan

June 18, 2019

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan, F. Tokhyan, A. Tunyan, A. Khachatryan, H. Nazaryan (Rapporteur), A. Petrosyan, with the participation (in the framework of the written procedure) of the applicant: Administrative Court of the Republic of Armenia, the respondent: A. Kocharyan, official representative of the RA National Assembly, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff, pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, as well as articles 22 and 71 of the constitutional law on the Constitutional Court, examined in a public hearing by a written procedure the case on conformity of paragraph 1 of part 6 of article 9 of the RA Law on Support, Service and Social Guarantees of the Activity of the Officials in part of the wording “minimum of 10 years” with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

The RA Law on Support, Service and Social Guarantees of the Activity of the Officials (hereinafter – the Law) was adopted by the National Assembly on 4 February 2014, signed by the President of the Republic on 13 February 2014 and entered into force on 1 July 2014.

Paragraph 1 of part 6 of article 9 of the Law, titled: “Transitional Provisions”, stipulates:

“6. Clause 3 of part 1 of article 2 of this Law shall not apply to the persons who, on the day of entry into force of this Law, have been in the position of judge for minimum of 10 years”.

In the present case, the above-mentioned legal provision is challenged in part of the wording “minimum of 10 years”.

Part 6 of article 9 of the law was amended by the Law HO-55-N of 10.06.2014, and part 6 of article 9 of the Law, including the challenged provision, was amended and supplemented by the Laws HO-29-N of 19.05.2014, HO-55-N of 10.06.2014, HO-198-N of 01.12.2014, HO-14-N of 04.03.2015, HO-91-N of 31.05.2017, HO-143-N of 07.03.2018 and HO-341-N of 21.06.2018.

The case was initiated on the basis of the application of the RA Administrative Court submitted to the Constitutional Court on 1 February 2019, which included the decision on “Terminating the proceedings of the administrative case and applying to the RA Constitutional Court” on the case VD/9279/05/18 of 29 January 2019.

Having examined the application, the written explanation of the parties, as well as having analyzed the relevant provision of the Law, other provisions of the legislation related with the latter, and other documents of the case, the Constitutional Court **FOUND:**

1. Applicant’s arguments

Referring to articles 1, 28, 29 and other articles of the Constitution, the legal positions expressed in the decisions of the Constitutional Court, the case-law judgments of the European Court of Human Rights, analyzing both paragraph 2 of part 2 of article 9 and other provisions of the Law, the applicant states that the application of the methods envisaged by these norms when calculating the pension of persons who held the position of a judge “by establishing a significantly lower pension significantly reduces the guarantees of social protection of a judge”, simultaneously arguing that “the legislator demonstrates a differentiated approach with regard to entities who have the same status and are in a similar situation, namely with regard to persons who took the office of a judge before 01.07.2014 and with minimum of 10 years of experience in the office of a judge, and after 01.07.2014 claiming the right to pension without establishing at the legislative level any objective and reasonable justification for such a differentiated approach”.

According to the applicant, by establishing the legal regulation applicable after 01.07.2014 which does not entail distortion of the essence of the right to pension from the general rule of calculating the pension, as well as having established the most favorable conditions for calculation (the amount) of a pension for persons who held the position of a judge for 10 years as of 01.07.2014, the legislator exercised its discretionary authority “which led to unjustified discrimination of the mentioned persons and the persons whose 10-year tenure as judge has expired after 01.07.2014”.

In addition, the applicant considers that by the challenged legal regulation the legislator also violated the constitutional principle of non-retroactivity of the law that worsens the legal status of a person.

Based on the above arguments, the applicant considers that paragraph 1 of part 6 of article 9 of the Law does not comply with the requirements of article 29 of the Constitution insofar as it provides a restriction for calculating, on more favorable conditions, the pensions of persons whose tenure as a judge at the time the Law entered into force did not reach 10 years.

2. Respondent's arguments

According to the respondent, the challenged provision is in conformity with the requirements of the Constitution.

Referring to a number of articles of the Constitution and the legal positions expressed in the decisions of the Constitutional Court regarding the principles on prohibition of discrimination, independence of judges and realization of the right to social security, as well as to the case-law judgments of the European Court of Human Rights and a number of international legal documents, the respondent thinks that the assessment of the correctness of the amount of the remuneration and the amount of pension of judges, as a guarantee of social security may be provided by comparing it with economic factors of a certain country.

The choice of the size of the pension, according to the respondent, is within the discretion of the State, as long as it does not contradict the requirements of the Constitution or international commitments. If the State, as stated by the respondent, conditions the amount of the judge's pension upon the amount of the pension of judges who have assumed office as a judge for a specific period of time, namely, “the judges who assumed the office of a judge before 1 July 2014 and who have had minimum of 10 years of experience in the office of a judge, this will mechanically result to increase the amount of the pension, which, although desirable, may not correspond to the financial capabilities of the State”.

The respondent also believes that the legislator did not give retroactive effect to the provisions subject to constitutional legal dispute, and these provisions “apply exclusively to legal relations that arose after the entry into force of the Law, and although prior to the entry into force of the Law, social relations existed between the applicant and the State, however, there was no reason to change the calculation formula”.

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

In the framework of the present case, the Constitutional Court, when assessing the constitutionality of the challenged norm, considers it necessary, in particular, to establish:

- whether the challenged legal regulation of the Law, as well as other provisions of the Law systemically interconnected with the latter, guarantee (from the point of view of parts 10 and 11 of article 164 of the Constitution) a pension consistent with the high status and accountability of a judge;
- whether the challenged legal regulation of the Law, without any objective grounds to distinguish between the judges who took the office of a judge before 1 July 2014 and who have had minimum of 10 years of experience in the office of a judge and claimed the right to pension after 1 July 2014.

4. Legal assessments of the Constitutional Court

4.1. The systematic analysis of articles 1 and 4 of the Constitution shows that the Republic of Armenia is a legal state, where the administration of the state power, including the judicial power, as the main principle of the constitutional system, is guaranteed in accordance with the Constitution and laws, which is a constitutional prerequisite guaranteeing the independence of the courts. Cumulatively with part 1 of article 164 of the Constitution, this primarily presupposes the existence of such normative regulations of the functional, institutional, material and social independence of the judges administering the judicial power (justice), which are necessary and sufficient for the administration of justice.

In the system of features characterizing the legal status of judges, the guarantees of social independence, inter alia, are of particular significant, which are of fundamental importance from the perspective of assessing the constitutionality of the legal regulation challenged in the present case.

The Constitutional Court, referring to the issues of the independence of the judiciary, the status of judges and the regulation of its peculiarities by law in its decisions, has repeatedly highlighted the

crucial importance of ensuring the prerequisites for the material and social independence of judges. The legal assessments expressed by the Constitutional Court on these issues mainly are as follows:

- 1) when regulating relations of the exercise of the right to social security of a judge, the internationally recognized principle of determining the amount of a pension approximated to the salary of a judge received by him/her in his/her recent position (DCC-647) cannot be breached;
- 2) the state, perhaps, in certain situations of restriction of its capacities can review its commitments undertaken earlier regarding the social security of judges, when it is necessary to protect other constitutional values but if the country's economy continues to record economic growth, there are no objective reasons to increase the gap between the salary and pension of a judge (DCC-647);
- 3) if the persons, whom the pension was granted to, anticipated that their pension should be calculated on a preferential basis, but then it was canceled, then the legitimate expectations of these persons for receiving a pension on a preferential basis are ignored (DCC-723);
- 4) if a person has acquired the right to a pension on the basis of previous legislation, then the State has an obligation to guarantee the implementation of the principles of respect for legitimate expectations in relation to the right to a pension and legal certainty (DCC-723);
- 5) the positive constitutional duty of the State is to ensure such conditions which provide the persons of the same status with equal opportunity to exercise their rights, and in case of violation to protect their rights; otherwise not only the constitutional principles of equality and the prohibition of discrimination, but also the principles of the rule of law and legal certainty will be violated. The establishment of the types of pensions, the procedure and conditions for their appointment are at the discretion of the State, however, when exercising this discretion, the State is obliged to comply with the above principles (DCC-731);
- 6) as a remedy of social security, the pension is also a form of ownership (DCC-865).

The Constitutional Court, reiterating the aforementioned legal positions expressed in its decisions, considers that they are also applicable within the scope of the present case for the assessment of the constitutionality of the challenged legal regulation.

4.2. The significance of the peculiarities of the independence of judges and the corresponding legal status is also emphasized in a number of international legal documents.

Thus, the Basic Principles on the Independence of the Judiciary, adopted in 1985 by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, stipulates that “frequently there still exists a gap between the vision underlying those principles and the actual situation”, and it must be taken into account that “the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality ...given that rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles”. At the same time, it was established that “the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law” (clause 11).

Similar principles are also enshrined in the Recommendation No. 94 (12) of the Committee of Ministers of the Council of Europe adopted on 13 October 1994 on the independence, effectiveness and role of judges, in the European Charter on the Statute for Judges (clause 6.4), adopted in 1998 in the framework of the Council of Europe, according to which judges who have reached the age of retirement as judges must benefit from the payment of a retirement pension, the amount of which must to the extent possible get close to the amount of their final salary as a judge. At the same time, according to the European Charter on the Statute for Judges and clause 6.2 of the explanatory memorandum thereto, the level of remuneration of one judge as compared to another may be subject to variations depending on length of service, the nature of the duties which they are assigned to discharge and the importance of the tasks which are imposed on them, and such tasks must be assessed on the basis of transparent criteria (Strasbourg, 1998).

Clause 54 of the Recommendation of the Committee of Ministers of the Council of Europe No. Rec(2010)12 adopted on 17 November 2010 on the independence, efficiency and responsibilities of judges prescribes that the judge's retirement pension should be in a reasonable proportion to his/her remuneration when working.

Clause 7 of the Magna Carta of Judges (Fundamental Principles), approved on November 17, 2010 by the Consultative Council of European Judges (CCJE) envisages that, in order to avoid undue influence, judges shall be provided with an adequate pension scheme envisaged by law. According to a joint report by the same Council and the European Commission for Democracy through Law (Venice Commission), “although the funding of courts is part of the State budget presented to Parliament, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to

exert any pressure on the judiciary when setting its budget”; at the same time, decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence (CCJE, Opinion No. 1, clause 62; Opinion No. 2, clause 5; Venice Commission, CDL-AD (2010) 004, clause 46; Venice Commission, CDL-AD (2010) 004).

The importance of establishing legal guarantees based on objective criteria for the independence of the judiciary is reiterated in the Report on the Independence of Judges (Judicial System), approved at the 82nd plenary session of the Venice Commission (March 12-13, 2010), and at the same time it is stated that “The independence of the judiciary has both an objective component, as an indispensable quality of the Judiciary as such, and a subjective component as the right of an individual to have his/her rights and freedoms determined by an independent judge. Without independent judges there can be no correct and lawful implementation of rights and freedoms. Consequently, the independence of the judiciary is not an end in itself. It is not a personal privilege of the judges but justified by the need to enable judges to fulfill their role of guardians of the rights and freedoms of the people” (section 1, clause 6).

Based on the provision of the Recommendation No. 94 (12) of the Committee of Ministers of the Council of Europe of October 13, 1994 on the independence, efficiency and role of judges, and expanding the application of the principle of guaranteeing by the law the remuneration of judges in accordance with their professional accomplishments and the degree of accountability, the Commission also noted in its Report the need to include in this Report the matters related to retirement (section 6, clause 44).

Thus, the Constitutional Court states that a comparative analysis of the regulations prescribed in the above-mentioned international legal documents, indicates that:

- the normative regulations ensuring the social guarantees for the independence of judges should be aimed at creating appropriate prerequisites for the administration of justice by judges;
- the issues on the financing of courts within the State budget as a result of a political decision should be resolved under strict compliance of the independence of the judges;
- the need to determine the amount of the pension depending on the remuneration of judges is an important element of the social guarantees of independence of judges;
- the judge's pension, its amount and retirement age should be as appropriately guaranteed by law;
- judges must be provided with such an equivalent pension envisaged by law, which will protect them from undue influence during the entire tenure;

- judges should receive such a pension, the amount of which should be as close as possible to the remuneration of a judge received by him/her in his/her recent position and be in a reasonable ratio with their salary;

- remuneration of judges, therefore, also the amount of the pension may vary depending on the term of office, nature of the duties performed by the judges, importance of the issues and degree of accountability .

4.3. Referring to the issue of assessing the constitutionality of the legal regulation challenged in the present case, the Constitutional Court considers it necessary to note the principles prescribed in the Constitution, within the framework of which the terms for the exercise of a judge's right to a pension should be regulated.

According to parts 10 and 11 of article 164 of the Constitution, **for the judge remuneration consistent with the high status and accountability of a judge shall be set. Details related to the status of judges shall be prescribed by the constitutional laws as Law on the Constitutional Court and the Judicial Code, and the amount of remuneration of judges shall be prescribed by law.**

The mentioned requirements of the Constitution are partially specified in part 1 of article 10 of the constitutional law on the Constitutional Court, which enshrines the requirement to establish a pension consistent with the high status and accountability of a judge of the Constitutional Court, and part 4 of the same article establishes that the salary and the supplementary payments established thereto, as well as the pension of a judge of the Constitutional Court may not be reduced, unless it is proportionally reduced for all high-level officials.

Parts 1 and 2 of article 57 of the constitutional law on Judicial Code of the Republic of Armenia also provide for principles of similar content for judges of other courts.

The Constitutional Court considers that the constitutionally prescribed fundamental requirements for ensuring the social independence of judges must underpin all legislative decisions regulating relations of the remuneration, including the pension of judges, in particular:

1) any normative regulation of the judge's remuneration, including the amount of remuneration and pension, should be determined due to the **high status and accountability of the judge**, and not the current political motivations as considerations of budgetary savings, and this thereby is called, inter alia, to protect the judge from undue influence, which determines the need to provide special social guarantees for the normal functioning of judges;

2) **the level of social guarantees already established** for judges, as well as the judge's salary (established supplementary payments), his/her pension **may be reduced in exceptional cases, as the latter alternative in parallel with proportional reduction for other officials consistent with the high status and accountability**, whereas, according to the requirement of part 1 of article 73 of the Constitution, without vesting retroactive force to the law regulating this reduction;

3) **the differentiation of remuneration of judges**, including the amount of pension, **must be determined only by objective circumstances**, in particular, the length of tenure, the nature and extent of the powers exercised by the judges, the degree of their accountability and not the certain period of tenure of judges, the solutions due to the current political motivations, the date of adoption or entry into force of any law, or the age of retirement of a judge;

4) although, unlike the constitutional requirement that all other guarantees consistent with the high status of a judge shall be guaranteed by constitutional laws (part 11 of article 164 of the Constitution), the remuneration of a judge, including the amount of pension, shall be established by **ordinary law** (second sentence of part 10 of article 164 of the Constitution), nevertheless, **this law should also provide equal prerequisites for the remuneration of a judge consistent with the high status and accountability , including his/her pension**, which cannot be dependent on the current proportion of political forces in the National Assembly and the Government and the current financial policies of that majority;

5) it is necessary to take into account that the pension and its amount consistent with the high status and accountability of judges, simultaneously with the remuneration for their activity, enables the judges to have such predictable legitimate expectations as:

- planning the life and activities after retirement;
- unencumbered by undue influence in the framework of official activities with the view of achieving the retirement age.

Consequently, the Constitutional Court considers that the amount of the pension of judges should be equivalent not only to their high status and degree of accountability, but also be in a reasonable proportion with the amount of remuneration to the time of suspension of his/her tenure as a judge in order the degree of guaranteed social independence of judges is not substantially reduced due to the suspension of his/her tenure and, all the more, it has not changed only depending on current political factors.

4.4. Comparing the challenged legal regulation of the Law with other systematic interrelated regulations, the Constitutional Court states:

1) the right to a pension established by the Law shall be granted to a person who served as a judge for minimum of 10 years, whose powers have been terminated or suspended on the grounds prescribed in clause 2 of part 1 of article 160 of the constitutional law of the Republic of Armenia on Judicial Code (he/she has attained the age of 65), as well as on the grounds of being judged as legally incapable by a court judgment that has entered into legal force or suffering physical ailment or disability that impedes his\her appointment as a judge (clause 3 of part 1 of article 2 of the Law);

2) one pension at his\her choice shall be assigned to the person entitled to have the right to a state pension established by the Law and other laws of the Republic of Armenia (article 4 of the Law);

3) the amount of the pension established by the Law is calculated according to the formula $MA=B*C+PE*PEC$, where: MA is the monthly amount of the pension; B-the amount of the basic pension taken as the basis for calculating the amount of the pension established by the Law; C-the maximum coefficient for the positions held by the person established by the Law of the Republic of Armenia on Remuneration of Persons Holding Public and Civil Service Positions; PE-professional experience; PEC-the annual value of professional experience (part 1 of article 5 of the Law);

4) when calculating the amount of the pension of a state official born on January 1, 1974 and thereafter, the professional experience is counted up to the period of January 1, 2014 (part 2 of article 5 of the Law);

5) the recalculation of the amount of the pension established by the Law is conducted in case of changes in the amount of the basic pension, the cost of one year of professional experience, or the coefficient (part 3 of article 5 of the Law);

6) the procedure for calculating the professional experience (periods counted as professional experience), the amount of the basic pension and the cost of annual professional experience are established by the Government of the Republic of Armenia (part 4 of article 5 of the Law);

7) the pensions assigned to an official after the entry into force of the Law, i.e. before July 1, 2014, are calculated in the manner established after the entry into force of the Law. If the amount of the calculated pension is less than the amount of the pension assigned (calculated) before July 1, 2014, the pension is paid in the same amount (part 1 of article 9 of the Law);

8) according to part 6 of article 9 of the Law, clause 3 of part 1 of article 2 of the Law shall not apply to the persons who, at the time of entry into force of this Law, have the experience of a judge for a minimum 10 years;

9) in the event of termination of the powers of a judge on the grounds prescribed in clause 2 of part 1 of article 160 of the constitutional law of the Republic of Armenia on Judicial Code, as well as on the grounds of being declared as legally incapable by a court judgment that has entered into legal force or suffering physical ailment or illness that impedes his\her appointment as a judge, the amount of the pension assigned to the aforementioned persons is calculated in the amount of 55 percent of the product of the amount of the salary (the total amount of the official salary rate is established on supplementary payments thereto) calculated in accordance with the legislation applicable before July 1, 2014 for the latter post occupied by the judge and the coefficient of zero rate for nine-tenths;

10) if the amount of the pension calculated in the aforementioned order is less than the amount of the pension calculated in accordance with the general procedure established by the Law, the pension shall be assigned in accordance with the general procedure established by the Law;

11) the amount of the pension calculated in the aforementioned order cannot exceed 92 percent of the official salary rate established by the legislation effective before July 1, 2014 for the last position held by a judge.

Thus, the analysis of the above-mentioned legal conditions for calculating a judge's pension shows that:

1) the law differentiates the legal conditions of both the general and the special (transitional) procedure for calculating the judge's pension based on the circle of people (in particular, on the circle of people who, on the day of entry into force of this Law, have been in the position of judge for minimum of 10 years or who were born on January 1, 1974 and after that); in addition to this, the operation of the norms established by the main part of the Law is accompanied by transitional provisions establishing differentiated regulations;

2) a person entitled to more than one pension is assigned one pension of his\her choice, which allows him/her to choose the most favorable terms and amount of pension;

3) the maximum coefficient of the salary rate set for the judge's position is taken into account in the general formula for calculating the amount of the pension in addition to other supplementary payments, which is consistent with international criteria that the pension should be as close as possible to the amount of the salary of the judge received by him/her in his/her last post;

4) the possibility to recalculate the amount of the established pension in consonance with the change in the size of its components is provided;

5) the possibility to choose between the pension calculated under the Law and a pension assigned (calculated) before July 1, 2014 is provided.

At the same time, the Constitutional Court states that the general procedure for calculating pensions established by the Law does not apply to persons who, at the time of the entry into force of the same Law, have been in the position of judge for minimum of 10 years.

4.5. The Constitutional Court states that it follows from the materials of the case, in particular also from the explanations of the respondent, i.e. the National Assembly that adopted the Law, that when determining the amount of pensions for different judges, depending on the specific period of termination of their tenure and on the laws adopted during this period, the calculation of pensions and the differential approach are mainly based on current political considerations regarding the economic factors existing in the Republic of Armenia at the time of adoption of these laws, the state's potential, and there is no justification regarding the changes in legal regulations prior to the adoption and entry into force of the challenged provision of the Law and other systemically related provisions, especially the provisions on the significant reduction in the amount of judges' pensions, which would become an urgent need and the latest alternative to the fulfillment of mandatory requirements of the financial policy of the state.

The Constitutional Court considers that taking into account the principle prescribed in part 3 of article 3 of the Constitution, interrelated with the legislative guarantees established in chapter 3 of the Constitution and the main goals of the state's policy, in the sphere of social security the state has fundamentally wide discretion in matters of policy development and implementation also based on current economic and financial capacities, at the same time engaging the constitutionally predetermined possible efforts aimed at the significant improvement in the level of social security. Assessing the constitutionality of the activities of public authorities in this sphere suggests the need for taking into account such discretion of the state and its socio-economic capacities.

On the other hand, the Constitutional Court considers that the special guarantees of social security, as an element of the independence of judges, cannot be identified with general guarantees of social security, while the respondent's arguments are based on this approach.

The Constitutional Court considers it necessary to emphasize that the independence of judges guaranteed by the Constitution cannot be abstract. This, inter alia, also implies such mandatory

prerequisites for social independence, which are necessary and sufficient to guarantee the normal functioning of the courts and the entire judiciary. **Therefore, the establishment of a pension for judges in accordance with their high status and accountability is not a privilege granted to them but a means of protecting public interests that is required at the constitutional level, primarily the interests of justice.**

Consequently, the legal regulations arising from this Decision, along with ensuring other guarantees of the independence of judges, should be aimed at the strengthening of social guarantees of the independence of judges.

Not only are the maintenance of the current level of guarantees for the independence of judges and courts but also its constant strengthening one of the international commitments of the Republic of Armenia. Consequently, the Constitutional Court considers that the reduction of the social guarantees of the independence of judges, including also the reduction in the amount of their pension without justified (objective) reasons following from the requirements of part 10 of article 164 of the Constitution, contradict the principle prescribed in part 10 of article 164 of the Constitution.

Assessing the reduction in the amount of judges' pensions for the previous and subsequent periods as permissible, in itself, without giving retroactive effect to this, the Constitutional Court considers that it is not sufficient to indicate the factor of budget savings or current political and economic factors to justify this. Consequently, the differentiation of the amount of the pension due to any of the periods of judges' retirement or the current policy adopted during this period cannot be assessed as objective and constitutionally justified differentiation of the amount of the pension between judges.

At the same time, the Constitutional Court considers that the challenged legal regulation did not violate the requirement of part 1 of article 73 of the Constitution, since the challenged legal regulation does not apply to legal relations that emerged prior to its adoption and entry into force. In addition, the Constitutional Court considers that the judge cannot have legitimate expectations that the established amount of his\her remuneration, including the amount of the pension to be assigned will remain unchanged, provided that the change in the amount of his/her pension is due to the need to guarantee the priority principles and norms of the Constitution, i.e. it is justified by an exceptional situation, and is the last alternative measure, as well as it is implemented in the entire public service system in accordance with the reduction of guarantees of social security established for other officials who correspond to the high status and accountability of the judge, as well as strictly observing other guarantees of the independence of the judiciary and judges.

The Constitutional Court considers that the legal regulation of part 2 of article 5 of the Law also contradicts the Constitution, insofar as, on the same unjustified grounds, it provided for a differentiated approach in calculating the amount of the pension for the persons born on January 1, 1974 and after, who hold the position of judge in the periods of restriction of professional experience for the period before January 1, 2014.

The Constitutional Court also considers that from the perspective of implementing the constitutional legal goals to guarantee the independence of the judiciary, the procedure for calculating the professional experience (periods counted as professional experience), the amount of the basic pension, the cost of one year of professional experience, as well as the legal regulations prescribed in part 4 of article 5 and the fourth paragraph of part 6 of article 9 of the Law regarding the provision to the Government of the Republic of Armenia of the power “to establish the procedure for the calculation of the salary in accordance with the procedure established by the legislation in force before July 1, 2014” for the last post occupied by the judge are controversial. The requirement to regulate relations in connection with the amount of the judges' pension and the procedure for its calculation exclusively by law follows from the general logic of parts 10 and 11 of article 164 of the Constitution and the principles enshrined in the international legal practice.

Based on the foregoing and taking into account the circumstance that in the Decision DCC-1302 of September 16, 2016 the Constitutional Court has already addressed the issue of constitutionality of part 6 of article 9 of the Law, declaring it to be in conformity with the Constitution within the framework of the legal assessments expressed in the mentioned Decision; moreover, the assessments of the Constitutional Court, inter alia, stated that **the Law does not provide equal social guarantees for the independence of judges**, and also based on the fact that the provisions of chapter 7 of the Constitution, including part 10 of article 164 of the Constitution (which served as basis for assessing the constitutionality in the present case) regarding the special requirement for the remuneration of a judge in accordance with his\her high status and accountability came into force on the day the current President assumes office, in accordance with part 10 of article 71 and clause 1 of part 16 of article 68 of the constitutional law on the Constitutional Court, the Constitutional Court reviews its Decision DCC-1302, since at the time of the consideration of the present case the provisions of the Constitution, enforced by the Decision DCC-1302, were amended.

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

1. To declare paragraph 1 of part 6 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials contradicting article 29 and part 10 of article 164 of the Constitution.

2. To declare paragraph 2 of part 6 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials, systemically interrelated with paragraph 1 of part 6 of article 9 of the same Law, contradicting article 29 and part 10 of article 164 of the Constitution in part of the provision “in the amount of 55 percent of the product of the amount of the salary (the total amount of the official salary rate is established on supplementary payments thereto) calculated in accordance with the legislation applicable before July 1, 2014 for the last post occupied by the judge, and a zero rate for nine-tenths”.

3. To declare the provisions prescribed in the second sentence of paragraph 2 of part 6 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials, systemically interrelated with paragraph 1 of part 6 of article 9 of the same Law, contradicting article 29 and part 10 of article 164 of the Constitution.

4. To declare part 2 of article 5 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials, systemically interrelated with paragraph 1 of part 6 of article 9 of the same Law, contradicting article 29 and part 10 of article 164 of the Constitution.

5. To declare the legal regulation prescribed in paragraph 4 of part 6 of article 9 of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials, as well as part 4 of article 5 of the same Law, in part that relates to the judges, systemically interrelated with paragraph 1 of part 6 of article 9 of the same Law, contradicting part 10 of article 164 of the Constitution.

6. Based on part 3 of article 170 of the Constitution, pursuant to clause 4 of part 9 and part 19 of article 68, as well as part 10 of article 71 of the constitutional law on the Constitutional Court, and taking into account the circumstance that declaring the challenged provisions as contradicting the Constitution by the Decision of the Constitutional Court will inevitably result in consequences for the State, thereby violating the legal security established by repealing the mentioned provisions, that is, there will be a

gap in the legal regulation of the pension security sphere of judges, to define October 30, 2019 for the invalidation of the provisions declared by this Decision as contradicting the Constitution, providing the National Assembly the possibility to reconcile the relevant legal regulations of the Law of the Republic of Armenia on Support, Service and Social Guarantees of the Activity of the Officials with the requirements of this Decision.

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

Chairman

June 18, 2019

DCC -1463

H. Tovmasyan