

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

**ON THE CASE OF CONFORMITY OF PARTS 1 AND 6 OF ARTICLE 143 OF THE RA
CRIMINAL PROCEDURE CODE WITH THE CONSTITUTION OF THE REPUBLIC
OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CASSATION COURT
OF THE REPUBLIC OF ARMENIA**

Yerevan

October 15, 2019

The Constitutional Court composed of A. Gyulumyan (Chairman), A. Dilanyan, F. Tokhyan (Rapporteur), A. Tunyan, A. Khachatryan, H. Nazaryan, A. Petrosyan,
with the participation of (in the framework of the written procedure):

the applicant: RA Cassation Court,

the respondent: K. Movsisyan, representative of the National Assembly, Head of the Legal Support and Service Division of the National Assembly Staff,

pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, and 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 parts 1 and 6 of article 143 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the Cassation Court of the Republic of Armenia.

The RA Criminal Procedure Code (hereinafter also referred to as the Code) was adopted by the RA National Assembly on 01.07.1998, signed by the RA President on 01.09.1998, and entered into force on 12.01.1999.

Parts 1 and 6 of article 143 of the Code, titled: “Bail”, prescribes:

“1. A bail is a contribution in the form of money, securities, other valuables contributed by one or several persons to the deposit of the court to release a person accused of minor and moderate

crimes from detention for ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings. Upon permission of the court, real estate may be taken as a bail.

...

6. In case the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission, the prosecutor shall address the court with a motion to forfeit the bail to the state budget. The mortgagor may appeal to a higher instance against the decision of the court concerning the forfeit of the bail to the state budget.

...”.

The case was initiated on the basis of the application of the Cassation Court of the Republic of Armenia submitted to the Constitutional Court on 16 April 2019.

Having examined the application and the attached documents, the written explanations of the parties, other documents of the case, as well as the Code, the Constitutional Court **FOUND:**

1. Applicant’s arguments

The applicant considers that the regulations established by the challenged provisions jeopardize the constitutional right of a person to freedom, insofar as they do not guarantee that the bail as the only alternative to the detention as a preventive measure, is an effective guarantee of neutralizing the obstruction of the consideration of the case in pre-trial proceedings or in court.

The applicant states that in the system of measures of restraint prescribed in the Criminal Procedure Code, a bail as the only alternative to the detention as a preventive measure, is a significant guarantee of ensuring a balance of public and private interests.

However, according to the applicant, under the current criminal procedure regulations, when the legislator, on the one hand, stipulates the application of bail as an alternative preventive measure, with all the grounds for applying preventive measures listed in part 1 of article 135 of the Criminal Procedure Code, on the other hand, in part 1 of article 143 of the Criminal Procedure Code the legislator establishes that ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings is the purpose of applying the bail, and in part 6 of the same article provides for the possibility to forfeit the bail to the state budget only in cases where the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission, the bail is not an effective measure to neutralize other grounds for applying preventive measures listed in part 1 of article 135 of the RA Criminal Procedure Code, including the obstruction of the consideration of the case in pre-trial proceedings or in court.

The applicant considers that in the presence of guarantees of attendance at the body conducting the proceedings, if the court considers that the threat of obstruction of the consideration of the case by the accused under custody can be neutralized by the material value offered as the subject of the bail and replaces the detention with bail, then in case of obstruction of the consideration of the case by the accused, an independent measure of procedural responsibility in the

form of forfeit of the subject of the bail to the state budget cannot be applied and the subject of the bail should be unconditionally returned to the accused. That is, in the case of applying the bail, the accused is not threatened with the loss of the subject of the bail, which, if he or she were free, would forced him or her to refrain from taking actions aimed at obstruction of the consideration of the case.

Based on the foregoing, the applicant states that, under the current legislative regulations, when a court replaces detention with the only alternative preventive measure – the bail, it does not serve as an effective measure to limit the possibility of obstructing the consideration of the case, while guaranteeing the proper conduct of the accused if he or she were free; and, as a result, when applying detention on the indicated basis, as a preventive measure, the motion for a bail with reference to the regulations of the law, may be automatically rejected without consideration on the merits.

The applicant considers it necessary to note that a separate law-enforcement practice of applying the bail as the only alternative preventive measure has now been formed, when in a number of cases the courts, referring to article 143 of the RA Criminal Procedure Code and the legal positions expressed by the Cassation Court regarding the interpretation of this article, reject the motion on the application of bail against a person as a preventive measure, noting that it cannot be considered as an effective guarantee to neutralize the threat of obstruction of the consideration of the case. At the same time, in a number of other cases, as in the present case, the courts satisfy the motion to replace the detention applied to the person with an alternative preventive measure - a bail, if there are basis for obstructing the consideration of the case.

As a result of the legal regulations prescribed by the current Criminal Procedure Code regarding the replacement of detention with the only alternative preventive measure - a bail and a separate law-enforcement practice formed under these conditions, in the applicant's opinion, the person's right to freedom is reasonably threatened. According to the applicant, this is also evidenced by the fact that in recent years, in the total number of motions submitted during pre-trial proceedings regarding the application of detention as a preventive measure, cases of satisfaction of motions by the courts without applying a bail have prevailed.

2. Respondent's arguments

As a result of the analysis of the relevant legislative provisions, the respondent concluded that the bail as an alternative measure of restraint should be applied only when the detention selected for the accused as a measure of restraint is justified, therefore the legislator, in pursuance with the Code, endowed the court with the right to a bail, having recognized the release from custody on bail only if necessary and reasonable.

In the light of a number of legal positions expressed by the Constitutional Court, the respondent states that the legislator, establishing the appropriate procedures for the institution of deprivation of personal liberty in accordance with the requirements of article 27 of the Constitution,

has clearly established the necessary tools and procedure following from the concept of the right to appeal the deprivation of personal liberty in accordance with the constitutional requirements.

According to the respondent, the study of the arguments and analysis submitted by the applicant does not provide an answer to questions about how the challenged provisions contradict the Constitution.

According to the respondent, the solution to the issues raised by the applicant is not within the competence of the Code and the Constitutional Court, since the applicant raises the issue of lawfulness of the application of the challenged provisions by the courts.

In the context of the foregoing, the respondent considers that the challenged provisions of the Code are in conformity with the Constitution, therefore, on the basis of the foregoing, requests to terminate the proceedings of the case.

3. Arguments of the Government of the Republic of Armenia

As a result of the content analysis of a number of legal regulations and the legal positions expressed by the Constitutional Court and the Cassation Court, the Government states that the legal purpose of applying a preventive measure, including a bail as the only alternative preventive measure, is to ensure the fulfillment of a certain obligation established by law; in particular the bail is a procedural measure of coercion in criminal proceedings, by which the deprivation of the right to liberty of the accused is replaced by restriction of this right, therefore the question of inadmissibility of application of the bail must be considered in the context of article 135 of the RA Criminal Procedure Code, which specifies other grounds for applying a preventive measure, including also the grounds for the obstruction of the consideration of the case in pre-trial proceedings or in court.

Meanwhile, according to the Government, the regulations prescribed in parts 1 and 6 of article 143 of the RA Criminal Procedure Code, considering that, as a precondition for applying the bail, for ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings and the possibility to forfeit the bail to the state budget only in cases where the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission, lead to the rejection by the courts of the motion for a bail with such a reasoning that the application of the bail cannot be an effective guarantee of neutralizing the threat of obstructing the proper course of proceedings by the accused with unlawful influence on the participants in criminal proceedings, which, according to the Government, does not provide the legal purpose of applying the bail as the only alternative preventive measure, based on the logic of compliance with the legal grounds for deprivation of the right to liberty of the accused and its restrictions.

Summarizing the foregoing, the Government considers that the regulation prescribed in parts 1 and 6 of article 143 of the RA Criminal Procedure Code is controversial in terms of guaranteeing a person's fundamental right to liberty, as prescribed in article 27 of the RA Constitution.

4. Arguments of the Human Rights Defender of the Republic of Armenia

The RA Human Rights Defender notes: "... international judicial practice and jurisprudence state that:

1. Detention, as a preventive measure, can be applied to the person who allegedly committed the crime only as an exceptional and final measure (last resort), when all other preventive measures, including bail, cannot ensure the implementation of the goals pursued.

...

2. The application of bail as an alternative measure of restraint cannot be determined by the severity of even the allegedly committed crime, that is, in each case, the court must, at its discretion, determine whether the bail is an effective measure to achieve the goals pursued.

...

3. In international jurisprudence, a bail is considered not only as a guarantee of appearance in court and non-avoidance of the proceedings, but also of non-interference in the administration of justice, that is, obstruction of the proceedings."

Meanwhile, according to the RA Human Rights Defender, from the analysis of the facts of part 1 of article 143 of the RA Criminal Procedure Code, it becomes clear that ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings is considered by the legislator as the only condition for applying the bail.

According to the Human Rights Defender, in all cases when the court concludes that the bail can be an effective guarantee for non-hindering the proceedings of the criminal case by the person who allegedly committed the crime, that is, by applying the bail, the person may be kept away from obstructing the proceedings, nevertheless being limited by the regulation of part 1 of article 143 of the RA Criminal Procedure Code, the bail cannot be applied, and in fact the person must remain in custody - in the status of a person arbitrarily deprived of his or her liberty.

The Human Rights Defender believes that a comparison of the international practice of guaranteeing a person's right to liberty, constitutional legal guarantees and existing legislative regulations implies that part 1 of article 143 of the RA Criminal Procedure Code may jeopardize the fundamental right of a person to personal liberty guaranteed by article 27 of the Constitution under such legal interpretation and law enforcement, when the choice of a bail is limited only to ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings.

5. Arguments of the Chamber of Advocates of the Republic of Armenia

The RA Chamber of Advocates finds that it follows from a number of legal regulations that tackling manifestations of improper conduct by a suspect or accused, such as obstructing the consideration of a case or committing an act prohibited by the Criminal Code, is not included in the purpose of applying the bail and the performance of the same actions is not the basis to forfeit the bail to the state budget.

According to the RA Chamber of Advocates, in the conditions of such a legislative regulation, given that the application of bail instead of detention would not serve the purpose of ensuring the proper conduct of a person, in particular, it would not prevent the suspects or accused from obstructing the proceedings or committing another crime, a reasonable necessity emerged in the court practice for non-replacement of detention with a bail as an alternative measure of restraint, since the bail will not serve the purpose that the detention serves.

The RA Chamber of Advocates considers that in such conditions the person's right to liberty is threatened insofar as, given the existence of a bail as an alternative to the detention, the courts will avoid applying the bail and will consider it more appropriate to deprive a person of liberty to ensure his or her proper conduct.

In the context of the foregoing, the RA Chamber of Advocates considers that leaving the restrictions on the grounds and purpose of applying the bail, prescribed in parts 1 and 6 of article 143 of the Code, solely to the discretion of the body carrying out the proceedings is unfair, it contradicts the essence and significance of the institution of bail and violates the person's right to liberty.

6. Issues to be ascertained within the framework of the case

In determining the constitutionality of the provisions challenged in the present case, the Constitutional Court considers it necessary to clarify whether the provision of bail as the only alternative to the detention as a preventive measure and the legislative restriction of its application guarantee the fundamental right of a person to personal liberty, prescribed in article 27 of the Constitution, and whether they comply with the principle of proportionality, prescribed in article 78 of the Constitution.

7. Legal assessments of the Constitutional Court

7.1. Enshrining the right to personal liberty as a fundamental right, the Constitution first of all pursued the goal of preventing any arbitrary and other unreasonable deprivation of liberty.

The Constitution also established those legal guarantees that are designed to protect a person from unlawful deprivation of liberty (parts 1, 4, 5 and 6 of article 27 of the Constitution).

By revealing the constitutional legal content of the right to personal liberty, the Constitutional Court in particular noted that "... the founder of the Constitution ... left the choice of the form of deprivation of liberty to the discretion of the legislator, without prejudging in any way what judicial procedural measures may be applied in each particular case or to achieve a specific goal". At the same time, the Constitutional Court emphasized that "... detention, as one of the preventive measures, is alternative and is selected from a number of all preventive measures when this type of preventive measure can be most conducive to achieve the objectives pursued by the application of the preventive measures, taking into account all the circumstances prescribed by part 3 of article 135 of the Criminal Procedure Code" (DCC-827).

In the Decision DCC-1387, the Constitutional Court stated: “Based on the specifics of the criminal proceedings and the specific tasks put forward by the law, the Code envisaged a number of preventive legal measures designed to provide conditions for the implementation of the goals of the activities of the body (official) conducting the proceedings. **The institution of a bail** is a similar preventive legal measure which, at the same time, is an **alternative** legal measure to the detention (deprivation of liberty) for the legislatively grounded **elimination of deprivation** of the right to personal freedom in criminal proceedings, when there are favorable conditions for the elimination of such “deprivation”. In the same Decision, the Constitutional Court also stated: “Ensuring the enforcement of a certain duty established by law is the legal purpose of applying a preventive measure, including the bail. Part 2 of article 135 of the Code directly establishes the basis for the application of an alternative measure of restraint (i.e. also the bail), according to which it can be applied to the accused only in cases where “... there are sufficient grounds that the accused can commit the actions prescribed in part 1 of this article”, that is, escape from the body conducting the criminal proceedings, obstructing the consideration of the case, exert unlawful influence on the participants in criminal proceedings, non-appearance without a valid reason when summoned by the body conducting the criminal proceedings, etc”.

In the framework of the present case, in order to reveal the constitutional legal content of the challenged provisions of the Code and to develop its legal assessments, the Constitutional Court considers it necessary to apply not only to the bail, but also to legal regulations regarding other preventive measures systemically interrelated with the latter, which are prescribed in chapter 18 of the Code. As a result of a systemic analysis of the latter, the Constitutional Court states:

1) The code has established general regulations for the bail as a preventive measure which also apply to other preventive measures. These are:

a) the general concept of preventive measures and the purpose of their application (part 1 of article 134 of the Code);

b) the single basis for the application of preventive measures (part 1 of article 135 of the Code);

c) the circumstances taken into account when applying the preventive measure, or the identical conditions for applying the preventive measure (part 3 of article 135 of the Code);

d) the preventive measures cannot be applied in conjunction with each other (part 4 of article 134 of the Code).

2) The Code includes a number of special provisions that distinguish bail from other preventive measures. In particular:

a) unlike other measures of restraint not related to deprivation of liberty, only the bail is an alternative preventive measure to the detention (part 4 of article 134 of the Code);

b) the bail, as well as detention, can be applied only to the accused (part 3 of article 134 of the Code) and only by the court decision;

c) the bail can be applied only after choosing detention as a measure of restraint both when applying the initial detention and when extending it (part 4 of article 134, part 4 of article 137 and part 2 of article 139 of the Code):

d) due to the fact that the bail is an alternative to the detention, special preconditions are indirectly provided for applying the bail (part 3 of article 135 of the Code), therefore, unlike other preventive measures not related to deprivation of liberty, the bail cannot apply to a person accused of committing a crime for which a sentence of imprisonment of up to one year is provided or of committing a crime punishable with a milder sentence;

e) the bail as a preventive measure can be replaced by detention if the accused has violated the duties imposed on him or her and the prescribed restrictions (part 8 of article 143 of the Code).

3) The Code also contains other provisions that differ significantly from both the above-mentioned general and special regulations. Thus:

a) although the bail is an alternative to the detention, its application is limited to one purpose, that is, ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings (part 1 of article 143 of the Code);

b) the property taken as a bail may be forfeited to the state budget if the accused escaped from the body conducting the criminal proceedings or has moved to another place without permission (part 6 of article 143 of the Code), or it is returned to the mortgagor, in particular when the above-mentioned violations are not proven (part 7 of article 143 of the Code);

c) although the application of restricted residence has, in essence, the same purpose as the bail (part 1 of Article 144 of the Code), it is not just an alternative preventive measure to the detention;

d) a broader purpose of application is provided for other measures of restraint not related to deprivation of liberty (personal guarantee, guarantee of an organization, transfer under supervision, transfer under supervision of the command) i.e. to guarantee or ensure the proper conduct of the suspect or accused, his or her appearance when summoned by the body conducting the criminal proceedings and execution of other procedural duties (part 1 of article 145, part 1 of article 146, part 1 of article 148, and part 1 of article 149 of the Code), although they are not considered alternative to the detention;

e) although the bail is an alternative to the detention, however, unlike detention, during pre-trial proceedings it can be changed or canceled not only by the prosecutor, but also with his or her consent by the investigator (part 3 of article 151 of the Code).

7.2. It follows from the content of part 1 of article 134 of the Code that the application of all the preventive measures, established in part 2 of this article, pursues the same goal - to prevent the inappropriate conduct of the suspect or accused during criminal proceedings and ensure the execution of the verdict.

Possible manifestations of improper conduct by the suspect or the accused are exhaustively listed in part 1 of article 135 of the Code. They are as follows:

- 1) escape from the body conducting the criminal proceedings;
- 2) obstructing the consideration of the case in pre-trial proceedings or in court with unlawful influence on the participants in criminal proceedings, concealment and falsification of the materials relevant to the case, not appearing without a valid reason when summoned by the body conducting the criminal proceedings, or by other means;
- 3) commitment of an action forbidden by criminal law;
- 4) avoiding responsibility and the imposed punishment;
- 5) obstructing the execution of the verdict.

It follows from the foregoing that, in the combination of certain circumstances, the application of each of the six preventive measures, not related to deprivation of liberty, can fundamentally provide the same desired result as the only measure of restraint leading to deprivation of liberty i.e. detention. **Consequently, the body conducting the criminal proceedings must have a real opportunity not only to assess, at the level of a reasonable assumption, the likelihood of the possibility of manifesting improper conduct by a suspect or accused, but it must not be burdened to apply the preventive measure which, in its opinion, is suitable and necessary for achieving the goal and can effectively neutralize the alleged negative consequences of inappropriate conduct.**

The Constitutional Court states that if there are sufficient grounds, the relevant regulations of the Code allow the application of detention in order to prevent or suppress any legislatively prescribed manifestation of improper conduct by the accused. Nevertheless, by virtue of the regulation stipulated in part 1 of article 14 of the Code, the bail, as an alternative to the detention, shall be applied in order to ensure only one manifestation of the person's proper conduct, namely, that the accused is placed at the disposal of the body conducting the criminal proceedings. **It follows from the above that the legislator does not consider the bail as an appropriate and necessary means to prevent or suppress other legislatively prescribed manifestations of possible improper conduct by the accused, and such a legal prohibition leads to the non-consideration of the application of the bail by the competent authority or rejection of such a motion.**

The European Court of Human Rights in its judgments considered the bail as an independent preventive measure (Aleksandr Makarov v. Russia, no. 15217/07 Judgment 12.03.2009 §138), noting that it can be applied only if the grounds necessary for applying detention prevail (Musuc v. Moldova, no 42440/06, Judgment 06.11.2007, § 42), and not in the case of a determination of application of the detention. The ECHR also emphasized that, by virtue of the law, the automatic rejection of bail without any judicial control is incompatible with the guarantees of part 3 of article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Piruzyan v.

Armenia, no. 33376/07, 26 June 2012, §105, S.B.C. v. the United Kingdom, no. 39360/98, 19 June 2001, §§ 23-24).

The Constitutional Court considers that the possibility of achieving the legitimate aim pursued by the founder of the Constitution by other, milder measures should be legislatively guaranteed. Meanwhile, under the challenged legislative regulation, **a detained person is deprived of the opportunity to exercise the fundamental right to release in return for a certain guarantee. Moreover, the person is not enabled to initially avoid imprisonment due to the application of other, milder measure of restraint, since detention can be selected in respect of the accused only if other preventive measures cannot ensure or guarantee the proper conduct of the accused and equivalent protection of public interest.**

7.3. The Constitutional Court also emphasizes the fact that in case of violation of the conditions for applying the bail as a preventive measure, certain adverse consequences may occur. In particular, the property taken as a bail may be forfeited to the state budget and the bail can be replaced by a more stringent preventive measure i.e. detention. If the first consequence is also applicable in cases of personal guarantee and surety of the organization (part 3 of article 147 of the Code), then, in the aspect of the second consequence, the legislator did not provide for such a direct sanction related to violation of the terms of any other preventive measure, but limited itself to the general wording “if necessary, the preventive measure may be substituted by the body conducting the criminal proceedings” (part 1 of article 151 of the Code).

Nevertheless, it is characteristic that the property taken as a bail may be forfeited to the state budget and the bail can be replaced by detention only in the case when the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission. That is, even if the bail is applied to prevent or suppress other manifestations of the possible improper conduct of the accused, then in case of failure to perform other duties or violation of other restrictions, the adverse consequences prescribed in parts 6 and 8 of article 143 of the Code cannot occur. **Therefore, in the mentioned cases, these sanctions do not have a deterrent effect and cannot deter the accused from manifesting inappropriate conduct. Meanwhile, the purpose of applying any preventive measure, including bail, is to suppress any manifestation of the improper conduct of the suspect or accused as prescribed by the Code, and in case of failure to achieve this result, to apply more stringent procedural restrictions against the latter.**

Thus, the Constitutional Court states that part 1 of article 143 of the Code, according to which the application of bail is considered admissible only for the purpose of ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings, as well as part 6 of article 143 of the Code, which considers it possible to forfeit the bail to the state budget only if the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission, are also controversial from the perspective of articles 27 and 78 of the Constitution.

7.4. In the framework of this constitutional legal dispute, the Constitutional Court considers it necessary to refer also to the concept of “alternative preventive measure” prescribed in the Code.

The Constitutional Court states that the wording “alternative preventive measure” is used in the Code only for bail and only in part 4 of article 134 of the Code. Moreover, the terms “alternative” or “alternate” are not used in any other regulation of the Code. In the end, the Code does not contain any other provision which would directly or indirectly enable not only to draw clear conclusions regarding the goal of the legislator, but also in general about the essence of the concept of “alternative”.

At the same time, it follows from a comparison and analysis of a number of provisions of the Code that the bail is an alternative preventive measure to the detention, since:

a) it shall be applied only if the court has already ruled on the detention of the accused (part 4 of article 134);

b) together with ruling on the detention, the court shall decide on the possibility of release of the accused from detention on bail and, acknowledging the possibility of such release, it shall assign the amount of the bail, and at the request of the defense party may subsequently review the decision on the inadmissibility of bail or the amount of bail (part 4 of article 137);

c) in determining the issue of extending the period of detention, the court shall have the right to recognize the possibility of release of the accused on bail and to appoint the amount of the bail (part 2 of article 139).

That is, the legislator considered the bail as an “alternative” to the detention on the grounds that the possibility of its appointment can only be considered during the decision on the issue of detention or extension of its term and it is applicable only after the detention is appointed a preventive measure by a judicial act.

The Constitutional Court considers that in the light of the aforementioned legal regulations, the bail is not an alternative to the detention, but is characterized as a separate measure of restraint depending on detention, and both its application and consideration are possible only if a relevant judicial act is rendered.

The Constitutional Court states that, in the hierarchy of the measures of restraint prescribed by the Code, detention is the most stringent and the only one that deprives a person of personal liberty. At the same time, the Constitutional Court reiterates its assessment that detention as one of the measures of restraint can be chosen in respect of a person only if other measures of restraint do not allow achieving the legitimate aim pursued. **Consequently, detention as the last and exceptional measure (ultima ratio) of criminal procedural coercion should always and mandatorily have an alternative. The alternative that should be prescribed in the criminal procedure law must provide the body conducting criminal proceedings with the actual opportunity and assign a legal obligation on the latter to initially choose between various preventive measures and appoint the most suitable means to achieve a legitimate goal. At the**

same time, it must also be obligatory to least restrict the fundamental rights and freedoms of the person, that is, the necessary means. Therefore, from the perspective of the Constitution, it is unacceptable to consider the issue of applying one of the preventive measures after giving preference to the most stringent one.

Thus, taking into account **the most intense interference of detention** with a person's right to personal liberty, the body conducting the proceedings in each case, prior to choosing detention, is obliged to **justifiably exclude the possibility of choosing all other milder preventive measures within the framework of due process**. Meanwhile, in the conditions of the "alternative" envisaged by the Code, the court, on certain grounds, firstly applies the most stringent preventive measure, and after a short period, due to the facts confirmed and the justifications adopted by the court itself, it is authorized to replace with a milder one.

It follows from the constitutional legal content of a person's right to personal liberty that any preventive measure prescribed by law that is not related to the deprivation of liberty must be considered as an alternative to the detention. The Constitutional Court considers that the constitutional legal perception of the concept of "alternative" should not only provide the competent authority with the possibility of directly choosing a particular preventive measure, but should also determine the application of detention - the most extreme procedural measure, as the most intensively interference with a person's personal liberty and the most severe preventive measure if all options have been exhausted to ensure the proper conduct of a person by other criminal procedure measures.

Thus, the Constitutional Court considers that the regulation of the Code regarding bail as an alternative to the detention, in particular the definition of bail as the only alternative to the detention, contradicts articles 27 and 78 of the Constitution.

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

1. To declare part 1 of article 143 of the Criminal Procedure Code of the Republic of Armenia contradicting articles 27 and 78 of the Constitution and void, insofar as it considers permissible the application of bail only for the purpose of ensuring that the accused is placed at the disposal of the body conducting the criminal proceedings, excluding other cases prescribed by article 135 of the same Code.

2. To declare part 6 of article 143 of the Criminal Procedure Code of the Republic of Armenia contradicting articles 27 and 78 of the Constitution and void, insofar as it considers possible to forfeit the bail to the state budget only in case the accused has escaped from the body conducting the criminal proceedings or has moved to another place without permission.

3. To declare part 4 of article 134, part 4 of article 137 and part 2 of article 139 of the Criminal Procedure Code of the Republic of Armenia systemically interrelated with part 1 of article 143 of the same Code contradicting articles 27 and 78 of the Constitution, insofar as the latter stipulate the bail as an alternative to the detention i.e. a preventive measure dependent on the detention.

4. Based on part 3 of article 170 of the Constitution, clause 4 of part 9 and part 19 of article 68 of the Constitutional Law on the Constitutional Court, and also taking into account the circumstance that at the time of promulgation of this Decision declaring part 4 of article 134, part 4 of article 137 and part 2 of article 139 of the Criminal Procedure Code of the Republic of Armenia as contradicting the Constitution and void will inevitably result in grave consequences for the State and society, thereby violating the legal security established by repealing the mentioned provisions, namely, there will be a gap in the legal regulation that will obstruct the application of other preventive measures as an alternative to the detention, as well as the bail - as an independent preventive measure, to define April 15, 2020 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 Criminal Procedure Code of the Republic of Armenia with the requirements of this Decision.

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

Chairman

A. Gyulumyan

October 15, 2019

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