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

THE CASE ON CONFORMITY OF ARTICLE 379, PART 1, POINT 3 AND ARTICLE 380, PARTS 1 AND 2, OF THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN GAYANEH ASHUGHYAN

Yerevan 16 October 2012

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan (Rapporteur), F. Tokhyan, M. Topuzyan, A. Khachatryan, V. Hovhannisyan, H. Nazaryan, A. Petrosyan, V. Poghosyan,
with the participation of the representatives of the Applicant A. Zeynalyan and A.Ghazaryan,
the representative of the Respondent A. Mkhitaryan, the Senior Specialist and H. Sardaryan, the Leading Specialist of the Legal Expertise Division of the Legal Division of the RA National Assembly Staff,
pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia,
examined in a public hearing by a written procedure the Case on conformity of Article 379, Part 1, Point 3 and Article 380, Parts 1 And 2 of the Criminal Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Gayaneh Ashughyan.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the citizen Gayaneh Ashughyan on 23.02.2012.

Having examined the written report of the Rapporteur on the Case, the written explanations of the representatives of the Applicant and the Respondent, having examined the RA Criminal Procedure Code and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. The RA Criminal Procedure Code was adopted by the RA National Assembly on 1 July 1998, signed by the RA President on 1 September 1998 and came into force on 12 January 1999.

Article 379, Part 1, Point 3 of the RA Criminal Procedure Code, titled “Deadlines for filing appeal” defines: “The appeal is filed … in the course of five days from the day of pronouncement of the decision of the First Instance Court on detention, extension of the term of detention, placing a person in a medical institution and other acts not resolving the cases on the merits in the course of ten days from the day of pronouncement of the decision.”

Article 380, Parts 1 and 2 of the RA Criminal Code titled “Procedure of restoration of the term of appeal” define correspondingly:

“1. If the established term for appeal is missed because of valid reasons, the persons entitled to appeal may petition to the court, which had rendered the judgment, for restoration of the missed term. The petition for the restoration of the missed term is considered in the court session by the court which made a decision or verdict, which is entitled to summon the petitioner for explanations.

2. The decision to turn down the petition on the restoration of the missed term may be appealed in the appellate court within 15 days, which is entitled to restore the missed term and consider the case observing the requirements specified in Article 382 and Article 383, Part 2 of this Code."

2. The procedural background of the case is following: the representatives of the Applicant submitted a complaint to the Court of General Jurisdiction with the request, inter alia, to oblige the RA Prosecutor General to apply to the RA Criminal Appeal Court with the demand to file a review proceeding of the decisions of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts on "Imposing an Administrative Fine" dated 07.04.2003 and 09.04.2003.

On 07.04.2011 Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts made a decision to decline the complaint, stating that "…G. Ashughyan's rights and freedoms were not violated by the RA Prosecutor General and Prosecutor's Office".

On 22.04.2011 the representatives of the Applicant submitted an appeal to the Appeal Court against this decision pointing out the circumstance that the Decision of the First Instance Court was passed to the Post Service on 12.04.2011 and they received it on 13.04.2011. Based on the mentioned facts, the representatives of the Applicant expressed opinion in the complaint submitted to the Appeal Court that the 10-day time period for appealing the decision shall start from the moment of receiving the decision.

The RA Appeal Criminal Court, by its decision ԵԿԴ/0025/ dated 28.04.2011 left the appeal without consideration reasoning that the deadline had expired. Simultaneously, ruled by Article 380 of the Criminal Procedure Code, the RA Appeal Court directed the representatives of the Applicant to submit a motion to Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts to restore the missed term as the decision of the latter on declining the motion could be appealed in the Appeal Court.

The representatives of the Applicant submitted a cassation complaint against this decision which was returned by decision ԵԿԴ/0025/22/22 of the Cassation Court dated 24.05.2011.

Simultaneously, in concordance with the legal position mentioned in the above mentioned decision ԵԿԴ/0025/22/22 of the RA Appeal Criminal Court dated 28.04.2011, the representatives of the Applicant submitted a motion to Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts to restore the missed term, which considering the fact, that the Decision of the First Instance Court dated 07.04.2011 had been received by the representatives of the Applicant by post service on 13.04.2011, as confirmed, declined the motion by its decision of 06.05.2011 reasoning that the representatives of the Applicant had sufficient time and possibility to appeal the mentioned decision and could have appealed the decision of the Court in a relevant manner and time period prescribed by law up to and including 18 April 2011, which was not done.

The representatives of the Applicant submitted an appeal against the decision of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts dated 07.04.2011.

By the Decision ԵԿԴ/0033/25/11 the RA Appeal Criminal Court, in essence, repeated the legal positions expressed in Decision of Yerevan General Jurisdiction Court of Kentron and Nork-Marash Administrative Districts dated 07.04.2011, and declined the appeal, adding that "…the fact of receiving the judgment from 07.04.2011 on 12.04.2011 in this certain case does not appear as such a restriction which could violate the right of access to the court".

The representatives of the Applicant submitted a cassation complaint which was returned by the Decision ԵԿԴ /0033/15/11 of the Cassation Court dated 22.08.2011.

3. Challenging the constitutionality of provision "from the moment of pronouncement" of Article 379, Part 1, Point 3 and Article 380, Parts 1 and 2 of the RA Criminal Procedure Code the Applicants finds that they contradict Articles 18 and 19 of the RA Constitution.

For substantiating her position, the Applicant states that the court lawfully publicizes only the conclusive part of the judgment, but the start of the time period for appeal is calculated from the moment of pronouncement, as a result of which, on one hand, the time period of appeal starts flowing and, on the other hand, the complainant does not have the content part of the judgment, i.e. does not have the real possibility to appeal, as he/she does not have any important data necessary for the efficiency of the appeal, e.g. the facts considered as essential by the court, the applied norms, the conclusions, reasoning and grounds of the court, etc. Referring to the mentioned Articles of the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms, quoting Article 3 of the Constitution, as well as legal positions mentioned in the relevant judgment of the European Court of Human Rights of Case "Mamikonyan v. Armenia", the Applicant finds that the challenged provisions of the Code do not ensure the right to effective judicial protection of persons prescribed by Articles 18 and 19, Parts 1 of the RA Constitution.

Referring a number of judgments of the European Court of Human Rights, where the legal positions are expressed, in accordance which six-month time period prescribed for applying to the European Court of Human Rights may be counted from the moment of receiving the copy of the final decision of the national court, the Applicant insists that Article 379, Part 1, Point 3 of the RA Criminal Procedure Code contradicts the subject and goals of the articles stating the right to fair trial guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms and the RA Constitution.

The Applicant does not consider the legal regulation prescribed by Article 380, Part1 of the Code, according to which "for acquiring the right to examine the appeal on the merits, the individual shall address to the judge, whose judgment he is going to criticize" as an effective remedy of judicial protection.

4. The Respondent objected to the arguments of the Applicant, stating that the provision "From the moment of pronouncement" stipulated in Article 379, Part 1, Point 3 and Article 380, Parts 1 and 2 are in conformity with Articles 18 and 19 of the Constitution of the Republic of Armenia. For substantiating his position the Respondent quotes the conclusion of the European Court of Human Rights in the case "Mamikonyan v. Armenia" mentioned by the Applicant likewise, according to which the European Court of Human Rights does not find the domestic rule, pursuant to which the ten-day time-limit for lodging an appeal to the European Court of Human Rights started to run not from the date of serving of a copy of the judgment, but from the date of pronouncement of that judgment, in itself, to be in violation of Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, provided that it is accompanied by sufficient guarantees enabling the appellants to enjoy the effective access to the appeal instance, including by affording them the opportunity to submit well-grounded appeals. Consequently, the Respondent finds that Article 174 and the challenged Article 380, as well as Article 402, Part 2 of the RA Criminal Procedure Code envisaged the guarantees which ensure the right of effective judicial protection of a person.

As for the time periods prescribed in Article 379, Part 1, Point 3 of the Code, the Respondent mentions that prescription of such a short term pursued the aim to fasten the resolution

of the disputes on judgments which do not resolve the case on the merits, which is aimed at assurance the fluent process of criminal proceeding. What concerns the prescription of shorter time period for the appeal of the judgments on depriving a person from freedom, which do not resolve the case on the merits, then, according to the Respondent, it is conditioned with the legislator's intention to repeal the illegal or non-relevant restrictions of the freedom of a person in possible shorter term.

Referring Article 285, Part 5, Article 290, Part 5, Article 479, Part 3 of the RA Criminal Procedure Code, the Respondent finds that despite the fact that the term for appeal of the judgments, as a rule, is counted from the moment of pronouncement, however, the legislator has stipulated **sufficient grounds** which provide appellants with possibility to enjoy the effective access to appeal instance.

Regarding the position of the Applicant, according to which the latter does not consider as effective remedy the legal regulation prescribed by Article 380, Part 1 of the Code, according to which "for acquiring the right to examine the appeal on the merits, the individual shall address to the judge, whose judgment he is going to criticize", the Respondent, pointing out Article 97 of the RA Constitution, finds, that the independence of the judge is not absolute, and in the given case the court shall be guided by law and satisfy the motion if a valid reason is available.

Regarding the difference of restoration of the missed term in accordance with criminal, civil and administrative procedures, the Respondents states that the criminal procedure for restoration the missed terms prescribed in Article 380 of the Code may not lead to the violation of the right to judicial protection, as in the case of satisfying the motion the appeal is proceeded by the court and in the case of declining the motion "…the possibility is prescribed to appeal to the Appeal Court, which is authorized to restore the missed deadline and consider the case ,which is an additional guarantee for the right to judicial protection of a person".

The Respondent also thinks that incomplete implementation of the rights of the Applicant is conditioned "… not with the unconstitutionality of the challenged provisions of the RA Criminal Procedure Code, but with the failure to follow the provisions of the law by the Applicant. In particular, for restoring the missed term the Applicant applied to the Appeal Court and not the First Instance Court, which resulted in refusal".

5. Considering the positions of the parties, within the framework of the consideration of this case the RA Constitutional Court deemed necessary to consider the challenged provisions in the context of the other provisions of the Code, and in particular, those concerning the obligation of the court to serve the party with the judgment on the merits, the terms for exercising that obligation, as well as the starting moment of counting the term for appeal of the judgment not resolving the case on the merits.

The RA criminal procedure legislation contains a differentiated legal regulation in regard to serving the concerned party with the judgments of the First Instance Court not resolving the case on the merits. In particular, in accordance with Article 285, Part 5 of the RA Criminal Procedure Code the Court serves, inter alia, the defendant and the defender with the decisions on selecting the custody as a measure of restraint, extending the time-term for keeping under custody or on declining the motion on them, on the day of their adoption, and in the case of not attending the court hearing sends them in due manner.

Regarding the criminal procedural norm mentioned above the Constitutional Court necessitates stating the fact of impossibility to send the judgment to the defendant who is wanted and does not have a defender, as well as the circumstance that if Defendant or Defender did not

attend the court hearing, then there is an indefinite time period between sending the judgment to them and moment of the factual receipt of the judgment by the latter.

What concern all other judgments not resolving the case on the merit, the Code does not contain terms for serving the concerned parties with the judgments (e.g. Article 283, Part 5, Article 290, Part 5 of the Code). As a result of such legal regulation there is indefinite time term also between the moment of sending the judgments which do not resolve the case on the merit and the moment of their factual receipt by the defendant and the defender.

Simultaneously, the Constitutional Court states that on contrary to the provisions of Article 379, Part 1, Point 3 of the Code, in a number of cases the legislator considered the moment of the receipt of the judgment by the addressee as the start of the term for appeal of the judgment not resolving the case on the merits (for instance Article 479, Part 3 and Article 412 of the Code).

6. While assessing the constitutionality of the challenged norms the Constitutional Court considered necessary to derive from:

- necessity to ensure the judicial protection of the fundamental rights and freedoms of a person and a citizen in accordance with the international legal principles and norms (Article 3 of the RA Constitution),

- necessity to ensure the right to legal remedy and appeal, which is an important element of the latter prescribed in Article 18 of the Constitution, and right to ensuring fair trial prescribed in Article 19 of the Constitution, based on the joint concept of the complex legislative development in that sphere, which derives from the decisions of the RA Constitutional Court on the constitutionality of the institution of judicial appeal.

7. In its former decisions the RA Constitutional Court expressed the legal positions, which, amongst others, concerns the effective implementation of the right to appeal the judgment. In its Decision DCC-719 from 28.11.2007 the court, in particular, stipulated that, "The constitutional right of judicial protection of an individual resulted in the positive obligation of the state to **ensure it both in rule-making and law enforcement activity.** It assumes, on one hand, the obligation of the legislator to stipulate the possibility and mechanisms of full judicial protection in the laws, and, on the other hand, the obligation of the law enforcer, without any exclusion, to admit for examination the applications lawfully addressed by the persons, who request legal protection from alleged violations of their rights. It is obvious that this requirement, first, concerns the courts because of their authorization with the comprehensive powers of legal protection. …On the other hand, the judicial power is the only one, which is capable and is obliged to review itself, i.e. the higher courts shall repeal the judicial errors of the lower courts. But, the inaction of the court towards the addressed applications distorts the essence of the right of judicial protection. Such an approach makes the justice impossible; it becomes non-accessible for the people. This situation is incompatible with the constitutional legal principles of legal state."

Referring to the admissibility criteria for submitting the application with the higher court, the RA Constitutional Court mentioned that "The situation differs for the higher judicial instances where **the admissibility criteria for the application may be stricter.** However, in these instances likewise the proceeding of the applications may not be implemented arbitrarily."

The RA constitutional Court, in its Decisions DCC-652 of 18 October 2006, DCC-665 of 16 November 2006, DCC-690 of 9 April 2007 and in a number of other decisions has touched upon many times the access and effectiveness of the justice guided by Articles 1,3,14,18,42, 43 and other Articles of the RA Constitution, the provisions prescribed in the European Convention for Protection of Human Rights and Fundamental Freedoms and other international legal documents, stating also the international practice of development of democracy and case law of the European Court of Human Rights, highlighted creation and development of sufficient legal normative

preconditions for guaranteeing the effective protection of the rights of a person, especially in the framework of the international obligations, assumed by the Republic of Armenia before the Council of Europe. Simultaneously, certain margin of appreciation in legislative restrictions for access to justice and, especially, the right of judicial appeal, is highlighted, deriving from these obligations.

In its Decision DCC-690 of 09.04.2007, the RA Constitutional Court, referring to the issue of appealing of the judgments, envisaged that **"making severe of such preconditions should not be disproportionate, creating obstacles for the persons to protect their rights.** Besides, in the matter of admitting for consideration the appeal and cassation complaints, the courts shall have not unlimited margin of appreciation, but the right and duty to accept or refuse to consider the complaint, based on the grounds, which are legislatively prescribed, precise and are understood uniformly by the persons. Referring to the above-mentioned matter, the Constitutional Court also highlighted the availability of relevant procedural and legislative guarantees ensuring the systemic complexity of the institution of appeal of the judgments.

8. The RA Constitutional Court stated that the prescription of certain deadline for the appeal of judgment pursues the legitimate aim to ensure the legal certainty, at the same time, based, in particular, on the legal positions stipulated in the Decisions DCC-652, DCC-665, DCC-690 and DCC-719 of the Constitutional Court finds, that deriving from the constitutional rights of access to the court and effective judicial protection, the legislator is obliged to stipulate legislatively the necessary preconditions for ensuring and guaranteeing them, while prescribing provisions on appealing the judgments of the lower court within a certain term from the moment of its pronouncement. The Constitutional Court the full implementation of the constitutional right of a person to judicial protection trough appealing the judgments of the lower court to the higher court, greatly depends on the circumstance **to what extent the challenged judgment is accessible to the concerned person, in what reasonable time period s/he may submit a well-grounded complaint for the judicial protection of his/her rights.** Such a legal position is based, in particular, on Article 381 of the Code, which concerns the requirements regarding the appeal and leaving the appeal without consideration, Article 407 that concerns the requirements regarding the cassation complaint and the grounds for leaving it without consideration, Article 414.1, which concerns returning the cassation appeal. Pursuant to Article 381, Part 1, Point 5.1 of the Code the appellant must substantiate in the complaint the violation of material or procedural norms by the lower court and its impact on the outcome of the case, and in the case of absence of such a substance the appeal is left without consideration in line with Part 2 of the same Article. Pursuant to Article 407, Part 1, Point 5 of the Code cassation appellant is obliged to substantiate in his complaint the violation of the material and procedural norms by the lower court, as well as its impact on the outcome of the case and in accordance with Point 6.1 of the same Part, the cassation appellant shall substantiate in his/her complaint the alleged judicial error made by the lower court, as well as the fact or the possibility of occurrence of grave consequences resulted from that error, and in case of absence of the mentioned argumentations and substantiations the cassation complaint is returned in line with Article 414.1, Part 1 of the Code.

Based on the above mentioned the RA Constitutional Court states that for preparing the appeal and cassation complaint consonant to the requirements prescribed by the law, the appellant or the cassation appellant should necessarily have the appealed judgment for being able to substantiate in his/her appeal or cassation complaint, the violation of the norms of material or procedural law by the lower court and its impact on the outcome of the case or the fact or possibility of occurrence of grave consequences resulted from them, based on the examination of the mentioned act. Meanwhile, in accordance with Article 379, Part 1, Point 3 of the Code considering the moment of pronouncement of the appealed act as the start of the term for appeal, the legislator, conditions full implementation of the constitutional right of a person to judicial protection through appealing the judgment of a lower court to the higher court, with the judicial discretion regarding the consideration of the missed term as well-grounded or ill-grounded. The fact is that after pronouncement of the judgment, a certain time period objectively passes between

the sending it to the addressee and receipt of it by the addressee, which may be prolonged conditioned with the subjective factors. In such conditions the person often does not possess the appealed judgment and does not have possibility to form the appeal and cassation complaints in accordance with the requirements prescribed by law, which legitimately serves as grounds for leaving the appeals and cassation complaints without consideration or for returning them, correspondingly.

9. For exercising the constitutional right of a person to judicial protection by appealing the judgment of the lower court to the higher court, the legislator also stipulated Article 380 of the Code, which concerns the consideration of the missing of the term for appeal as well-grounded. In this case, the task of the Constitutional Court is to find out whether Article 380 of the Code precisely ensures the constitutional right of the person to judicial protection.

Considering as confirmed the fact that a certain time period had passed from the moment of pronouncement of the appealed judgment and its receipt by the Applicant, the RA courts, anyway, did not consider the missing of the term as well-grounded, and based on the fact that after receiving the appealed judgment 6 days were left till the end of time period prescribed by law, which, according to the RA courts, is sufficient time period for stating that the appellant had real possibility to lodge an appeal within the prescribed term.

Concerning the above-mentioned the Constitutional Court states that in Article 380 the legislator authorized the courts with a wide margin of appreciation to consider missing the terms as well-grounded or ill-grounded. In this concern, guided by the necessity to implement effectively the right of a person to judicial protection and based on its own legal position expressed in Decision DCC-690, according to which "in the matter of admitting for consideration the appeal and cassation complaints, the courts shall have not unlimited margin of appreciation, but the right and duty to accept or refuse to consider the complaint, based on the grounds, which are legislatively prescribed, precise and are understood uniformly by the persons", the Constitutional Court finds that Article 380 of the Code does not ensure effective implementation of the constitutional right of a person to judicial protection through appealing the judgment of the lower court to the higher court, because the implementation of the mentioned margin of appreciation leads to uncertainty. For instance, the approach of the court is not clear for the certain cases, when after receiving the judgment the term for appeal expires not after 6 days, as it was in the case of the Applicant, but after 5 days or less. In this concern, the Constitutional Court considers as ill-grounded providing the courts with wide margin of appreciation in the case, when the motion is filed for considering as well-grounded the missing of the term for appeal based on the fact of late receipt of the appealed judgment. If based on the nature of the appealed judgment and considering the necessity of implementation of the right of access to the court and right to fair trial, the legislator regarded the term, in this case five or ten day period, as well-grounded for appealing this act, then the mentioned terms shall start to run from the moment of real possibility to get known to the appealed judgment, moreover, that in a number of cases the legislator not only does not exclude, but directly prescribes the moment of receipt of the judgment by the addressee as starting point of the term for appealing the judgment.

In this regard, also taking into consideration the requirement of Article 63, Part 1 of the RA Law on the Constitutional Court, the Constitutional Court also considers important to touch upon the general situation in the RA judicial practice. In this regard, the situation envisaged by Decision 36 of the Council of the Chairmen of the RA Courts dated 22 December 2000, according to which there are cases "…when the courts serve the appellants with the judgments and decisions late, violating the time periods prescribed by law, and this deprives the latter from the possibility to lodge complaints to the higher courts within the time periods prescribed by law". Deriving from such assessment of the situation, the Council of the Chairmen of the Courts found that in all cases**, when the term is missed for the reasons regardless the will of the appellant,** missing of the term **shall be considered as substantiated** by the courts. In particular, it concerns also the cases when the term is missed because the court **serves** the copy of the judgment later than the time prescribed by the law.

Thus, in the conditions of availability of such a position the matter has not been legislatively regulated, but is again left to the margin of appreciation of the court. The Constitutional Court finds that in the sense of protection of the constitutional rights of an individual in the mentioned cases the missed term shall be considered as substantiated ex jure, which will guarantee the effective implementation of the right to access to the court and right to fair trial.

10. Concerning the second matter raised by the Applicant, which concerns Parts 1 and 2 of the challenged Article 380, the Constitutional Court finds that in case of missing the legislatively prescribed term for appeal based on valid reasons, the competence to endow the courts adopted the judgment with the power to examine the motion of the appellant on restoration of the missed term, is within the margin of appreciation of the legislator. In the frames of this legal regulation the right to appeal the decision on refusal of the above-mentioned motion is an essential guarantee. In particular, Part 2 of the challenged Article 380 of the Code stipulates that "The decision to refuse the motion on restoration of the missed term may be appealed against within 15 days with the Court of Appeal, which is authorized to restore the missed term and consider the case in accordance with the requirements envisaged in Article 382 and Article 383, Part 2 of the Code".

The moment of the beginning of the fifteen-day time period, stipulated in the mentioned norm of the Code, is another issue. In this concern, the Constitutional Court states that Part 2 of Article 380 contains legal uncertainty; the norm does not precisely mention whether the judgment may be appealed at the Court of Appeal within 15-day time-period from the moment of pronouncement or from the moment of receiving the copy of judgment. Taking into consideration the legal positions prescribed in Point 9 of this Decision, **the Constitutional Court finds that the 15-day time-period prescribed by Part 2 of Article 380 of the Code starts from the moment of factual receipt of the judgment by the addressee or from the moment when it was accessible for him practically in the manner prescribed by law and the law enforcement practice shall be guided by such understanding of constitutional legal content of Part 2 of Article 380 of the Code.**

11. What does the analysis of the international legal practice and the case law of European Court of Human Rights concerning this matter state? The legal practice of a number of countries states that both legal provisions, according to which the appeal against the judgment may be brought after the pronouncement of the judgment or after serving with its copy (Slovakia, Rumania, Ukraine, Georgia, Moldova, etc.) and the legal regulation, when this term is prescribed to run from the moment of handing over the judgment (Poland, Montenegro, Greece, Spain, Germany, Croatia, etc.) are equally acceptable. The essential point here is the fact that in all those countries where the calculation of the term for appeal starts from the moment of pronouncement of the, necessary and sufficient guarantees are envisaged legislatively to ensure the receipt of **the entire** judgment by the appellant in a reasonable time and to enable him/her to exercise effectively his/her right of access to the court and right to fair trial.

In practice, the European Court of Human Rights has expressed similar position. In particular, in case "Mamikonyan v. Armenia (Complaint No. 25083/05, 16 March 2010), which was quoted by in the explanations of the parties, the European Court of Human Rights expressed a distinct legal position, according to which the calculation of the ten-day time-limit for lodging a cassation appeal from the date of pronouncement of the judgment of the Court of Appeal, in itself, may not be considered as to be in violation of Article 6 of the Convention. Although, simultaneously, it is highlighted that "… provided that it is accompanied by sufficient guarantees which authorize the appellants to enjoy the effective access to the appeal instance, including by affording them the opportunity to submit well-grounded appeals." The Court also considered as an essential guarantee the circumstance that in line with the requirements prescribed in Part 2 of Article 402 of the RA Criminal Procedure Code that a copy of Court of Appeal's judgment **should be served the defendant** not later than three days after the date of its pronouncement.

The last circumstance shall be considered as pivotal in the conditions of such legal regulations, when the term of appeal is calculated from the moment of pronouncement of the judgment. Moreover, the Constitutional Court, first, drives the attention to the circumstance that in the mentioned decision of the European Court of Human Rights (which is officially published in Armenian by the RA Ministry of Justice) the term "serve on" is used. This term is also used in the abovementioned decision of the Council of Chairmen of the RA Courts. Although the term **"is sent"** is prescribed in Part 2 of Article 402 of the RA Criminal Procedure Code. It is obvious that these are essentially different and in terms of time "**sending"** is not relevant to **"serving on"** and it is unknown, when it will get to the subject of these legal relations, depending on the way of sending. In the sense of contents, these notions may be considered as identical only in the cases when the entire text of a judgment **is provided to** the relevant subjects within this term or is posted at the official website of the court for them to be accessible, as it is done in a number of countries. Thus the RA Constitutional Court finds that in all such cases the party shall have reasonable time-period to submit a well-grounded appeal after **receiving** the judgment **or having its entire text under his/her disposal, when it is officially accessible.** And as it has been already mentioned, in all cases when the legislatively prescribed reasonable time lodging an appeal is violated because of the circumstances not depending on an appellant, the missed time-period shall be considered as valid ex jure, and the solution of that matter should not be left to the margin of appreciation of the court. Only in such terms the right to submit a well-grounded appeal within a reasonable time, right of the access to the court and the right to fair trial will be ensured for the appellants.

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

1. Article 379, Part 1, Point 3 of the RA Criminal Procedure Code is in conformity with the Constitution of the Republic of Armenia insofar as it guarantees **serving** the appellant with the judgment in accordance with the procedure and time-period prescribed by law is guaranteed and the missing of the term for reasons not depending on him/her is declared as valid, ex jure.
2. To declare Parts 1 and 2 of Article 380 of the RA Criminal Procedure Code as contradicting the requirements of Article 18 and 19 of the Constitution of the Republic of Armenia in regard to leaving the restoration of the missed term for lodging an appeal for the reasons not depending on an appellant, to the margin of appreciation of the court and not considering it as valid, ex jure.
3. The provisions of Article 402 of the RA Criminal Procedure Code which are systemically interrelated to the challenged articles, are in conformity with the Constitution of the Republic of Armenia insofar as the term "**is sent"** prescribed in Part 2 of the Article guarantees **serving (access) the entire judgment** with the subjects prescribed by law within that term.
4. 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

16 October 2012
DCC - 1052