



IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

**ON THE CASE OF CONFORMITY OF ARTICLE 244
OF THE CRIMINAL CODE OF THE REPUBLIC OF ARMENIA
WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA
ON THE BASIS OF THE APPLICATION OF THE HUMAN RIGHTS
DEFENDER OF THE REPUBLIC OF ARMENIA**

Yerevan

January 26, 2016

The Constitutional Court of the Republic of Armenia composed of V. Hovhannisyan (Chairman), K. Balayan, F. Tokhyan, A. Tunyan, A. Khachatryan, H. Nazaryan, A. Petrosyan (Rapporteur), with the participation of (in the framework of the written procedure) the Applicant: RA Human Rights Defender,

representative of the Respondent: H. Sardaryan, official representative of the RA National Assembly, Chief Specialist of the Legal Consultation Division of the Legal Department of the RA National Assembly Staff,

pursuant to Point 1 of Article 100, Point 8 of Part 1 of Article 101 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the Law of the Republic of Armenia on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Article 244 of the Criminal Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the Application of the Human Rights Defender of the Republic of Armenia.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by the RA Human Rights Defender on September 17, 2015.

Taking into account the fact that by the abovementioned Application the RA Human Rights Defender presented his positions on the constitutionality of Article 244 of the RA Criminal Code challenged in this Case within the framework of the provisions of Chapter 2 of the RA Constitution with amendments through 27 November 2005, the RA Human Rights Defender submitted a complemented application to the RA Constitutional Court on 14 January 2016, clarifying his positions on the constitutionality of Article 244 of the RA Criminal Code challenged in this Case, in accordance with the provisions of the current Chapter 2 of the RA Constitution with amendments through 6 December 2015 (which entered into force on 22 December 2015).

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

1. The RA Criminal Code was adopted by the RA National Assembly on 18 April 2003, signed by the RA President on 29 April 2003 and entered into force on 1 August 2003.

Article 244 of the RA Criminal Code challenged in this Case is titled: “Abandonment of the site of road accident,” which states:

“Abandonment of the site of road accident by the driver of a vehicle who violated the traffic rules or rules of operation of vehicles, in the case of consequences envisaged in Article 242 of this Code,

shall be punished with a fine in the amount of 100-fold to 250-fold minimal salaries, or with arrest for the term of up to 3 months, or with imprisonment for the term of up to 2 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.”

The challenged Article was amended by the RA Law HO-119-N of 1 January 2009.

2. The Applicant considers that Article 244 of the RA Criminal Code creates an issue of constitutionality and asks to resolve the issue of conformity of the said Article with Articles 65 and 66 of the RA Constitution with amendments through 6 December 2015.

In the Applicant's opinion, "it follows from the formulation and literal interpretation of the challenged norm that its real purpose is not to protect and/or provide assistance to those affected by the accident, but to assist law enforcement authorities in investigating a road accident."

According to the Applicant, the challenged Article obliges the person guilty of a road accident to recognize and admit his guilt first and foremost at the site of the accident, i.e. not to abandon the site of the accident. That is, the challenged norm obliges the participants of a road accident to act on the basis of the presumption of their own guilt, since at the time of the accident and immediately after it (especially in disputable cases) no one can be sure who can eventually be found guilty of the accident.

To ground his positions, the Applicant refers to the legal positions expressed in a number of judgments of the European Court of Human Rights concerning the right to silence and not to testify about himself/herself, the presumption of innocence, as well as the legal positions expressed by the constitutional justice authorities of a number of foreign states regarding the issue in dispute. The Applicant also refers to the legal positions of the RA Court of Cassation expressed in the Decision of 13 September 2013 (ԵԱՆԴ/0122/01/12) regarding the issue in dispute.

3. Objecting the arguments of the Applicant, the Respondent finds that providing criminal liability for the abandonment of the site of road accident is due to the need to protect the rights of affected persons and, in particular, under the threat of punishment it pursues the aim to oblige the participants of a road accident not to abandon and provide the necessary assistance to persons affected by the accident.

According to the Respondent, in order to fully understand the legal content of Article 244 of the RA Criminal Code, it is necessary to apply to the RA Law on Ensuring Road Traffic Safety (in particular Article 24), which defines the duties of owners of vehicles and drivers.

Referring to the duty of persons, who violated the rules of road safety, to testify and the danger of being under threat of criminal prosecution, the Respondent notes that the Law does not oblige the person who violated the traffic rules to testify. Moreover, both the RA Con-

stitution and the RA Criminal Procedure Code entitle not only the suspect but also the witness to refuse to testify about himself/herself, if a person may be under threat of criminal prosecution as a result of this. The right to refuse to testify is valid even if such testimony may not only directly but also indirectly turn a person from witness into suspect.

According to the Respondent, the provisions of Article 244 of the RA Criminal Code are in conformity with the RA Constitution.

4. Within the framework of the constitutional legal dispute raised in this Case, taking into account the requirements of Part 7 of Article 68 of the RA Law on the Constitutional Court, and based on the arguments and conclusions of the Applicant in this Case, the Constitutional Court considers it necessary to establish:

- a) the legal objectives and grounds for the challenged legal regulation;
- b) the duties of the driver of the vehicle in the event of participation in a road accident;
- c) in case of the challenged legal regulation, the legal guarantees and ensuring the exercise of the constitutional rights to be exempted from the duty to testify and the presumption of innocence.

5. Within the framework of the systemic analysis of the provisions of the RA Criminal Code, the RA Constitutional Court states that the tasks of the RA Criminal Code are the protection of the rights and freedoms of the human being and the citizen, the rights of legal entities, the property, the environment, the public order and security, the constitutional order, the peace and security of mankind from criminal encroachments, as well as crime prevention. To implement these objectives, the RA Criminal Code establishes the basis for criminal liability and the principles of criminal legislation, determines which socially dangerous acts are considered crimes, and establishes the types of punishment for the committal of these acts and other penal and legal measures (Article 2 of the RA Criminal Code). The General Part of the RA Criminal Code also defines the purpose of punishment, i.e. restoration of social justice, correction of the person punished, as well as crime prevention (Part 2 of Article 48 of the RA Criminal Code).

Within the framework of the powers to assess the public danger of the act and its criminalization, the legislator, based on the above-mentioned tasks and objectives of the RA Criminal Code, fixed the Article challenged in this Case in Chapter 23 of the RA Criminal Code, titled: “Crimes against public security.” According to the mentioned regulation, the legislator considers the abandonment of the site of road accident by the driver of a vehicle who violated the traffic rules or rules of operation of vehicles as crime, and determines the qualification of this act as such with the circumstance of the mandatory occurrence of consequences stipulated in Article 242 of the RA Criminal Code, titled: “Violation of the traffic rules and rules of operation of vehicles.” These consequences are: causing grave or medium gravity damage to human health by negligence, causing death by negligence, causing death of two or more persons by negligence.

The Respondent in this Case argues that by the challenged legal regulation, determination of the legal requirement not to abandon the site of road accident is aimed at protecting the rights of affected persons and it is conditioned by the necessity of exercising the duties of the vehicle driver stipulated by the RA Law on Ensuring Road Traffic Safety.

Based on the above-mentioned, the RA Constitutional Court considers that the argument of the Applicant that “... providing criminal liability for the abandonment of the site of road accident, under the threat of punishment the legislator pursued the aim to oblige the driver of a vehicle who violated the traffic rules or rules of operation of vehicles to stay at the site of road accident solely for the purpose of assisting law enforcement authorities” is not grounded.

The RA Constitutional Court states that according to Point “d” of Part 2 of Article 24 of the RA Law on Ensuring Road Traffic Safety, titled: “Main Duties of Owners of Vehicles and Drivers,” the vehicle driver shall be obliged:

“d) in case of involvement in a road accident:

1) to immediately stop the vehicle, turn on emergency lights in the manner prescribed by the traffic rules, and not move both the vehicle and the objects related to the accident (in order to ensure emergency safety at the site of the road accident, emergency lights of vehicles, stopped for assistance in the immediate vicinity of the site of the accident, must also be turned on);

2) to take the necessary measures to provide first aid to the affected persons, call the “First Aid Service” or other specialized service, and in case of emergency take the affected persons in a passing car or in his own vehicle to the nearest medical institution, inform her/his name, registration number plate of the vehicle (with the presentation of an identity document or driver’s license and vehicle registration certificate), then return to the site of accident;

3) to free the carriageway in the manner prescribed by Part 4 of this Article, if there are obstacles which hinder the movement of other vehicles;

4) to report the accident to the Police and await the arrival of the police officers.”

According to Part 4 of the same Article, “In case there are no affected persons as a result of the road accident victims, by mutual agreement on assessing the situation with the accident the drivers may draw up and sign the scheme of the accident in advance, appear at the nearest post of road patrol service or the territorial police agency for registration of the accident in the established order.”

It follows from the above-mentioned legal regulation that in the event of participation the driver of a vehicle in a road accident the legislator, inter alia, included not only the duties conditioned by the relations with law enforcement authorities, but also the obligation to take the necessary measures to provide first aid to the affected persons.

The RA Constitutional Court also states that according to Article 33 of the RA Law on Ensuring Road Traffic Safety, “persons who violate the legislation on ensuring road traffic safety shall be liable in accordance with the procedure provided for by the law.”

It should be noted that Article 124⁶ of the RA Administrative Offences Code establishes administrative liability for violation of the legislation in the field of ensuring road traffic safety (which caused an emergency or a road accident) for the failure to perform her/his duties by the driver-participant of the accident. In particular, Part 3 of the said Article establishes administrative liability for failure to fulfill road traffic safety obligations by the driver-participant of the road accident, if it does not contain signs of a crime.

The study of the RA legislation on road traffic shows that prior to the adoption of the RA Law on Ensuring Road Traffic Safety, the RA

Government Decision No. 924-N “On Approval of the Rules of the Road Traffic of the Republic of Armenia” dated 23 May 2002 was in force, which included similar legal regulations prescribed by the said Law.

The RA Constitutional Court considers it necessary to state that a legal position on the legal regulation challenged in this Case was also expressed in the Decision of the RA Court of Cassation (ԵԱՆԴ/0122/01/12) dated 13 September 2013. In particular, in Point 18 of the Decision, the RA Court of Cassation noted that “Article 244 of the RA Criminal Code aims to punish those who violated the rules of road traffic, abandoned the site, evaded assistance to the persons affected by the road accident, did not want to report the road accident to the law enforcement authorities and assist to disclose the committed act and circumstances connected with its consequences.” The RA Constitutional Court states that **in case of participation in a road accident, the law does not envisage the duty of the vehicle driver to assist to disclose the committed act, the circumstances connected with its consequences and the liability for its non-performance. Meanwhile, according to Point 9 of Part 1 of Article 62 of the RA Criminal Code, the assistance to the disclosure of the crime is considered a circumstance mitigating liability and punishment.** Therefore, the law enforcement practice should be guided by the approach to exclude imposing duty to the person beyond legislative regulation and, as a consequence, criminal liability for its non-performance.

Based on the aforementioned analysis, the RA Constitutional Court states that the provision of criminal liability for the act, provided for by the Article challenged in this Case, is conditioned by the need to ensure the protection of the interests of participants of road traffic, in particular the persons affected, as well as the performance of the duties of drivers of vehicles in the case of her/his participation in the road accident. The Constitutional Court finds that by establishing criminal liability for the act provided for by the Article challenged in this Case, the State shall in particular exercise its constitutional obligation to protect the rights and freedoms of the human being and the citizen.

At the same time, the RA Constitutional Court finds that in case, in the course of further legislative developments the legislator complies with the policy of criminalization of the act provided for by the Article

challenged in this Case, in order to avoid different interpretations it will be necessary to further increase the level of legal certainty and legal predictability of legal regulation, taking into account the legal positions expressed by the Constitutional Court in this Decision.

6. The RA Constitutional Court states that the rights to be exempted from the duty to testify and the presumption of innocence are established by Articles 65 and 66 of the RA Constitution (with amendments through 6 December 2015).

Article 65 of the RA Constitution, titled: “Right to be Exempted from the Duty to Testify,” states that “No one shall be obliged to testify about herself/himself, her/his spouse, or close relatives, if it is reasonably assumed that it may be used against him or her or against them in the future. The law may prescribe other cases of exemption from the duty to testify.”

Article 66 of the RA Constitution, titled: “The presumption of innocence,” states that “A person accused of a crime shall be presumed innocent until her/his guilt is proven in accordance with the law, upon criminal judgment of the court entered into legal force.”

The constitutional rights to be exempted from the duty to testify and the presumption of innocence, in similar regulation, were also stipulated by Articles 21 and 22 of the RA Constitution with amendments through 27 November 2005.

The rights to be exempted from the duty to testify and the presumption of innocence are directly or indirectly enshrined in a number of international legal instruments. In particular, Article 11 of the Universal Declaration of Human Rights, Part 2 of Article 14 of the International Covenant on Civil and Political Rights, Part 2 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms establish the right to the presumption of innocence. It should be noted that in the 17 December 1996 Judgment of the European Court of Human Rights in the case of *Saunders v. the United Kingdom* (Application no. 19187/91) Court expressed the position that, although not specifically mentioned in Article 6 of the Convention, the right to silence and the right not to incriminate oneself are generally recognized international standards which lie at the heart of the notion of a fair procedure. In the same Judgment, the European Court of Human

Rights also concluded that the right to silence is closely intertwined with the presumption of innocence.

In its decisions, the RA Constitutional Court also addressed the issues of guaranteeing and ensuring the full realization of the constitutional rights to be exempted from the duty to testify and the presumption of innocence. Within the framework of This Case, the Constitutional Court considers it necessary to refer, *inter alia*, to the following legal position expressed in the Decision DCC-871 of 30 March 2010:

“... the principle of the presumption of innocence is aimed at protecting a person from an unfair charge, while at the same time it cannot exclude the fact that the competent authority has a suspicion of a criminal offense until such suspicions were not justified as a result of the lawful actions of that authority.”

The RA Constitutional Court states that the legislator provided legal guarantees for the realization of the constitutional rights to be exempted from the duty to testify and the presumption of innocence in the RA Criminal Procedure Code, in particular in Article 18 titled: “The Presumption of Innocence,” and Article 20 titled: “Exempted from the duty to testify.”

The RA Criminal Procedure Code also defines other guarantees ensuring the implementation of the above-mentioned rights. In particular, according to the RA Criminal Procedure Code, testifying or refusal to testify, giving explanations or refusal to give explanations, are defined as the rights of the suspect (Points 7 and 8 of Part 2 of Article 63) and the accused (Points 6 and 7 of Part 2 of Article 65). In addition, the RA Criminal Procedure Code prescribes the legal requirement for the investigator to explain the suspect (Part 3 of Article 211) and the accused (Part 8 of Article 212) of her/his rights before conducting interrogation, including the right to refuse to testify, the legal requirement for the investigator to warn a witness (at the beginning of the confrontation) about the right not to testify about herself/himself, her/his spouse, or close relatives (Part 2 of Article 216), and the legal requirement for the presiding judge to clarify to a witness (before questioning) her/his right to refuse to testify about herself/himself, her/his spouse, or close relatives (Point 1 of Part 1 of Article 339).

It should also be noted that Part 2 of Article 339 of the RA Criminal Code, titled: “Refusal to testify,” states: “A person who refused to testify about herself/himself, her/his spouse, or close relatives shall be exempted from criminal liability.”

Comparing the above with the Applicant’s conclusion in this Case, according to which Article 244 of the RA Criminal Code challenged in this Case “raises an issue of constitutionality insofar as it contradicts the right of a person not to testify about herself/himself, as well as the principle of the presumption of innocence,” the RA Constitutional Court finds, that this conclusion is not justified, since direct regulation of legal guarantees and ensuring the implementation of the constitutional rights to be exempted from the duty to testify and the presumption of innocence, goes beyond the scope of legal regulation of the RA criminal legislation and naturally also the scope of the legal regulation challenged in this Case. Legal guarantees for the realization of the constitutional rights to be exempted from the duty to testify and the presumption of innocence in the systemic integrity are provided by the RA criminal procedure legislation.

Based on the review of the Case and being governed by Point 1 of Article 100, Point 8 of Part 1 of Article 101, and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 68 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Article 244 of the Criminal Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia within the framework of legal positions expressed by the Constitutional Court in this Decision.

2. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia this Decision is final and enters into force from the moment of the announcement.

Chairman
January 26, 2016
DCC-1252

V. Hovhannisyan