

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

ON THE CASE OF CONFORMITY OF THE PROVISION “WITHIN THE SAME PERIOD, THE INJURED PERSON, THE CIVIL CLAIMANT, THE CIVIL DEFENDANT, THEIR REPRESENTATIVES SHALL BE SERVED WITH THE COPY OF THE COURT JUDGMENT ON THEIR OWN MOTION” PRESCRIBED IN ARTICLE 375 OF THE RA CRIMINAL PROCEDURE CODE WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF ROMIK DANIAL

Yerevan

September 18, 2018

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan (Rapporteur), A. Dilanyan, F. Tokhyan, A. Tunyan, A. Khachatryan, A. Petrosyan,

with the participation (in the framework of the written procedure)

the representatives of the applicant: advocates T. Yegoryan and D. Gyurjyan,

representative of the respondent: official representative of the RA National Assembly A. Kocharyan, Senior Legal Specialist of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

pursuant to Point 1 of Article 168, Point 8 of Part 1 of Article 169 of the Constitution, and Articles 22, 40 and 69 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of the provision “within the same period, the injured person, the civil claimant, the civil defendant, their representatives shall be served with the copy of the court judgment on their own motion” prescribed in Article 375 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of Romik Danial.

The RA Criminal Procedure Code (hereinafter referred to as the Code) was adopted by the National Assembly on 1 July 1998, signed by the President of the Republic on 1 September 1998, and entered into force on 12 January 1999.

Article 375 of the Code, titled “Serving the convict or the acquitted person with the copy of the court judgment” prescribes: “No later than within 5 days after the announcement of the court judgment, the convict or the acquitted person, his defense counsel and the prosecutor must be served with the copy of

the court judgment. Within the same period, the injured person, the civil claimant, the civil defendant, their representatives shall be served with the copy of the court judgment on their own motion”.

The case was initiated on the basis of the application of R. Danial submitted to the Constitutional Court on 10 April 2018.

Having examined the application and attached documents, the written explanation of the respondent and other documents of the case, as well as having analyzed the relevant provisions of the Code, the Constitutional Court **ESTABLISHES:**

1. Positions of the applicant

The applicant challenges the provision of the second sentence of Article 375 of the Code, according to which, within 5 days the injured person, the civil claimant, the civil defendant, and their representatives shall be served with the copy of the court judgment on their own motion. He argues that the indicated “... provision and/or its interpretation in the law enforcement practice, which is also in contradiction with Articles 1, 3, 28, Part 1 of Article 61, Part 1 of Article 63, Articles 75, 78, 79, 80, and 81 of the Constitution, also contradicts Article 29 of the Constitution”.

The applicant notes that the Court of Appeal applied the challenged provision in respect of him in such an interpretation, according to which “the Court was obliged to serve the applicant with the copy of the court judgment only according to his application, and the applicant in turn was obliged to apply and receive the copy of the court judgment within five days by submitting his complaint within the prescribed one-month period after the promulgation of the court judgment”.

The applicant is convinced that by virtue of the challenged provision, the realization of the right of the injured person to appeal the court judgment depends on his positive (active) behavior, namely on the circumstances of requesting the court judgment, thus restricting his right to effective judicial protection of rights and freedoms.

According to the applicant, the requirement of the law for the injured person to file a motion for the copy of the court judgment does not pursue a legitimate aim and contradicts the fundamental principles of the criminal procedure, i.e. the principle of adversarial proceedings and equality of rights of the parties to proceedings. The challenged provision needlessly obliges the injured person to file a motion to receive the court judgment, and does not establish the grounds and reasons for such a differentiated approach with respect to one of the parties to the proceedings and the need for such a restriction.

Referring to Article 79 of the Constitution, the applicant considers that in the case of restriction of the right of a person, recognized as an injured party in a criminal case, to appeal the court judgment rendered in the given case - as a component of the fundamental right to an effective judicial protection of the rights and freedoms of a person - the law must also establish its grounds and shall be conceptualized.

According to the applicant, the challenged provision does not impose specific time-terms for the injured person to request from the court the copy of the court judgment, and does not prescribe the consequences for the injured person if he applies within a five-day period after the promulgation.

The applicant argues that, contrary to the case under consideration, in a number of other cases, the Court of Appeal formed a completely different court practice, that is, legal provisions regulating the time-terms for serving and receiving a court judgment, and filing an appeal against the judgment, are not consistently applied by the Court of Appeal.

2. Positions of the respondent

The respondent considers that by challenging the constitutionality of the challenged provision of Article 375 of the Code, the applicant raises two different main issues:

- by establishing the duty of the court to serve the injured person with the copy of the court judgment in case the latter files a motion within time-term of five days after the promulgation of the court judgment, the challenged provision does not prescribe a specific time-term for filing the motion;
- the challenged provision needlessly obliges the injured person to file a motion to receive the court judgment, thus restricting the right to effective judicial protection of his rights and freedoms, while the convict or the acquitted person, their defense counsel and even the prosecutor are served with the copy of the court judgment without any prerequisite for filing a motion or submitting requests.

With regard to the first issue, the respondent argues that the legislator clearly prescribes that the court is obliged to serve the injured person, the civil claimant, and the civil defendant with the copy of the court judgment only according to their motion, and the persons mentioned may apply and receive the copy of the court judgment, and lodge a complaint against the court judgment within five days time-term set forth by criminal procedural legislation. If in this process the courts have applied the criteria

that contradict the objectives of the relevant legal regulations of the Code, this cannot lead to the unconstitutionality of these legal regulations, since in law enforcement practice the interpretation of any provision of the Code, that does not correspond to the objectives of the Code, cannot change the content of these provisions as they are established exclusively by the legislator, hence “the issue lies exclusively in the sphere of practical interpretation, and not in legislative sphere”.

As for the circumstance of needlessly obliging the injured person to file a motion, the respondent notes that in the same provision a different approach was applied with regard to the other party to the proceedings.

Comparing several international legal norms aimed at protecting the right to a fair trial, and the relevant provisions of the Constitution, the respondent argues that “... the equality of parties is the core of justice, which is enshrined in the approaches of the European Court of Human Rights as “equality of arms”, and it is enshrined as “a competition” in the positions of the RA Constitutional Court which in general are the primary in “every requirement of justice”.

The respondent considers it obvious that the challenged provision, by stipulating the obligation of the court to serve the convict or the acquitted person, their defense counsel and the prosecutor with the court judgment within a specific period, the challenged provision requires from the injured person, the civil claimant, the civil defendant, and their representatives to file a motion for serving the same copy of the court judgment. Such a differentiated approach leads to discriminatory and unequal conditions for the effective realization of the right to a fair trial, which may violate the right of access to justice. The respondent concludes that the challenged legal position in this aspect contradicts the requirements of the Constitution.

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

By the Decision DCC-1394 of December 8, 2017, the Constitutional Court determined that Article 375 of the Code “is in conformity with the Constitution of the Republic of Armenia in such constitutional legal content, according to which the terms “must be delivered” and “is delivered” mean **making the full text of the act accessible to those established by law in any way (including electronic), provided that availability of the electronic copy of the judicial act should not exclude the provision of a paper version of the judicial act to the party**”. The constitutionality of Article 375 of the Code was challenged in this case only in the part thereof that it does not prescribe the obligation of the court to serve the party with the judicial act on the day of its promulgation, and only this issue was

considered by the Constitutional Court, therefore, the presence of the aforementioned Decision does not prohibit the consideration of the challenged provision.

To determine the constitutionality of the provision challenged in the present case, the Constitutional Court considers it necessary to clarify the following issues:

- Are the constitutional principles of general equality before the law and the prohibition of discrimination violated in the case of the establishment of different procedures for serving the parties to criminal proceedings with a copy of the court judgment?
- Is the principle of equality of the parties to criminal proceedings violated and, consequently, the right to judicial protection and the right to a fair trial violated in the case if the injured person, the civil claimant and the civil defendant are required to file a motion to receive a copy of the court judgment?
- Do the challenged legal provision and other systemically related legal provisions establish organizational mechanisms and procedures necessary in criminal proceedings for the effective implementation of the rights to judicial protection and a fair trial of persons recognized as the injured party, a civil claimant or a civil defendant?
- Does the challenged legal provision comply with the requirements of the constitutional principle of certainty?

Based on the foregoing, the Constitutional Court will assess the constitutionality of the challenged legal regulation in the context of Articles 28, 29, Part 1 of Article 61, Part 1 of Article 63 and Articles 75, 79 of the Constitution.

4. Legal positions of the Constitutional Court

4.1. The principles of general equality before the law and the prohibition of discrimination are guaranteed by the Constitution (Articles 28 and 29) and the criminal procedural legislation (Article 8), as well as by a number of important international documents, namely the Universal Declaration of Human Rights (Article 7), the International Covenant on Civil and Political Rights (Article 26), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14) and Protocol No. 12 to this Convention. It follows from these legal provisions that it is a positive duty of the State to ensure conditions that provide persons of the same status with an equal opportunity to

exercise their rights, and in case of violation, protect their rights; otherwise the principles of general equality and the prohibition of discrimination are violated.

Interpreting the constitutional principle of the prohibition of discrimination, the Constitutional Court considered that “in the case of alleged discrimination there should be a situation when a differentiated approach is manifested in relation to the given particular subject compared to another subject in the same situation, and the attitude toward the latter is more favorable” (DCC-967, 7 June 2011).

Referring to the applicant's statement in the present case that the challenged Article does not ensure equality of participants in criminal proceedings before the law, the Constitutional Court states that the observance of the principle of general equality is undoubtedly assessed in the context of comparability with other persons. At the same time, it should be noted that since the recognition of a certain procedural status of a person, each participant in legal proceedings is endowed with a certain range of rights and duties, i.e. both general rights and duties for all participants, and special rights and duties characteristic of the status of the certain participant in legal proceedings.

Section 3 of the Code, titled “Parties and persons involved in criminal proceedings”, clearly distinguished the prosecution party (Chapter 7), the defense party (Chapter 8), representatives and successors (Chapter 9), other persons involved in criminal proceedings (Chapter 10).

According to Point 5 of Article 23 of the Code “the parties to criminal proceedings are empowered by the criminal-procedural legislation with equal opportunities to defend their position. The court substantiates the verdict only based on the evidence during the study of which equal conditions were provided for each of the parties”. In addition, Part 6 of the same Article prescribes a provision according to which: “in the course of criminal proceedings, the parties within the framework of the law **choose** their position, methods and means of upholding it **independently**, regardless the court, other bodies and persons. Upon the motion of a party, the court shall assist such a party in receiving necessary materials in the manner prescribed by this Code”.

Thus, participants in criminal proceedings are equal before the law precisely in the scopes and full range of rights and obligations provided for by criminal procedural legislation, otherwise endowing various participants in court proceedings with all the tools and equal opportunities to participate in all trials makes the content of the person’s procedural status meaningless.

4.2. The right to effective judicial protection enshrined in Part 1 of Article 61 of the Constitution also includes the person's standing to apply to the court in order to protect his rights and freedoms, to receive and appeal the rendered judicial act (accessibility of the court), the validity and finality of court decisions, as well as timing of enforcement of final court judgments.

According to Part 1 of Article 63 of the Constitution, everyone shall have the right to a fair and public hearing of his case within a reasonable period by an independent and impartial court. The fairness of the proceedings also includes the requirements of the adversarial proceedings and equality of the parties. The adversarial nature of the proceedings means that the materials and evidence relating to the case must be accessible to both parties, and they must be able to familiarize themselves with the evidence and arguments presented by the opposite party and interpret them. Equality of rights of the parties implies providing equal opportunities to the parties for the submission of the case.

According to the case law of the European Court of Human Rights, the principle of equality of the parties to the proceedings, as an element of the right to a fair trial, requires that each of the parties was given a reasonable opportunity to present their case in the conditions that **are not essentially unfavorable** for the opposite party (Kress v. France [GC], no. 39594/98, § 72, ECHR 2001-VI, Wynen and Center Hospitalier Interregional Edith Cavell v. Belgium, no.32576/96, 05/11/2002, § 32, Yvon v. France, no.44962/98, 24/04/2003, § 31, Matyjek v. Poland, no. 38184/03, 24/04/2007, § 55, Nikolova and Vandova v. Bulgaria, no.20688/04, 17/12/2013, § 91).

Chapters 7, 8 and 9 of the Code prescribe the rights of the prosecution party and the defense party, as well as their representatives. Both parties have the right to receive a copy of the court judgment or other final court decision, to appeal against the court's actions or decisions, including the court judgment or other final court decision, to file objections to complaints filed by the opposite party against the court judgment or other final court decision.

Receiving free of charge copies of the court judgment is enshrined as a distinct right of participants in criminal proceedings (Point 11 of Article 59, Point 11 of Article 61, Point 19 of Article 65, Point 12 of Article 75, and Point 14 of Article 77 of the Code), and equal provision of this right to both parties first of all derives from the principle of adversarial criminal proceedings and the need to provide the parties with equal opportunities within the framework of judicial process, which is one of the guarantees for the realization of the right of a person to a fair trial.

Legislative granting of the right of participants of judicial process to receive a copy of the court judgment, in fact, pursues two objectives, namely, to ensure that the participant in the judicial process:

- was informed of the justification of the court judgment and was able to orient how the court judgment directly restricts his rights and freedoms or otherwise directly concerns his interests;
- had the opportunity to exercise his right to appeal the court judgment, if he believes that it violates his rights and legitimate interests.

Article 375 of the Code definitely indicates that the Article concerns the provision of a copy of the court judgment to the convict or the acquitted person. Nevertheless, the legislator included a wider range of participants in judicial process in the Article, and in fact divided the latter into two groups: the convict, the acquitted person, the defense counsel and the prosecutor, who are unequivocally served with a copy of the court judgment, and the injured person, the civil claimant, the civil defendant and their representatives, who are served with this procedural document on a specific condition, namely in the presence of their motion.

By the Decision DCC-881 of 4 May 2010, the Constitutional Court expressed a legal position on the principle of prohibition of discrimination, according to which the principle of prohibition of discrimination does not imply that within the framework of people of the same category any differentiated approach may be considered as discrimination, and that any differentiated approach is considered acceptable due to objective grounds and legitimate purpose.

Although the injured person and the civil claimant together with the prosecutor are the prosecution party (Point 21 of Article 6 of the Code), and the mentioned persons together with the convict, the defense counsel and the civil defendant are considered to be the participants in judicial process (Point 31 of Article 6 of the Code), and the comparison and comprehensive study of their procedural rights and duties indicate that they do not coincide in their volume and content (Articles 54, 59, 61, 65, 73 and 75 of the Code). Moreover, they have certain differences due to the peculiarities of the status of one or another participant in the criminal judicial process.

That is to say, the range of discrepancy between the rights of participants in the judicial process or their content divergence, in this case, is due to such objective grounds as the difference in their procedural statuses.

In turn, the status of a participant in the judicial process is determined by his legitimate interests in criminal proceedings and a reasonable desire to achieve their satisfaction. In other words, when establishing the range of rights and obligations of a participant in the judicial process, the legislator proceeds from the legitimate aim of creating standpoints for the effective protection of his interests.

Such a differentiated approach - serving the parties to the judicial process with a copy of the court judgment - also pursues a legitimate aim needlessly not to overload the work of the courts and ensure the proper administration of justice. This is evidenced by the information provided by the RA Judicial Department, according to which, of the 7310 appeals submitted to the RA Criminal Court of Appeal in 2016-2017, the number of appeals filed by the injured person (the successor of the injured person), the civil claimant, the civil defendant and their representatives (including legitimate), only 121 appeals, which is about 1.6% of the total number of appeals, from which only 8 were left without consideration on the basis of a missed deadline.

As for the argument of the applicant that the realization of the right of the injured person to appeal the court judgment depends on his positive (active) behavior, that is, on the circumstances in which the court judgment is sought, and he is needlessly burdened with the obligation to file a motion to receive the court judgment, the Constitutional Court considers that the term prescribed in Article 375 of the Code does not restrict the right of the injured person to effective judicial protection of his rights and freedoms and the right to a fair trial.

The analysis of the provisions of the challenged Article and the relevant provisions of other Articles of the Code, which are in the systemic integrity with the latter, indicates that filing a motion for receiving a copy of the court judgment does not either create legal difficulties for the interested person or cause any additional serious challenges (application of additional efforts, commitment of expenditures, etc). In addition, the consideration of the motion does not bear the risk of overcoming confusing or unnecessary procedures or not receiving a copy of the court judgment, since in such a case the court must unequivocally provide a copy of the court judgment.

Having considered in principle the establishment of procedural restrictions at the legislative level and requirements for the proper administration of justice, the European Court of Human Rights considers that the applicant must make major efforts into implementing procedural requirements and the requirements of the judicial process (*Jodko v. Lithuania*, no.39350/98, decision on the acceptance of the application, 7/09/1999).

In terms of the timeframes for appealing a court judgment, the injured person or other subjects of this group, in comparison with other participants in the judicial process, are not in a disadvantageous or essentially unfavorable situation, since these timeframes are identical for all participants in the judicial process.

4.3. At the same time the Constitutional Court considers that the aforementioned differentiated approach can be justified only if there are necessary legislative organizational mechanisms and procedures for ensuring the possibility of filing a motion by the injured person, the civil claimant, the civil defendant or their representatives to receiving a copy of the court judgment. Moreover, priority of these guarantees is that the injured person, the civil claimant, the civil defendant, and their representatives were informed about the promulgation of the court judgment prior to the submission of the motion for receiving a copy of the court judgment.

The systemic analysis of the Code shows that the duty of the court to notify the parties to proceedings of the place and time of court hearings is enshrined in the provisions of the Code relating to appellate proceedings (Article 390 of the Code) and cassation proceedings (Article 417 of the Code), as well as in the proceedings before the court of first instance when considering motions for selecting detention as a measure of restraint or extension of detention (Article 285) and considering complaints against detention (Article 289.4). In other cases, no direct requirement is envisaged for notifying the parties to proceedings of the place and time of court hearings in criminal cases in the court of first instance, and there is no regulation regarding the notification of the place and time of the promulgation of the court judgment. However, the content of Articles 307, 308 and 305 of the Code directly implies the duty of the court in due course to notify these persons of the place and time of court hearings.

Article 101 of the Code guarantees the explanation to the persons participating in the proceedings of their rights and obligations, and the provision of the possibility of their implementation. According to the mentioned Article, in addition to the fact that “any person participating in the criminal proceedings, is entitled to know his rights and obligations, the legal consequences of the position, selected by him and also to understand the meaning of the procedure actions”, “the body, conducting the criminal trial, must explain to each person participating in the criminal proceedings, of his rights and obligations and the possibility of their implementation by the procedure provided for by this Code”. It should be noted that also “the rights and obligations are to be explained to a person, who acquired the status of a participant in the judicial process, prior to the beginning of the investigatory or other procedure actions with his participation and prior to the expression by him of any position as a participant in the judicial

process. The court must explain to the participant in the judicial process, who appeared before the court, of his rights and obligations, irrespectively of the fact whether he had been explained of his rights and obligations in the course of pre-trial proceedings of the criminal case”.

According to Article 102 of the Code, motions and requests must be necessarily considered, and Part 2 of the same Article establishes a provision according to which: “motions and requests must be considered and resolved immediately upon their declaration, unless another procedure is provided for by the provisions of this Code. The resolution of the motion may be postponed by the body conducting the criminal proceedings, until the revealing of the circumstances essential for rendering a decision on the motion. In the cases stipulated by this Code, an untimely petition is left without consideration”. In addition, “the body conducting the criminal proceedings shall immediately notify the applicant of the decision rendered on the motion or request”.

Based on the foregoing, the Constitutional Court considers it necessary to note that within the framework of the above-mentioned legal positions the organizational mechanisms and procedures established by the Code ensure the exercise of the rights to effective judicial protection and a fair trial of parties to proceedings specified in the challenged legal provision.

4.4. Referring to the applicant's allegation that the challenged criminal procedural provision does not comply with the constitutional principle of certainty, since “it does not establish a specific timeframe for the injured persons to claim from the court a copy of the court judgment”, the Constitutional Court considers that it is groundless with the following motivation.

The first sentence of the Article under challenge clearly establishes the timeframe “no later than 5 days after the promulgation of the court judgment”, during which “a copy must be served to the convict or the acquitted person, their defense counsel and the prosecutor”. The specified timeframe also applies to other participants in judicial process prescribed in the second sentence of the Article, i.e. the injured person, the civil claimant, the civil defendant, and their representatives.

For appealing against judicial acts by higher courts, the legislator has established certain deadlines aimed at ensuring the proper implementation of criminal proceedings. Within the framework of the deadlines prescribed by the legislator, the persons specified in the challenged legal provision must comply with the necessary behavior in order to receive a copy of the court judgment and appealing against it.

Based on the review of the case and governed by Point 1 of Article 168, Point 8 Part 1 of Article 169 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. The provision “within the same period, the injured person, the civil claimant, the civil defendant, their representatives shall be served with the copy of the court judgment on their own motion” prescribed in Article 375 of the RA Criminal Procedure Code in conformity with the RA Constitution.

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

Chairman

H. Tovmasyan

18 September 2018

DCC -1426