

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

**ON THE CASE CONCERNING THE CONSTITUTIONALITY OF ARTICLE
101 § 1(2) OF THE ADMINISTRATIVE PROCEDURE CODE OF THE
REPUBLIC OF ARMENIA AND ARTICLE 90 § 6 OF THE JUDICIAL
CODE CONSTITUTIONAL LAW OF THE REPUBLIC OF ARMENIA,
CONSIDERING ALSO THE INTERPRETATIONS GIVEN TO THE
MENTIONED PROVISIONS IN THE LEGAL PRACTICE, RAISED BY
THE APPLICATION OF DAVIT HARUTYUNYAN**

Yerevan

May 21, 2024

The Constitutional Court, composed of A. Dilanyan (presiding), V. Grigoryan, H. Tovmasyan, H. Hovakimyan, E. Shatiryan, S. Safaryan, and A. Vagharshyan,

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

the applicant, D. Harutyunyan,

the respondent: Head of Legal Support and Service Division of the Staff of the National Assembly M. Stepanyan, as the representative of the National Assembly,

pursuant to Article 168(1) and Article 169 § 1(8) of the Constitution, as well as Articles 22 and 69 of the Constitutional Law on the Constitutional Court,

examined in a public hearing through a written procedure the case concerning the constitutionality of Article 101 § 1(2) of the Administrative Procedure Code of the Republic of Armenia and Article 90 § 6 of the Judicial Code Constitutional Law

of the Republic of Armenia, considering also the interpretations given to the mentioned provisions in the legal practice, raised by the application of Davit Harutyunyan.

The Administrative Procedure Code of the Republic of Armenia (hereinafter referred to as “the Code”) was adopted by the National Assembly on December 5, 2013, was signed by the President of the Republic on December 28, 2013, and entered into force on January 7, 2014.

Article 101 § 1(2) of the Code, under the heading “*Judicial Sanctions and General Manner of Imposing Them*” prescribes as follows:

“1. Upon the grounds prescribed by the Judicial Code Constitutional Law of the Republic of Armenia, the court has a right to impose the following sanctions against persons, representatives, participating in an administrative litigation, and other persons present at the court session:

(...)

2) Removal from the courtroom”.

The above-mentioned provision of the Code was drafted in a new edition by the Law HO-120-N on Making Amendments and Supplements to the Administrative Procedure Code of the Republic of Armenia, adopted on February 9, 2018.

The Judicial Code Constitutional Law of the Republic of Armenia (hereafter also referred to as “the Constitutional Law”) was adopted by the National Assembly on February 7, 2018, was signed by the President of the Republic on February 10, 2018, and entered into force on April 9, 2018.

Article 90 § 6 of the Constitutional Law, under the heading “*Sessions of the Supreme Judicial Council*”, prescribes as follows:

“6. In the case of acting as a court, the Supreme Judicial Council shall hold open court sessions, except for the cases when, by the reasoned decision of the Supreme Judicial Council rendered upon the motion of a Member of the Supreme Judicial Council, or upon the motion of a participant to the proceedings, the Council holds

closed court sessions with the aim of protecting the privacy of the participants to the proceedings, the interests of justice, as well as national security, public order or morality”.

The above provision of the Code was supplemented and amended by the Constitutional Law HO-197-N on Making Supplements and Amendments to the Judicial Code Constitutional Law of the Republic of Armenia, adopted on March 25, 2020.

This case was initiated by the application of D. Harutyunyan submitted to the Constitutional Court on January 3, 2024.

Having examined the application and the documents in the case, and the written explanation of the respondent, as well as having analyzed the contested and other provisions related to the latter, the Constitutional Court **FOUND**:

1. Brief background of the case

On April 14, 2023, the Press Secretary of the Minister of Justice submitted the Report No. N//9734-2023 to the Acting Minister of Justice, on considering the necessity for examining the grounds for instituting disciplinary proceedings against Davit Harutyunyan, Judge of the First Instance Criminal Court of General Jurisdiction of Yerevan (hereafter also referred to as “the Judge”) based on a mass media publication.

Disciplinary proceedings were initiated against the Judge, according to the Decision N 31-A of the (acting) Minister of Justice of April 20, 2023.

On May 24, 2023, the Acting Minister of Justice submitted a petition to the Supreme Judicial Council (hereinafter also referred to as “the Council”) by Decision N 42-A regarding a disciplinary action against the Judge, noting that the ground for initiating disciplinary proceedings was the prima facie violation of the rules of judicial conduct by the Judge, as prescribed by Article 69 § 1(6 and 8) of the Constitutional Law, and the reason for instituting a disciplinary proceeding was the relevant mass

media publication.

On June 19, 2023, the Minister of Justice submitted a petition to the Council to hold a closed court session in the case of subjecting the Judge to disciplinary responsibility, with the following reasoning: “(...) The nature of disciplinary violations committed by the judge is such that it directly refers to the discreditation of the judiciary, questioning the independence of the Supreme Judicial Council acting as a court, and the legitimacy of its decisions due to a public statement made by the Judge. Whereas, the function of the Council to ensure the independence of courts and judges, as enshrined in the Constitution, implies the prevention - within the framework of the powers assigned to the Council – of any action that hinders guaranteeing the independence of courts and judges, and discredits the judiciary. Based on the above, we believe that the dissemination of the Judge’s statement during the public hearing of the case may have an additional negative impact in the context of maintaining the public’s trust and confidence in the reputation, independence and impartiality of the judiciary, and holding a closed court session stems from the need to protect the interests of justice”.

At the court session convened on June 19, 2023, the Council decided to uphold the submitted petition (based on the minutes of the court session of June 19, 2023 in the Case No. SJC-57-O-K-16).

By the Decision No. SJC-57-O-K-16 of July 3, 2023, the Council considered it important to address the need for rendering a decision on examining the petition of the Authorized Body on subjecting the Judge to disciplinary action in a closed court session, and noted that the violations committed by the Judge of the rules of judicial conduct, as prescribed by Article 69 §1(6 and 8) of the Constitutional Law, which served as a ground for instituting disciplinary proceedings, contained public statements discrediting the judiciary, reducing public trust and confidence in the independence and impartiality of the judiciary, which, according to the Council, served as a ground for

holding a closed court session. The Council, in particular, noted: “(...) taking into account the function of the Council to ensure the independence of courts and judges, as prescribed by the Constitution, the dissemination of statements about the above-mentioned facts by the Judge within the framework of the public examination of the case in accordance with the judicial order may have an additional negative effect in the context of maintaining the reputation of the judiciary and public trust and confidence, which is why the Council, based on the need to uphold the interests of justice, has rendered a decision to hold a closed court session.

(...)

(...) taking into account the described circumstances, including the risk of discrediting the judiciary, the need for maintaining the dignity of a judge’s position and public trust and confidence in the independence and impartiality of the judiciary, also emphasizing the need for adhering to the principle of publicity, the Council shall publish this decision in whole on the official website of the Judiciary within the specified period”.

During the court session convened on June 26, 2023, the Council imposed the sanction of “removal from the courtroom” on the Judge, continuing the examination of the case without the participation of the Judge and his representatives (based on the minutes of the court session of June 26, 2023 in the Case No. SJC-57-O-K-16).

At the court session of July 3, 2023, the final part of the Council’s Decision No. SJC-57-O-K-16 was published, by which the Council held:

“1. To grant the petition, filed by Levon Balyan, acting as the Minister of Justice, regarding the disciplinary action against Davit Harutyunyan, Judge of the First Instance Criminal Court of General Jurisdiction of Yerevan. To terminate the powers of Davit Harutyunyan, Judge of the First Instance Criminal Court of General Jurisdiction of Yerevan, on the grounds of an essential disciplinary violation.

(...)”.

2. Applicant's submission

D. Harutyunyan (hereafter referred to as “the applicant”), in particular, states: “The enforcement of Article 11 § 2, Article 90 § 6 (closed court session for protecting the interests of justice), Article 50 § 2, and interrelated Article 101 § 1(2) of the Administrative Procedure Code of the Republic of Armenia (removal of a judge from the courtroom), against the applicant by the Decision of the Supreme Judicial Council [Decision No. SJC-57-O-K-16 of the Supreme Judicial Council, adopted on July 3, 2023, “On subjecting Davit Harutyunyan, Judge of the First Instance Criminal Court of General Jurisdiction of Yerevan, to disciplinary responsibility], is manifestly interfering with the applicant’s basic rights to effective judicial protection and a fair trial, private family life and good reputation, as well as joining the public service, guaranteed by Articles 61, 63, Article 31 § 1, and Article 49 of the Constitution”.

As for the constitutionality of the interpretation given in the legal practice of Article 90 § 6 of the Constitutional Law, the applicant finds that the protection of the interests of justice is not an independent ground for limiting the publicity of the court session and holding a closed court session, if there is no related need for the protection of human rights. In particular, the applicant states: “(...) **it is not reasonably possible to imagine a situation where there are persons who bear the interests of justice, therefore, the publicity of the examination of the case can be limited purely for the purpose of protecting the interests of justice.**

(...)

(...) the interest of justice or its protection cannot be interpreted in a literal or narrow sense, and it cannot refer only to a narrow issue related to justice, such as law-making activity, legislative amendments, decisions of the court rendered in public, or the legitimacy thereof. Such processes (...) cannot be implemented in closed court sessions in the context of the literal interpretation of the protection of the interests of justice.

(...)

(...) The interpretation of laws in legal practice and/or the legislative gap and/or the certainty of the law are unconstitutional, insofar as they allow to interfere with one of the essential components of a fair trial, the principle of publicity of the case prescribed by the law, solely for the purpose of protecting the interest of justice; the latter contradict the rights to effective judicial protection and a fair trial guaranteed by Article 61 § 1 and Article 63 § 1 of the Constitution”.

The applicant also raises the question of whether holding a closed court session solely for the purpose of protecting the interests of justice is in line with the constitutional principle of legal certainty, considering the fact that there are no specific permissible cases of holding a closed court session for the purpose of protecting the interests of justice.

As for the imposition of the judicial sanction of “removal from the courtroom” against the judge in the framework of the disciplinary proceedings, the applicant, in particular, states: “(...) especially at the initial stage of the case consideration, especially when at the initial stage of the disciplinary proceedings the judge has not yet submitted materials and/or has not been allowed to submit materials, evidence, has not submitted explanations, has not made a defense speech, no lawyers and representatives have been present, the participation of representatives has not been ensured in the future either, and the sanction of removal from the courtroom is imposed on him, the norm or its suchlike interpretation in legal practice contradict the Constitutional right of the parties to equality, competition, protection, and a fair trial”.

The applicant also states: “(...) although before the end of the court session, after imposing a court sanction, lawyers arrived and their entry was forbidden by the Chair of the Council, and at the same time loudly expressing regret, he continued the session, the said per se is subject to evaluation and appeal by other procedures, and no issue of legality or illegality of actions or decisions is raised before the Constitutional Court, but

rather this application addresses the interpretation given to the provision in the legal practice or the legislative gap, applied by the enforcement agency in the field, namely the Supreme Judicial Council, the only entity shaping the legal practice in disciplinary cases”.

The applicant states: “(...) as a result of imposing the court sanction, the right of the party to be heard was not ensured, the party did not enjoy the right to submitting explanations on the disciplinary proceedings and the allegations at the relevant stage, to participating in the examination of the evidence, to a closing speech, as a result of which his powers were terminated.

(...) unless the applicant was removed from the courtroom, even more so, for an indefinite period of time, if his right to at least be heard regarding both the sanction and the proceedings in general were ensured, unless his rights were limited by the application of the above-mentioned legal provisions in suchlike interpretation and by such actions, no such interference could have happened with regard to the basic rights to a fair trial and good reputation, as well as joining public service of the judge subject to disciplinary responsibility.”

According to the applicant, “(...) Article 50 § 2 of the Law, and Article 101 § 1(2) of the Administrative Procedure Code of the Republic of Armenia and/or the interpretation given thereto in legal practice and/or the legislative gap, in particular, insofar as they do not provide for an exception to imposing the judicial sanction of “removal from the courtroom” on the judge during the examination of a case in disciplinary proceedings, or ensure such possibility, and/or insofar as they do not provide for the duration of the imposed sanction and/or insofar as they do not provide for the impossibility of continuing the court session without the participation of a lawyer, are unconstitutional, contradicting the rights to effective judicial protection and a fair trial, as guaranteed by Article 61 § 1 and Article 63 § 1 of the Constitution”.

3. Respondent's submission

The National Assembly (hereinafter referred to as “the respondent”), in particular, considers that holding a closed court session for the purpose of protecting the interests of justice prescribed by Article 11 § 2 and Article 90 § 6 of the Code is in line with the principle of proportionality, and the limitation of the rights implied thereby pursues a legitimate goal.

According to the respondent, “In essence, the applicant raises the issue of the unfair enforcement of the norm against him, arguing that the grounds for holding a closed court session were insufficient or absent, and such a circumstance cannot raise the issue of the constitutionality of the norm”.

The respondent considers that the contested norms are meant to guarantee the implementation of an effective trial, and “In the case under discussion, certain procedures (closed court session, and removal from the courtroom) are defined in order to ensure the effective examination of the court case, which are aimed at and support the administration of justice, in particular, the effective examination of the case during the court session. The mentioned procedures also enable the prevention of potential violations of the law. The mentioned procedures do not limit a person's right to access to court and a fair trial, but support the protection of the interests of justice”.

As for Article 50 § 2 of the Code, the respondent believes that the impossibility of imposing the judicial sanction of “removal from the courtroom” to some participants in the proceedings is aimed at providing sufficient guarantees for the participation of the representative or the defense counsel during the examination of the case, “(...) which enables the person removed from the courtroom to fully exercise his right to judicial protection.

(...)

It is necessary to note that in all cases the issue of the impossibility or possibility of continuing the examination of the case is of an evaluative nature, and the court may

render such a decision depending on the circumstances of the case; consequently, insofar as the norm does not prescribe an imperative regulation to stop the examination of the case, it cannot be interpreted to deprive the court of its ability to render such a decision. Therefore, under the current regulations, the court may discontinue the examination of the case if there are sufficient grounds.

In the case of prescribing an imperative that in all cases the examination of the case should be discontinued in the absence of a representative, a risk of the violation of rights arises, which will lead to artificial delays in the examination of cases”.

The respondent considers that there is no issue of a legislative gap or unconstitutional interpretation raised by the applicant in relation to the contested provisions, and the applicant’s claims are essentially groundless.

The respondent requests to render a decision in this case on declaring the contested provisions as conforming to the Constitution.

4. Considerations to be clarified in the case

In order to clarify the constitutionality of the legal provisions contested by this application, taking into account also the interpretations thereof in the legal practice, the Constitutional Court considers it necessary to address, in particular, the following questions:

- Is the possibility of exercising the person’s right to a fair trial, guaranteed by Article 63 § 1 of the Constitution, ensured in the context of guaranteeing the right to public hearing of the case, in the conditions of the interpretation given to Article 90 § 6 of the Constitution in legal practice, according to which – in case of acting as a court – the Council can hold closed court sessions for the purpose of protecting the interests of justice, as well as in the case when the facts, which serve as a ground for closed court sessions, have already been made public at the time of the examination of the

disciplinary proceedings?

- Is Article 101 § 1(2) of the Code, which in legal practice has been construed so that, within the framework of disciplinary proceedings, the judicial sanction of “removal from the courtroom” can be imposed on a judge, without guaranteeing the possibility of the participation of the judge’s representative after the said sanction is imposed, consistent with the constitutional content of the right to judicial protection guaranteed by Article 61 § 1 of the Constitution and that of the right to a fair trial guaranteed by Article 63 § 1 of the Constitution?

5. Assessments of the Constitutional Court

5.1. One of the fundamental principles of administering justice in a democratic society is the public examination of the case, which is a characteristic component of the right to a fair trial, prescribed by the Constituent power in Article 63 § 1 of the Constitution. The publicity of the court case is twofold in constitutional law, presented as a principle and as an individual right of a person. As a *principle*, on the one hand, it is the cornerstone of the court’s activity, a vital guarantee of ensuring justice and the primary precondition for the establishment of a rule of law state and democracy, and on the other hand, it implies the participation of public in court sessions, enjoying the opportunity of being part of the administration of justice, and public oversight over the latter, which directly derives from the imperative of democracy. As an *individual right of a person*, it is an essential component of a person’s right to a fair trial, which implies the right of a person to open and public court proceedings against him. Thus, referring to the legal significance of the principle of publicity in the context of the conceptualization of the right to a fair trial prescribed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as “the Convention”), the European Court of Human Rights (hereinafter also referred to as “the ECHR”) has emphasized that this principle protects litigants from a trial devoid of public scrutiny by ensuring public trust and confidence in courts

(both higher and lower) and, in fact, it is aimed at realizing the objectives of Article 6 § 1 of the Convention (*Gautrin and Others v. France*, 38/1997/822/1025–1028, 20.05.1998, § 42, *Pretto and Others v. Italy*, Application no. 7984/77, 08.12.1983, § 21). The principle of publicity includes two important aspects, namely, the public examination of a court case, and the publication of the act, issued on the case, in an open session (*Tierce and Others v. San Marino*, Applications nos. 24954/94, 24971/94 and 24972/94, 25.07.2000, § 93, *Sutter v. Switzerland*, Application no.8209/78, 22.02.1984, § 27):

Regarding the above, in the Decision DCC-1467 of the Constitutional Court of July 2, 2019, it is specifically stated: “(...) The principle of publicity of the trial is one of the fundamental principles of the administration of justice in a democratic society, the role and significance of which implies that this principle is a serious guarantee for ensuring the legal activity of the court, and the presence of the public and the mass media is a deterrent for the court in the process of examination of a court case”.

Referring to the guarantees for realizing the right to a fair trial and, in particular, the principle of publicity, the Constitutional Court stated in its Decision DCC-1020 of April 11, 2012: “(...) the minimum and most important guarantees for the realization of that right are the **public trial** (in particular, publicly accessible information about the court trying the case, the case under examination, the venue and the time of the trial, the order of the trial, etc.), as well as **the mandatory publication of the judicial act**.

(...)

(...) the publicity of the trial first of all means the possibility of exercising public oversight over the trial and the acts adopted by the court”.

The Constitutional Court states that the publicity of the trial is an important component of the right to a fair trial, which is meant to ensure:

- **the implementation of a person’s right to an open, transparent trial conducted against him or with his participation which is accessible for public**

oversight,

- **the implementation of public oversight over justice, including the “access” for the mass media representatives to the court,**
- **public accountability of the courts,**
- **strengthening of the trust and confidence of the trial participants and the public in the independence and impartiality of the court and the judge.**

However, the principle of publicity of justice is not absolute and is subject to limitations based on public interests and the constitutional and legal objectives of human rights protection. The legitimate objectives – for the protection of which the publicity may be limited, in particular, by closed court sessions – have been specified in the domestic and international legal systems. Article 63 § 2 of the Constitution stipulates: “2. In the cases and procedure provided by law, the court proceedings or a part thereof may be held in closed court sessions upon a court decision with the aim of protecting the private life of the participants of proceedings, the interests of minors or the interests of justice, state security, the public order, or morals”.

Article 6 § 1 of the Convention also establishes the grounds in the presence of which the court session can be held in closed court sessions: “(...) Judgment shall be promulgated publicly but the presence of the press and public may be prohibited in the trial or a part thereof in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity might prejudice the interests of justice”.

Thus, the principle of publicity can be limited only if **strictly necessary** and **in special circumstances**.

The Constitutional Court states that **holding the court proceedings or a part thereof in closed court sessions is a procedural measure for the protection of the goals defined by the Constitution and the law, by which the law enforcer is given**

the opportunity to prevent the possible targeting of interests under constitutional and legal protection, which in each case should be as real and predictable as possible.

In the Decision DCC-1452 of April 2, 2019, the Constitutional Court stated: “1) the principle of publicity is an important and inviolable principle of exercising procedural rights within the framework of the Constitution, international legal acts, and procedural legislation (...),

(...)

3) the principle of publicity can be limited only under circumstances clearly defined by the Constitution, and in the conditions where the limitation is implemented in accordance with the procedure prescribed by law, there can be no issue of violation of the principle of publicity”.

The objectives pursued by limiting the principle of publicity when holding court proceedings or a part thereof in closed court sessions, are on the one hand, the protection of *private interests* due to the need to protect the rights of the participants to the proceedings, and on the other hand, they are aimed at the protection of *public interests* due to the need for the protection of the interests of justice, state security, public order or morality.

Although public and private interests are interdependent and complementary, and in all cases holding court proceedings or a part thereof in closed court sessions with the aim of protecting private interests also derives from public interests, this does not in any way challenge the self-sufficient nature of public interests. **The ultimate beneficiary of public interests, including the interest of justice, is the public, and the public authority is responsible for the pursuit of public interest, mandated by the Constituent power with the exclusive constitutional mission of securing and protecting public interests.** The public interests listed in Article 63 § 2 of the Constitution, including the interest of justice, are of paramount importance in the state

legal system, and in cases where the examination of a court case in open court session might undermine any of those interests, the court proceedings or a part thereof must be held in closed court sessions.

In accordance with the requirements for mechanisms for limiting the principle of publicity through holding a closed court session, as prescribed by the Constituent power, the court proceedings or a part thereof can be held in closed court sessions **(1) *only by the decision of the court***, and **(2) *in the cases and in the order prescribed by law***.

The Constituent power has envisaged the fundamental provisions of the institution in question, and delegated the concretization/detailing of the legislation to the legislator, and the latter has defined the respective legislative mechanisms, taking into account the substantive and procedural features, characteristic of certain types of court cases. Thus, Article 90 § 6 of the Constitutional Law challenged by the applicant, in parallel with the above-mentioned constitutional procedural requirements, stipulates that the Council may hold a closed court session *only upon the motion of a Member of the Council, or upon the motion of a participant to the proceedings*, which is conditioned by the constitutional and legal status of the Council as a collegial judicial authority. In the context of the above, it should be noted that the provisions contested by the applicant relate to each other as general and special norms: Article 11 § 2 of the Constitutional Law, as reflected in Chapter 2 with the heading “Principles of Organization and Functioning of Courts”, contains the legal grounds for holding a closed court session, which are applicable, in general, to all types of court proceedings, regardless of the branch of law. Article 90 § 6 of the Constitutional Law establishes, in particular, the grounds for closed court sessions held by the Council acting as a court, according to the criteria defined in Article 11. Both provisions of the law derive from Article 63 § 2 of the Constitution, and are the legislative reflections of the latter.

Nevertheless, regardless of the substantive and procedural features, characteristic

of individual types of court cases, an intense restriction of the principle of publicity, such as holding a closed court session, must comply with the following standards of legitimacy:

1. It must be driven by the purpose of guaranteeing interests under constitutional and legal protection. Holding a closed court session should really pursue the goal of guaranteeing the interests protected by the Constitution and the law. All cases of limiting the principle of publicity by holding closed court sessions driven (imposed) by motives other than the interests subject to protection prescribed by the law, are illegitimate and contradict the constitutional and legal significance of the provision in question. When rendering a decision to hold a closed court session, the court should be guided exclusively by the legal goals prescribed by the Constitution, remaining above various impulses and factors that question the independence and impartiality of the judiciary, target the reputation of the judiciary, undermine the trust and confidence of the public in the latter, and hinder the administration of justice. **The closed court session should not be a cover-up measure for administering “shadow justice”.**

Any limitation of the principle of publicity, which does not really pursue the goal of protection of any interest listed in Article 63 § 2 of the Constitution, leads to the violation of the principle of publicity of judicial proceedings.

2. It must be applied as a possible last resort means for the protection of any interest prescribed by Article 63 § 2 of the Constitution, when the public examination of the case may cause irreparable damage to the interest in question that enjoys constitutional and legal protection.

3. It must be effective in terms of the protection of any interest listed in Article 63 § 2 of the Constitution. If holding the judicial proceedings in closed court sessions cannot ensure that the listed interests are guaranteed or protected, the limitation of the principle of publicity – as a result of its application – essentially becomes meaningless.

In order for the court proceedings or a part thereof held in closed court sessions to be an effective means for the protection of the stated goals and interests, it is necessary that the publication of factual circumstances containing an alleged threat during the court proceedings – the existence of which determines the need for examining court cases in closed court sessions – be dictated by *the real, non-abstract and predictable* nature of the risk, threatening the interests protected by the limitation.

In the context of the above, the Constitutional Court considers it necessary to highlight the constitutional and legal specificities of examining court cases in closed court sessions with the aim of protecting the interests of justice.

The concept of “*interest of justice*” is multi-layered and multifaceted: it is practically impossible to predict and determine with absolute clarity the certain and exhaustive scope of public relations containing the interests of justice. Accordingly, during the examination of the case, there may appear circumstances which may in one way or another undermine the interests of justice, and in each case the source of the alleged risk and the manifestations of targeting the interests of justice may be diverse and varied, which enables a conclusion to be drawn that although the determination of the exhaustive scope of such circumstances in the context of the process of formation and interpretation of public interests is appropriate, but it is impossible from the point of view of legislative policy.

The Constitutional Court states that the circumstances, serving as a ground for holding a closed court session with the aim of protecting the interests of justice are subject to *evaluation/qualification by the court* in each case, which enables the law enforcer to appropriately counteract the circumstances targeting the interests of justice, in view of the protection of constitutional and legal goals.

Therefore, in the context of the above, referring to the question of the applicant, as to whether the limitation of the principle of publicity due to examining the case in a closed court session solely for the purpose of protecting the interest of justice is in

conformity with the constitutional principle of legal certainty in the event that the law does not specify permissible cases of examining the case in a closed court session with the aim of protecting the interests of justice, the Constitutional Court notes that no problem of legal certainty arises in relation to this issue.

However, the above *does not in any way mean that the legislator has endowed the court with absolute discretion in interpreting the concept of “interest of justice”*. Holding a closed court session with the limitation of the principle of publicity with the aim of protecting the interest of justice should in each case be dictated by the need to ensure the necessary conditions for the effective and unobstructed implementation of justice in the specific case examined in the court proceedings. In that context, the court must highlight, based on its own assessment, the circumstances that hinder the interests of justice, and justify with proper reasoning whether *the circumstances that led to the closed court session, threaten the effectiveness of the examination of the case or its unhindered course*, and whether the limitation of the publicity of the judicial proceedings in the presence of such a threat, *can ensure the protection of that interest*.

Highlighting the causal relationship between the facts mentioned by the court and the potential threat to the interests of justice and the reasoning for the decision regarding the limitation of the publicity of the court proceedings, of course, maintaining discretion of the specific court in determining the depth and scope of reasoning, are of key importance for ensuring constitutionality by limiting the principle of publicity through holding the court proceedings in closed court sessions, taking into account that ensuring the publicity of court proceedings is a positive general rule, and exceptions to this rule must have a convincing justification in each specific judicial case and instance.

In the light of the facts of this case, the Constitutional Court considers it necessary to note that the court must highlight the circumstances that threaten to undermine the interests of justice in the relevant decision on holding the court proceedings or a part thereof in closed court sessions with the aim of protecting the

interests of justice. *The neutralization of the threat to the interest of justice should not be outdated and irrelevant*: the circumstances threatening the interest of justice and the damage caused thereby must be real.

Referring to the factual circumstances of this case in the context of the above, the Constitutional Court notes that the Council's limitation of the principle of publicity by holding disciplinary proceedings in closed court sessions was based on the assessment of the Council that repeating in an open court session of the opinion expressed by the judge in the interview where he criticized the Council's activity, may target the reputation of the judiciary, and thereby undermine the interests of justice. Whereas, apart from the circumstance of targeting the reputation of the judicial authority, no other circumstances were mentioned regarding the effectiveness of the administration of justice in the specific disciplinary proceedings and any circumstances hindering its course. Moreover, the disciplinary proceedings against the applicant were initiated and were subsequently held in the Supreme Judicial Council in relation to violations of the rules of judicial conduct caused by the statements made by the judge himself, and the decision on limiting the publicity of the judicial proceedings therefor – aimed at the protection of the “interest of justice” in the sense of Article 63 § 2 of the Constitution – did not include any other circumstance containing risks related to either the acquisition and examination of evidence and protection of the entirety and integrity thereof, or hindering the course of the proceedings per se. Together with the above-mentioned, the Constitutional Court also notes that the statements made by the Judge, which served as a ground for initiating disciplinary proceedings, had already been published, disseminated through the mass media, and become known to the public before the initiation of disciplinary proceedings. In other words, at the time of rendering the decision to hold the disciplinary proceedings in a closed court session with the aim of protecting the interests of justice, in the absence of any other justification in the decision to limit the

publicity of the disciplinary proceedings, the expressions – the competence for the assessment of the legitimacy of which is reserved to the Supreme Judicial Council – had already influenced the reputation of the judiciary, as per the assessment of the Supreme Judicial Council.

The Constitutional Court considers that the Council’s interpretation, given to the contested Article 90 § 6 of the Constitutional Law, does not conform with the constitutional and legal meaning and content of the mentioned norm, and thereby, it does not meet the requirements for limiting the publicity of judicial proceedings, as prescribed by Article 63 § 2 of the Constitution, thus leading to the violation of the right to a public examination of the case, as prescribed by Article 63 § 1 of the Constitution.

In the light of all the above, the Constitutional Court finds that Article 90 § 6 of the Constitutional Law is in conformity with the Constitution in the interpretation that the wording “interest of justice” refers to the effective and unhindered implementation of justice in a specific disciplinary case examined by the Supreme Judicial Council.

5.2. The Constitutional Court states that the right of a person to participate in the proceedings against him can be limited in the presence of the respective grounds, and taking into account the scope of this constitutional and legal dispute, the limitation of the said right will be addressed in the context of imposing the judicial sanction of “removal from the courtroom”.

Judicial sanction is a means of judicial interference imposed by the court on the grounds and in the manner prescribed by the law against the participants of the trial, their representatives, and other persons present at the court session in connection with the conduct that hinders the effective examination of the case and/or discredits the judicial authority. In each case, the judicial sanction serves as a means of procedural counteraction to the wrongful conduct of a participant to the proceedings.

The imposition of judicial sanctions, aimed at the protection of legal interests stipulated by the Constitution and laws, falls within the reasonable discretion of the court. However, this discretion of the court is constrained by the imperative for guaranteeing the procedural rights of the parties, in particular, the right to be heard, especially when it comes to the administration of the judicial sanction of “removal from the courtroom”.

The Constitutional Court states that Article 101 § 1 of the Code defines the types of judicial sanctions to be imposed in judicial proceedings and the general manner of the imposition thereof in the presence of relevant grounds, and Article 50 § 2 of the Constitutional Law, among the specific aspects of imposing a judicial sanction, defines the range of trial participants with immunity to the court sanction of “removal from the courtroom”.

The wrongful conduct of a participant to the proceedings can be manifested through the violation of both procedural norms, and the abuse of procedural rights. Article 18 § 3 of the Code stipulates that *the parties must exercise their procedural rights in good faith and fulfill their procedural obligations in good faith*. The above-mentioned is equally applicable to all the participants to the proceedings: the manifestations of violations of procedural norms and abuse of procedural rights can serve as a ground for imposing judicial sanctions.

According to the general logic of the procedural institution in question, judicial sanctions should be imposed only when necessary. Article 49 § 1 of the Constitutional Law is also indicative of the above, according to which: *a judge shall be obliged to prevent and minimize, through his conduct, the necessity and cases of imposing a judicial sanction*. When imposing a judicial sanction, the court must be guided exclusively by its constitutional and legal significance and procedural necessity.

The imposition of a judicial sanction in specific circumstances must be predictable

for the participant to the proceedings. Thus, Article 101 § 2 of the Code and Article 49 § 2 of the Constitutional Law stipulate that before imposing a judicial sanction, the judge shall warn in a perceptible manner of the power of the court to impose a judicial sanction, as well as clarify the grounds for and consequences of imposing a judicial sanction, which ensures the predictability of the negative consequences of the wrongful conduct by the participant to the proceedings.

Based on the considerations of guaranteeing a person's procedural rights, Article 101 § 3 of the Code stipulates that when imposing a judicial sanction on a person present at the courtroom, the court must, upon necessity, give him an opportunity to express himself, which, however, is not absolute and can also be limited upon necessity. According to the above-mentioned provision, not giving an opportunity to speak out when imposing a fine or removing a person, participating in an administrative court proceeding, from the courtroom must be justified by the court.

The Constitutional Court emphasizes **that imposing the judicial sanction per se, as well as the limitation of the opportunity to express himself before the sanction is imposed, must be justified and reasoned by the court in each case, which is a prerequisite predetermining the legitimacy of the limitation of the right.**

According to Article 101 § 4 of the Code, if a person admits the illegality of his act and asks for the forgiveness of the court, a judicial sanction may not be imposed on the latter, and according to Article 101 § 5 of the Code, if the right to express himself granted by the court to the person is abused in order to continue the act that has served as a ground for imposing a judicial sanction or to commit a new such act, the court has the right to impose a more severe judicial sanction. Thus, in terms of intensity, the warning is followed by the sanction of "removal from the courtroom", which implies limiting the rights to effective judicial protection and a fair trial, therefore, it should be imposed only in the case when it is impossible to achieve the pursued legal goal by imposing a milder sanction. In this case, the court has the right to limit the person's

right to participate in the proceedings by imposing on him the stricter sanction of “removal from the courtroom”.

In the context of the above, **the Constitutional Court states that the judicial sanction of “removal from the courtroom”, as an intensive measure of limiting a person’s procedural rights, must be imposed in special cases only, when it is impossible to effectively counteract the wrongful conduct of a participant to the proceedings by imposing a milder judicial sanction; in case of the contrary perception of the norm in question, the procedural mission of the judicial sanction will be distorted.**

The Constitutional Court states that imposing the sanction of “removal from the courtroom” must not lead to competition between the parties, and thereby, to the full blockage of the principles of representation of interests. The court must make all possible and necessary efforts to ensure adequate representation and protection of the interests of the party being removed from the courtroom (for example, inviting the party’s representative or, upon necessity, postponing the court session if it is impossible to continue the trial without the party’s representation), and in the case of the impossibility thereof or the ineffectiveness of the implemented measures, only then the court may continue the examination of the case in the absence of the interested party.

The use of an adequate countermeasure by the court in relation to the wrongful conduct of the participant to the proceedings is extremely important in terms of the need to ensure the purposeful implementation of the norms in question.

Procedural norms, and especially the provisions stipulating the limitation of rights, must not be perceived and interpreted by the courts in isolation, and must be subjected to a systemic interpretation in the light of the interpretation of the fundamental and overriding principles of constitutional and legal, general procedural,

and branch-specific procedural legislation, with the realization that all procedural norms, including measures of coercive nature, originally derive from these principles and are aimed at their proper implementation. Therefore, the interpretation and application of procedural norms contrary to these principles will be claimed as unconstitutional.

The Constitutional Court states that the above is equally applicable also to the disciplinary proceedings against judges, which stand out not only by the peculiarities of the subject composition and the field of activity, but also by the factor of great public interest. The focus of the Council's constitutional and legal mission is to guarantee the independence of courts and judges. The Constitution has given the Council a sole constitutional monopoly – wherein it acts as a court – of subjecting judges to disciplinary responsibility and terminating their powers.

In that context, *within the framework of the disciplinary proceedings, the Council must in each case treat the judge with the attitude commensurate with the latter's high status.* The constitutional and legal mission of the Council must be properly implemented in the context of ensuring the independence, reputation and professional dignity of the judge, and the recognition of the supremacy of the interests of justice. Accordingly, *a judge acting as a party in a disciplinary proceeding, must also be guided by the high reputation of his professional status, demonstrating a conduct, consistent with the spirit of his constitutional and legal mission, and a marked respect for justice and the instances authorized to implement justice.* The above applies to the implementation of any stage of disciplinary proceedings and any procedural action.

Disciplinary proceedings against a judge can ultimately lead to such an intense interference with rights as the termination of the judge's powers, which is related to the interests of a certain individual as well as those of the entire judiciary, *emphasizing the need for properly balancing the interests by the Council.*

Within the framework of disciplinary proceedings against a judge, taking into account the importance of the legal relations in question, as well as the sensitivity of the public reaction to the latter, the Council must impose judicial sanctions only in the case of extreme necessity, with strict adherence to the constitutional and legal, and procedural principles of judicial proceedings. The judicial sanction of “removal from the courtroom” against the judge must be interpreted and imposed by the Council in strict compliance with the constitutional and legal standards of rights limitation, and all possible efforts must be made to protect the judge’s procedural rights in the context of ensuring the equality of the parties and the judge’s right to be heard. Given the intensity of the negative consequences for a judge upon imposing the judicial sanction of “removal from the courtroom”, the Council must employ adequate procedural levers to ensure the realization of the party’s right to be heard.

The Constitutional Court finds that guaranteeing the constitutional right to a fair trial requires that in each case, in parallel with the issue of imposing the sanction of “removal from the courtroom”, the Council shall take measures to ensure the judge’s right to be heard by guaranteeing the participation of the judge’s representative in the disciplinary proceedings, and even in case of the absence of such a possibility, the Council shall at least ensure that the positions of the party be submitted at least in writing if their participation in the proceedings is not possible.

Thus, when imposing the judicial sanction of “removal from the courtroom”:

1. The Council must take into account the peculiarities of its constitutional and legal status and, above all, the non-appealability of its decisions (under the current legal regulations);
2. The Council must take into account the consequent effect of the sanction in question when it is imposed under conditions of an intense restriction of the publicity of the court session, such as the holding a closed court session;

3. Taking into account the consequential effect of the applied measure, the Council must display special caution to ensure a reasonable possibility for the party to exercise his right to be heard.

In the context of localizing the above-mentioned principles to the unique circumstances of this case, the Constitutional Court states that the Council has imposed the judicial sanction of “removal from the courtroom” on the Judge in the absence of the latter’s representatives, and around 20 minutes after the Judge’s removal from the courtroom, the case trial concluded. In other words, though respecting the exercised judicial powers and the legitimacy of decisions within the proceedings carried out by the Council, the Constitutional Court observes that, under the conditions of the impossibility of the applicant’s participation in the proceedings at the courtroom due to the sanction imposed by the Council against his right to be heard, the applicant was not able to submit his positions even in writing, without participating in the session in person or through his representatives, due to the unreasonably, if not near impossibly short time between his removal and the conclusion of the trial, rendering it impossible for him to submit his positions in writing.

Summing up the complete picture of this constitutional and legal dispute, the Constitutional Court states that as a result of suchlike interpretation and enforcement of the contested provision, the Judge’s right to guaranteed representation of interests, as well as the right to be heard were unlawfully limited due to the imposed sanction, as evidenced by the impossibility of submitting his position, at least through a closing speech. In this context, the Constitutional Court emphasizes that the imposition of the judicial sanction in question must not in any case lead to the neutralization of the person’s right to be heard.

In the light of all stated above, the Constitutional Court finds that Article 101 § 1(2) of the Code is in conformity with the Constitution in the interpretation

that, in the framework of disciplinary proceedings, the judicial sanction of “removal from the courtroom” can be imposed on a judge in the conditions where the Council makes all possible and necessary efforts to ensure the right to be heard for the judge to be removed from the courtroom.

Based on the results of the examination of the case and subject to Article 168(1), Article 169 § 1(8), Article 170 §§ 1 and 4-5, as well as guided by Articles 63, 64, and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. Article 90 § 6 of the Judicial Code Constitutional Law of the Republic of Armenia is in conformity with the Constitution in the interpretation that the wording “interest of justice” refers to the effective and unhindered administration of justice in the specific disciplinary case examined by the Supreme Judicial Council.

2. Article 101 § 1(2) of the Administrative Procedure Code of the Republic of Armenia is in conformity with the Constitution in the interpretation that, within the framework of disciplinary proceedings against a judge, the judicial sanction of “removal from the courtroom” can be imposed under the conditions where the Supreme Judicial Council makes all possible and necessary efforts to ensure the right to be heard for the judge to be removed from the courtroom.

3. In accordance with Article 69 § 10 of the Constitutional Law on the Constitutional Court, the final judicial act rendered against the applicant shall be subject to revision upon the grounds of a newly emerged circumstances as prescribed by the Law, bearing in mind that Article 90 § 6 of the Judicial Code Constitutional Law of the Republic of Armenia, and Article 101 § 1(2) of the Administrative Procedure Code of the Republic of Armenia had been applied against the applicant by an interpretation other than given by this Decision.

4. Pursuant to Article 170 § 2 of the Constitution, this Decision shall be final

and shall enter into force upon its promulgation.

**PRESIDENT
A. DILANYAN**

21 May 2024

DCC-1729