



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 223,
PART 3 AND ARTICLE 231, PARTS 4 AND 5 OF THE RA
CIVIL PROCEDURE CODE WITH THE CONSTITUTION
OF THE REPUBLIC OF ARMENIA ON THE BASIS
OF THE APPLICATIONS OF THE CITIZENS
HOVHANNES SAHAKYAN AND KARAPET HAJIYAN**

Yerevan

June 16, 2015

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, A. Gyumlyan, F. Tokhyan, A. Tunyan, A. Khachatryan, V. Hovhanissyan (Rapporteur), H. Nazaryan, A. Petrosyan,

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

R. Ayvazyan, representative of the Applicant H. Sahakyan and the Applicant K. Hajiyan

Representative of the Respondent: H. Sargsyan, official representative of the RA National Assembly, Head of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia, examined in a public hearing by a written procedure the Case on

conformity of Article 223, Part 3 and Article 231, Parts 4 and 5 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the Basis of the Applications of the citizens Hovhannes Sahakyan and Karapet Hajiyan.

The Case was initiated on the basis of the applications submitted to the Constitutional Court of the Republic of Armenia accordingly on 16.02.2015 and 23.03.2015 submitted by the citizens Hovhannes Sahakyan and Karapet Hajiyan.

By the Procedural Decision PDCC-20 “On the Case of Conformity of Article 223, Part 3 and Article 231, Part 4 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of the Application of the Citizen Karapet Hajiyan” of 07.04.2015 and accepted for consideration by the CC “On the Case of Conformity of Article 223, Part 3 and Article 231, Parts 4 and 5 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of the Application of the Citizen Hovhannes Sahakyan” were joined.

Having examined the written reports of the Rapporteur on the joint Case, the written explanations of the Applicants and the Respondent, having studied the RA Civil Procedure Code and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Civil Procedure Code was adopted by the RA National Assembly on June 17, 1998, signed by the RA President on August 7, 1998 and came into force on January 1, 1999.

The challenged Part 3 of Article 223 of the RA Civil Procedure Code titled “Persons having the right to lodge a cassation appeal” prescribes:

“3. Natural and legal persons participating in the case may lodge cassation appeal only through the lawyer.”

A number of amendments and addenda were made to the mentioned Article by the RA National Assembly, and the challenged provision was stipulated in the RA Civil Procedure Code by the RA Law HO-49-N of 10.06.14 on “Making amendments and addenda to the Civil Procedure Code of the Republic of Armenia.”

Parts 4 and 5 of Article 231 of titled: “Content of the cassation appeal” accordingly stipulate:

“4. The cassation appeal is signed by the representative of the applicant, Prosecutor General or his deputy. The license formulated in accordance with the order prescribed by law is attached to the appeal.

5. The document verifying payment of state due in accordance with the procedure prescribed by law and the rate of state due and the copy of the appeal, as well as the evidence of sending the case to the court and the parties to the case and the electronic carrier of the cassation appeal are attached to the cassation appeal. In the cases when the possibility of postponing of payment of the state due or reducing its rate is prescribed by law, then a motion is attached to the cassation appeal or is included in the appeal.”

In the above-mentioned Article the RA National Assembly made amendments and addenda to the disputed provisions were stipulated in the RA Civil Procedure Code by the RA Law HO-49-N of 10.06.14 on “Making amendments and addenda to the Civil Procedure Code of the Republic of Armenia.”

2. The procedural background of the joined Cases is the following:

One of the Applicants, citizen Garnik Isaghulyan submitted a claim to the Court of First Instance of Arabkir and Kanaker-Zeytun Administrative Districts and demanded to sell the flat (Apt. I Building 12, Orbeli Str., Yerevan) by public auctions and impose levy of execution on Hovhannes Sahakyan’s share. The Court satisfied the claim by the judgment of 23.04.2014. Applicants Hovhannes Sahakyan and Silva Stepanyan lodged a cassation appeal against the Judgment of 23.04.2014 of the Court of First Instance. The RA Civil Court of Appeal by its judgment of 17.09.2014 declined the appeal and leave in force the judgment of the Court of First Instance of Arabkir and Kanaker-Zeytun Administrative Districts of 23.04.2014. Hovhannes Sahakyan, Silva Stepanyan and Ruben Ayvazyan lodged a cassation appeal against the judgment of the RA Civil Court of Appeal of 17.09.2014, and on 12.11.2014 the RA

Court of Cassation adopted a decision on “Returning the cassation appeal” for correcting errors and defined fifteen day period for re-submitting the cassation appeal. In the mentioned decision the RA Court of Cassation, amongst other circumstances mentioned that, “In this certain case Hovhannes Sahakyan and Silva Stepanyan ... have not submitted the cassation appeal through the lawyer. ...In this certain case, the persons who submitted the cassation appeal have not attached the electronic carrier of the cassation appeal.” The cassation appeal was re-submitted to the RA Court of Cassation and based on it on 14.01.2015 the RA Court of Cassation adopted the decision on dismissing the cassation appeal.

The Applicant Karapet Hajiyan - as a third party - was involved in the civil case ԵԱՔԴ/1517/02/14, according to which the citizen Nune Zakaryan applied to the Court of First Instance of Arabkir and Kanaker-Zeytun Administrative Districts with a claim to eliminate the violations of the right to property and restore the right to dispose of the property. By the decision of 10.10.2014 the Court dismissed Karapet Hajiyan’s application in which he asked for clarification. Karapet Hajiyan lodged an appeal against the decision of the Court of General Jurisdiction dated 10.10.2014 the RA Civil Court of Appeal returned the appeal by the decision of 30.10.2014. Karapet Hajiyan lodged a cassation appeal against the decision of 30.10.2014 of the RA Civil Court of Appeal and on 03.12.2014 the RA Court of Cassation adopted a decision on dismissing the cassation appeal and for correcting errors and defined fifteen day period for re-submitting the cassation appeal. In the mentioned decision, the RA Court of Cassation amongst other circumstances mentioned that, “besides the applicant ..., did not submit the cassation appeal through the lawyer...” The Cassation claim was re-submitted to the RA Court of Cassation and on 18.02.2015 the RA Court of Cassation adopted a decision to dismiss the cassation appeal.

3. The Applicants state that Part 3 of Article 223 and Part 4 of Article 231 of the RA Civil Procedure Code contradict Articles 18, 19, 20, and 42 of the RA Constitution and Article 6 of the European

Convention on Human Rights and Fundamental Freedoms as they exclude the possibility to lodge cassation appeal by natural or legal persons on their own behalf personally or through the person they chose.

Mentioning that the right to legal assistance cannot be obligatory especially in the case when the person is not able to pay for the services provided by the lawyer, the Applicants state that the legal norm to submit cassation appeal to the RA Court of Cassation through the lawyer violates and disproportionately restricts the right to access to justice by in practice conditioning the possibility of the party to the proceeding to enjoy protection of the rights at the courts by her/his financial capacities. Simultaneously, by stating that in past the person could appeal the judgments by cassation procedure without any obstacle, the Applicants are convinced that “The possibilities of effective protection of the rights have been eliminated thus restricting the procedure to apply to the RA Court of Cassation directly. For substantiating their demand the Applicants state that “In case of legislative obstacle to submit the acts subject to appeal to the RA Court of Cassation exclusively through the lawyer, the law should regulate some mechanisms to provide free legal assistance regardless of the person’s financial position.”

Regarding Part 5 of Article 231 of the RA Civil Procedure Code the arguments of the Applicant Hovhannes Sahakyan state that Part 5 of Article 231 of the RA Civil Procedure Code contradicts Articles 18, 19, 20 and 42 of the RA Constitution.

For substantiation of his demand the Applicant states that the requirement to attach the electronic carrier to the appeal stipulates waste of extra financial means, which is a legal regulation aggravating the person’s legal situation as the legislation does not ban the hand written option of the cassation appeal. The Applicant also considers that in accordance to the current legal regulations the hand written version shall be digitalized beside the RA Court of Cassation should have such a computer which would read the electronic carrier of the submitted cassation appeal.

4. The Respondent states that the European Court of Human Rights has stated for many times that the right to judicial protection – which also includes the right to access to justice – is not absolute and it can be restricted especially in regard to the terms of acceptability of the appeal. In all cases, in this regard the states enjoy discretionary freedom. Together with the above-mentioned, the Respondent also admits that, anyway, the applied restrictions should not be restricted any way or to any extent the person's right to access to justice which will damage the main essence of this right.

The Respondent states that taking into consideration the case-law legal positions of the RA Constitutional Court, for declaring the mandatory requirement to submit cassation appeal through the lawyer null as prescribed by Part 3 of Article 223 of the RA Civil Procedure Code, the RA National Assembly put into circulation the draft of the RA Law on Making amendments to the Civil Procedure Code of the Republic of Armenia (documentary code Պ-6331 - 09.10.2014, 03.04.2015-ՊԻ-010/0), which is included in the agenda of coming session.

Referring to the issue of constitutionality of the challenged legal positions of Article 231 of the RA Civil Procedure Code, the Respondent finds that though the format of the electronic document and type of the electronic carrier are not specified in the procedural codes, such circumstance cannot cause violation of rights in the law-enforcement practice. The electronic version of the document can be accessible by any carrier able to carry the electronic version of the document. The legislator by not specifying the type of carrier, by merits considered as acceptable option any kind of carrier valid for preserving and transferring the electronic version of cassation appeal. By not specifying the type of electronic carrier by the Code, the person who submits cassation appeal is provided with wide options to decreasing the expenses made for purchasing the electronic carrier to the minimum. The Respondent states that the Applicant's statement that obligatory requirement to submit the cassation appeal via electronic carrier demands additional investments and thus makes impossible the constitutional right to judicial protection, is not substantiated, as submission of the cassation appeal demands certain

expenses from the applicant such as state due. Delivering the copy of the appeal to the court and the parties to the proceeding etc., which are completely included in preconditions of realization of the right to judicial protection.

According to the Respondent, not following the requirements of Article 231 of the RA Civil Procedure Code cannot hinder the right to access to the Court of Cassation. Not following the requirements of the mentioned Article serves as grounds for returning cassation appeal, which enables to apply to the court after elimination of the mentioned shortcomings in accordance with Article 233 of the RA Civil Procedure Code.

The Respondent concludes that “the provision of Part 3 of Article 223 and the provisions of Part 4 of Article 231 of the RA Civil Procedure Code in so far as correlated with the legal regulation to submit a cassation appeal through the lawyer /in regard to the part concerning the representative/ contradict the RA Constitution but the provisions of Part 5 of Article 231 of the RA Civil Procedure Code are in conformity with the RA Constitution.”

5. The RA Constitutional Court considers necessary to mention that the study of the application states that the issue raised by the Applicant H. Sahakyan, by merits does not concern entire Part 5 of Article 231 of the RA Civil Procedure Code, but the first sentence of Part 5 of the mentioned Article.

The Constitutional Court states that the RA Civil Procedure Code by prescribing in Part 3 of Article 223 the right to submit the cassation appeal only through the lawyer in the first and second sentences of Part 4 of Article 231 uses the term “representative.” The Constitutional Court finds that in the first and second sentences of Part 4 of Article 231 of the RA Civil Procedure Code the provisions regarding the representative concern the lawyer.

6. The Constitutional Court states that the legal provisions stipulated by the decisions DCC-765, DCC-833, DCC-1192 and DCC-1196 are applicable and subject to reconfirmation for the provisions stipulated in Part 3 of Article 223, Part 4 of Article 231 and the

first sentence of Part 5 Article 231 of the RA Civil Procedure Code. The Constitutional Court also states that in the above-mentioned decisions, the Court regarding the legislative regulation to submit a cassation appeal only through the lawyer had already formulated a number of legal positions, which amongst others are of significant importance for the adjudication of this Case. In particular, taking into consideration the certain similarity of constitutional legal disputes in the Decision DCC-1192 and this Case, the Constitutional Court considers necessary to refer to the legal decisions stipulated in those decisions:

a) "... conditioned with functional peculiarities of the Court of Cassation, the demand to apply to the Court of Cassation through the lawyer may be considered legitimate if it derives from the interests of natural and legal persons to be represented by professional and experiences specialists. The Constitutional Court at the same time considers necessary to emphasize that the institution to apply to the Court of Cassation through the lawyer is an alternative option can be considered as a legitimate option only in the case when the legislation guarantees every person the possibility to obtain the services of lawyers despite the financial position of the person" (DCC-765),

b) "... the mandatory requirement concerning representation through the lawyer prescribed in the challenged norm concerning submission of the appeal regarding the review of judicial acts by the lawyers in the cases of not providing possibility of legal assistance on free basis while submitting application on review of judicial acts by the lawyers disproportionately restricts the violated rights guaranteed by the Constitution and the Convention... thus endangering the effective implementation of person's right to constitutional justice and constitutional right to judicial protection of her/his violated right at the international instances" (DCC-833).

The Constitutional Court in the Decision DCC-1192 also states the following: "For the implementation of authorities of the Court of Cassation to review the judicial acts by the subordinate court amongst the others the institution of appeal of judicial acts, by such a material and procedural legislative regulation which will ensure

the effective and fully fledged implementation of the person's rights and freedoms of judicial protection, is an important guarantee. In the mentioned context the Constitutional Court highlights the systemic integrity of the institution of appeal of judicial acts and presence of relevant structural and legislative guarantees which ensure efficient implementation which is necessary for preciseness of implementation of the right to judicial protection as well as for assessment in the cassation proceeding. The Constitutional Court states that any judicial peculiarity or procedure cannot hinder or prevent the possibility of efficient implementation of the right to apply to the court and make senseless the right guaranteed by Article 18 of the RA Constitution or hinder its implementation. While defining the terms for accepting the cassation claim the guarantees of accessibility of the justice and ensuring the right to effective appeal shall prevail. The structural status of the Court of Cassation as a supreme body in the system of general jurisdiction courts system cannot hinder the precise implementation of competence prescribed by law and effective exercising of the right to appeal if legal and structural guarantees necessary for its creation are created."

7. The Constitutional Court also states that taking into consideration the contextual equivalency of the provisions challenged in the decisions DCC-1192 and DCC-1196 (except for Point 2 of Part 2 of Article 4141 of the RA Criminal Procedure Code) and the provisions challenged in this Case, other legal positions of the Constitutional Court on the issue of constitutionality of provisions challenged in the aforementioned decisions also serve as basis. This especially concerns the matter of principal, according to which the contended legitimate aim must be realized within the framework of guaranteeing the principle of supremacy of law, which presumes that the legislative regulation cannot cause social disproportional burden for the persons regarding their financial capacities and, as a result, the latter does not ensure fully-fledged realization of fair trial, effective means of judicial protection and the right to access to justice. In this content it should be mentioned that Article 20 of the RA Constitution unambiguously recognizes that the right to receive legal as-

sistance which is provided for free in the cases speculated by law. Recommendation No. R(2000)21 of the Committee of Ministers of the European Council to member States also suggests to exclude the possible blocking of the right to access to justice for the persons in an economically weak position.

The Constitutional Court considers significant the statistic data presented in the response note No. ԴԴ-1 Ե-2262 of the RA Judicial Department dated 22.04.2015. According to that statistics, from 03.07.2014 to 21.04.2015, from 849 cassation appeals received in the Civil and Administrative Chamber of the RA Court of Cassation 170 were left without consideration, 506 were dismissed, and only 53 applications were accepted for consideration, which comprises only 6.24 percent of the cassation appeals.

Based on the review of the Case and being governed by the requirements of Article 100, Point 1 and Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare Part 3 of Article 223 of the RA Civil Procedure Code contradicting Article 14.1, Part 1 of Article 18, Part 1 of Article 19 of the RA Constitution and void, taking into consideration that in the terms of current legal regulations it creates social disproportionate burden for the persons application of this provision in the current legal regulations creates disproportionate social burden for the persons regarding their financial capacities, and also not ensuring fully-fledged realization of the right to fair justice, effective means of judicial protection and the right to access to justice.

2. To declare Part 4 of Article 231 of the RA Civil Procedure Code, in regard to the part concerning the parties to the case who did not have a lawyer at the moment of signing cassation appeal and no possibility to obtain free legal assistance prescribed by law contradicting Part 1 of Article 18 and Part 1 of Article 19 of the Constitution of the Republic of Armenia and void, taking into consideration that the application of this provision in the conditions of current legal regulation excludes the possibility to lodge cassation

appeal in the context of presenting their legitimate interests by the mentioned persons.

3. To declare the provision “Electronic carrier of the cassation claim shall also be attached to the cassation appeal” in conformity with the Constitution of the Republic of Armenia in the framework of legal positions on the same issue expressed in the Decision DCC-1192 of the RA Constitutional Court.

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

**Chairman
tyunyan**

G. Haru-

**June 16, 2015
DCC - 1220**