Non-Official Translation

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

ON THE CASE OF CONFORMITY OF CLAUSES 2 AND 3 OF PART 6 OF ARTICLE 50 PRESCRIBED BY PART 1 OF ARTICLE 2 OF THE CONSTITUTIONAL LAW ADOPTED BY THE NATIONAL ASSEMBLY ON MAKING AMENDMENTS AND ADDENDA TO THE RA CONSTITUTIONAL LAW ON RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE PRESIDENT OF THE REPUBLIC OF ARMENIA

Yerevan April 19, 2019

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

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

the applicant: President of the Republic of Armenia,

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

pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, as well as articles 22 and 73 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on the case of conformity of clauses 2 and 3 of part 6 of article 50 prescribed by part 1 of article 2 of the Constitutional Law adopted by the National Assembly on Making Amendments and Addenda to the RA

Constitutional Law on Rules of Procedure of the National Assembly with the Constitution of the Republic of Armenia on the basis of the application of the President of the Republic of Armenia

with the Constitution of the Republic of Armenia on the basis of the application of the Criminal Court of Appeal of the Republic of Armenia.

The RA Constitutional Law "On Making Amendments and Addenda to the RA Constitutional Law" Rules of Procedure of the National Assembly" (hereinafter referred to as the Law) was adopted by the National Assembly on October 2, 2018, was not signed by the President of the Republic of Armenia and did not enter into force.

According to part 1 of article 2 of the Constitutional Law of the Republic of Armenia "On Making Amendments and Addenda to the Constitutional Law" Rules of Procedure of the National Assembly", part 6 of article 50 of the Law shall be amended as follows:

"6. If eligibility of the sitting, by the procedure established by article 51 of the Rules of Procedure:

1) is provided, then, after the debate of the issue, the presiding officer shall declare the sitting concluded;

2) is not ensured when considering the issue stipulated in part 2.1 of this article, due to exceptional circumstances and failure of deputies to participate in the National Assembly sitting through threats, the sitting of the National Assembly is considered to be interrupted, as the Chairperson of the National Assembly makes a statement. In this case, the sitting is convened the next day at 10:00 a.m. The rules prescribed in this paragraph on the interruption of a sitting shall also apply to a convened sitting;

3) the case prescribed in paragraph 2 of part 6 of this article is not ensured and does not take place, then the special sitting is considered to be cancelled".

The reason for the consideration of the case was the application of the President of the Republic of Armenia registered in the Constitutional Court on October 23, 2018.

Having examined the written explanations of the applicant and the respondent in this case, as well as having analyzed the relevant provisions of the Law and other documents of the case, the Constitutional Court ESTABLISHES:

1. Positions of the applicant

The applicant challenges the constitutionality of paragraphs 2 and 3 of part 6 of article 50, prescribed in part 1 of article 2 of the RA Constitutional Law "On Making Amendments and Addenda to the RA Constitutional Law" Rules of Procedure of the National Assembly", which regulate the conduct of special sittings of the National Assembly called for the election of the Prime Minister. According to the challenged legal Rules, a special sitting of the National Assembly convened for electing the Prime Minister is considered to be interrupted in cases when, due to an exceptional situation or other obstacles, deputies cannot participate in this sitting.

The President of the Republic of Armenia believes that the operation of the challenged provisions may lead to a situation when the deadline prescribed in article 149 (3) of the Constitution may actually be extended, thus provoking risks arising in the conduct of the election of the Prime Minister within a reasonable time frame.

In addition, the applicant notes that, due to the mentioned amendments and addenda, the principle of legal certainty is violated, since the challenged provisions use the term "exceptional cicumstances", but it does not specify what kind of legal act should be used to evaluate them.

The President of the Republic of Armenia also notes that in this case the challenged provisions do not provide for the mechanisms that guarantee, in accordance with the constitutional legal requirement, completion of the issue of voting after a special sitting is declared invalid.

Based on the above, the applicant notes that the Rules of Procedure stipulated by paragraphs 2 and 3 of part 6 of article 50, prescribed in part 1 of article 2 of the Constitutional Law of the Republic of Armenia "On Making Amendments and Addenda to the Constitutional Law" Rules of Procedure of the National Assembly" article 149 (2 and 3) of the Constitution and requests to resolve the issue of the constitutionality of the challenged provisions.

2. Positions of the respondent

The respondent notes that the expiration of the seven-day period prescribed in article 149 of the Constitution cannot produce legal effects, since under these conditions the requirements of article 94 of the Constitution are violated, according to which the deputy represents the whole people, shall not be bound by imperative mandate, shall be guided by their conscience and convictions.

Turning to the applicant's arguments on the violation of the principle of legal certainty, the respondent notes that, within the context of the challenged provision, “exceptional circumstances” are those circumstances when the deputies due to the inevitable and extraordinary circumstances which are beyond their control cannot express their will and take part in a special sitting convened to elect the Prime Minister.

As to the constitutionality of the challenged provision, according to which if the competence of special sitting is not ensured and at the same time there are no grounds for considering the sitting to be interrupted, the special sitting is considered to be cancelled, this provision is provided for by both the challenged amendments as well as the RA Constitutional Law “Rules of Procedure of the National Assembly”. Referring to articles 51, 140 and 149 of the Constitution, the respondent concludes that the wording “in case Prime Minister is not elected, a new election of Prime Minister shall be held seven days after voting” enshrined in paragraph 3 of article 149 of the Constitution does not only cover the cases when more than half of the total number of deputies registered at the beginning of a special sitting, but also wherein the candidates for Prime Minister nominated by at least one third of the total number of Deputies shall be entitled to participate.

Based on the above, the respondent considers that clauses 2 and 3 of part 6 of article 50, established by part 1 of article 2 of the RA Constitutional Law On Making Amendments and Addenda to the RA Constitutional Law Rules of Procedure of the National Assembly, comply with the requirements of the Constitution.

The respondent supplemented his previous explanation with an additional explanation, registered in the Constitutional Court on 08.04.2019. According to an additional explanation, the respondent considers that the challenged Law is problematic both from a substantive and legal point of view and from the point of view of observance of the procedure for its adoption (in form).

In particular, the respondent believes that the legal processes arising from the results of certain amendments enshrined in the Law may lead to a situation that in accordance with the

procedure established by the Constitution, in case of non-election of the Prime-Minister, the seven-day time frame after the vote can be extended. Moreover, the legal norms that are the subject of a constitutional legal dispute are also problematic from the perspective of the principle of legal certainty. The respondent notes that the challenged legal norms do not establish the appropriate legal mechanisms that are in conformity with the requirements of the Constitution and should ensure the organization of voting on the relevant issue if the special sitting did not take place, which causes a legal gap.

In additional explanations, the respondent notes that when the Law was adopted, the constitutional legal requirement for transparency of the sittings of the National Assembly was not met. The requirements of articles 60 and 61 of the RA Constitutional Law "Rules of Procedure of the National Assembly" were also not followed.

Summing up his reasons, the respondent believes that the RA Constitutional Law "On Making Addenda and Amendments to the RA Constitutional Law Rules of Procedure of the National Assembly" contradicts the requirements of the Constitution.

3. **Circumstances to be ascertained within the framework of the case**

In determining the constitutionality of the provisions challenged in the present case, the Constitutional Court considers it necessary, in particular, to address the following issues:

- whether the effect of the challenged provisions may lead to a violation of the timeterm prescribed in paragraph 3 of article 149 of the Constitution;
- whether the failure to establish criteria in the Constitutional Law of the Republic of Armenia "Rules of Procedure of the National Assembly" for assessing the term "exceptional circumstances" used in the challenged norms, violates the constitutional principle of legal certainty;
- whether the provision envisaged by the challenged norms regarding the recognition of a special sitting as cancelled meet the requirements of parts 2 and 3 of article 149 of the Constitution;
- whether any violation of the RA Constitutional Law "Rules of Procedure of the National Assembly" automatically leads to the violation of the Constitution and, whether it becomes a subject of dispute in the Constitutional Court, and whether the procedure envisaged by the Constitution for adopting the RA Constitutional Law "On Making Addenda and Amendments to the RA Constitutional Law Rules of Procedure of the National Assembly" is preserved.

4. Legal positions of the Constitutional Court

4.1. As a result of amendments to the Constitution adopted at the referendum held on 6 December 2015, the transition from a semi-presidential system of government to a parliamentary system has occurred which is characterized by a number of signs, including the formation of the Government by parliamentary means and the Government's responsibility to Parliament.

The Constitution enshrines **the key role of the National Assembly in shaping the will of the people**.

The place and role of the National Assembly in the system of constitutional bodies are directly enshrined in the Constitution (article 88). The main characteristic of the status of the National Assembly is reflected in part 1 of article 88 of the Constitution, according to which the National Assembly is the people's representative body. And according to article 94 of the Constitution, the deputy represents the whole people, shall not be bound by imperative mandate, shall be guided by their conscience and convictions (highlighted by the Constitutional Court).

The parliamentary system of government also implies a rapid increase in the role of the National Assembly in the formation of other bodies of state power. In this aspect, the National Assembly, being directly formed by the people as the sole source and carrier of state power and acquiring direct democratic legitimacy, indirectly transfers this quality to the formed state bodies and elected officials.

It should be noted that one of the prerequisites for the dissolution of the National Assembly, stipulated by the Constitution, is related to the absence of the possibility to exercise this authority. In accordance with this, the National Assembly is dissolved if a Prime Minister is not elected (article 149, part 3). Another basis for the dissolution of the National Assembly is enshrined in part 4 of article 151 of the Constitution (disapproval of the Government's program by the National Assembly after the election of the Prime Minister).

The existence of a clear and comprehensive basis for the dissolution of the National Assembly, as provided for by the Constitution, derives from the logics characteristic to the parliamentary system of government that **the National Assembly must act as long as it has the majority necessary to form a government**. On the other hand, within the framework of the same logic, the norms regulating the dissolution of the National Assembly are aimed at creating such balances that will ensure the stability of the Government.

The powers of the National Assembly, on the matter of electing the head of government, are enshrined in articles 115 and 149 of the Constitution.

According to article 149 of the Constitution "1. Immediately after commencement of the term of powers of the newly-elected National Assembly, the President of the Republic shall appoint as Prime Minister the candidate nominated by the parliamentary majority formed under the procedure prescribed by article 89 of the Constitution.

2. In case the Prime Minister submits a resignation or in other cases of the office of the Prime Minister becoming vacant, the factions of the National Assembly shall be entitled to nominate candidates for Prime Minister within a period of seven days after accepting the resignation of the Government. The National Assembly shall elect the Prime Minister by majority of votes of the total number of Deputies

3. In case Prime Minister is not elected, a new election of Prime Minister shall be held seven days after voting, wherein the candidates for Prime Minister nominated by at least one third of the total number of Deputies shall be entitled to participate. In case Prime Minister is not elected by majority of votes of the total number of Deputies, the National Assembly shall be dissolved by virtue of law.

4. The election of the Prime Minister shall be held by roll-call voting.

5. The President of the Republic shall immediately appoint as Prime Minister the candidate elected by the National Assembly.

Thus, in case if the Prime Minister submits a resignation or in other cases of the office of the Prime Minister becoming vacant, the factions of the National Assembly shall be entitled to nominate candidates for Prime Minister within a period of seven days after accepting the resignation of the Government.. If a Prime Minister is not elected in the first round, a new election of the prime minister shall be held seven days after the vote. If a Prime Minister is not elected also in this round by majority vote of the total number of the deputies, the National Assembly shall be dissolved by virtue of law.

Thus, article 149 of the Constitution specifies only two terms related to the organization of the process of electing the Prime Minister: 1) the seven-day period **for the nomination** of candidates for the Prime Minister by the factions of the National Assembly and 2) the seven-days **for holding a new election** in case the Prime Minister is not elected for the first time, which starts after the vote in the first round.

The above-mentioned states that the election of the Prime Minister is a process taking place in the National Assembly, which at least includes nomination of candidates and certain actions related to the nomination of candidates, the candidate's statement, questions asked to the candidate and his/her representative, the final statement of the candidate etc. (although this is not directly enshrined in the Constitution, however, such discussions are inevitable in the plenary sitting of the National Assembly so that the election stages of the Prime Minister were not meaningless).

If, as a result of this process, the Prime Minister is not elected, then seven days after the vote, new elections of the Prime Minister are held. It should be noted that the founder of the Constitution in this case did not use the term "within seven days" or "on the seventh day", but used the term "after seven days", which is not the final deadline for performing these actions, but a reasonable period established for preparing these actions.. In other words, not all stages of the election of the Prime Minister by the above-mentioned provisions of the Constitution set exhaustive terms. In particular, only for the first stage of the election of the Prime Minister - the nomination of candidates has set a deadline, however, for example, the deadline for organizing voting is not established by the Constitution, which, by the way, is the starting point for calculating the time period for the second stage of election of the Prime Minister.

In systemic integrity, this means that part 2 of article 149 of the Constitution does not set the deadline for the first stage of the election of the Prime Minister, and since the beginning of the calculation of the second stage of the election of the Prime Minister provided for in part 3 of the same article is due to the end of the first stage, it is necessary to state that, in the sense of parts 2 and 3 of article 149, the issue of the deadline for the election of the Prime Minister has not been resolved by these provisions. This means that the founder of the Constitution provided the legislator with a broader discretion framework for finding optimal options for resolving and securing issues not regulated by the Constitution, which the legislator has implemented by the RA Constitutional Law "Rules of Procedure of the National Assembly".

Securing guarantees of compliance with the constitutional deadlines in the law subject to the compliance with other requirements of the Constitution **is the discretion of the legislator**. One of the manifestations of this is part 2.1 of article 50 of the RA Constitutional Law "Rules of Procedure of the National Assembly", according to which "in the case established by part 3 of article 140 of the Rules of Procedure, the issue of electing the Prime Minister is considered at

12.00 p.m. following the day of the expiration of the nomination of candidates for the Prime Minister ”

The institute for the dissolution of the Parliament by virtue of law is an innovation in the Republic of Armenia. As already mentioned, the Constitution provides for the following cases of dissolution of the Parliament by virtue of law: when the National Assembly is unable to elect the Prime Minister (by virtue of article 149 of the Constitution already mentioned) or when the National Assembly does not approve the Government’s program (by virtue of parts 3 and 4 of article 151 of the Constitution).

The Constitutional Court states that in all these cases **there is the question of non-exercising of the powers of the National Assembly (established by the Constitution) within the framework of its natural activity**.

Considering the fact that, through the National Assembly, we are dealing with a direct democratic legitimacy, playing the key role in the system of constitutional bodies of the highest representative body of the people, the issue of dissolving the National Assembly on the basis prescribed in part 3 of article 149 of the Constitution by virtue of law may arise only in the case, if in advance **the main guarantees of the natural activities of the National Assembly were ensured.**

In this aspect, such legislative mechanisms are necessary which can ensure the sustainable work of the National Assembly and will not permit **to dissolve the National Assembly, which is directly formed by the people, by virtue of law, if the deputies were unable to demonstrate their will for objective reasons.**

The disputed provisions of the Law are intended to enshrine and provide such guarantees.

In particular, according to part 1 of article 2 of the Law “part 6 of article 50 of the law shall be stated as follows” :

If the power of the sitting by the procedure prescribed in article 51 of the Rules of Procedure:

1) is provided, then, after the debate of the issue is completed, the presiding officer shall declare the special sitting closed;

2) is not ensured for the debate of the issue, foreseen by part 2.1 of this article, as a result of emergencies, as well as when the participation of the MPs in the sitting of the National Assembly is hindered: including through threats, then the sitting of the National Assembly shall be

considered as interrupted, about which the President of the National Assembly shall take the floor with a statement. In that case, the sitting shall be convened the next day at 10:00 am. The rules, foreseen this way for adjourning a sitting, shall be also applied towards a resumed sitting;

3) is not ensured, and there is not the case foreseen by paragraph 2 of part 6 of this article, then the special sitting shall be considered not taken place."

From the above, it is obvious that a special sitting of the National Assembly is considered to be interrupted if two terms are present, namely: 1) during an exceptional circumstance and (or) there is other obstruction (including through threats); 2) if the aforementioned circumstance makes the participation of the deputies in the said sitting of the National Assembly impossible.

In case of presence of these terms, a special sitting convened for electing the Prime Minister is suspended and, by virtue of law, is convened the next day at 10:00 a.m.

The Constitutional Court states that the presence of such guarantees is necessary to ensure the natural activity of the Parliament (in this case, for the expression of the free will of deputies and proper organization of the procedure for electing the Prime Minister). If the deputies, due to circumstances beyond the control (objective reasons), and not of their own accord, do not fulfill their mandatory powers, and if this does not ensure the authority of the National Assembly sitting, then the National Assembly cannot be dissolved by virtue of law.

The dissolution of the National Assembly by virtue of law is not an end in itself and cannot be mechanical; it is based on legitimate prerequisites that should be implemented only when **the National Assembly is objectively unable to exercise its key constitutional powers,** in this case, **the election of the Prime Minister, and if its natural activities are legally and practically guaranteed.**

Otherwise, by creating artificial obstuctions for the exercise of the powers of the National Assembly, it is possible to achieve the dissolution of the National Assembly by virtue of law.

The Constitutional Court finds that only in the case of providing all guarantees for ensuring the natural activity of the National Assembly, it is possible to speak of a violation by the National Assembly of the terms envisaged in the Constitution, and thus in the cases envisaged in the Constitution also the grounds for dissolving the National Assembly arise.

According to the Constitutional Court, the applicant's arguments regarding doubts on the violation of the terms envisaged in the Constitution have been dispelled, since the regulation of

the challenged provisions is aimed at guaranteeing the substantive process in the National Assembly after these terms, namely the proper organization of the election of the Prime Minister and the legitimate aim of extending the deadlines envisaged in the Constitution. This also changes the starting point for calculating the deadlines: if a special sitting of the National Assembly is deemed interrupted, the terms envisaged in the Constitution are legally preserved. And when a sitting of the National Assembly is deemed cancelled the issue of the process and deadlines disappear, since it is stated that there was no special sitting convened to elect the Prime Minister.

At the same time, the Constitutional Court considers it necessary to note that while in case of electing the Prime Minister, the legislator, considering also objective reasons, can establish various regulatory norms, they cannot endlessly delay the election of the Prime Minister. That is, the legislator is obliged to establish a reasonable maximum deadline for the first election of the Prime Minister and the new election of the Prime Minister. If the eligibility of the National Assembly's sitting for discussing the election of the Prime Minister is not ensured even in cases due to objective circumstances - in exceptional circumstances, by preventing the participation of deputies in the National Assembly sitting, then this situation cannot be maintained for indefinite period of time, since this means that there will be no Prime Minister for indefinite period of time, which, in turn, will lead to the failure of fulfillment of a number of other constitutional requirements.

In view of the above-mentioned, at the assessement of the Constitutional Court, the challenged provisions do not cause issues from the perspective of constitutionality.

4.2. The Constitutional Court in its Decision DCC-1176 of 02.12.2014 and in a number of other decisions (DCC-630, DCC-753, DCC-1176, DCC-1322) regarding the principle of legal certainty, expressed the following position: "... in terms of compliance with legal certainty, the concepts used in the legislation should be clear, definite and not lead to diverse interpretations and confusion".

In this case, according to the applicant, in the challenged provisions of the Law the term "exceptional circumstances" is used, but it is not specified which legal act should be used to assess this. Without a clear consolidation of this, a possible ambigiuty may arise in the criteria for assessing the term "exceptional circumstances". According to the applicant, the absence of such legal Rules of Procedure may contain risks in terms of the full implementation of the provisions of article 149 of the Constitution.

. According to the assessment of the Constitutional Court, it is not necessary for the RA Constitutional Law "Rules of Procedure of the National Assembly" to provide a description of "exceptional circumstances", referring to the provisions of the relevant law. If there is any law in which this definition already exists, then from the perspective of legal certainty, the specificity of this characteristic could be the subject of a dispute, but not the fact that the "Rules of Procedure of the National Assembly" do not refer to this law.

Article 1 of the Law of the Republic of Armenia "On Protection of the Population in Exceptional Circumstances" defines an exceptional situation, according to which an exceptional situation is a situation that has arisen in a certain territory or object as a result of a major accident, a dangerous natural phenomenon, man-made, natural or ecological (environmental) disaster, epidemic, epizootic, widespread contagious disease of plants and crops (epiphytotics), use of weapons that entails or can lead to human victims, significant harm to human health and the environment, major financial losses and disruption of the natural conditions of living environment.

At the same time, the applicant did not refer to any controversial law enforcement practice, which would have been formed regarding the application of the concept of "exceptional circumstances" in the said law and would have led to a different perception of this concept.

The Constitutional Court considers it important to emphasize that within the framework of the challenged provision, "exceptional circumstances" may be all those unpredictable or unavoidable phenomena that directly prevent the participation of deputies in a special sitting of the National Assembly. That is, within the meaning of the challenged provisions, we can talk not about any exceptional situation, but only about those exceptional circumstances, which as a cause automatically produces effects, i.e. obstruct the participation of deputies in the relevant sitting.

Based on the above, the Constitutional Court states that failure to establish criteria for evaluating the term "exceptional circumstances" used in the challenged provisions does not violate the constitutional principle of legal certainty and does not contain any risk of full implementation of the requirements of article 149 of the Constitution.

4.3. According to part 1 of article 2 of the RA Constitutional Law "On Making Amendments and Addenda to the Constitutional Law "Rules of Procedure of the National Assembly" if the authority of a sitting is not provided in accordance with the procedure

established by article 51 of the Rules of Procedure and there is no case of declaring the sitting of the National Assembly interrupted, then a special sitting is considered to be cancelled.

According to the applicant, this regulation obviously contains the risks of non-compliance with the requirement arising from the literal and systemic analysis of parts 2 and 3 of article 149 of the Constitution. In particular, there is a legislative gap, since the Law is consonant with the constitutional legal requirement that sufficient mechanisms are not provided to guarantee the end of the issue's resolution by voting after a special sitting is declared invalid.

The Constitutional Court, in its Decision DCC-1143 of 08.04.2014 noted that a legislative gap cannot be mechanically identified only with the absence of a statutory definition of a particular term. A legislative gap exists **when, due to the absence of an element ensuring the full legal regulation or the incomplete regulation of this element, the full and normal implementation of a legally regulated legal relationship is violated**.

In this case, according to article 102 of the Constitution, a sitting of the National Assembly shall have quorum **if more than half of the total number of Deputies have registered at the beginning of the sitting.**

According to part 1 of article 51 of the RA Constitutional Law "Rules of Procedure of the National Assembly", the sitting of the National Assembly is competent if at the beginning of the sitting more than half of the total number of deputies is registered in the prescribed manner. And according to part 3 of the same article, the deputy registers personally. Registration is tantamount to voting, and the participation of a deputy in registration is taken into account in the number of votes.

According to clause 2 of part 6 of article 50 of the same Law, if the authority of the sitting in accordance with the procedure established in article 51 of the Rules of Procedure is not ensured, the sitting of the National Assembly **is considered interrupted**.

Proceeding from the essence of the recognition of the National Assembly sitting as interrupted, the Constitutional Court states that **the recognition of the sitting as interrupted** due to the failure to ensure the authority of the National Assembly sitting **is not an innovation provided by the disputed provisions, but is also enshrined in the current** RA Constitutional Law "Rules of Procedure of the National Assembly".

With regard to the legal consequences of declaring a special sitting interrupted, convened to elect the Prime Minister, the Constitutional Court first of all considers it necessary to analyze the Rules of Procedure prescribed in article 149 of the Constitution in order to interprete them.

The interpretation of article 149 of the Constitution, in particular, implies that after the opening of a vacancy for the post of Prime Minister the following circumstances are possible:

1) factions do not nominate a candidate for the Prime Minister within seven days;

2) a candidate (or candidates) is nominated (are nominated), but at the beginning of a special sitting convened to elect the Prime Minister, more than half of the total number of deputies do not register;

3) a candidate (or candidates) is nominated (are nominated) and at the beginning of a special session more than half of the total number of deputies are registered, but the candidate does not receive the necessary number of votes for election.

Thus, the legal fact provided for in part 3 of article 149 of the Constitution, which is the basis for the new election of the Prime Minister, namely the non-election of the Prime Minister, occurs not only when the special sitting is valid, but the candidate does not receive the required number of votes, but also in cases where the factions do not nominate a candidate for the Prime Minister within seven days, **or when the quorum is not ensured and it is declared invalid** (since in this case there is no objective obstucle to express the will of a deputy).

Considering the fact that any of the three possible cases listed above leads to a situation where the Prime Minister is not elected, which in turn is a legal prerequisite for holding the third stage of the election of the Prime Minister prescribed in part 3 of article 149 of the Constitution, therefore the occurrence of one of these three cases (including also the recognition of the meeting as failed) in general **does not suspend the deadlines prescribed in article 149 of the Constitution, but, on the contrary, it directly serves as grounds for their application.**

In the context of the above analysis, the Constitutional Court states that in this case there is no legal gap, **since the challenged provision for invalidating a special sitting does not in any way impede the new elections of the Prime Minister**, and it is obvious that mechanisms are prescribed to guarantee the completion of the issue of voting after a special sitting has been declared invalid.

4.4. The Constitutional Court, referring to the issue of compliance with the procedure for adopting the RA Law "On Making Addenda and Amendments to the RA Constitutional Law "Rules of Procedure of the National Assembly", states that in accordance with part 5 of article 88 of the Constitution, the National Assembly acts in accordance with its Rules of Procedure.

The Constitutional Court considers that the mentioned provision of the Constitution should be considered within the framework of the system logic of other relevant provisions of the Constitution.

According to part 1 of article 167 of the Constitution, constitutional justice shall be administered by the Constitutional Court, ensuring the supremacy of the Constitution and according to part 2 of the same article, when administering justice the Constitutional Court shall be independent and **shall abide only by the Constitution**. (highlighted by the Constitutional Court).

The last rule is a special rule in comparison with part 1 of article 164 of the Constitution, according to which the Constitutional Court is solely guided by the Constitution, and not by the law as in the case of other courts.

The function of the Constitutional Court is to ensure the supremacy of the Constitution through constitutional justice, for which the Constitution establishes an exhaustive list of the powers of the Constitutional Court, which follows from the requirement of part 3 of article 167 of the Constitution. And in accordance with the relevant authority deriving from the mentioned function of the Constitutional Court, the Constitutional Court determines (including) the compliance of laws with the Constitution (article 168 § 1 of the Constitution). This means that in the process of adopting laws, only those violations of the RA Constitutional Law "Rules of Procedure of the National Assembly", which are violation of the provisions relating to the Constitution, can become the subject of a dispute at the Constitutional Court. So, if, as a result of violation of the RA Constitutional Law "Rules of Procedure of the National Assembly", the voting procedure prescribed in the Constitution was violated, which affected or could affect the adoption of a law or decision by the required number of votes prescribed in the Constitution, then such a law or decision according to the procedure of adoption may be subject of a consideration at the Constitutional Court.

Despite the fact that the Law HO-58-N "On the Constitutional Court" of June 1, 2006, is no longer in force and the new, same titled Constitutional Law does not contain such special regulation, it is nevertheless necessary to note that according to clause 2, part 7, article 68 of the Law HO-58-N, among other criteria, when assessing the constitutionality of a challenged legal act, the Constitutional Court also takes into account **the observance of the procedure** for the adoption and enactment of a legal act **prescribed in the Constitution**, and according to clause 5

of the same part, the permissible limits of the powers of state and local self-government bodies and officials (highlighted by the Constitutional Court).

Although the said provision is not reproduced in the Constitutional Law "On the Constitutional Court", since it was a listing of particular cases of assessment of constitutionality, among other things, the scope of the assessment of constitutionality, as well as **the permissible limits of the powers of the National Assembly** (exhaustively enshrined in the Constitution) is the procedure prescribed in the Constitution for the adoption or enactment of any law or regulation of the National Assembly. Therefore, it is also obvious that the Constitutional Court is not competent to assess any violations or compliance of constitutional or any laws and other legal acts that are in the jurisdiction of the Court, or their compliance not with the Constitution, but with other legal acts prevailing the latter. Such a control is within the competence of other public authorities, especially within the competence of other courts. Otherwise, the Constitutional Court may be burdened with any violation of the RA Constitutional Law "Rules of Procedure of the National Assembly" or, for example, by virtue of part 2 of article 5 of the Constitution, disputes regarding the determination of compliance of other normative legal acts which prevail the latter, which goes beyond the constitutional function of the Constitutional Court.

The Constitutional Court considers that violations of the constitutional requirements of the National Assembly in accordance with its Rules of Procedure may become a matter of dispute in the Constitutional Court only as a result of these violations any requirement of the Constitution is violated.

The Constitutional Court also addressed in its decisions the issue of the significance of compliance with the procedure stipulated by the Constitution for the adoption and enactment of a law (legal act) to assess the constitutionality of this law (another challenged legal act). Thus, in the Decision DCC-1224 of 07.07.2015, the Constitutional Court on this issue expressed the following position: "…from the perspective of requirement to organize parliamentary, as well as public debates on adoption of laws, any violation of extra-parliamentary procedures is inadmissible in the framework of the legislative procedure, is incompatible with the rules of legislative activity, but not all violations are of principle significance from the perspective of constitutionality. **The latter include violations of only those rules that are directly based on the requirements of the Constitution, are crucial for making a final decision on the adoption of the law and/or are so significant that without following these rules, it is**

impossible to determine in credible manner the true will of the legislator, therefore the people of Armenia".

In the Constitution, only the main key requirements of legislative activity (regarding the procedure for adopting laws / resolutions by the National Assembly) are prescribed. They concern, in particular, the publicity of sittings of the National Assembly (article 101 of the Constitution), the quorum (article 102 of the Constitution), the number of votes necessary for the adoption of laws, including constitutional laws, the required minimum number of deputies participating in the voting (article 103 of the Constitution), the subjects of the right of legislative initiative (article 109 of the Constitution), as well as the signing and publishing of laws by the President of the Republic (article 129 of the Constitution) and are essentially designed to guarantee the legitimacy of the activities of the National Assembly.

By studying and comparing the procedure for adopting the Constitutional Law adopted by the National Assembly on Making Amendments and Addenda to the RA Constitutional Law on Rules of Procedure of the National Assembly, including documents submitted to the Constitutional Court regarding voting results, as well as video materials of three sessions held on October 2, 2018 posted at the official website of the National Assembly, and the shorthand materials and protocols, all information concerning the process of adopting a law becomes available, and on the basis of compliance with the procedures stipulated by the Constitution for adopting a law, information necessary for determining the constitutionality of this law. Incidentally, this also indicates that the constitutional requirement of openness of the meetings of the National Assembly was not violated.

In accordance with this, it follows from the information and other factual materials mentioned in the previous paragraph of this Decision that the subjects vested with this right came up with the legislative initiative, the sitting was open (it was open, the persons envisaged by article 54 (1) of the Constitutional of the Law “Rules of Procedure of the National Assembly” could participate), availability of the necessary votes for the adoption of the law and the minimum number of deputies participating in the voting.

Based on the foregoing, the Constitutional Court states that there are no violations based on the requirements of the Constitution and related to the adoption of the challenged law that are or may be relevant for making decisions on the constitutionality of the law and which led to a situation when it is impossible to reliably determine the true will of the legislator.

Consequently, the Constitutional Law of the Republic of Armenia "On Making Amendments and Addenda to the Constitutional Law" Rules of Procedure of the National Assembly "from the point of view of the constitutionality of observance of the procedure provided for by the Constitution is not problematic.

Based on the review of the Case and governed by article 168 (1), article 169(1.8), article 170 (1, 2, 4, 5) of the Constitution of the Republic of Armenia, articles 63, 64 and 73 of the Constitutional Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Article 50 (6.2. and 6.3) prescribed in article 2 (1) adopted by the National Assembly of the RA Constitutional Law "On Making Amendments and Addenda to the Constitutional Law" Rules of the National Assembly ", comply with the Constitution.

2. Pursuant to part 2 of article 170 of the Constitution of the Republic of Armenia this Decision shall be final and shall enter into force upon its promulgation.

Chairman **H. Tovmasyan**

19 April 2019

DCC -1454