

**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 31 § 2(3) AND THE SECOND PARAGRAPH OF ARTICLE 295 § 1 OF
THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA
RAISED BY THE APPLICATION OF AT LEAST ONE FIFTH OF THE TOTAL
NUMBER OF DEPUTIES OF THE NATIONAL ASSEMBLY OF THE
REPUBLIC OF ARMENIA**

Yerevan

December 7, 2021

The Constitutional Court, composed of A. Dilanyan (presiding), V. Grigoryan, H. Tovmasyan, A. Tunyan, A. Khachatryan, E. Shatiryan, A. Petrosyan, and A. Vagharshyan, with the participation (in the framework of the written procedure) of:

the applicant: representative of at least one fifth of the total number of deputies of the National Assembly A. Vardevanyan, and

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

pursuant to Article 168(1) and Article 169 § 1(2) of the Constitution, as well as Articles 22 and 68 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case concerning the constitutionality of Article 31 § 2(3) and the second paragraph of Article 295 § 1 of the Criminal Procedure Code of the Republic of Armenia raised by the application of at least one fifth of the total number of deputies of the National Assembly of the Republic of Armenia.

The Criminal Procedure Code of the Republic of Armenia (hereinafter also referred to as the “Criminal Procedure Code”) was adopted by the National Assembly on July 1, 1998,

was signed by the President of the Republic on September 1, 1998, and entered into force on January 12, 1999.

Article 31 of the Criminal Procedure Code titled “Grounds for Suspension of Criminal Proceedings” stipulates:

“1. Criminal proceedings may be suspended - in full or in respective part thereof - upon the decision of the prosecutor, the investigator, or the court, where:

- 1) the person, who must be involved in the case as an accused, is not identified;
- 2) the accused has escaped from investigation or trial, or his/her whereabouts still remain unknown due to other reasons;
- 3) the accused, or the person, with regard to whom sufficient evidence is available to charge with an offense, is immune from criminal prosecution;
- 4) the accused suffers from severe illness or is out of the Republic of Armenia and thus is unable to participate in the criminal proceedings, if it is impossible to conduct further criminal proceedings without his/her participation;
- 5) there are insurmountable circumstances that temporarily block the conduct of any further criminal proceedings;
- 6) an agreement on pre-trial cooperation was signed with the accused.”

2. Upon the initiative of the court or at the request of the participants in the proceedings, the criminal proceedings may be suspended by a decision of the court, where the court considers that the applicable law or other legal act contradicts the Constitution of the Republic of Armenia. In this case the court shall be entitled to suspend the criminal proceedings and apply to the Constitutional Court of the Republic of Armenia.

3. The court decrees to approve or to reject the appeal of the participants on the above mentioned grounds which can be appealed to the higher court within ten days. The motions of the participants in the proceedings to suspend the proceedings on the above mentioned ground shall be granted or rejected by a court decision, which can be appealed to a higher court within ten days after the respective decision is rendered.

4. Criminal proceedings may be suspended after all the necessary and possible procedural actions are taken.

5. Criminal proceedings may be suspended until the elimination of the circumstances that served as grounds for its suspension. After their elimination, the criminal proceedings shall be resumed by a decision of the prosecutor, the investigator, or the court.

6. The proceedings suspended on the grounds prescribed by § 2 of this article shall be resumed after the decision of the Constitutional Court of the Republic of Armenia is rendered.

7. Proceedings suspended on the grounds prescribed by § 1(6) of this article shall be resumed after the termination of cooperation or after the acquisition of factual data confirming the proper performance of the duties undertaken by the accused under the agreement on pre-trial cooperation.

The challenged provision of the above-mentioned article, particularly, § 1(3) was not amended or supplemented.

Article 295 of the Criminal Procedure Code titled “Decision on suspension of criminal proceedings” stipulates:

“1. If the accused is in hiding, or his/her whereabouts are unknown, or s/he suffers from severe illness, or s/he enjoys criminal immunity, or there are insurmountable circumstances that exclude his/her participation in the trial, as well as in other cases prescribed by Article 31 of this Code, the court shall render an argued decision on suspending the proceedings.

Moreover, if the proceedings are suspended on the basis of enjoying immunity from criminal responsibility, the competent authority shall, in accordance with the procedure prescribed by this Code, resolve the issue of depriving the given person of immunity and changing the measure of restraint in accordance with the procedure prescribed by law.

2. The proceedings may be suspended concerning one out of a few accused persons, provided that it does not violate his/her right for defense.”

The Law LA-91-N of 25.05.06 supplemented § 1 of the Criminal Procedure Code with the following (challenged) paragraph: “Moreover, if the proceedings are suspended on the basis of enjoying immunity from criminal responsibility, the competent authority shall, in accordance with the procedure prescribed by this Code, resolve the issue of depriving the given person of immunity and changing the measure of restraint in accordance with the procedure prescribed by law.”

Article 295 of the Criminal Procedure Code was not further amended or supplemented.

This case was initiated by the application of at least one fifth of the total number of deputies of the National Assembly which was submitted to the Constitutional Court on September 1, 2021.

Having examined the application, the written explanations of the applicant, and other documents in the case, as well as having analysed the contested legal norms, the Constitutional Court **FOUND:**

1. Applicant's submission

Having analyzed the legal regulations of Article 96 of the Constitution, as well as the Decision DCC-1476 of the Constitutional Court, the positions submitted by the relevant judgment of the European Court of Human Rights (hereinafter also referred to as “the ECHR”), as well as referring to the regulation of Article 31 § 1(3) of the Criminal Procedure Code in the light of the above-mentioned, at least one fifth of the total number of deputies of the National Assembly of the Republic of Armenia (hereinafter also referred to as “the applicant”) submits that the term “may” is used in the mentioned provision, whereby the investigator, the prosecutor, or the court are endowed with the discretionary power to suspend the criminal proceedings even for those enjoying immunity (an accused or a person that may be involved as an accused), which circumstance, according to the applicant, contradicts Article 96 of the Constitution. The applicant notes that “...the constitutional and legal content of the mentioned provision should not imply discretion, but should exclusively require and imply a mandatory power of the investigator and the prosecutor in pre-trial proceedings, as well as a mandatory power of the court in court proceedings, namely, ‘suspension of the criminal case’...”

The applicant submits that the second paragraph of Article 295 § 1 of the Criminal Procedure Code contradicts Article 96 of the Constitution. In this regard, the applicant notes that the wording in the second paragraph of Article 295 § 1 of the Criminal Procedure Code “...envisages an obligation to take actions on the issue of deprivation of immunity of a person...”, which, according to the applicant, contradicts Article 96 of the Constitution since the court does not have the power to apply to the National Assembly on the issue of deprivation of immunity in the case pending before the court, and even if the court had such authority, it would turn into a criminal prosecution agency in case of applying to the National Assembly on the said issue. Moreover, the applicant submits that no tool exists for obtaining the consent of the National Assembly on the mentioned issue in the case pending before the court, bearing in mind that the prosecution office also “...cannot perform such an action, since the case is not pending before the prosecution office and the prosecution office is limited by the principle of competition between the parties.”

2. Respondent's submission

The National Assembly (hereinafter also referred to as “the respondent”) submits that the scope of personal immunity of a deputy and a candidate for deputy is the same, and that “... criminal prosecution cannot be instituted and measures of restraint involving deprivation of liberty cannot be chosen without the consent of the authority envisaged by the

Constitution...” At the same time, the respondent submits that Article 96 of the Constitution shall not apply to the cases “...where a criminal prosecution has been initiated against a person, or the latter has been deprived of liberty prior to acquiring the status of a deputy.”

The respondent emphasizes that the Constitution does not stipulate “any requirement to obtain the consent of the National Assembly on the issue of continuing the criminal prosecution or the coercive measure involving deprivation of liberty after receiving the parliamentary mandate by a deputy candidate (against whom a criminal prosecution has been initiated or a coercive measure involving deprivation of liberty has been applied with the consent of the Central Electoral Commission)...”

Moreover, according to the respondent, discussing the issue of the latter’s immunity by the National Assembly in such conditions would directly contradict Article 6 of the Constitution.

Referring to the issue of the alleged contradiction of Article 31 § 1(3) of the Criminal Procedure Code with Article 96 of the Constitution, the respondent submits that the contested provision cannot be considered in the context of contradiction with the guarantee of immunity of the deputy, noting that the discretion of the authority implementing the proceedings refers to suspending the proceedings of the case, rather than applying to the National Assembly on the issue of overcoming the immunity of a deputy.

Referring to the issue of the alleged contradiction of Article 295 of the Criminal Procedure Code with Article 96 of the Constitution, the respondent submits that the contested article “cannot be considered in any way in the context of the conflict with the guarantee of the immunity of a deputy.” Moreover, the respondent asserts that although the applicant concluded that the issue of depriving a person of immunity in accordance with the procedure prescribed by Article 295 of the Criminal Procedure Code cannot be resolved by the prosecutor, however, the applicant did not justify how the principle of competition of the parties is limited if the prosecutor resolves the given issue.

3. Considerations to be clarified in the case

To resolve the constitutional dispute raised in this case, as well as to assess the constitutionality of the contested norms of the Criminal Procedure Code in this case, the Constitutional Court considers it necessary to focus on the following questions:

1) Is a deputy protected by immunity guaranteed by Article 96 § 2 of the Constitution from the further continuation of the criminal prosecution initiated prior to acquiring the status of a deputy?

2) Where the person is deprived of liberty prior to acquiring the status of a deputy, does the deprivation of liberty after acquiring the status of a deputy (continuing the deprivation of liberty) without the consent of the National Assembly contradict Article 96 § 2 of the Constitution?

4. Assessments of the Constitutional Court

4.1. Article 96 of the Constitution reads as follows:

“1. During and after the term of powers, a deputy may not be prosecuted and held liable for the voting or opinions expressed in the framework of parliamentary activities.

2. Criminal prosecution of a deputy may be initiated only with the consent of the National Assembly. Without the consent of the National Assembly, a deputy may not be deprived of liberty, unless caught at the time of or immediately after committing a crime. In this case, the deprivation of liberty may not last longer than 72 hours. The Chairperson of the National Assembly shall be notified immediately of the deputy’s deprivation of liberty.

Within the framework of the aforementioned constitutional regulations, the Constitutional Court states that although the aforementioned article is titled “Immunity of a Deputy”, nevertheless, the latter defines the guarantees conditioning the constitutional status of a deputy and deriving from such status, i.e. the indemnity (non-liability) of a deputy (Article 96 § 1 of the Constitution) and the immunity (inviolability) of a deputy (Article 96 § 2 of the Constitution).

Meanwhile, the indemnity guarantees the effective performance of a deputy’s parliamentary activities, excluding the criminal liability in general, and therefore also the criminal prosecution, for the expressed opinion arising from a deputy’s activity, or for the voting at the National Assembly. However, the exclusion of “external” responsibility for the opinion of a deputy within the framework of his/her activity does not imply exclusion of responsibility in general, and especially does not exclude “internal” responsibility, namely, the disciplinary responsibility in the form of various sanctions.

As for the immunity of a deputy, the latter is provided with some protection against criminal prosecution for acts unrelated to his/her functions. At the same time, it provides protection in cases of depriving a deputy of his/her liberty.

According to the assessment of the Constitutional Court, the separation of the aforementioned constitutional guarantees is of both theoretical and practical importance. For instance, in the case of indemnity, criminal liability is excluded for the opinion expressed by

a deputy arising from his/her activity, or for the vote made within the parliamentary activity, and in the case of the immunity of a deputy, criminal liability is not excluded, and the initiation of criminal prosecution against a deputy and a complicated procedure for depriving a deputy from liberty is prescribed which does not exclude the criminal liability, the possibility of criminal prosecution, as well as the deprivation of liberty of a deputy.

In addition, the protection provided to a deputy in the case of indemnity is not limited by time, and in the case of immunity of a deputy, the protection is provided to the person for the term of office of a deputy.

The above-mentioned constitutional guarantees stipulating the status of a deputy provide different scope of protection and different terms, as well as the latter pursue legitimate goals that ensure:

(1) the independence of a deputy, thus creating the necessary prerequisites for the person endowed with a representative mandate to effectively exercise his/her powers, keeping him/her away from “external” persecution (by the executive power, political opponents etc) and/or the possibility of groundless and politically motivated accusations;

(2) the independence of the National Assembly as a legislative body;

(3) normal activity of the National Assembly.

4.2. The Constitutional Court also notes that approaches closely related to the aforementioned position regarding the constitutional guarantees of indemnity and immunity of a deputy are adopted both by the European Court of Human Rights (see, for instance, the judgment of December 3, 2009 in the case of Kart v. Turkey, application no. 8917/05 § 91) and the European Commission for Democracy through Law of the Council of Europe (hereinafter also referred to as “the Venice Commission”) (see, CDL-AD(2014)011 Report¹ (hereinafter referred to as “the Report”), paras 7, 22, and 152).

Along with highlighting the legitimate goals of the two constitutional guarantees that condition the status of a deputy and arise from such status, the Constitutional Court considers it necessary to address the possible dangers, in particular, the dangers of abusing the immunity of a deputy that may turn into a privilege of a certain person. In addition, the Constitutional Court states that, taking into account these risks, in the current times, in a number of countries with a developed democratic system, there is a clear tendency to completely refuse or severely narrow the immunity of a deputy, which is not related to his/her functions. The above-mentioned is justified mainly by the fact that the goals, that are ensured through the mentioned institution, can be achieved by other means in the current legal systems.

¹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)011-e)

In this regard, the following observations made by the Venice Commission are noteworthy, according to which: “In an established democratic system it is not very likely that the government would try to attack the workings of parliament as an institution by bringing unsubstantiated criminal charges against the members, and if this should happen, then parliament as an institution normally has far better and more effective means of defence than relying on criminal inviolability. Furthermore there are also legal and political norms and standards in any well-functioning democracy that effectively hinder the political majority from misusing the criminal legal system against individual political opponents. Rules and principles on the independence and impartiality of the judiciary and the public prosecuting authorities are much more important and relevant in this regard than old rules on parliamentary immunity” (CDL-AD(2014)011 Report, para 153).

However, according to the conclusion of the Constitutional Court, the above-mentioned does not indicate that the institution of immunity of a deputy has lost its relevance in the current times. In sustainable and well-established democracies, it is possible to achieve the pursued goal of immunity of a deputy due to well-established systems, and the issue is completely different in developing or new democracies, where the systems are not well-established, and it is not excluded that criminal prosecution is used as a tool to suppress political opponents.

In this regard, the Venice Commission has also stated the following: “In some countries that are still in transition towards real democracy, or where democracy is still relatively new and fragile, there are experiences with cases in which the police or prosecutorial powers have been used to discredit, punish or destroy political opponents, including members of parliament. Nor is it always the case that in every state the judicial power can be trusted to act independently and not be unduly influenced by the executive. Members of parliament, and especially of the opposition, may, in some countries, be vulnerable to political harassment in the form of unfounded legal allegations...” (para 154 of the Report).

On the other hand, however, the danger of abusing parliamentary immunity increases precisely due to the lack of establishment of the given systems in the mentioned “countries of new democracy”; at the same time, the above-mentioned Report of the Venice Commission states the following: “...it is often new democracies that are most exposed to political corruption and the misuse of immunity by extremist parliamentarians to threaten democracy itself. Thus the paradox of parliamentary immunity – that it can serve both to foster and to undermine democratic development...” (para 29 of the Report).

According to the conclusion of the Constitutional Court, in such a situation, the following key issues arise:

on the one hand, to ensure the independence of a deputy, the parliament, and the uninterrupted functioning of the parliament by virtue of the institution of immunity of a deputy (since other systems, that could serve as a means to achieve the aim pursued, are not fully established);

and on the other hand, to ensure the above-mentioned in such a way and due to such a balanced approach that the very immunity of a deputy does not violate the rights of others, and does not become a factor undermining the power of the parliament itself.

Thus, any inability to adequately secure the functioning of the parliament from unnecessary “external” interference endangers the democratic constitutional system. Conversely, the inability to ensure the protection of the rights of citizens, as well as the parliament as an institution, from abuses of the parliamentary mandate poses a risk of undermining trust in parliament and endangers its legitimacy.

In view of the above, the Constitutional Court considers that the two constitutional guarantees that condition the status of a deputy of the National Assembly and derive therefrom are of public legal significance, pursue clear goals (as mentioned above), and are aimed at ensuring the protection of public interests; therefore, these guarantees shall in no way be understood (be interpreted) as a personal privilege or advantage reserved to individuals. The exclusion of such a perception might not only oppose the specific purpose of the discussed guarantees by leading to the distortion of their public legal significance, but might also undermine the rule of law thereby leading to the violation of general equality before the law guaranteed by Article 28 of the Constitution, as well as in some cases, under certain circumstances, it might entail disproportionate restrictions on the right to judicial protection and the right to a fair trial (Articles 61 and 63 of the Constitution).

4.3. The Constitutional Court states that the abuse of the immunity of a deputy from criminal prosecution, as well as its formation into personal privilege or advantage may endanger the right to judicial protection and the right to a fair trial. The aforementioned conclusion is derived from a combination of the following circumstances:

Firstly, the constitutional provision regulating the immunity of a deputy (Article 96 § 2 of the Constitution) does not specify the scope of crimes for which the consent of the National Assembly is necessary when initiating criminal prosecution against a deputy. According to the provisions of this article, the immunity of a deputy shall extend to cases of initiation of criminal prosecution for essentially all crimes, without any limitation of the scope of crimes.

Secondly, although Article 96 § 2 of the Constitution provides for the possibility of depriving a deputy of his/her immunity with the consent of the National Assembly, however, at the level of legislative regulation, Article 108 of the Constitutional Law The Rules of Procedure of the National Assembly defines the procedure for depriving a deputy of his/her immunity, and thereby it does not prescribe any definite and objective criterion or basis that may serve as basis for the National Assembly to decide on whether or not to deprive a deputy of his/her immunity; and under such circumstances, taking into account the fact that the National Assembly is a political authority, the issue of depriving a deputy of his/her immunity is mostly decided on the basis of various political motives.

Thirdly, the fact that due to the public legal significance of the institution of the immunity of a deputy, the possibility of a deputy to waive the immunity of a deputy is missing.

Fourthly, in the event the National Assembly makes a decision to refuse to give consent to the initiation of criminal prosecution against a deputy, the given decision actually entails indefinite legal consequences (since the legislation lacks the time limit on the legal consequences of such a decision /for instance, the term of office of a deputy/, and on the other hand, there are no clear structures in terms of overcoming the consequences of such a decision and ensuring the initiation of criminal prosecution and the further course of the proceedings; therefore, under such circumstances, it turns out that in the event the National Assembly makes a decision to refuse to give consent where the immunity of the criminal prosecution against a deputy is not overcome, the criminal prosecution /proceedings/ might become impossible not only for a certain period of time, but actually become impossible at all).

In the aforementioned context, the Constitutional Court deems it necessary to emphasize that according to the RA Criminal Procedure Code that was adopted by the National Assembly on June 30, 2021, and to enter into force on January 1, 2022, it is considered that non-deprivation of immunity of a person for the commission of an alleged criminal offence by the competent authority, in accordance with due procedures, is deemed as a circumstance excluding criminal prosecution (Article 12 § 1(6)).

Fifthly, the fact that the possibility of being re-elected as a deputy are not restricted, and as a consequence there is a further possibility of continued immunity. (In this context, the European Court of Human Rights has made the following statement in certain judgments, according to which the suspension of any criminal case against a deputy during his/her parliamentary mandate might lead to a significant time gap between the performance of actions subject to appeal and the initiation of criminal proceedings, thus entailing the uncertainty or unpredictability of the latter, especially in terms of evidence. In another context, the European Court of Human Rights has noted that the the

time taken to hear an appeal [might] cast doubt on its effectiveness /Ganci v. Italy, application no. 41576/98, judgment of October 30, 2003, § 30; Tsalkitzis v. Greece, application no. 11801/04 judgment of November 16, 2006, § 50/).

Based on the aforementioned, for making the immunity of a deputy to serve the aim pursued, and for curbing the dangers arising from the immunity of a deputy, as well as for excluding its formation into personal privilege or advantage for certain persons, the Constitutional Court considers that the norms regulating the institution of the immunity of a deputy (also including the constitutional norms) should be interpreted and applied in a very narrow sense, thus ensuring the balanced protection of public and private interests.

The Constitutional Court notes that a similar approach has been adopted both by the European Court of Human Rights (see, for instance, Syngelidis v. Greece, application no. 24895/07, judgment of February 11, 2010, §§ 44-46; Tsalkitzis v. Greece, application no. 11801/04 judgment of November 16, 2006, § 49), and the Venice Commission. The Venice Commission has emphasized in the above-mentioned Report that rules on inviolability are not a necessary part of national constitutional law (in particular, para 156 of the Report), and also noted that in some countries, rules on parliamentary inviolability should not go beyond what is strictly justified for legitimate purposes, and should always be construed and applied in a restrictive manner (paras 157, 158, and 185 of the Report). Furthermore, the Venice Commission has also emphasized that the aforementioned rules on inviolability should not be applied in practice unless there are compelling reasons to do so in the individual case (para 158 of the Report).

4.4. In the light of the above, the Constitutional Court notes that in all cases where the clear and direct link between the parliamentary activity of a deputy and the initiated criminal prosecution is missing, a deputy should not be protected by immunity from the continuation of criminal prosecution, otherwise the public legal significance of immunity might be undermined, and such immunity may turn into a privilege or advantage of a certain person.

In this regard, the Constitutional Court considers that the time gap between the initiation of criminal prosecution against a person and the subsequent acquisition of the status of a deputy by that person indicates the lack of the link between the criminal prosecution initiated (current) against the person and the parliamentary activity of a deputy, and in such conditions, based on the approach of excluding the formation of the institution of immunity of a deputy into personal privilege, and excluding the interpretation (application) of the norms regulating the latter in a very narrow sense (in case a person acquires the status of a deputy after initiating a criminal prosecution), the consent of the National Assembly is not necessary for the continuation of the criminal

prosecution initiated against the latter; in such a case, the continuation of the criminal prosecution should be carried out in a general manner.

On the other hand, the Constitutional Court states that where the time gap between the initiation of criminal prosecution against a person and acquiring the status of a deputy indicates the lack of link between the prosecution and the parliamentary activity of a deputy, this circumstance cannot similarly indicate that the mentioned time gap automatically ensures the independence of the National Assembly, as a legislative authority, and its uninterrupted normal functioning. Even in such a situation, it is not excluded that a person's rights might be restricted (for instance, the person may be arrested), which may actually exclude the possibility of the parliamentary activity of the person who has acquired the status of a deputy in general, and as a consequence leading to the disruption of the activities of the National Assembly, thus endangering the independence of the National Assembly in general.

Based on the above, the Constitutional Court finds that within the framework of the provisions of Article 96 § 2 of the Constitution, the Constitution distinguished the protection granted to a deputy by immunity (protection from criminal prosecution) and protection from deprivation of liberty, considering it possible only with the consent of the National Assembly, except for certain cases prescribed by the second sentence of Article 96 § 2 of the Constitution.

At the same time, the Constitutional Court notes that the resolution of the issue should be diametrically opposite in the case under discussion: in the event a person has acquired the status of a deputy after the initiation of criminal prosecution, and the consent of the National Assembly is not necessary for the continuation of the criminal prosecution initiated against the latter, the resolution of the issue is completely different in the case of depriving the person of his/her liberty after acquiring the status of a deputy; therefore, in this case, apart from the exceptional cases prescribed by Article 96 § 2 of the Constitution, in all other cases, the acquisition of the status of a deputy is necessarily conditioned by the fact that depriving the latter of his/her liberty (and in the case of deprivation of liberty prior to the acquisition of that status, continuing the deprivation of liberty) unconditionally requires the consent of the National Assembly, and the absence of such consent excludes the possibility of depriving a person of liberty with the status of a deputy.

In the case of the opposite approach to the one presented, the normal functioning and the independence of the National Assembly may be endangered, which may directly contradict the protection of a deputy prescribed by Article 96 § 2 of the Constitution, thus entailing the illegitimacy of depriving a person of liberty with the status of a deputy.

At the same time, the Constitutional Court considers that except for the exceptional cases prescribed by the second sentence of Article 96 § 2 of the Constitution, a deputy may not be deprived of liberty (and in the case of being deprived of liberty prior to acquiring the status of a deputy, the person may continue to remain deprived of liberty after acquiring the status of a deputy) if the National Assembly has not given its consent on this issue, and no authority other than the National Assembly shall be entitled to remove the protection provided by the immunity of a deputy.

4.5. Based on the conclusions made in the previous paragraph of this Decision, the Constitutional Court notes that the immunity conditioning the status of a deputy and the immunity arising thereof, as well as the institutions of suspension of proceedings, as prescribed by the RA Criminal Procedure Code, may be interrelated in some cases, although they are not mutually dependent in all cases, namely: (a) it is possible to overcome the immunity protection provided to a deputy without suspending the criminal proceedings, and (b) it is also possible to suspend the criminal proceedings on any other basis, unrelated to the overcoming the immunity protection provided to a deputy.

However, the above-mentioned does not anyhow imply that the existence of the third situation is excluded, i.e. the suspension of criminal proceedings for overcoming the immunity protection provided to a deputy.

Therefore, by assessing the regulation of Article 31 § 1 of the Criminal Procedure Code (which provides the investigator, the prosecutor, and the court a discretionary power to suspend criminal proceedings also on the basis of Article 31 § 3 of the Criminal Procedure Code) in the light of the separation of the above-mentioned three legal situations, the Constitutional Court notes that the regulation in question is lawful and does not pose an issue of constitutionality, since the discretionary power of the mentioned participants of the proceedings to suspend the proceedings does not and cannot automatically result in the discretionary power of the competent authority to refer or not the issue.

In this regard, the Constitutional Court also considers it necessary to emphasize that the suspension or non-suspension of the criminal proceedings (in the event the immunity of the person is not overcome) does not in any way presume the power of the authority implementing the proceedings to perform actions (make decisions) that directly affect the immunity protection provided to a deputy. The opposite would presume a violation of the imperative requirement prescribed by Article 96 § 2 of the Constitution, thereby making unreal the protection of a deputy provided by the immunity.

4.6. Referring to the applicant's questions in the context of the results of the analysis, the Constitutional Court states as follows:

(1) The applicant's claims that "... the constitutional content of the mentioned provision (Article 31 § 1(3) of the Criminal Procedure Code) must exclusively require and imply a mandatory power (but not discretion) of the investigator and the prosecutor - in pre-trial proceedings, and of the court - in court proceedings, i.e. 'suspension of the criminal case', and that '...the contrary might directly contradict Article 96 of the RA Constitution," are not justified;

(2) another issue raised within the framework of the application (with internal contradictions), i.e. the alleged legal gap in Article 31 of the Criminal Procedure Code, is automatically resolved:

according to the assessment of the Constitutional Court, the above-mentioned positions eliminate the danger of the concerns raised in the application that due to the failure to provide a mandatory valid condition or structure for amending the measure of restraint prescribed by the contested provision (where the proceedings are suspended by the investigator, the prosecutor, or the court), the requirement of Article 96 of the Constitution might be ignored, and that it is possible for a person endowed with the immunity of a deputy (remains detained) "...where the proceedings of the criminal case are suspended, and the person may continue to remain detained, since there is no obligation to immediately remove the restraining order based on the legal status of immunity". In case of being guided by the aforementioned positions of the Constitutional Court in legal practice, the risk of such a problem would also be excluded.

In addition, the Constitutional Court states that regulations consistent with this position are contained in Article 136 § 2 of the Criminal Procedure Code, according to which: "...in case of grounds for choosing detention as a measure of restraint against persons enjoying immunity from criminal responsibility, the prosecutor shall apply to the relevant authorities with a request for consent." Under the conditions of such a regulation, the detention (deprivation of liberty) of a person enjoying immunity, in particular, a deputy, becomes possible only in the event that the protection provided by the immunity of a deputy is overcome; in other words, in order to choose the detention of a deputy as a measure of restraint, an additional condition is necessary, namely, where the protection provided by the given immunity is overcome.

In this context, the Constitutional Court considers it necessary to refer to the following position of the applicant: "...where the criminal case is in court proceedings, there is no instrument to obtain consent from the National Assembly, as the prosecution office cannot perform such action..." since the case is not in the proceedings of the prosecution office; the court also does not have such powers, and, in addition, in the case of addressing the National Assembly with such a request, the court may turn into a criminal prosecution authority. In this regard, the Constitutional Court states as follows:

(1) for considering the case in court proceedings, either the person's immunity from criminal prosecution provided to a deputy must have already been overcome, or the criminal prosecution against the person must have been initiated prior to acquiring the status of a deputy, in which case the consent of the National Assembly for the continuation of the criminal prosecution against the person is not required in general (in that case, the person is not protected by immunity from the further continuation of the criminal prosecution);

(2) in the context of another protection provided to a deputy by virtue of immunity, the Prosecutor General shall apply to the National Assembly where a deputy is deprived of liberty only with the consent of the National Assembly, regardless of whether the case is in court or in pre-trial proceedings.

According to the assessment of the Constitutional Court, the above-mentioned directly derives from the comprehensive analysis of Article 108 § 1 of the Constitutional Law on the Rules of Procedure of the National Assembly, as well as Article 53 § 2(11) and Article 136 § 2 of the Criminal Procedure Code.

Based on the above-mentioned, the Constitutional Court states that in all cases when, in court proceedings, it becomes necessary to detain a person with the status of a deputy, the Prosecutor General must apply to the National Assembly to ensure the latter's detention, that is, for overcoming the protection provided by the immunity. In addition, where the prosecutor submits a motion to the court for detaining a person with the status of a deputy, prior to submitting such a motion to the court, the Prosecutor General must have already received the consent of the National Assembly to deprive a deputy of his/her liberty.

In the case where during the examination of the case the court concludes that in a specific case, detention should be chosen as a measure of restraint against a person with the status of a deputy, then, on the one hand, where the protection of a deputy's immunity from deprivation of liberty has not been overcome, and on the other hand, in the event that the court does not have the power to address such a matter to the National Assembly, and thirdly, in the absence of a special condition for the detention of a deputy, the existing legal regulations indicate that the court must suspend the proceedings in the given case based on Article 31 § 1(3) of the Criminal Procedure Code.

In the case of making a decision to suspend the proceedings on the above-mentioned grounds, based on the logic of the legal regulations mentioned above, the Prosecutor General must ex-officio submit a respective motion to the National Assembly for the latter's consent to deprive a deputy of his/her liberty. Where a decision on whether

or not to give such consent is rendered, the proceedings must be resumed and, accordingly, the issue whether or not to detain the person must be resolved.

4.7. Due to the systemic analysis performed on the basis of the above-mentioned legal norms, the Constitutional Court considers that in the contested Article 295 § 1 of the Criminal Procedure Code the wording “...if the proceedings are suspended on the basis of enjoying immunity from criminal responsibility, the competent authority shall, in accordance with the procedure prescribed by this Code, resolve the issue of depriving the given person of immunity and changing the preventive measure in accordance with the procedure prescribed by law” contains the sentence “the competent authority shall, in accordance with the procedure prescribed by this Code, resolve the issue of depriving the given person of immunity and changing the preventive measure in accordance with the procedure prescribed by law,” which should be understood as a duty of the competent authority (in the specific case, the Prosecutor General) to apply to the National Assembly in due procedure on the issue of detaining a deputy (giving consent to deprive a deputy of his/her liberty). In the case of such an interpretation, the possibility of the alleged contradiction raised by the applicant between Article 295 § 1 of the Criminal Procedure Code and Article 96 of the Constitution is excluded.

4.8. At the same time, the Constitutional Court considers it necessary to state that the law enforcement practice (in particular, in criminal cases CC/0066/01/21, CC1/0060/01/21, and YeC/0886/01/21) has developed in a logic contrary to the positions expressed in this decision, according to which: in the event that a person was deprived of liberty prior to acquiring the status of a deputy, after acquiring the status of a deputy, it was not considered necessary to obtain the consent of the National Assembly in order to maintain the further deprivation of liberty of the later. In this regard, the Constitutional Court considers that such law-enforcement practice does not derive from the content of the provisions of Article 96 § 2 of the Constitution.

Based on the examination of the case and subject to Article 168(1), Article 169 § 1(2), and Article 170 of the Constitution, as well as Articles 63, 64, and 68 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court **HOLDS:**

1. Article 31 § 1(3) of the Criminal Procedure Code of the Republic of Armenia complies with the Constitution in the interpretation that:

(a) the discretionary power of the competent authority - the Prosecutor General, to apply to the National Assembly on the issue of overcoming the immunity protection from

criminal prosecution provided to a deputy does not derive from the discretionary power of the investigator, prosecutor, or the court to suspend the proceedings;

(b) non-suspension of the criminal proceedings (in the event the immunity protection provided to a deputy is not overcome) does not in any way presume (imply) the power of the authority implementing the proceedings to perform actions (make decisions) that directly affect the immunity protection provided to a deputy;

(c) upon acquiring the status of a deputy, a person who is deprived of liberty and does not have the status of a deputy, may not continue to remain deprived of liberty after acquiring the status of a deputy, except for the cases prescribed by Article 96 § 2 of the Constitution. Upon acquiring the status of a deputy, a person may not be deprived of liberty in any other way than with the consent of the National Assembly, except for the cases prescribed by Article 96 § 2 of the Constitution.

2. The Second paragraph of Article 295 § 1 of the Criminal Procedure Code of the Republic of Armenia complies with the Constitution.

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

PRESIDENT

A. DILANYAN

December 7, 2021

DCC - 1619