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 THE SECOND PARAGRAPH OF PART 9 OF ARTICLE 43 OF THE LAW OF THE REPUBLIC OF ARMENIA ON THE SERVICE IN THE POLICE AND PART 1 OF ARTICLE 16.1 OF THE LAW OF THE REPUBLIC OF ARMENIA ON APPROVING THE DISCIPLINARY STATUTE OF THE POLICE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION ON THE BASIS OF THE APPLICATIONS OF THE HUMAN RIGHTS DEFENDER AND THE ADMINISTRATIVE COURT OF THE REPUBLIC OF ARMENIA

Yerevan February 25, 2020

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

with the participation of**:**

the applicants: the Human Rights Defender and the Administrative Court of the Republic of Armenia,

the respondent: K. Movsisyan, official representative of the National Assembly, Head of the Legal Support and Service Division of the National Assembly Staff,

pursuant to Clause 1 of Article 168, Clause 10 of Part 1 and Part 4 of Article 169 of the Constitution, as well as Articles 22, 41, 68 and 71 of the Constitutional Law on the Constitutional Court,

examined in a public hearing partly by oral procedure the case on conformity of the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police

and Part 1 of Article 16.1 of the Law of the Republic of Armenia on Approving the Disciplinary Statute of the Police of the Republic of Armenia with the Constitution on the basis of the applications of the Human Rights Defender and the Administrative Court of the Republic of Armenia.

The Law of the Republic of Armenia on the Service in the Police (hereinafter – also the Law) was adopted by the National Assembly on 3 July 2002, signed by the President of the Republic on 30 July 2002 and entered into force on 1 January 2003.

The disputed second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police, titled: "Procedure for the Application and Removal of a Disciplinary Penalty", stipulates:

"When conducting a criminal prosecution against a police officer, the temporary suspension of powers shall be carried until the completion of the criminal case or until the entry into force of the court verdict in a certain case. In this case, the salary shall be paid for no more than two months, and the rest of the payment shall be made in case of termination of the case on acquittal basis".

Article 43 of the Law was supplemented and amended by the Laws HO-131-N of 14.12.04, HO-169-N of 24.10.06, HO-169-N of 15.11.10, HO-215-N of 16.12.16, and HO-49-N of 31.05.19.

The Law of the Republic of Armenia on Approving the Disciplinary Statute of the Police of the Republic of Armenia (hereinafter – also the Statute) was adopted by the National Assembly on 11 April 2005, signed by the President of the Republic on 11 May 2005 and entered into force on 28 May 2005.

The disputed Part 1 of Article 16.1 of the Statute, titled "Prohibition of appointment to a new position and dismissal from service in the police during the period of criminal prosecution and official investigation", stipulates:

"A police officer against whom criminal prosecution has been initiated cannot be appointed to a new position, resign from the police service on his own initiative until the criminal prosecution is terminated".

Article 16.1 of the Statute was supplemented by the Law HO-36-N of 19.03.12.

The case was initiated on the basis of the applications of the Human Rights Defender and the Administrative Court of the Republic of Armenia submitted to the Constitutional Court on 31 July 2019 and 23 September 2019 respectively.

Based on Article 41 of the Constitutional Law on the Constitutional Court, the cases on the above applications were joined by the Procedural Decision PDCC-123 of the Constitutional Court dated 5 November 2019.

For more effective disclosure of the circumstances of this case, by the Procedural Decision PDCC-23 of the Constitutional Court dated 11 February 2020, it was decided to shift to the oral consideration of the case in part of the application of the Human Rights Defender.

Having heard and examined the explanations of the applicants and the respondent in this case, also having analyzed the relevant provisions of the Law and the Statute as well as other documents of the case, the Constitutional Court **FOUND:**

1. Applicants' arguments

1.1. Applying to the Constitutional Court, the Human Rights Defender requested to determine the compliance of the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police and Part 1 of Article 16.1 of the Law of the Republic of Armenia on Approving the Disciplinary Statute of the Police of the Republic of Armenia with Articles 29, 31, 57, 66, 78 and 80 of the Constitution insofar as, in the event of criminal prosecution against a police officer, the latter is deprived of the opportunity both to resign from the police service on his own initiative and to be appointed to a new position or perform other work, alongside scientific, pedagogical and creative work.

The Human Rights Defender presents the issues of the alleged constitutionality of the disputed legal provisions in the context of a comparative analysis of the constitutional legal and international legal content of the exercise of the right to free choice of employment, constitutional legal guarantees for the restriction of this right, the relationship between the right to free choice of employment and the right to private and family life, the prohibition of discrimination in labor relations, the principle of the presumption of innocence, as well as similar legal provisions governing relations in other spheres of the civil service. In particular, the applicant concludes that "As a result of the establishment of such problematic legal regulations for police officers, the latter find themselves in a situation where an employee, on the one hand, cannot choose another paid work, on the other hand, being left without a salary, he does not have the opportunity to take care of the minimum material and social needs and ensure the vital needs of his family". The applicant also considers that the non-payment of salary and the simultaneous prohibition on dismissal from service during the entire period of criminal prosecution

leads to a disproportionate restriction of the rights of a police officer enjoying the constitutional legal guarantee of the principle of the presumption of innocence, and this restriction includes elements worsening the situation of the person and, therefore, it is of punitive nature.

1.2. The Administrative Court of the Republic of Armenia applied to the Constitutional Court with a request to determine the compliance of the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police with Article 29, Part 1 of Article 61 and Article 79 of the Constitution.

Presenting the issues of the alleged constitutionality of the disputed legal provision in the context of the analysis of a number of constitutional legal and international legal regulations and certain legal positions of the Constitutional Court and the European Court of Human Rights, the Administrative Court of the Republic of Armenia, in particular, concludes that the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police contradicts Article 79 of the Constitution, given the fact that the application of this legal provision restricts the exercise of the person's right to free choice of employment as prescribed in Article 57 of the Constitution, without establishing substantive grounds for such restriction and certain conditions for its application. According to the applicant, “although the lack of establishing by the disputed legal provision of the grounds and scope of temporary suspension of the powers of a police officer de jure does not deprive a person of the right to judicial protection to appeal against an administrative act on the suspension of his powers, nevertheless such a right in practice becomes formal. In particular, when appealing in court the order to suspend the powers of a police officer without any grounds, only by virtue of the criminal prosecution against him, the person is deprived of a real opportunity to challenge the validity of this order in court, which directly contradicts the right to effective judicial protection as prescribed in Part 1 of Article 61 of the RA Constitution”. At the same time, the applicant believes that a single legislative approach to various civil servants is not ensured, which is not justified; therefore, unjustified discrimination is shown towards police officers and differentiation is provided in comparison with subjects who are in the same circumstances and endowed with the same status.

2. Respondent’s arguments

The respondent (in the written explanations of September 27 and November 11, 2019) applied to the Constitutional Court with a request to make a decision in the case on conformity of the disputed

provisions of the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police and Part 1 of Article 16.1 of the Law of the Republic of Armenia on Approving the Disciplinary Statute of the Police of the Republic of Armenia with the Constitution.

The respondent addressed the issues put forward by the applicants regarding the alleged constitutionality of the disputed legal provisions analyzing a number of provisions of the Constitution, the Labor Code of the Republic of Armenia, the Criminal Procedure Code of the Republic of Armenia, laws regulating relations between certain types of public service, as well as referring to certain legal positions of the Constitutional Court and the European Court of Human Rights.

The respondent believes that "…. the restriction of the choice of employment of a police officer during disciplinary proceedings …. is conditioned by the final decision on the issue of bringing a person to disciplinary liability if he is not charged with criminal offense, which would be impossible in the event of a police officer being dismissed from service". .... The restriction envisaged in this case is necessary and proportionate to the legitimate aim pursued and follows from the principle of the inevitability of punishment".

According to the respondent, "…. police officers are not considered persons equal to military personnel, unlike employees of the penitentiary institutions of the RA Ministry of Justice, employees of the Rescue Service of the RA Ministry of Emergency Situations and compulsory enforcement officers. .... Considering police officers, military personnel and persons equal to them, as well as employees of other law enforcement agencies, in particular employees of the Investigative Committee and the Prosecutor's Office as "persons of the same category" does not follow from the legal regulations of the RA legislation". The respondent concludes that the legislative regulation does not distinguish between police officers and judges, employees of the Investigative Committee and the Prosecutor's Office, since the latter, in fact, cannot be considered persons with the same status.

The respondent also considers that the administrative-legal mechanism for the suspension of the powers of a police officer can be applied if the actions prescribed in Article 152 of the Criminal Procedure Code of the Republic of Armenia have been performed and the guarantees established by the same article have been observed, which in itself presupposes the criminal-procedural mechanism for suspension of powers. According to the respondent, taking into account the goals and principles underlying the Criminal Procedure Code of the Republic of Armenia and the Law, as well as based on the literal meaning of the words and expressions contained therein and the goals pursued by the body adopting them, the mechanisms established in the two above-mentioned legal acts are consistent and

deriving from one another processes; that is, the temporary suspension of the powers established by the second paragraph of Part 9 of Article 43 of the Law can be carried out only in the presence of a decision of the prosecutor or investigator issued in accordance with Article 152 of the Criminal Procedure Code of the Republic of Armenia.

In addition to the above explanations, the respondent notes in his additional written and oral explanations of February 17, 2020 and February 18, 2020, respectively, that the disputed provisions do not contradict the Constitution, but at the same time notifies that the issues raised in the application and the problems raised are in general acceptable also by the National Assembly.

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

In order to assess the constitutionality of the legal regulations disputed in this case, the Constitutional Court considers it necessary to address, in particular, the following issues:

a) Is the suspension of the powers of a police officer during the period of criminal prosecution against the latter mandatory by virtue of the legal regulation of the second paragraph of Part 9 of Article 43 of the Law, and if it is based solely on the fact of initiating criminal proceedings against a police officer, does it violate the principle of prohibition of discrimination prescribed in Article 29 of the Constitution and the principle of presumption of innocence prescribed in Article 66 of the Constitution?

b) Does the non-payment of salaries to a police officer during the period of criminal prosecution and, at the same time, the legal prohibition on his dismissal from service on his own initiative violate the requirements prescribed in Articles 49, 66 and 78 of the Constitution?

c) Does the legal regulation of the second paragraph of Part 9 of Article 43 of the Law comply with the principle of certainty prescribed in Article 79 of the Constitution?

4. Legal assessments of the Constitutional Court

4.1. As a result of the analysis of the provisions of the Law, the Constitutional Court states that in Article 43, titled: “Procedure for the Application and Removal of a Disciplinary Penalty”, the legislator separately regulated the relations related to the temporary termination of the powers of a police officer for the period of official investigation (first paragraph of Part 9) and the temporary

suspension of powers when conducting a criminal prosecution against a police officer (second paragraph of Part 9).

As a result of studying the law enforcement practice (according to the letter of the Deputy Chief of the Police of the Republic of Armenia dated 17.02.2020), the Constitutional Court also states that the temporary suspension of powers (when conducting a criminal prosecution against a police officer) was carried out on the grounds prescribed in Article 152 of the Criminal Procedure Code of the Republic Armenia (by the order of the prosecutor or by the order of the investigator with the consent of the prosecutor) and without the grounds prescribed in the above article. In other words, in the law enforcement practice, cases have been recorded when, during the period of criminal prosecution against a police officer, the temporary suspension of his powers have been based solely on the fact that the police officer was prosecuted.

Referring to the terms “implementation of criminal prosecution” and “initiation of criminal prosecution” prescribed in the disputed provisions in this case, the Constitutional Court states that the meaning of the notions “criminal prosecution” and “initiation of criminal prosecution” is disclosed, respectively, in Clauses 17 and 18 of Article 6 of Criminal Procedure Code of the Republic of Armenia. In this regard, criminal prosecution means all procedural activities conducted by the prosecuting bodies, and in cases prescribed in the Criminal Procedure Code of the Republic of Armenia, the injured party, with the purpose of identifying the person who committed the action prohibited by criminal law, determining whether he is guilty of a crime, and ensuring that this person is punished or subjected to other compulsory measures. As for the initiation of criminal prosecution, this is the decision made by the criminal prosecution body to bring in a person as an accused, as well as to detain him or apply a preventive measure against him prior to bringing in a person as an accused.

In the event that any of the above-mentioned decisions are made, the person must acquire the status of either a suspect (Part 1 of Article 62 of the Criminal Procedure Code of the Republic of Armenia) or an accused (Part 1 of Article 64 of the Criminal Procedure Code of the Republic of Armenia). At the same time, it follows from the content of Part 1 of Article 152 of the Criminal Procedure Code of the Republic of Armenia that such a measure of procedural coercion as “temporary removal from office” can be applied exclusively with respect to a suspect or accused, that is, to a person against whom a criminal prosecution has already been initiated.

In the context of the aforementioned criminal procedural regulations, the Constitutional Court notes that within the framework of the analysis of the provisions disputed in the present case, “the

implementation of criminal prosecution" follows "the initiation of criminal prosecution". Consequently, the terms mentioned in this Decision are used taking into account this ratio.

4.2. In the Decision DCC-1488 of 15 November 2019, the Constitutional Court has addressed the constitutional content of the right to join the public service on general grounds, as prescribed in Article 49 of the Constitution, and expressed, in particular, the following legal positions:

1) The legislator is obliged to provide general grounds for the realization of the constitutionally prescribed right to join the public service on general grounds, *excluding any discrimination*;

2) Nonetheless, the mechanisms for the implementation of the fundamental right to enter the public service on general grounds may differ significantly from each other *depending on the characteristics of the public office and the type of public service*;

3) The fundamental right to enter public service also includes **the right of a person to hold the public office on general grounds**, which, in turn, implies *a prohibition of dismissal from public service on the grounds not provided by law, as well as arbitrarily*.

By the Decision DCC-1488 of the Constitutional Court, it was also prescribed that "…. the clarity, predictability and accessibility of laws restricting fundamental rights or freedoms are directly proportional to the degree of restriction of the fundamental right: **the more intense this restriction is, the more clear, predictable and accessible the wording of these laws should be**, so as not to create ambiguities for individuals in relation to the content and availability of prohibitions, other restrictions or duties assigned to them".

Reiterating and developing the above-mentioned legal positions within the framework of the present case, the Constitutional Court finds:

1) Any interference with the right to hold the office of a public servant must be carried out on a *non-discriminatory basis*, regardless of whether a criminal prosecution has been initiated against him or not, and regardless of any other circumstance that does not lead to a legitimate interference with his right to hold office;

2) Interference with the maximum or high intensity with the right to hold the office of a public servant, that is, leading to the forced termination or suspension of his powers, should be based on clear, predictable and accessible regulations at the level of law and, in addition, should be proportionate;

3) the laws governing the public service should not prescribe additional restrictions solely conditioned by the initiation of criminal prosecution, which, on the one hand, go beyond the logic of the general system of public service, and on the other hand, do not have substantive justification in a specific law;

4) given the insufficient legal obstacles to initiating criminal proceedings in relation to the majority of public servants, and in general, in relation to other private persons, other additional restrictions on the tenure of a public servant *not prescribed by the criminal procedure legislation* should be applied exclusively *in accordance with the subsidiarity rule*, i.e. if through the application of criminal procedural measures, it is impossible to achieve the implementation of the relevant legitimate goal established by the Constitution or law. At the same time, in the absence of the need to apply criminal procedural measures, securing additional legislative restrictions **solely by virtue of the fact of initiating criminal prosecution** cannot pursue any goal justified by the Constitution; therefore, this cannot be justified either by the logic of the general system of public service or by the peculiarities of any or a specific type of public service;

5) the right to join the public service and hold an office without undue interference also presupposes **an unhindered opportunity to resign from this position on the own initiative**, regardless of the existence of a procedure for bringing to disciplinary, criminal or other liability in connection with the exercise of official powers. The right to resign from the position of a public servant on the own initiative is protected by Article 49 of the Constitution to the same extent as the right to join the public service.

The Constitutional Court considers it necessary to note that the prohibition on dismissal from public service on the own initiative also applies to the right to free choice of employment, as prescribed in Part 1 of Article 57 of the Constitution, since it restricts the opportunity of a person to move from public service to another job, including the employment in private legal relations.

It should also be noted that international legal documents also establish key regulations in the field of protection of labor rights. So:

1) In accordance with Article 23 of the Universal Declaration of Human Rights, everyone has the right to work, to free choice of employment;

2) In accordance with Part 1 of Article 6 of the International Covenant on Economic, Social and Cultural Rights, “The States Parties to the present Covenant recognize the right to work, which

includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right";

3) In accordance with Part 1 of the European Social Charter (revised), the Parties accept as the aim of their policy, to be pursued by all appropriate means the attainment of conditions in which everyone shall have the opportunity to earn his living in an occupation freely entered upon;

4) In accordance with Clause 2 of Article 1 of the Convention concerning Discrimination in Respect of Employment and Occupation, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination, and in accordance with Article 4 of the said Convention, any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

The Constitutional Court states that these international standards, mutatis mutandis, should also be applicable in the field of public service, since in their essence they are also applicable to persons exercising state power functions within the framework of public-legal relationship.

4.3. According to the second paragraph of Part 9 of Article 43 of the Law disputed in the present case, when conducting a criminal prosecution against a police officer, the temporary suspension of powers shall be carried until the completion of the criminal case or until the entry into force of the court verdict in a certain case. In this case, the salary shall be paid for no more than two months, and the rest of the payment shall be made in case of termination of the case on acquittal basis. As the above law enforcement practice has shown, it follows from such a formulation of legal regulation that the temporary suspension of powers of a police officer is carried out also without the grounds prescribed in Article 152 of the Criminal Procedure Code of the Republic of Armenia (by the order of the prosecutor or by the order of the investigator with the consent of the prosecutor), and this in essence, is solely conditioned by the fact of initiating criminal prosecution against a police officer.

It should be noted that along with this legal regulation, there is also a legislative prohibition, according to which a police officer against whom criminal prosecution has been initiated cannot be appointed to a new position, resign from the police service on his own initiative until the criminal prosecution is terminated (Part 1 of Article 16.1 of the Statute).

The Constitutional Court considers that the aforementioned legal regulations and their legal application are problematic from the perspective of Articles 29 and 66 of the Constitution.

According to Article 29 of the Constitution, discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.

The wording of the fundamental principle that enshrines the prohibition of discrimination, in part of other peculiarities of personal or social nature, amongst others, also concerns *the circumstances of being in public service, as well as the fact of initiating criminal prosecution*.

In a number of decisions, the Constitutional Court has already referred to the principle of non-discrimination, expressing, in particular, the following legal positions:

1) ".... the positive constitutional obligation of the State is to provide such conditions that will provide people with the same status with an equal opportunity to exercise, and in case of violation - to protect their rights; otherwise not only the constitutional principles of equality and non-discrimination, but also the rule of law and legal certainty would be violated" (DCC-731);

2) "within the framework of the principle of non-discrimination, the Constitutional Court considers admissible any differentiated approach justified by an objective basis and a legitimate aim. The non-discrimination principle does not mean that any differentiated treatment of persons of the same category can be considered as discrimination. The differentiated approach **deprived of an objective basis and legitimate aim**, is considered as a violation of the principle of discrimination" (DCC-881);

3) "…. free choice of employment provides equal opportunities for every person to enter into labor relations without any discrimination and freely demonstrate their professional and other abilities. At the same time, this does not prevent the legislator (in the process of legal regulation of labor relations) from establishing **different legal status of persons** in connection with working conditions, direct contractual obligations, field of activity, and even to provide for **special cases of employment and dismissal from certain positions**, if they are objectively justified and have an appropriate constitutional legal basis (DCC-991);

4) "…. discrimination exists when a differentiated approach is shown to this or that person or persons of the same legal status; in particular, they are deprived of any rights, or the latter are limited, or they gain privileges" (DCC-1224).

The Constitutional Court also considers it necessary to refer to the legal positions of the European Court of Human Rights regarding the principle of non-discrimination, which are as follows:

1) A difference of treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Judgment of 28 October 1987 in the case of Inze v. Austria, application No. 8695/79, § 41);

2) No objective and reasonable justification means that the distinction in issue does not pursue a legitimate aim or that there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Grand Chamber Judgment of 18 February 2009 in the case of Andrejeva v. Latvia, application No. 55707/00, § 81).

According to Article 66 of the Constitution, anyone charged with a crime shall be presumed innocent until proven guilty as prescribed by law, upon criminal judgment of the court entered into legal force.

The Constitutional Court considers that the presumption of innocence, in conjunction with the principle of non-discrimination, excludes the legal possibility of securing restrictions (at the level of law) related to the initiation of criminal prosecution, which relate to the general status of a person, including his right to continue to remain in public office, in this case, the police service, or his right to resign from the police service, which are not necessary for the implementation of criminal proceedings. Therefore, firstly, the fact of the initiation of criminal prosecution cannot possibly be the basis for the suspension or termination of powers of a person from the position of a public servant, if such a procedural measure has not been chosen against him that blocks his further term of office. This means that the right of a person to resign from the position of a public servant cannot also be blocked on this basis. Therefore, all rights related to the position of the public service, which have not been restricted in the framework of criminal prosecution, cannot be restricted either by general or specific laws governing public service. In addition, this also means ensuring the unimpeded performance of the duties arising from the position of the public service, from which it follows that, **until the entry into force of a conviction, a person's right to remuneration cannot and should not be restricted either in terms of content or in terms of timing**.

Thus, the Constitutional Court considers that there are no grounds to restrict the person's right related to the position of public service **solely on the basis of the initiation of criminal prosecution**.

The above-mentioned applies to both persons holding positions of the civil service, municipal service, public positions, and persons working under an employment contract.

4.4. According to the principle of proportionality prescribed in Article 78 of the Constitution, the means chosen for restricting fundamental rights and freedoms must be suitable and necessary for achievement of the aim prescribed by the Constitution. The means chosen for restriction must be commensurate to the significance of the fundamental right or freedom being restricted.

Within the framework of assessment of the constitutionality of the legal regulations disputed in the present case, it is also necessary to establish whether the restrictions imposed on the police officer in accordance with the laws, namely *the automatic suspension of powers, the limitation of the time period for the payment of the salary, the appointment to a new position or the prohibition on dismissal from the police service on the own initiative* pursue a legitimate aim, i.e. the aim prescribed by the Constitution.

The Constitutional Court considers that the aforementioned restrictions are solely due to the fact of initiation of criminal prosecution; therefore, they can be justified only by the need to apply measures of influence in the framework of criminal proceedings, the assessment of which is within the competence of the relevant bodies carrying out criminal proceedings. Only the respective decision of the latter can serve as a basis for the application of such a necessary restriction in relation to a person holding a public service position (in this case, in relation to a police officer) as the suspension of powers. In this aspect, the Constitutional Court considers that the automatic, that is, mandatory suspension of powers of a person holding a position in the police service, the limitation of the time period of payment of his salary, as well as the prohibition on dismissal from service on the own initiative cannot pursue any goal prescribed by the Constitution; that is, they contradict Article 78 of the Constitution. It should be noted that the Law cannot establish such restrictions that, until the entry into force of the court verdict, directly or indirectly predetermine the guilt of a person in the commission of the alleged crime.

As for the prohibition of appointment to a new position prescribed in the disputed Part 1 of Article 16.1 of the Statute, this may be justified if the person holding a position in the police service must be encouraged by moving to a higher position or to another position of equal value and with higher responsibility. In such cases, due to the fact that criminal prosecution has been initiated, it is permissible to temporarily refrain from applying such encouraging measures that would call into

question the public interest in solving crimes. However, in these cases, based on the imperative requirement of the presumption of innocence, the mandatory applicable absolute prohibition must not be established, especially taking into account the gravity of the acts alleged against the person, as well as the circumstances characterizing the person and all other necessary circumstances to be assessed in each certain case.

4.5. The Constitutional Court states that the second paragraph of Part 9 of Article 43 of the Law does not establish the grounds for the suspension of the powers of a police officer, as well as the scope of entities authorized to suspend his powers, the issue of assessing the constitutionality of which (from the perspective of legal certainty) was raised by the Administrative Court of the Republic Armenia acting as the applicant in this case.

In a number of decisions, the Constitutional Court has referred to the principle of legal certainty, expressing, in particular, the following legal positions:

1) No legal norm can be considered as a "law" unless it is worded not precisely enough to allow the citizen to engage in appropriate conduct (DCC-630), the legal law must be sufficiently accessible, and the subjects of law, in appropriate circumstances, should be able to determine which legal norms are applied in a certain case (DCC-753), the concepts used in the legislation should be clear, specific, and not lead to varying interpretations or confusion (DCC-1176);

2) "…. the Constitutional Court considers that the principle of legal certainty presupposes both the presence of legal regulation, as precise as possible, and ensuring its predictability. In particular, the wording of the legal regulation should not only enable the person to engage in appropriate conduct, but also to foresee what actions the public authority can take and what consequences the application of the given legal regulation may entail" (DCC-1452);

3) Given the diversity of essential issues and the impossibility to respond to all situations in a rulemaking manner, the requirement of certainty of legislative and sub-legislative regulations does not exclude the consolidation of vague legal concepts in laws and sub-legislative normative legal acts, but this must necessarily be accompanied by an equivalent interpretation of such concepts, and in identical cases, by uniform interpretation, without which it is impossible to ascertain the predictability of these provisions (DCC-1488).

The Constitutional Court considers it necessary to note that the aforementioned legal positions are also important in the aspect of ensuring the implementation of the right to effective judicial protection guaranteed by Part 1 of Article 61 of the Constitution.

Taking as a basis the general logic of the criminal procedure legislation, as well as the legal positions expressed in this Decision, the Constitutional Court considers that the provision “temporary suspension of powers shall be carried out” prescribed in the second paragraph of Part 9 of Article 43 of the Law is also problematic from the perspective of Article 79 of the Constitution. In the aspect of ensuring legal certainty, the provision “temporary suspension of powers shall be carried out” prescribed in the second paragraph of Part 9 of Article 43 of the Law should be based on criminal procedure law as a legal basis.

The Constitutional Court considers it necessary also to note that the issue of ensuring the uniform application of the terms expressing, in essence, the same content and meaning should also be touched upon at the legislative level. The legislator uses the term “temporary removal from office” in Article 152 of the Criminal Procedure Code of the Republic of Armenia, and the term “temporary termination of powers” - in the first paragraph of Part 9 of Article 43 of the Law, but uses the term “temporary suspension powers ” in the second paragraph of the same Part.

4.6. The Constitutional Court states that according to the Law of the Republic of Armenia on Public Service, the peculiarities of the organization and activities of certain types of public service are prescribed by the relevant laws (Part 3 of Article 2).

Within the framework of the subject matter in this case, the Constitutional Court also considers it necessary to refer to the analogous provisions of certain laws regulating the peculiarities of the organization and activities of other types of public service. So:

According to Part 14 of Article 59 of the Law of the Republic of Armenia on Rescue Service, “When conducting a criminal prosecution against a servant, the temporary suspension of powers shall be carried until the completion of the criminal case or until the entry into legal force of the court verdict on the case. In this case, the servant shall continue to receive salary”.

According to Part 9 of Article 37 of the Law of the Republic of Armenia on Criminal Executive Service, “When conducting a criminal prosecution against a criminal executive officer, his powers shall be temporarily terminated until the termination of criminal prosecution or until the entry into

legal force of the court verdict on the case. During the period of temporary termination of powers of a criminal executive officer, he shall continue to receive salary".

According to Part 8 of Article 36 of the Law of the Republic of Armenia on Compulsory Enforcement Service, "When conducting a criminal prosecution against a compulsory executor, his powers shall be temporarily terminated until the termination of criminal prosecution or until the entry into legal force of the court verdict on the case. During the period of temporary termination of powers of a compulsory executor, he shall continue to receive salary".

Article 32 of the Law of the Republic of Armenia on the Investigative Committee of the Republic of Armenia establishes:

"1. The powers of an officer of the Investigative Committee shall be suspended:

1) In the event of initiation of criminal prosecution against an officer of the Investigative Committee, until the relevant final decision is taken;

(...)

4. During the period of suspension of powers of an officer of the Investigative Committee, he shall continue to receive salary".

Article 37.1 of the Law of the Republic of Armenia on Customs Service establishes:

"The official powers of a customs officer, involved as an accused in criminal cases, shall be suspended with the maintenance of the basic salary, until the charges are dropped".

Based on the foregoing, the Constitutional Court states that in the laws governing the above-mentioned types of public service, there is no prohibition on dismissal from service on the own initiative and appointment to a new position, or to perform other work on the basis of initiation of criminal prosecution. In addition, in the event of a suspension of powers, the salary is maintained.

Within the framework of this case, the Constitutional Court is not competent to refer to the constitutionality of the relevant provisions of the laws regulating certain types of public service.

However, at the same time, the Constitutional Court considers it necessary to note that the objective grounds and legitimate goals of the disputed legal regulations, which differ from the relevant provisions of the laws regulating the above-mentioned types of public service, are not legally substantiated; therefore, in this aspect, they also contradict Article 29 of the Constitution.

Based on the review of the case and governed by Clause 1 of Article 168, Clause 10 of Part 1 and Part 4 of Article 169, Parts 1 and 4 of Article 170 of the Constitution, as well as articles 63, 64, 68 and 71 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. To declare the second paragraph of Part 9 of Article 43 of the Law of the Republic of Armenia on the Service in the Police contradicting Articles 29, 49, 66, 78 and 79 of the Constitution and void, in the part of suspension of powers of a police officer exclusively due to the fact of initiating (conducting) a criminal prosecution against him, as well as in the part of provision of a time-limit for the payment of the salary of a police officer.

2. To declare Part 1 of Article 16.1 of the Law of the Republic of Armenia on Approving the Disciplinary Statute of the Police of the Republic of Armenia contradicting Articles 29, 49, 66 and 78 of the Constitution and void, in the part of provision of an absolute prohibition for a police officer to be appointed to a new position until the termination of criminal prosecution, as well as in the part of provision of a prohibition to resign from the police service on the own initiative.

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

Chairman **H. Tovmasyan**

February 25, 2020
DCC -1507