Non-Official Translation

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

IN THE CASE CONCERNING THE CONSTITUTIONALITY OF ARTICLE 86 §§ 2 AND 7 AND ARTICLE 5 § 2(4.2) OF THE CONSTITUTIONAL LAW ON THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY 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 April 29, 2021

The Constitutional Court, composed of A. Dilanyan (presiding), V. Grigoryan, H. Tovmasyan, A. Tunyan, A. Khachatryan, E. Khundkaryan, E. Shatiryan, A. Petrosyan, and A. Vagharshyan,

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

The applicant: at least one fifth of the total number of deputies of the National Assembly, and

The respondent: National Assembly representative S. Grigoryan and National Assembly deputies V. Hovakimyan and A. Julhakyan,

pursuant to Article 168(1) and Article 169 § 1(2) of the Constitution, as well as Articles 22, 40, 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 86 §§ 2 and 7 and Article 5 § 2(4.2) of the Constitutional Law on the Rules of Procedure of the National Assembly, 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 Constitutional Law on the Rules of Procedure of the National Assembly (hereinafter also referred to as the "Rules of Procedure") was adopted by the National Assembly on December 16, 2016, was signed by the President of the Republic on January 14, 2017, and entered into force on May 18, 2017.

Article 86 § 2 of the Rules of Procedure titled "Procedure for Debating and Adopting Draft Amendments to the Constitution" stipulates:

"2. Prior to the second reading and adoption in full of draft amendments to the Constitution, the draft decision of the National Assembly on applying to the Constitutional Court with regard to the issue of constitutional amendments shall be put to a vote. If the

decision is adopted, the President of the National Assembly shall, within two working days, sign the decision and submit it, together with the draft amendments to the Constitution debated in the second reading, to the Constitutional Court for the assessment of the draft amendments from the point of view of their compliance with the non-amendable articles of the Constitution, and debate on the issue shall be paused pending the decision of the Constitutional Court."

The above-mentioned article of the Rules of Procedure was supplemented by the Constitutional Law LA-304-N on Making Supplements and Amendments to the Constitutional Law on the Rules of Procedure of the National Assembly, which was adopted by the National Assembly on June 3, 2020, was signed by the President of the Republic on June 24, 2020, and entered into force on June 25, 2020, and this article was supplemented with the following language: "for the assessment of the draft amendments from the point of view of their compliance with the non-amendable articles of the Constitution."

Article 86 § 7 of the Rules of Procedure stipulates:

"7. The President of the National Assembly shall, within one week, promulgate amendments to the Constitution adopted by the National Assembly."

Article 86 § 7 of the Rules of Procedure was amended by the Constitutional Law LA-309-N on Making Amendments and Supplements to the Constitutional Law on the Rules of Procedure of the National Assembly, which was adopted by the National Assembly on June 22, 2020, was signed by the President of the Republic on June 24, 2020, and entered into force on June 25, 2020.

Article 5 § 2(4.2) of the Rules of Procedure stipulates:

"The President of the National Assembly shall promulgate amendments to the Constitution adopted by the National Assembly in cases envisaged by Article 202 § 2 of the Constitution."

Constitutional Law LA-309-N on Making Amendments and Supplements to the Constitutional Law on the Rules of Procedure of the National Assembly supplemented the Rules of Procedure with this provision.

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 August 18, 2020.

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

1. Applicant's submission

The applicant submits that the Constitution envisages mandatory (and not dispositive) provisions with regard to the National Assembly applying to the Constitutional Court on constitutional amendment issues prior to the adoption of draft amendments to the Constitution.

Article 86 of the Rules of Procedure, in so far as it defines the discretionary power of the National Assembly to apply to the Constitutional Court, "is in blatant contradiction to Article 168(2), as well as Article 169 § 2 of the Constitution, as the latter envisage mandatory provisions for applying to the Constitutional Court, while the above-mentioned

provision of the Rules of Procedure of the National Assembly envisages adoption of a certain decision by the National Assembly on this issue. In other words, Article 86 § 2 of the Rules of Procedure of the National Assembly contradicts the Constitution, as it violates the imperative nature of the requirement contained therein."

The applicant also finds that "Article 86 § 2 of the Constitutional Law on the Rules of Procedure of the National Assembly provides one branch of government, the legislative body, with the opportunity to put to a vote the issue of application to another branch of government and counterbalancing body; that is, it establishes a discretionary power for the National Assembly, which naturally contradicts the principle of separation and balance of powers and, therefore, also Article 4 of the Constitution."

Summarizing its arguments in this regard, the applicant posits that "Article 86 § 2 of the Constitutional Law on the Rules of Procedure of the National Assembly, in so far as it establishes the discretionary right of the National Assembly to apply to the Constitutional Court (by putting to a vote a draft decision of the National Assembly on applying to the Constitutional Court on the issue of amending the Constitution), contradicts Articles 4 and 5, Article 168(2), and Article 169 § 2 of the Constitution and is unconstitutional."

Regarding the constitutionality of Article 86 § 7 and Article 5 § 2(4.2) of the Rules of Procedure, the applicant notes that Article 86 § 7 of the Constitutional Law on the Rules of Procedure of the National Assembly, in the version in effect until June 22, 2020, established the following: "The President of the National Assembly shall, within one week, submit amendments to the Constitution adopted by the National Assembly to the President of the Republic, who shall sign and promulgate them within twenty-one days," whereas the same provision in the disputed version states: "The President of the National Assembly shall, within one week, promulgate amendments to the Constitution adopted by the National Assembly."

According to the applicant, this amendment has deprived the President of the Republic of the authority to sign and promulgate amendments to the Constitution.

2. Respondent's submission

The respondent argues that Article 86 § 2 of the Rules of Procedure is in accordance with the Constitution, in that, firstly, the National Assembly could not apply to the Constitutional Court to determine whether the National Assembly's June 22, 2020 second reading amendments (hereinafter, "2020 Constitutional Amendments") were in compliance with the Constitution, given that, at the time the amendments were adopted, seven of the nine acting justices (members) of the Constitutional Court were directly impacted by the constitutional amendments. The respondent also emphasizes that Article 168(2) and Article 169 § 2 of the Constitution do not envisage any mandatory requirement to apply to the Constitutional Court to determine the constitutionality of draft amendments to the Constitution before their adoption in the second reading.

According to the respondent, Article 168 of the Constitution does not use the words "may," "can," or other such words when setting out the powers of the Constitutional Court, even in cases in which the applicant has the discretion to apply or not to apply to the Constitutional Court (for instance, to determine the constitutionality of the laws mentioned in Article 168(1)). With regard to Article 169 of the Constitution, the respondent finds that

this article does not regulate the mandatory or dispositive nature of any applicant entity's right to apply to the Constitutional Court; rather, the purpose of this article is limited to securing the power of appeal exclusively for the applicant entities without referring to its mandatory or dispositive nature. The respondent also emphasizes that, even if one is to accept that the imperative or dispositive nature of the power of appeal is included in the scope of regulation of this article, then neither the imperative nor dispositive nature of this power is enshrined in the Constitution. In particular, given Article 169 § 2, the issue of whether the National Assembly is obliged to apply to the Constitutional Court in all cases in which it adopts amendments to the Constitution is generally beyond the scope of the subject of regulation of this paragraph. From the content of Article 169 § 2 of the Constitution it follows only that applications pertaining to the exercise of the powers of the Constitutional Court set forth in Article 168(2) must be submitted by the National Assembly.

Regarding the constitutionality of Article 86 § 7 and Article 5 § 2(4.2) of the Rules of Procedure, the respondent finds that the position of the applicant that the President of the Republic has lost his authority is not grounded, since the President of the Republic did not previously enjoy such authority. Not a single article of the Constitution sets forth the authority of the President of the Republic to sign and promulgate amendments to the Constitution adopted by the National Assembly. The power of the President of the Republic to sign and promulgate laws adopted by the National Assembly, enshrined in Article 129 § 1 of the Constitution, cannot be perceived as such a power, since it refers, in this case, to changing laws and not the Constitution.

3. Essential considerations in the case

3.1. On June 19, 2020, on the initiative of at least one fourth of the total number of deputies, draft amendments to the Constitution were put into circulation. They were included on the agenda of an extraordinary meeting of the National Assembly on June 22, 2020. The National Assembly considered this draft, put it to a vote, and adopted it in the first reading. It afterwards put to a vote the draft decision of the National Assembly on applying to the Constitutional Court on this issue, which was not adopted by a vote. After that, the draft amendments to the Constitution, considered in the second reading, were put to a vote and adopted.

3.2. On June 22, 2020, in the National Assembly, the draft Constitutional Law on Making Supplements and Amendments to the Constitutional Law on the Rules of Procedure of the National Assembly was put to a vote and was also adopted. The Constitutional Law on Making Supplements and Amendments to the Constitutional Law on the Rules of Procedure of the National Assembly (LA-309-N) amended Article 86 § 2 of the Rules of Procedure and supplemented Article 5 § 2(4.2) of the Rules of Procedure. The Constitutional Law on Making Supplements and Amendments to the Constitutional Law on the Rules of Procedure of the National Assembly (LA-309-N) was signed on June 24, 2020.

3.3. The 2020 Constitutional Amendments were promulgated by the President of the National Assembly on June 25, 2020.

3.4. By a procedural decision PDCC-27 of the Constitutional Court of February 11, 2021, the proceedings in the "Case concerning the constitutionality of the exercise by the National Assembly of its powers under Article 86 §§ 2 and 7 and Article 5 § 2(4.2) of the

Constitutional Law on the Rules of Procedure of the National Assembly raised by the application of at least one fifth of the total number of deputies of the National Assembly of the Republic of Armenia" were terminated with respect to the following demands:

"3.1. r<u>ecognize and declare</u> that the National Assembly exceeded the scope of its constitutional powers and violated the Constitution when it did not send the June 22, 2020 constitutional amendments to the Constitutional Court to determine compliance with the Constitution prior to the second reading and adopted them in the second reading and in full without the opinion of the Constitutional Court;

3.2. <u>recognize and declare</u> that the National Assembly exceeded the scope of its constitutional powers and violated the Constitution when it amended the content of Article 213 of the Constitution in such a manner as to essentially change the provisions regulated by Chapter 7 of the Constitution;

3.3. <u>recognize</u> as contrary to the Constitution the failure of the National Assembly to apply to the Constitutional Court on the issue of compliance with the Constitution of amendments to the Constitution during the adoption of such amendments by the National Assembly on June 22, 2020 and the adoption in full of the draft amendments to the Constitution in the second reading without a decision from the Constitutional Court, and to recognize the June 22, 2020 constitutional amendments as contrary to the Constitution and invalid in full;

3.4. <u>recognize and declare</u> that the National Assembly and the President of the Republic have exceeded the scope of their constitutional powers and violated the Constitution by adopting and signing the amendments to the Rules of Procedure of the National Assembly and thus depriving the President of the Republic of the power to sign and promulgate amendments to the Constitution."

4. Substance of the case

4.1. To resolve the constitutional dispute raised in this case, the Constitutional Court focuses on the following questions:

1. Are draft amendments to the Constitution subject to mandatory preliminary constitutional review, and is the decision of the National Assembly to apply to the Constitutional Court on the issue of amending the Constitution the only necessary and effective legal procedure for ensuring this process?

2. Is the lack of provision of a structure for signing and promulgating amendments to the Constitution by the President of the Republic in line with the powers vested to the President by the Constitution?

4.2. The Constitutional Court examines this case **within the framework of abstract constitutional oversight**, in accordance with the procedure prescribed by Article 168(1) of the Constitution and Article 68 of the Constitutional Law on the Constitutional Court.

5. Assessments of the Constitutional Court

5.1. The applicant, in essence, challenges the constitutionality of the relevant procedural provisions of the Rules of Procedure having to do with making changes to the Constitution. Taking into account the direct relation of the challenged provisions to the institution controlling constitutional oversight, the Constitutional Court considers it

necessary to analyze the provisions concerning the adoption of constitutional amendments before assessing their constitutionality.

Prior to the entry into force of the 2015 constitutional amendments, any amendment to the norms of the Constitution was adopted exclusively through a public referendum. The National Assembly also has the authority, with at least two-thirds of votes of the total number of deputies, to adopt amendments to the articles set forth in Article 202 § 2 of the Constitution, as amended by the 2015 referendum.

The stability of the Constitution is one of the important principles of modern constitutional systems and also serves as an important guarantee for the strengthening and development of constitutionality. Moreover, the stability of the Constitution is ensured by the stability of the norms guaranteeing the invariability of the fundamental principles and values underlying the Constitution, regardless of the frequency of amendments to the text of the Constitution.

For the effective observance and protection of the fundamental principles and values underlying the Constitution, the Constitutional Court notes that, regardless of the volume of amendments to the text of the Constitution or the scope of subjects eligible for amendment, in conditions of developing societal relations, the dynamic stability of the Constitution as the main regulator can be ensured by observing the rules of the hierarchy of its norms.

5.2. The Constitutional Court considers it necessary to classify the provisions prescribed by the Constitution according to the jurisdiction of the entities adopting them, into the following groups:

a) The Preamble to the Constitution, Articles 1-3 and 203, as non-amendable provisions of the Constitution;

b) The provisions of the Constitution that can be amended only through a referendum, as constitutional provisions that are under the exclusive jurisdiction of the people of the Republic of Armenia, which are listed in Article 202 § 1 of the Constitution; and

c) Provisions of the Constitution that may also be amended by the National Assembly.

The objectives of differentiating the procedure for amending the provisions of the Constitution are to ensure the supremacy of the values and principles enshrined in the non-amendable provisions established by the primary constituent power of the Republic of Armenia, the Armenian people, internal stability of the Constitution, predictability of interpretation of the provisions of the Constitution, and prevention and resolution of possible internal conflicts.

The Constitutional Court notes that the non-amendable provisions of the Constitution are the fundamental and central axis that serve as the basis for the formation and development of the legal system of the Republic of Armenia.

5.3. The Constitutional Court notes that, from a comprehensive analysis of the constitutional and legal content of the principles set forth in the non-amendable provisions of the Constitution—in particular, the fact that the Republic of Armenia is a sovereign, democratic, social state governed by the rule of law, the people are the exclusive and only holders of power in the Republic of Armenia, and the human being is the highest value—as well as the provisions of a special norm governing the process of adopting amendments to the Constitution prescribed in Article 202, it follows that draft amendments to the Constitution must comply with:

a) the non-amendable provisions of the Constitution, the provisions of the Constitution that can be amended only through a referendum, and the provisions of the Constitution that are not amended by that draft, in the case the amendments to the Constitution are adopted by the National Assembly; and

b) (in case of adoption of amendments to the Constitution by means of a referendum,) the non-amendable provisions of the Constitution and those provisions of the Constitution that are amended only by means of a referendum, which are not changed by this draft.

5.4. In the context of the constitutional dispute in the present case, it is necessary to determine whether preliminary constitutional review of draft amendments to the Constitution is mandatory.

In the cases prescribed by Article 168(2) of the Constitution, the entity authorized to apply to the Constitutional Court (the National Assembly) is indicated in Article 169 § 2 of the Constitution. No other state body has the authority to apply to the Constitutional Court for a determination of the constitutionality of a draft amendment to the Constitution.

Articles of the Constitution stipulating the Powers of the Constitutional Court (Article 168) and the list of entities applying to the Constitutional Court (Article 169), inter alia, envisage the following: "*The Constitutional Court, as prescribed by the Law on the Constitutional Court, shall, prior to the adoption of draft amendments to the Constitution, as well as draft legal acts put to referendum, determine the compliance thereof with the Constitution"* (Article 168(2)), and "*The National Assembly shall, in the cases prescribed by* Article 168(2) *of the Constitution, apply to the Constitutional Court in respect of amendments to the Constitution (…)"* (Article 169 § 2).

The Constitutional Court notes that the purposes of the Constitutional Court's exercise of preliminary oversight over draft amendments to the Constitution are as follows:

a) proceeding from the goals of ensuring the supremacy of the Constitution, to prevent the occurrence of possible internal conflicts in the text of the Constitution as a result of amendments to the Constitution;

b) in order to achieve the goal of the supremacy of the Constitution through the position of the Constitutional Court as an independent and impartial guardian of constitutionalism, to prevent changes introduced to serve segment interests, which may conflict with the values and principles enshrined in the Constitution; and

c) to provide National Assembly deputies and, in the event of the adoption of amendments to the Constitution through a referendum, citizens who have the right to participate in the referendum, the opportunity to make an informed decision on draft amendments to the Constitution.

In examining the positions of the applicant and the respondent on the review of the constitutionality of the draft amendments to the Constitution, the Constitutional Court notes that, in contrast to the cases prescribed in Article 169 § 1 of the Constitution, wherein the Constitution uses the wording "may apply," the use of the term "shall … apply" in § 2 of the same article should be understood to refer to an obligation to apply to the Constitutional Court and not a discretionary option. Therefore, it follows from the content of Articles 168 and 169 of the Constitution, as well as from the language of the Constitution, that draft amendments to the Constitution are subject to mandatory preliminary review.

Given the above, the Constitutional Court finds that the Constitution envisages a review of the constitutionality of draft amendments to the Constitution, observance of which rule guarantees stability of the constitutional order, prevents the adoption of norms contrary to the principles and values underlying the Constitution, and can serve as an effective means for the citizens of the Republic of Armenia and the National Assembly to make informed and reasonable decisions when adopting amendments to the Constitution.

5.5. The provisions on the National Assembly acting as a constituent power are reflected in Article 202 of the Constitution, and the details are prescribed in Articles 84-86 of the Rules of Procedure.

With regard to the norm prescribed in Article 86 § 2 of the Rules of Procedure, the Constitutional Court finds that this norm regulates the procedures by which the National Assembly applies to the Constitutional Court, within the framework of which, for the implementation of the norms defining the authority of the National Assembly to apply to the Constitutional Court—as prescribed by Article 169 § 2 of the Constitution—it is envisaged that prior to the adoption of draft amendments to the Constitution in the second reading and in full, the draft decision of the National Assembly on applying to the Constitutional Court on issues relating to amendment of the Constitution is put to a vote. Accordingly, Article 86 § 2 of the Rules of Procedure stipulates that it is not a discretion but rather an obligation to submit to a vote a draft decision on applying to the Constitutional Court.

Article 103 § 3 of the Constitution stipulates that the National Assembly shall adopt decisions in the cases prescribed by the Constitution, as well as on the organization of its activities. In accordance with Article 103 § 1 of the Constitution, decisions of the National Assembly, as well as other acts of the National Assembly (laws, statements and addresses), with the exception of cases prescribed by the Constitution, shall be adopted by a majority of votes of the deputies participating in the voting, provided that more than half of the total number of deputies took part in the voting. In this regard, the Constitutional Court emphasizes that Article 103 of the Constitution is intended to ensure the effective exercise of the powers of the National Assembly as a legislative body representing the people, conditioned by its constitutional mission. The exercise of the power of each state body manifests externally, concluding with the adoption of a legal document in the relevant form. Depending on the competence of the state body, the Constitution provides for the possibility of adopting relevant legal acts. In this context, the Constitutional Court notes that the Constitution envisages two groups of decisions to be adopted by the National Assembly, i.e. decisions to be adopted by the National Assembly in specific cases envisaged by the Constitution and decisions to be adopted on the organization of the activities of the National Assembly. The first group of decisions includes, for instance, decisions envisaged in Article 115, Article 118, Article 202, and Article 205 of the Constitution. The Constitution also stipulates the adoption of decisions on the organization of the activities of the National Assembly, but the decisions to be adopted in the context of the organization of those activities are prescribed in the Rules of Procedure. Article 97 § 1 of the Rules of Procedure reflects the provision of Article 103 § 3 of the Constitution, and, in accordance with §2, the Rules of Procedure of the National Assembly, as well as other decisions on the organization of the activities of the National Assembly shall be adopted in the cases and in accordance

with the procedure prescribed by the Rules of Procedure. Such decisions include, for instance, the provisions envisaged in Article 36 § 4 and Article 37 § 3 of the Rules of Procedure.

Pursuant to Article 103 of the Constitution, the Rules of Procedure define the nature of the addresses and statements of the National Assembly, as well as the procedure for the National Assembly to submit, circulate, examine, and adopt draft laws, decisions, addresses and statements.

In connection with the above, the Constitutional Court notes that Article 103 of the Constitution lists the acts adopted by the National Assembly for the exercise of the powers of the National Assembly, the details of which are prescribed by the Rules of Procedure. The National Assembly may not exercise its power in any way other than through the structures prescribed by Article 103 of the Constitution, based on Article 103 of the Constitution and Article 6 of the Constitution, according to which state and local self-government bodies and officials shall be entitled to perform only such actions for which they are authorized under the Constitution or laws.

The decision envisaged in Article 86 § 2 of the Rules of Procedure is aimed at organizing the process of exercising the power of the National Assembly to apply to the Constitutional Court. It is noteworthy that in case the National Assembly adopts a decision to apply to the Constitutional Court on the issue of amending the Constitution in accordance with Article 86 § 2 of the Rules of Procedure, the President of the National Assembly shall, within two working days, sign this decision and shall, together with the draft amendment to the Constitution debated in the second reading, submit it to the Constitutional Court.

Based on the above, the Constitutional Court finds that no other structure is defined except for the adoption of decisions by the National Assembly by the constitutionally prescribed majority of votes within the scope of its powers as a collegial body and for the organization of the process aimed at the implementation of the powers of the National Assembly.

The Constitutional Court notes that the regulation of Article 86 § 2 of the Rules of Procedure refers to the procedure of exercising the authority of the National Assembly to apply to the Constitutional Court, within the framework of which the application to be submitted to the Constitutional Court is formulated in the decision of the National Assembly. The Government follows the same procedure, in compliance with the provisions of Article 168(3) and Article 169 § 3 of the Constitution, according to which, prior to the ratification of an international treaty, the Constitutional Court shall determine the compliance of the commitments enshrined therein with the Constitution, and in this case, the Government shall apply to the Constitutional Court. The Government also shall apply to the Constitutional Court by adopting the relevant decision. Therefore, the adoption of the relevant decision by the legislator when applying to the Constitutional Court is a procedural stage of exercising the authority provided by the Constitution.

Based on the above, the Constitutional Court finds that the legal regulations of Article 86 § 2 of the Rules of Procedure challenged by the applicant are consistent with the provisions prescribed by Article 168(2) and Article 169 § 2 of the Constitution.

5.6. The analysis of Article 86 of the Rules of Procedure shows that it regulates all possible situations that may arise during the adoption of draft amendments to the Constitution. In particular, the Rules of Procedure foresees situations in which:

a) The Constitutional Court finds the draft amendments to the Constitution to be unconstitutional;

b) The Constitutional Court finds the draft amendments to the Constitution to be in compliance with the Constitution, and the National Assembly either adopts or does not adopt the draft.

In view of the above, the Constitutional Court emphasizes the fact that the clarification in the Rules of Procedure of the consequences of the decision of the National Assembly not to apply to the Constitutional Court on the issue of amending the Constitution will exclude possible misunderstandings on this issue at the legislative level.

5.7. Although the part of the application in this case is examined within the framework of abstract constitutional review, in which the compliance of the challenged norms with the Constitution is checked, regardless of the application, the possible application and the circumstance of lawfulness of application of the given norms in specific situations, the Constitutional Court attaches particular importance to the fact that the applicant in this case is at least one fifth of the total number of deputies of the National Assembly, and the content of the application mainly refers to the non-submission of the 2020 draft constitutional amendments to Article 213 to the Constitutional Court.

The Constitutional Court has already referred to the mentioned part of the application in this case through its February 11, 2021 Procedural Decision PDCC-27. Nevertheless, respect for the opposition in a parliamentary republic, as well as the sensitive content of the issues raised on the constitutionality of the formation and replenishment of the Constitutional Court underline the importance of addressing the issues raised by the Constitutional Court.

The Constitutional Court notes that the institution of mandatory preliminary constitutional review of draft amendments to the Constitution is typical of new democracies. In the study of comparative constitutional law, mandatory preliminary constitutional review of draft amendments to the Constitution is one of the rare powers of the bodies of constitutional justice (European Commission for Democracy through Law, CDL-AD(2010)001 Report on Constitutional Amendment, 19 January 2010 (paragraphs 194-196), which is typical of relatively new democracies (particularly Ukraine, Kyrgyzstan, and Moldova).

The institution of obligatory *ex ante* review of draft amendments to the Constitution is not only a novelty in the constitutional law of Armenia, but its practical application has also not been studied in depth compared to the institution of non-mandatory review of draft amendments to the Constitution. At the international expert level of comparative constitutional law, only some problematic aspects of this institution have been identified, and at the same time, other problematic circumstances for democratic processes have not been ruled out in practice (European Commission for Democracy through Law, CDL-AD(2010)001 Report on Constitutional Amendment, 19 January 2010, paragraph 195, as well as CDL-AD (2015)045 Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania, paragraphs 20-21).

Taking into account the above-mentioned concerns, the Constitutional Court notes that, in addition to the favorable effect mentioned in paragraph 5.4 of this decision on the preservation and strengthening of the Constitution, the strictness of the rule stipulating this structure is the problematic aspect of mandatory preliminary review of the constitutionality of draft amendments to the Constitution if the mentioned rule does not have the necessary flexibility to overcome the obstacles to the realization of the goal of establishment of this institution.

Given the fact that the mandatory preliminary review of the constitutionality of draft amendments to the Constitution is defined by the Constitution, the Constitutional Court considers this rule mandatory, except in cases when the application of this rule may lead to the result contrary to the objectives of the introduction of the institution of mandatory preliminary review of the constitutionality of draft amendments to the Constitution.

5.8. In a situation in which the goal of mandatory preliminary review of the constitutionality of draft amendments to the Constitution cannot be achieved through the application of this institution, a reasonable exception to the mentioned constitutional rule is possible, which is an exceptional measure and is applicable only in the case when it is impossible for the Constitutional Court to check the constitutionality of the draft in compliance with the principles of the key procedural guarantees and principles of constitutional justice.

At the same time, no exception to the rule of mandatory preliminary review of the constitutionality of draft amendments to the Constitution may be considered reasonable if the draft under review concerns the rights and freedoms of persons other than justices of the Constitutional Court. In this case, the failure of the Constitutional Court to review the draft amendments to the Constitution cannot be assessed as a reasonable exception, regardless of the fact that the justices of the Constitutional Court are in a situation of actual or possible conflict of interest in relation to the review of the constitutionality of the draft.

It should be noted that the majority of cases accepted for examination at the Constitutional Court refer to the verification of the constitutionality of legal norms, and these norms may also apply to the justices of the Constitutional Court. However, the fact that the norms under review relate to the subjective interests of the justices of the Constitutional Court is not a sufficient basis for the Constitutional Court to conclude on the lack of capacity and jurisdiction (*non liquet*) of the Court to exercise constitutional justice. The lack of capacity and jurisdiction of the Constitutional Court for the preliminary review of the constitutionality of draft amendments to the Constitution is a situation in which the draft under review concerns only the interests of incumbent justices (members) of the Constitutional Court, and the sitting of the Constitutional Court may not have quorum if those justices (members) cannot participate in the trial of such a case. The rule of "reasonable exception" may be applied to this situation for the purpose of not impeding the exercise of the sovereign will of the constituent power by exercising the right to adopt amendments to the Constitution.

Otherwise, in exercising the mandate of mandatory review of the constitutionality of draft amendments to the Constitution, neglecting a reasonable exception may not only jeopardize the above-mentioned objectives of mandatory preliminary review of draft amendments to the Constitution, but also cause a situation where the conflict of interest of

the justices of the Constitutional Court and the aim pursued by the constituent power when adopting a certain draft may lead to the restriction of the authority to amend the Constitution by the constituent power (the people of the Republic of Armenia or the National Assembly), thus prioritizing the subjective interests of the justices of the Constitutional Court before the high public interest of expression of the sovereign will of the constituent power. The Constitutional Court considers such a reality intolerable from the viewpoint of the supremacy of the Constitution.

5.9. With regard to the specific circumstances referred to by the applicant, the Constitutional Court notes that after discussing the draft of the 2020 Constitutional Amendments in the second reading, the National Assembly voted on the draft decision of the National Assembly on applying to the Constitutional Court on the issue of amending the Constitution, which was not adopted; afterwards, the draft amendment to the Constitution was adopted in the second reading and in full. The respondent substantiates this circumstance, inter alia, by the fact that, at the time of adoption of the amendments to the Constitution, seven of the nine justices (members) of the Constitutional Court were directly affected by the amendments to the Constitution.

The mentioned draft amendments to the Constitution envisaged reduction of the term of office of the current members of the Constitutional Court to the 12-year term as prescribed by Article 166 § 1 of the Constitution, as well as the termination of the term of office of the President of the Constitutional Court. As a result of the application of Article 213 of the Constitution with the adoption of the draft, the terms of office of the three members of the Constitutional Court appointed prior to the entry into force of Chapter 7 of the Constitution with amendments of 2015 were considered to have expired and their terms of office have ceased, the terms of office of four members of the Constitutional Court have been reduced, and the term of office of the President of the Constitutional Court appointed by the National Assembly has been terminated.

The Constitutional Court notes that the above-mentioned amendments to the Constitution have not concerned any other person and have not directly caused legal consequences for any other person, except for the above-mentioned seven members of the Constitutional Court.

In the rationale provided for the draft 2020 Constitutional Amendments, its authors have noted that: "*…if the current composition of the Court is maintained, there is a significant difference between the terms of office of the justices elected by the 2015 Constitution and the terms of office of previously appointed members. … The draft amendments to the Constitution are expected to resolve the issues surrounding the constitutionality of the composition of the Constitutional Court and the lack of public trust in that composition, as well as to guarantee the full-fledged implementation of the model of the Constitutional Court envisaged by the rules of Chapter 7 of the Constitution with 2015 amendments. As a result, the democratic criteria for the formation of the Constitutional Court and the new level of its activities envisaged by the Constitution with the 2015 amendments would be put into practice.*" (Statement on reason for 2020 Constitutional Amendments).

Analyzing the amendments to the transitional provisions of the Constitution made by the National Assembly, as a constituent power, as well as their justifications, the

Constitutional Court notes that the amendments have not interfered with or amended in any way the non-amendable provisions of the Constitution or their content, which can only be amended through a referendum. As a result, by way of the 2020 Constitutional Amendments, the National Assembly has fully put into practice Article 166 §§ 1-2 of the Constitution that relate to the formation of the Constitutional Court:

a) By equalizing the status of justices of the Constitutional Court and their terms of office (Article 213 §§1-2 of the Constitution);

b) By enabling the election of the President of the Constitutional Court from among the justices of the Constitutional Court as an auxiliary guarantee of the independence of the Constitutional Court (Article 213 § 4 of the Constitution); and

c) By ensuring the involvement of all constitutionally designated entities participating in the replenishment of the composition of the Constitutional Court, as a factor for increasing the democratic legitimacy of the Constitutional Court.

With the application of the amendment to Article 213 of the Constitution, the Constitutional Court has moved away from the transitional provisions of the Constitution, and the status and terms of office of all justices of the Constitutional Court are now exclusively governed by the rules of Chapter 7 of the Constitution, according to Article 202 § 1 of which, such amendments can be adopted exclusively through a referendum.

5.10. The issue of the Constitutional Court's ability to comply with the requirements of constitutional procedural guarantees in such review proceedings is of primary importance for the assessment of the reasonableness of the exception to the constitutional rule for mandatory review of the constitutionality of the 2020 Constitutional Amendments.

According to Article 166 § 1 of the Constitution, "… *The Constitutional Court shall be composed of nine justices* …" According to Article 167 of the Constitution, "*1. Constitutional justice shall be administered by the Constitutional Court, ensuring the supremacy of the Constitution. 2. When administering justice the Constitutional Court shall be independent and shall abide by only the Constitution. 3. The powers of the Constitutional Court shall be prescribed by the Constitution, whereas the procedure for the formation and rules of operation thereof shall be prescribed by the Constitution and the Law on the Constitutional Court.*"

Article 16 of the Constitutional Law on the Constitutional Court provides for cases of impossibility to participate in the examination of a case, such as bias towards a participant of the proceeding or his/her representative, for the purpose of ensuring the constitutional requirement of impartiality by a justice of the Constitutional Court in the exercise of his/her powers. In this regard, the Constitutional Court emphasizes that the fact that, according to legislative regulations which even consider bias towards a participant of the proceeding as a ground for impossibility to participate in the examination of the case, the legislator did not consider it impossible for a justice of the Constitutional Court to be directly interested in the outcome of the case, i.e. to be a justice in his/her own case.

However, the fact that such a situation is not regulated by the legislature cannot be interpreted to permit Constitutional Court justices to appear at the center of possible conflicts of interest during the course of their constitutional mission, as this would undermine public confidence in constitutional justice, raising public skepticism regarding constitutional justice prevailing over the personal interests of justices of the Constitutional

Court. In this regard, the Constitutional Court emphasizes that constitutional justice cannot be conditioned on the personal attitude of the justices of the Constitutional Court towards the case under consideration and on the subjective interest connected with the outcome of the case, since the Constitutional Court, acting as the only specialized body of constitutional justice in the Republic of Armenia, is bound exclusively by the Constitution and is called upon to guarantee the supremacy of the Constitution.

According to Article 14 § 2(2) of the Constitutional Law on the Constitutional Court, a justice of the Constitutional Court shall be obliged "to be impartial and refrain from displaying bias or discrimination through his or her speech or conduct or from leaving such an impression on a reasonable and impartial observer," and, according to Article 14 § 2(5), "to avoid any conflict of interest and not allow any family, social, or other relationships to influence the exercise of his or her official duties in any way." However, given the universally recognized duty of judges to maintain impartiality and avoid conflicts of interest, the case in question is a situation where the conflict of interests objectively arose between the public interests listed in this Decision when amending Article 213 of the Constitution and the possible preferences of the members of the Constitutional Court to remain in office for the period prescribed by the Constitution as amended in 2005, thus endangering the unimpeded implementation of the constitutional will of constituent power when initiating constitutional amendments and its normal functioning.

5.11. With regard to the strengthening of the institutional guarantees of the independence of the Constitutional Court in accordance with the 2020 amendments to the Constitution, the Constitutional Court considers it necessary to emphasize the following:

Since the entry into force of Chapter 7 of the Constitution on April 9, 2018, Article 213 of the Constitution has served as the constitutional basis for the tenure of all eight members of the Constitutional Court, including the President of the Constitutional Court, as this article envisaged the term of office of the members and the President of the Constitutional Court appointed before the entry into force of Chapter 7 of the Constitution with the 2015 amendments.

Prior to the amendment of Article 213 of the Constitution in 2020, the members of the Constitutional Court appointed before April 9, 2018 continued to hold office on the basis of Article 213 of the Constitution, i.e. based on the provision of the Constitution that was among the provisions to be amended by the National Assembly. That is, the constitutional basis for the tenure of the members of the Constitutional Court acting on the basis of Article 213 of the Constitution was provided by an article of the Constitution that could be amended by the National Assembly through a vote of at least two thirds of the total number of deputies. The Constitutional Court notes that prior to the amendment of Article 213 of the Constitution, the legal framework envisaged by the Constitution then in force could not ensure the necessary independence of the Constitutional Court from political power, given that, in the parliamentary government of the Republic of Armenia, legislative and executive powers are exercised by the political force that won a majority in the National Assembly. In these circumstances, the Constitutional Court, as a constitutional counterbalance to the legislative and executive powers necessary for constitutional democracy, needed a more stable constitutional basis for institutional formation, including protection from external interference and guarantees of independence.

Prior to the amendment of Article 213 of the Constitution, for members of the Constitutional Court appointed before April 9, 2018, who at the time of the 2020 amendments to the Constitution constituted seven-ninths of the total number of members of the Constitutional Court, holding office for more than 12 years (as prescribed by Article 166 § 1 of the Constitution) was conditioned on the approval of at least two thirds of the total number of deputies of the National Assembly. Moreover, the President of the Constitutional Court, being appointed in accordance with the 2005 Constitution and not being elected on the basis of Article 166 § 2 of the Constitution, served as President of the Constitutional Court on the basis of Article 213 of the same (previous) version of the Constitution.

The stable constitutional basis for the status and tenure of a member or justice of the Constitutional Court is the cornerstone of his/her independence, as well as that of the Constitutional Court. The provision envisaging longer terms of office for the members and the President of the Constitutional Court under Article 213 of the previous version of the Constitution and under the rules of Chapter 7 of the Constitution, was at the same time a matter within the competence of the National Assembly, which could not ensure the institutional independence of the Constitutional Court that the Constitutional Court obtained by the 2020 amendments to the Constitution.

According to the amendments to Article 213 of the 2020 Constitution, all members of the Constitutional Court appointed before April 9, 2018, whose 12-year term of office had not expired, will continue serving for the remainder of their unfinished terms as justices of the Constitutional Court, and the President of the Constitutional Court will continue serving in that position for the entire term of office in accordance with the term of office prescribed by the rules of Chapter 7 of the Constitution, the amendment of which is already beyond the competence of the National Assembly and is reserved exclusively for the people of the Republic of Armenia, as is the case with the Constitutional Court which has a mission to ensure the supremacy of the Constitution in a constitutional democracy.

Thus, in the systemic sense, the 2020 Constitutional Amendments have led to the following results:

a) All justices serving in the Constitutional Court shall hold office for an equal term and with equal status;

b) Making amendments to Article 166 § 1, which serves as the constitutional basis for the terms of office of justices of the Constitutional Court, is beyond the competence of the National Assembly and this provision can be amended exclusively by the people of the Republic of Armenia through a referendum;

c) The authority to elect the President of the Constitutional Court, as an additional guarantee of the independence of the Constitutional Court, is exercised by the Constitutional Court, whereas previously the President was appointed by the National Assembly; and

d) Making amendments to Article 166 § 2, which serves as the constitutional basis of the term of office of the President of the Constitutional Court, is beyond the competence of the National Assembly and this provision can be amended exclusively by the people of the Republic of Armenia through a referendum.

The Constitutional Court notes that, in accordance with the 2020 Constitutional Amendments, the National Assembly has completely exhausted its constitutional authority with respect to the term of office of the incumbent members and President of the

Constitutional Court appointed before April 9, 2018 and transferred the authority to regulate the terms of office of the justices and President of the Constitutional Court exclusively to the scope of more stable constitutional legal provisions envisaged by Article 166 of the Constitution, which can be amended exclusively by the people of the Republic of Armenia.

5.12. The Constitutional Court also notes that the provisions of Article 213 of the Constitution, as amended by the National Assembly on June 22, 2020, have been fully implemented by all public authorities responsible for its implementation. In particular, pursuant to Article 213 adopted by the 2020 Constitutional Amendments:

a) The Government, the President of the Republic, and the General Assembly of Judges have nominated candidates for justices of the Constitutional Court (pursuant to § 3 of the article);

b) Candidates nominated by the Government, the President of the Republic, and the General Assembly of Judges have been elected by the National Assembly as justices of the Constitutional Court, and, upon taking their oaths during the session of the National Assembly, have proceeded to fulfill their constitutional powers (pursuant to § 3 of the article); and

c) The Constitutional Court has elected the President of the Constitutional Court (pursuant to § 4 of the article).

5.13. In summary, the Constitutional Court considers the 2020 Constitutional Amendments a necessary measure for strengthening the institutional independence of justices of the Constitutional Court, ensuring equality in the status and tenure of the members and justices of the Constitutional Court based on constitutional provisions amendable only by referendum, and strengthening the level of public trust in the Constitutional Court and its democratic legitimacy by way of the election of the President of the Constitutional Court by the justices of the Constitutional Court and the fact that the Constitutional Court is built through the direct participation of all branches of government, which are measures aimed at strengthening the independence and the autonomy of the Constitutional Court.

At the same time, in connection with the adoption of these necessary amendments by the National Assembly, the Constitutional Court notes that the conditions for non-submission of the draft 2020 Constitutional Amendments for preliminary review by the Constitutional Court meet the above-mentioned conditions set by the Constitutional Court as a reasonable exception to the rule of mandatory preliminary review of draft amendments to the Constitution.

5.14. Regarding the issue of deprivation of powers of the President of the Republic as a result of the amendments to the Rules of Procedure raised by the applicant, the Constitutional Court first notes that, according to Article 4 of the Constitution, state power shall be exercised in compliance with the Constitution and the laws, based on the separation and balance of the legislative, executive, and judicial powers. The principle of separation and balance of powers is a fundamental guarantee of democracy, rule of law, protection of human rights, and freedoms, which allows for the implementation of the mandate of the Constitution of the Republic of Armenia to serve as the basis for a democratic state governed by the rule of law, as prescribed by Article 1 of the Constitution.

Emphasizing that the principle of separation and balance of powers is one of the cornerstones of constitutional order in a parliamentary republic, the Constitutional Court nevertheless notes that this principle is implemented in accordance with a model different from the governing mechanisms of presidential and semi-presidential republics.

The scope of powers of the head of state among the bodies envisaged by the Constitution is conditioned by the form of government of the given state. As a result of the transition to the parliamentary model of government in accordance with the 2015 amendments to the Constitution, the President of the Republic was endowed with a new constitutional status.

Through its April 1, 2020 DCC-1518 decision, the Constitutional Court has explained the description of the status of the President of the Republic in the conditions of the parliamentary model of government, noting in particular that, "By virtue of Article 4 of the Constitution titled 'The Principle of Separation and Balance of Powers,' the President of the Republic was included in the executive branch in functional aspect but was completely excluded from the institutional system of the executive branch; and, unlike other independent or autonomous bodies included in the executive branch in functional aspect, the President of the Republic is the head of state and has functions inherent in that status and powers deriving from them. In accordance with that, the President of the Republic, as the head of state (Article 123 § 1 of the Constitution), **is the constitutional body that integrates society and the state and symbolizes national unity**.

In essence, refraining from the function of participating in the development of the domestic and foreign policy of the state, as well as from the process of its governance in terms of content, and not bearing responsibility for the above-mentioned, the President of the Republic is constitutionally delegated **to be impartial and to be guided exclusively by state and national interests** (Article 123 § 3). Accordingly, the President of the Republic is constitutionally **assigned the role of a supra-party arbitrator**, who may not be a member of any party during the exercise of his powers (Article 124 § 5 of the Constitution). At the same time, the role of a supra-party (non-partisan) arbitrator is based on both the integrative function of the President of the Republic as the head of state and his impartiality, which presupposes the **implementation of the function of monitoring compliance with the Constitution**, which is also directly prescribed by the Constitution (Article 123 § 2 of the Constitution). In addition, the function of monitoring compliance with the Constitution, in turn, implies that **the President of the Republic must have the ability to effectively exercise this function through checks and balances**; therefore, he must not only be able to assess alleged unconstitutional actions (or inactions) or decisions after the fact, but, **being endowed with certain powers of preventive constitutional review,** must also be able, first and foremost, **to prevent the occurrence of such actions or inactions.**.

4.2. The Constitution endows the President of the Republic with sufficient powers to ensure the implementation of his/her constitutional functions (Article 123 § 4 of the Constitution), explicitly prescribing those powers through the Constitution in order to exclude the possibility of influencing the President of the Republic and leaving the legislator to regulate their implementation in the cases directly envisaged by the Constitution.

The Constitutional Court notes that the signing and promulgation by the head of state of any legal act adopted by the parliament is not an end in itself. It is aimed at ensuring the

implementation of the functions assigned to the President of the Republic by the Constitution, together with other relevant powers prescribed by the Constitution. Involvement of the head of state in the process of signing and promulgating legal acts adopted by the parliament may particularly fall in the framework of the function of the head of state in accordance with the Constitution, if the President of the Republic is at the same time endowed with powers, the combination of which allows the system of checks and balances to be applied to the legislature.

Thus, Article 129 of the Constitution envisages the participation of the President of the Republic in the process of implementing laws adopted by the National Assembly. It follows from the legal regulation stipulated in that article that, after the adoption of any law by the National Assembly, the law must be sent to the President of the Republic, for whom the Constitution has reserved discretionary power, i.e. the President of the Republic may sign and promulgate the law adopted by the National Assembly, or apply to the Constitutional Court for the purpose of determining the compliance of the law adopted by the National Assembly with the Constitution, or not take any action. In other words, the President of the Republic, being endowed with the role of a supra-party (non-partisan) arbiter, shall have the right, if necessary, to apply to the Constitutional Court for the purpose of determining the compliance of the law adopted by the National Assembly with the Constitution prior to signing and promulgating the law adopted by the National Assembly, guided solely by state and national interests, with the aim of preventing the enactment of unconstitutional laws. In other words, the Constitution envisages the authority of the President of the Republic to sign laws, while, at the same time authorizing the President with an additional logically and systemically interrelated power, which is the right to apply to the Constitutional Court. In fact, the signing and promulgation by the President of the Republic of the law adopted by the National Assembly is not only of a ceremonial nature, since it is one of the powers of preventive constitutional review vested in the President of the Republic, called to ensure the implementation of the function of observing compliance with the Constitution.

In the context of the above, in considering the issue of the constitutional authority of the President of the Republic to sign amendments to the Constitution, the Constitutional Court first of all notes that this authority is not included in the regulatory scope of Article 129 of the Constitution, and the authority of the President of the Republic to sign laws does not presuppose the authority of the latter also to sign amendments to the Constitution. The Constitutional Court's conclusion in this regard is conditioned by the fact that the Constitution clearly distinguishes between the concepts of "*amendments to the Constitution*" and "*law*." Particularly, in Article 168(2), Article 169 § 2, Article 202 § 3, and Article 209 § 1 of the Constitution, as well as in the title of Article 210 ("Bringing Laws into Compliance with the Amendments of the Constitution"), the Constitution uses the phrase "*amendments to the Constitution*," in some cases even using in parallel the word "*law*" in the same provision. Consequently, these concepts cannot be identified in terms of content, and neither absorb the other in terms of meaning; therefore amendments to the Constitution do not fit into the semantic scope of the concept of "law" in the context of the Constitution, and on this basis the latter also do not fit into the scope of powers vested in the President of the Republic, as prescribed by Article 129 of the Constitution.

On the other hand, by its April 1, 2020 DCC-1518 decision, the Constitutional Court has analyzed the scope of powers of the President of the Republic within the framework of the parliamentary form of government, stating in particular that: “The powers of the President of the Republic, depending on the constitutionally predetermined goals, are both mandatory and discretionary in nature. Mandatory and discretionary powers of the President of the Republic are independent or non-independent (constrained). Non-independent powers are exercised either in the presence of preconditions prescribed by the Constitution or on the basis of exercising the powers of another constitutional body (competent entity). Thus:

The President of the Republic shall exercise the following mandatory powers on the grounds (in the manner) prescribed by the Constitution:

a) Calling regular and extraordinary elections to the National Assembly (Article 93 of the Constitution);

b) Accepting the resignation of the Government (Article 130 of the Constitution);

c) Temporary appointment of officials (Article 138 of the Constitution);

d) Making appointments to the positions of the Staff to the President of the Republic (second sentence of Article 145 § 1 of the Constitution);

e) Appointment of the Prime Minister (Article 149 §§ 1 and 5 of the Constitution);

f) Proposing to the National Assembly the candidates for vacant positions of three justices of the Constitutional Court (second sentence of Article 166 § 1 of the Constitution); and

g) Calling a referendum (first sentence of Article 206 of the Constitution).

The President of the Republic shall exercise the following discretionary powers on the grounds (in the manner) prescribed by the Constitution:

a) Delivering an address to the National Assembly on issues falling under his competence (Article 128 of the Constitution);

b) Signing and promulgating a law adopted by the National Assembly, or applying to the Constitutional Court for the purpose of determining the compliance of the law with the Constitution (Article 129 of the Constitution);

c) Making changes to the composition of the Government (Article 131 of the Constitution) or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

d) In the field of foreign policy - concluding international treaties, appointing and recalling diplomatic representatives to foreign states and international organizations, receiving letters of credence and letters of recall of diplomatic representatives to foreign states and international organizations, approving, suspending or revoking international treaties not requiring ratification, conferring the highest diplomatic ranks (Article 132 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

e) In the field of Armed Forces - appointing and dismissing the supreme command of the armed forces and of other troops, conferring the highest military ranks (Article 133 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

f) Resolution of issues related to the granting and termination of citizenship of the Republic of Armenia (Article 134 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

g) Granting pardon to convicts (Article 135 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

h) Decorating with orders and medals of the Republic of Armenia, and granting honorary titles (Article 136 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

i) Awarding the highest ranks (Article 137 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

j) Appointing the Chief of General Staff of the armed forces (first sentence of Article 155 § 3 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution;

k) Appointing the judges of the Court of Cassation, courts of appeal, and courts of first instance, chairpersons of the chambers of the Court of Cassation, chairpersons of the courts of first instance and courts of appeal (first sentence of Article 166 § 3, first sentence of Article 166 § 4, Article 166 § 6, and first sentence of Article 166 § 7 of the Constitution), or the alternative powers prescribed by Article 139 §§ 2-3 of the Constitution; and

l) Appointing the Deputy Prime Ministers and ministers (third sentence of Article 150 of the Constitution), or the alternative power prescribed by the fifth sentence of Article 150 of the Constitution.

Based on the analysis of the above-mentioned constitutional norms defining the powers of the President of the Republic, the Constitutional Court finds that the President of the Republic is not endowed with the authority to sign amendments to the Constitution. Moreover, this Constitutional regulation is based on a certain logic. In this context, the Constitutional Court notes that, unlike the authority of the President of the Republic to sign laws adopted by the National Assembly, the President of the Republic does not have any accompanying authority in connection with signing amendments to the Constitution. Another entity, namely the National Assembly, is endowed with the authority to apply to the Constitutional Court on the issue of preliminary constitutional review of constitutional amendments, and this authority may be implemented only prior to making amendments to the Constitution (Article 169 § 2 interconnected with Article 168(2) of the Constitution). In such conditions, the authority of the President of the Republic to sign amendments to the Constitution would be of only a ceremonial nature, and the Constitution does not define this authority.

In fact, the constituent power does not condition the enactment of any amendments to the Constitution after their adoption with approval by any other body of public authority or with the signature of any official. Moreover, the mentioned approach is not conditioned by any manner of adopting amendments to the Constitution. That is, regardless of the manner in which amendments to the Constitution are adopted (by the people through a referendum or by the National Assembly authorized to make certain amendments to the Constitution), after their adoption, they do not undergo a signing process by any person, including the President of the Republic.

The Constitutional Court notes that legislative regulations have also evolved in this direction. Thus, results of referendums on making amendments to the Constitution are summarized by the Central Electoral Commission, and if the latter makes a decision on the adoption of the amendments to the Constitution put to a referendum, in essence only

establishing the results of the referendum (Article 35 § 1 of the Constitutional Law on Referendum), the promulgation of this decision is followed by the promulgation of the amendments to the Constitution in the Official Journal of the Republic of Armenia (if the decision of the Central Electoral Commission has not been appealed to the Constitutional Court), after which the amendments to the Constitution shall enter into force (Article 36 of the Constitutional Law on Referendum). A similar regulation was established as a result of the amendments to the Rules of Procedure, eliminating the requirement for the President of the Republic to sign and promulgate amendments to the Constitution adopted by the National Assembly which is endowed with the right to adopt certain amendments to the Constitution (which is essentially a constitutional function). Meanwhile, it is noteworthy that as a result of the amendments, the President of the National Assembly does not sign amendments to the Constitution but only promulgates them, thus only ensuring the accessibility to the public of amendments to the Constitution adopted by the National Assembly which, in essence, fulfils the Constitutional powers set forth in Article 202 § 2 of the Constitution.

Taking the above into account, the Constitutional Court finds that Article 5 § 2(4.2) of the Rules of Procedure, as well as Article 86 § 7 of the Rules of Procedure, in that it does not authorize the President of the Republic to sign and promulgate amendments to the Constitution, comply with the Constitution.

Based on the foregoing 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 5 § 2(4.2) and Article 86 §§ 2 and 7 of the Constitutional Law on the Rules of Procedure of the National Assembly comply with the Constitution.

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

PRESIDENT
A. DILANYAN

April 29, 2021
DCC - 1590