

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION MADE BY THE CONSTITUTIONAL COURT OF THE REPUBLIC
OF ARMENIA

ON THE CASE REGARDING THE CONFORMITY OF THE LAST SENTENCES
OF PARAGRAPHS 3 AND 4 OF ARTICLE 35, POINT “E” OF ARTICLE 49,
PARAGRAPH 2, THE LAST SENTENCE OF PARAGRAPH 4 AND PARAGRAPH 5 OF
ARTICLE 112 OF THE LAW ON RULES OF PROCEDURE OF THE NATIONAL
ASSEMBLY OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF
THE REPUBLIC OF ARMENIA

City of Yerevan

February 16, 2007

The Constitutional Court of the Republic of Armenia with its panel of judges - G. Haroutyunyan (presiding judge), K. Balayan (rapporteur), H. Danielyan, F. Tokhyan, V. Hovhannissyan, Z. Ghukassyan, H. Nazaryan, R. Papayan, V. Poghosyan,

with the participation of

the applicant, G. Mheryan, Assistant to the President of the Republic of Armenia, official representative of the RA President,

the respondent, A. Khachatryan, Head of the NA Department of the Legislative Analysis, representative of the RA National Assembly,

pursuant to paragraph 1 of Article 100 and paragraph 1 of Article 101 of the Constitution and the Articles 25, 38 and 68 of the RA Law on “The Constitutional Court”,

examined in a public hearing **the case regarding the consistency of the provisions in the last sentences of paragraphs 3 and 4 of Article 35, point “e” of Article 49, paragraph 2, the last sentence of paragraph 4 and paragraph 5 of Article 112 of the Law on Rules of Procedure of the National Assembly with the RA Constitution.**

The case was triggered through the application submitted by the RA President to the Constitutional Court.

Having heard the statements put forward by the rapporteur on the present case, the arguments of the parties, having examined the Law and other available documents, the Constitutional Court of the Republic of Armenia **FOUND:**

I. The RA Law on Rules of Procedure of the National Assembly was adopted on February 20, 2002 by the RA National Assembly and entered into force on April 12, 2002. It was amended on July 3, 2002, December 24, 2004 and December 25, 2006.

Paragraph 3 of Article 35 of the RA Law on Rules of Procedure of the National Assembly sets out: “Each Tuesday of a four-day sitting from 17:00, the Deputies, according to the succession of their turn, may make statements with the duration of 3 minutes. In case of necessity the officer presiding over the sitting may prolong the sitting for 30 minutes. The following day the video recording of the sitting shall be transmitted in full by Public Television at 21:30”. Paragraph 4 of Article 35 of the Law sets out: “At the last sitting of each Wednesday of a four-day sitting in a regular session the Prime Minister and the Members of the Government, according to the procedure defined by Article 105 of this Law, shall answer the questions raised by Deputies. The same day the video recording of the sitting shall be transmitted in full by Public Television immediately after the transmission of the statements of Deputies.”

Article 49 of the Law is titled “*Decisions on the organization of the activities of the National Assembly*”. According to point “e” of the Article in order to organize its activities, the National Assembly is entitled to adopt decisions on “the broadcasting of the sessions of the National Assembly on the Public TV and Radio Company, either live or recorded”

Paragraph 2 of Article 112 sets out: “The open sittings of the National Assembly shall be transmitted live by the Public Radio Channel, unless the National Assembly adopts another resolution”. The last sentence of paragraph 4 of the same Article prescribes “The Public Television Channel broadcasts the "Parliamentary Hour" at 21:00 on Sundays.” At the same time paragraph 5 of the same Article sets out: “The videotaping of the meetings stipulated by paragraph 4 of Article 35 of this Law, as well as live broadcasting of meetings of the National Assembly and, in the cases established by the resolutions of the National Assembly, recordings of meetings of the National Assembly is carried out by the Public Television and Radio Company.”

Among all the disputed provisions only paragraph 4 of Article 112 was written in new edition based on Article 39 of the Law on Amendments to the RA Law on Rules of Procedure of the National Assembly adopted on December 24, 2004.

Article 27 of the RA Constitution sets out:

“Everyone shall have the right to express freely his/her opinion. No one shall be forced to recede or change his/her opinion.

Everyone shall have the right of freedom of speech including freedom to look for, receive and impart information and ideas by any means of information regardless of the state frontiers.

Freedom of mass media and other means of mass information shall be guaranteed.

The state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programs. ”

The last two Paragraphs of this Article were incorporated into the RA Constitution by the Constitutional Amendments in 2005.

Article 62 of the RA Constitution sets out “Legislative power in the Republic of Armenia shall be vested in the National Assembly. In cases stipulated in paragraphs 13 and 14 of Article 55, Articles 57, 59, part 2 of this Article, 66, 67, 69, 73, 74, 74.1, 75, 77, 79, part 2 of Article 80, 81, 83, 83.1, 83.2, 83.3, 83.4, 84, 94.1, paragraph 2 of Article 101, 103, 111 and 112 as well as on matters related to the organization of its activities the National Assembly shall adopt resolutions, which shall be signed and promulgated by the Chairman of the National Assembly.

The National Assembly shall make addresses and announcements in conformity with the procedure prescribed by the Law on the Rules of Procedure of the National Assembly.

The powers of the National Assembly shall be defined by the Constitution.

The procedure of the activities of the National Assembly, as well as the formation and activities of its bodies shall be defined by the Constitution and the Rules of Procedure of the National Assembly. ”

II. The applicant party arguing the provisions set out in the last sentences of paragraphs 3 and 4 of Article 35, point “e” of Article 49, paragraph 2, the last sentence of paragraph 4 and

paragraph 5 of Article 112 of the Law on Rules of Procedure of the National Assembly, sought that these provisions are inconsistent with Articles 27 and 62 of the RA Constitution based on the following:

First, in the light of the duties defined by Articles 35, 49 and 112 the full independence of Public Broadcaster prescribed by the RA Constitution is not guaranteed. Moreover, the RA Constitution defines that the state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programs.

Second, according to Article 62 of the RA Constitution the powers of the National Assembly shall be defined by the Constitution. Therefore, by point “e” of Article 49 of the Law on Rules of Procedure of the National Assembly can not be defined a power of the National Assembly to rule a decision that obliges the broadcast of the sessions of the National Assembly by the Public TV and Radio Company, either live or recorded. Such a decision of the National Assembly can not be binding as the later has no Constitutional power to rule decisions affecting the Public TV and Radio Company. Besides, according to the applicant, Article 62 of the RA Constitution clearly defines the scope of issues to be regulated by the Law on Rules of Procedure of the National Assembly. In particular, the Rules of Procedure shall define the procedures of the activities of the National Assembly, the formation and activities of the bodies of the National Assembly. No other relations shall be regulated by the Rules of Procedure.

Third, the applicant substantiates that the acts of the bodies of the executive branch also do not prescribe any duties for the Public TV and Radio Company. In particular, in the Decree PD-1064 of the RA President on the Rules of Activities of the RA Government adopted on March 13, 2002, there is no any provision regarding the Public TV and Radio Company. Provisions related to the Public TV and Radio Company prescribed by the Rules of Procedure of the National Assembly establishes unequal conditions for legislative, executive and judicial branches of the power.

Fourth, according to the applicant, paragraphs 3 and 4 of Article 35 of the Rules on Procedures of the National Assembly are not in conformity with the powers of the National Assembly defined by Article 62 of the RA Constitution. Besides, the law stipulates norms that are of universally binding nature, but the abovementioned Article of the Rules of Procedure sets out duties for the Public TV and Radio Company, which is an issue that shall be solved by mutual agreement.

Fifth, setting out duties for the Public TV and Radio Company by the Law on Rules of Procedure of the National Assembly does not conform to the requirements of international legal acts such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights (1966).

According to the applicant the independence of the Public Broadcaster is largely based on the editorial independence of the latter, which includes freedom and independence in defining the program policy, program schedule, and program directions as well as prohibition of the influence of state and political powers over those processes. The abovementioned principles which refer to the independence of the Public Broadcaster are guaranteed in several international legal documents, including European Convention on Human Rights (Article 10); Declaration on Freedom of Expression and Information of 29 April, 1982, endorsed by the Governments of the member States of the Council of Europe; Recommendation R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting of the Committee of Ministers; Recommendation 1641 (2004) 1 of the Parliamentary Assembly of the Council of Europe.

III. The respondent considers that the Constitutional Amendments in this area actually require some legislative changes. In the National Assembly there are initiatives aimed at harmonizing the provisions of the Law on Rules of Procedure of the National Assembly and the regulations of public telecommunications with the Constitutional changes and with the international obligations of the RA.

Second, the respondent considers that guarantee of the publicity of the activities of the National Assembly is one of the democratic achievements and this tradition shall not be abolished. Studies of the disputed issues proved that the activities of the European Parliamentary Assembly and the Parliaments of various countries are covered and broadcast by the accredited media outlets. Moreover, the parliaments possess with their own TV and Radio channels or web sites, which provide live or recorded broadcasting for the parliaments.

Third, the respondent also emphasizes that parliaments do not define legislatively the concrete time and day for broadcasting of their sessions; nonetheless, they have the power to rule decisions on broadcasting time and volumes of their sessions. However, in many states the tendency of broadcasting of the work of their parliaments is due to the fact that the Parliament, as a representative body responsible for the formation of the legal framework, shall work open to

public and with wide transparency, and the most effective tool for connecting with public is the Television.

Fourth, paragraph 3 of Article 27 of the RA Constitution guarantees freedom of mass media and other means of mass information, which is one of the most important components of the rule of law state and of the civil society. Naturally, these means are called for large support to the connection between the society and the individual in regard to enlightenment of the activities of the state bodies and providing information about those. According to the respondent, the freedom of the particular media outlet in this regard shall not be absolute; otherwise it would collide with the absolute rights of such nature of other parties, which in its turn would bring to the conflict of interests and conflicting situations among various actors. Freedom of the media outlet referred by this case supposes that the state is obliged to provide the most optimal interrelation between the boundaries of permissible and possible conducts.

Fifth, the contested provisions of the Law on Rules of Procedure of the National Assembly include the right of the public to receive information and opinions with the help of the Public TV and Radio Company, which is also not an absolute right. It is also a subject of restrictions for the aims prescribed in Article 43 of the Constitution. The respondent considers that the restriction by the Law of the guarantee of freedom of mass media and other means of mass information prescribed by paragraph 3 of Article 27 of the RA Constitution is paralleled with the right of every individual to receive information on the coverage of the activities of the Parliament.

Sixth, the respondent considers that in spite of the fact that the Recommendation R (96) 10 on the Guarantee of the Independence of Public Broadcasting of the Committee of Ministers of the Council of Europe adopted on September 11, 1996, requires the Member States to establish specific conditions for guaranteeing the editorial independence for public broadcasters. However, from various provisions of the same Recommendation it becomes clear that in the cases prescribed by Law the opportunity for changing the programmatic functions of Public Broadcasters, also including under the control of public authorities, is not excluded (Section I of the Appendix to the Recommendation). Moreover, Section VI of the Appendix to the Recommendation sets out the cases “in which public service broadcasting organizations may be compelled to broadcast official messages, declaration or communications, or to report on the acts or decisions of public authorities or to grant airtime to such authorities...”. The Recommendation requires those cases to be confined with exceptional circumstances laid down in details in laws or regulations.

Seventh, regarding the statements on the unconstitutionality of paragraphs 3 and 4 of Article 35 of the Law on Rules on Procedures of the National Assembly, according to the respondent, the stated Article 62 of the RA Constitution does not include any provision, which excludes the opportunity to regulate any relations concerning the activities of the later by the Rules of Procedure of the National Assembly. Moreover, Articles 67 and 76 of the RA Constitution set out relations that shall be regulated in details by the Rules of Procedure.

IV. On the issue being examined the Constitutional Court records that Article 27 of the RA Constitution on the one hand guarantees the right of each individual to freedom of speech (including freedom to look for, receive and impart information and ideas by any means of information), and on the other hand attaches importance to the freedom of mass media and other means of information as a guarantee for fulfillment of the abovementioned rights. In this context it is specifically underlined that “The state shall guarantee the existence and activities of an independent and public radio and television service offering a variety of informational, cultural and entertaining programs”.

The freedom of mass media in particular presumes independence and freedom in the process of defining the program policy, programmatic content, program directions as well as exclusion of any influence by public authorities over those processes. Taking into consideration this fact and in order to meet the RA international obligations, the RA Constitutional Amendments introduced the regulation of mass media as a Constitutional Function and Article 83.2 of the Constitution defined that “To ensure the goals of freedom, independence and plurality of broadcasting media, an independent regulatory body shall be established by the law...”

The provisions of Article 27 of the RA Constitution as well as the Recommendation No R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting of the Committee of Ministers solve the issue of freedom of information and freedom of public broadcasting within the organic interrelation of both. Stressing the importance of freedom of mass media in a democratic society, the mentioned Recommendation of the Committee of Ministers, suggests to the Member States of the Council of Europe to secure the independence of the public broadcasting by the Law, which includes programmatic, editorial and structural independence. At the same time, in Part three of the Introduction of the Explanatory Memorandum to Recommendation No R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting it is stressed that public service broadcasting organizations also contrast with their

state-run counterparts in that they accomplish their missions independently and without interference from any external authority. The principle that public service broadcasters are independent is viewed to be crucial. It is also stressed that even the state funding should not prejudice their independence in programming matters and influence the structural sovereignty directly or indirectly (Recommendation, Part 5). Acknowledging the freedom of public broadcasting as a crucial principle, the Recommendation requires that it shall be free from any political, economic or administrative influence and shall serve to the public.

The approach adopted by the Recommendation 1641 (2004) 1 of the Parliamentary Assembly of the Council of Europe has a principle importance for regulating of the given sphere. This approach in particular states that public service broadcasting differs from broadcasting for purely commercial or political reasons because of its specific remit, which is essentially to operate independently of those holding economic and political power.

The Republic of Armenia, having ratified the Charter of the Council of Europe in December 2000, committed to follow the provisions of the later, to take into account the recommendations of the Committee of Ministers and Parliamentary Assembly as well as to create necessary preconditions for fulfillment of those recommendations.

V. The legal status of the Public TV in the Republic of Armenia is stipulated by Article 28 of the RA Law on Television and Radio Broadcasting, which specifically states that “The public television is a state enterprise with a special status. This Law regulates the legal part of the Armenian Public Television. It is launched by the State to guarantee the Constitutional rights of people to receive freely political, economic, educational, cultural, children's, teenagers, scientific, Armenian language and history, sport, entertainment and other popular information. It operates according to this law, to its regulations and the RA legislation.” Undoubtedly, the main purpose of this provision is to ensure the right of an individual to receive information freely and the means of achieving this purpose is to have a TV and Radio company with a special status. However, this Law was adopted on October 9, 2000 and the National Assembly has not yet brought its provisions into compliance with the requirements of the Constitutional Amendments. The Law on Rules of Procedure of the National Assembly - last sentences of paragraphs 3 and 4 of Article 35, Point “e” of Article 49, Paragraph 2, last sentence of Paragraph 4 and Paragraph 5 of Article 112 - have not been brought into conformity either: these provisions do not guarantee functional independence and structural sovereignty of the Public TV and Radio Company, which is an agency that received an independent status by Constitutional norms. The National

Assembly can make any decision on the necessity of broadcasting its sessions or its discussions of specific issues. However, the issue of constitutionality of the disputed provisions is not connected with either the public significance of the object of legal regulation or with the expedience of broadcasting as such— the importance of these is not argued – it is rather connected with the legitimacy of regulation of legal relations between different subjects. In fact, the disputed provisions – specifically within the content of point “e” of Article 49 of the Law – have made the issue of unilateral legal regulation of relations with other bodies as an object of organizing the activities of the RA National Assembly: or they create a possibility of interfering with the activities of those bodies, which does not meet the requirements of Articles 27 and 62 of the RA Constitution. The standpoint here is the fact that the legislature in this case has interpreted the content of the concept “issues of organizing its activities” - stipulated by part 1 of Article 62 of the Constitution - with the help of a provision of a law. When regarding this interpretation in the light of Article 5, Article 6 Part 2, and Article 62 of the Constitution it shall be stated that this interpretation is not legitimate, since the power of the National Assembly to make decisions within its legal relations with other bodies is defined in the Constitution in an exhaustive way. The word combination “issues of organizing its activities” can not and must not provide in this case for a possibility of determining an obligation for the Public TV and Radio Company (point “e” of Article 49 of the Rules of Procedure) neither should it provide for a possibility of relieving the Public TV and Radio Company of its obligation stipulated by Law (paragraph 2 of Article 112 of the Rules of Procedure).

VI. Within the content of the disputed issue the RA Constitutional Court also states that the legislative body has a special role in the democratic development of every country. The culture of parliamentarism is a culture of civilized pluralism and dialogue. It is first of all manifested when people exercise their governance through representative bodies. Approaches towards regulation of social relations and the legislature’s open and public implementation of its oversight powers are most important guarantees for establishment of the civil society. On the other hand, the European Court of Human Rights has emphasized several times in its various decisions its legal standing, according to which the activities of the authorities in democratic systems must also be subject of public scrutiny. In the last fifteen years another stable tradition has been established in the Republic of Armenia, according to which the activities of the Legislative body has been quite transparent and available to all strata of the society. In its turn, Recommendation R (96) 10 of the Committee of Ministers of the Council of Europe, which attaches importance to the independence of public broadcasting, also provides by Guideline 21 of Explanatory Memorandum that the objective of public broadcasting is also to ensure political

pluralism by granting air time to the parliamentary minority, to different political forces, so that they can present their views on air.

Guaranteeing wide transparency of the activities of the National Assembly, its bodies and the deputies (also within currently existing forms that have become traditional) follows the constitutional principles of democratic and rule of law state and shall be provided by legislative and organizational grounds. At the same time, those grounds shall be legitimate, shall elicit from the requirements of constitutional principle of separation and balance of powers and shall not violate the requirement of functional and structural independence of Constitutional institutions. The RA Constitutional Court expressed its standpoint regarding that issue in its Decision CCD-278 of 11.01.2001. In the meantime, the RA Constitutional Amendments set out new requirements for guaranteeing freedom and independence of mass media. In order to secure those the National Assembly has a new obligation to revisit and to harmonize with the Constitution the Law on Television and Radio, adopted on October 9, 2000, the Law on Mass Information, adopted on December 13, 2003, the Law on Rules of Procedure of the National Assembly and correspondent provisions of other Laws related to the issue. The comparative analyses of the abovementioned Laws demonstrates that the legal guarantees of establishment of the Public TV and Radio Company in accordance with the RA international obligations are not sufficient and complete. The issue requires speedy institutional solution as the problem is not fully solved by Constitutional review of this or the other provision of a particular law. Specifically, the international practice regarding the object of review shows that the formula of solving the issue in principle is providing maximum publicity to the activities of the legislature under the condition of functional and structural guarantee of independence of mass media, including the public media. As to the selection of legitimate form, it is the responsibility of the legislature. In any case, while selecting any form existing in international practice, there shall be legal guarantees in order not to endanger the wide publicity of the activities of the legislature and the existence of political pluralism in the practice of public broadcaster. While solving this issue the RA National Assembly shall follow the RA international obligations and shall be led by Articles 27, 83.2 of the RA Constitution, as well as by provisions of Recommendation R (96) 10 of the Committee of Ministers of the Council of Europe, its Explanatory Memorandum, Recommendation 1641 (2004) 1 on Public Service Broadcasting of the Parliamentary Assembly.

Following from the reasons set out above, as well as pursuant to the first paragraph of Article 100 and Article 102 of the Constitution, Articles 63, 64 and 68 of the Law on the

Constitutional Court of the Republic of Armenia, the Constitutional Court of the Republic of Armenia **DECIDED:**

1. The last sentences of paragraphs 3 and 4 of Article 35, paragraph 2, the last sentence of paragraph 4 and paragraph 5 of Article 112 of the Law on Rules of Procedure of the National Assembly are inconsistent with Paragraphs 3 and 4 of Article 27 of the Constitution of the Republic of Armenia and invalid.
2. Point “e” of Article 49 of the Law on Rules of Procedure of the National Assembly is inconsistent with Article 62 of the RA Constitution and invalid.
3. In accordance with Article 102 of the RA Constitution, this decision is final and enters into force upon its publication.

Presiding Judge

G. Haroutyunyan

16 February, 2007

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