

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

**ON THE CASE CONCERNING THE CONSTITUTIONALITY OF PART 6 OF ARTICLE 94 OF THE CONSTITUTIONAL LAW OF THE REPUBLIC OF ARMENIA “ON THE JUDICIAL CODE”, RAISED BY THE APPLICATION OF ARTUR STEPANYAN**

City of Yerevan

22 April 2025

The Constitutional Court of the Republic of Armenia, composed of:

Justices  
Vahe Grigoryan,  
Hrayr Tovmasyan,  
Yervand Khundkaryan,  
Hovakim Hovakimyan,  
Edgar Shatiryan,  
Seda Safaryan,  
Arthur Vagharshyan,

with the participation of (within the framework of written procedure):

the applicant:	Artur Stepanyan (hereinafter referred to as “the Applicant”),
the representative:	advocate Siranush Sahakyan,
the respondent:	the National Assembly (hereinafter referred to as “the Respondent”),
the representative:	Mari Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly,

according to point 1 of Article 168 and point 8 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 69 of the Constitutional Law “On the Constitutional Court”,

examined in an open session through the written procedure the case concerning the constitutionality of part 6 of Article 94 of the Constitutional Law of the Republic of Armenia “On the Judicial Code”, raised by the application of Artur Stepanyan.

Having examined the application, the attached and other documents in the Case, the written explanations of the Applicant and the Respondent, as well as having analyzed the contested law and other provisions of laws interrelated with the latter, the Constitutional Court **ESTABLISHED:**

## **Proceedings at the Constitutional Court**

1. The Constitutional Law of the Republic of Armenia “On the Judicial Code” (hereinafter also referred to as “the Code”) was adopted by the National Assembly on 7 February 2018, was signed by the President of the Republic on 10 February 2018, and entered into force on 9 April 2018.

2. Part 6 of Article 94 of the Constitutional Law, entitled “*Acts of the Supreme Judicial Council and procedure for adopting them*”, stipulates:

“6. The decisions of the Supreme Judicial Council on imposing disciplinary action against a judge or a member of the Supreme Judicial Council, on imposed termination of the powers of a judge or a member of the Supreme Judicial Council, as well as on giving consent to instituting criminal prosecution against a judge or a member of the Supreme Judicial Council or depriving them of liberty in connection with the exercise of their powers, shall be adopted in the deliberation room by a majority vote of the Council members participating in the session held through an open ballot, if at least half of the total number of Council members voted in favor of the decision. Where the Supreme Judicial Council fails to adopt a decision due to the vote resulting in an insufficient number of votes in favour of any decision, the decision on rejecting the relevant motion shall be deemed to be adopted, and the decision shall be composed and signed by the members of the Supreme Judicial Council having voted in favour of rejecting the motion”.

3. Under point 3 of Article 23 of the Constitutional Law HO-197-N of 25.03.2020 “On Making Supplements and Amendments to the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’”, part 6 of Article 94 of the Code has been reworded.

4. Under Article 5 of the Constitutional Law HO-22-N of 09.02.2022 “On Making Amendments and Supplements to the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’”, the first sentence of part 6 of Article 94 of the Code has been reworded.

5. Part 6 of Article 94 of the Code has been amended following point 1 of Article 11 of the Constitutional Law HO-335-N of 25.10.2023 “On Making Supplements and Amendments to the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’”. Under parts 4 and 5 of Article 22 of the mentioned Constitutional Law, “4. Articles 2-21 of this Law shall enter into force upon the entry into force of the sub-legislative normative legal act of the Supreme Judicial Council adopted based on part 1.5 of Article 141 of the Law, supplemented by Article 13 of this Law”.

5. The regulations in force prior to the entry into force of Articles 2-21 of this Law shall apply to disciplinary proceedings instituted, including completed disciplinary proceedings, and the regulations in force prior to the entry into force of Articles 2-21 of this Law shall apply to decisions adopted as a result of those proceedings.

6. This Case was initiated by the application of A. Stepanyan, which was submitted to the Constitutional Court on 10 January 2025.

7. Under points 1 and 2 of the Constitutional Court’s Procedural Decision PDCC-16 of 5 February 2025, the case “Concerning the constitutionality of point 1 of part 1 of Article 69, part 6

of Article 94, points 2 and 3 of part 6 of Article 142, point 1 of part 1 of Article 146, point 4 of part 1 of Article 149, and part 1 of Article 152 of the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’, raised by the application of Artur Stepanyan” was accepted for examination.

8. By the Constitutional Court’s Procedural Decision PDCC-55 of 22 April 2025, the case proceedings were partially suspended in part of point 1 of part 1 of Article 69, points 2 and 3 of part 6 of Article 142, point 1 of part 1 of Article 146, point 4 of part 1 of Article 149, and part 1 of Article 152 of the Constitutional Law of the Republic of Armenia “On the Judicial Code”.

### **The brief background to the constitutional dispute**

The background to this case is as follows:

9. The disciplinary proceedings were instituted by the report of the Programs Coordinator at the “Union of Informed Citizens” consulting NGO, addressed to the Minister of Justice on 22 December 2023 and received by the Ministry of Justice on 26 December 2023. In addition to the report, the applicant submitted the relevant lawyer’s applications by letter dated 29 December 2023 (received by the Ministry of Justice on 03.01.2024), addressed to Judge Artur Stepanyan of the First Instance Civil Court of General Jurisdiction of Yerevan.

10. By Decision No. 18-A of the Minister of Justice dated 13 February 2024, disciplinary proceedings were instituted against Judge Artur Stepanyan of the First Instance Civil Court of General Jurisdiction of Yerevan (hereinafter also referred to as “the Judge”), and the term of the disciplinary proceedings instituted by Decision No. 33-A of 11 April 2024 was extended.

11. By Decision No. 48-A of the Minister of Justice dated 23 May 2024, a petition was submitted to the Supreme Judicial Council (hereinafter referred to as “the Council”) to impose disciplinary action against the judge.

12. By the Decision of the Council of 11 June 2024, a court session was scheduled. The examination of the case was concluded at the session held on 17 June 2024.

13. On 9 July 2024, the final part of the Council’s Decision No. SJC-61-O-K-8 was promulgated, by which the Council decided: “To grant the petition of the Minister of Justice to impose disciplinary action against Judge Artur Stepanyan of the First Instance Civil Court of General Jurisdiction of Yerevan. To terminate the powers of Judge Artur Stepanyan of the First Instance Civil Court of General Jurisdiction of Yerevan on the ground of an essential disciplinary violation.

(...)”.

14. The above Decision was promulgated on 30 July 2024.

### **Positions of the Applicant**

15. The Applicant raised the issue of conformity of part 6 of Article 94 of the Code with parts 1 of Articles 61 and 63 of the Constitution, taking into account the interpretation of the said provision in legal practice, according to which the decision of the Council on imposed termination of powers of a judge shall be adopted without counting the votes of the Council members participating in the court session.

In this regard, the Applicant, in particular, notes: “(...) All 10 members of the Supreme Judicial Council participated in the session held on 17 June 2024 (...). However, during the voting on the decision on imposed termination of powers of the judge, the votes of only 8 members were taken into account. Moreover, it follows from the content of the decision on imposed termination of powers of the judge that the Supreme Judicial Council adopted that decision with a full bench of all 10 members of the Supreme Judicial Council.

(...) Although ten members participated in the court session, exercising all the rights reserved to the judge, including asking questions, which could have affected their stance, 8 votes were considered for counting. In addition, having the opportunity to ensure the participation of all members participating in the session in the voting, the Supreme Judicial Council did not create such a condition, and to count the votes, ignored the 2 judges who participated in the court session, which violates part 1 of Article 61 and part 1 of Article 63 of the Constitution, considering the interpretation of the Supreme Judicial Council to the mentioned provision in legal practice. Under such conditions, the powers of the judge were imposed terminated by 5 votes of the Council members participating in the session cast in favor, and not by the required majority of votes, i.e., at least 6 votes”.

### **Positions of the Respondent**

16. As for the alleged unconstitutionality of the interpretation in legal practice of part 4 of Article 94 of the Code, contested by the Applicant, according to which the decision of the Council on imposed termination of powers of a judge shall be adopted without counting the votes of the Council members participating in the court session, the Respondent notes: “It is obvious that the requirement of unanimity for decision-making in collegial bodies would inevitably lead to the impossibility of decision-making and insurmountable obstacles to the activities of the given body. In the case of the Supreme Judicial Council, the legislator has envisaged the majority of the votes of the Council members participating in the session for adopting a decision on imposing disciplinary action against a judge, which may not be less than half of the votes of the Council members, considering that the specified number of votes is sufficient for the Council to adopt a legitimate decision. Moreover, the legislation of the Republic of Armenia does not, in any case, show a differentiated approach between the decisions of collegial bodies depending on the number of members of the given body having cast a vote in favor of adopting the decision. In other words, a decision adopted by the maximum number of votes has the same legitimacy and legal force as a decision adopted by the minimum required number of votes”.

The Respondent has requested a decision in this Case on declaring the contested provision conforming to the Constitution.

### **The framework of the constitutional dispute**

17. Considering that *the arguments submitted by the Applicant relate only to the issue of constitutionality of the first sentence of part 6 of Article 94 of the Code, regarding the votes required for the adoption of a decision on imposing disciplinary action against a judge, as interpreted in legal practice, the Constitutional Court does not address the issue of constitutionality of the second sentence of part 6 of Article 94 of the Code within the framework of the examination of this constitutional dispute, since no reference to the latter has been made within the framework of this individual application.*

18. At the same time, taking into account that the first sentence of part 6 of Article 94 of the Code establishes the procedure for determining the votes required for the adoption of decisions by the Council when exercising its powers as a court, and *the individual circumstances/facts of this Case, and accordingly, the justifications submitted in relation to the provision disputed in this individual application, relate only to the adoption of a decision on imposing disciplinary action against a judge within the framework of disciplinary proceedings by imposing the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation” on a judge, the Constitutional Court will address the issue of the constitutionality of the first sentence of part 6 of Article 94 of the Code only in the context of the issue of the votes required for the adoption of a decision by the Council on imposing disciplinary action against a judge by imposing the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation”.*

### **Considerations to be clarified in the Case**

19. According to part 1 of Article 32 of the Constitutional Law “On the Constitutional Court”, *the Constitutional Court shall investigate the factual circumstances of a case ex officio.*

Part 2 of Article 32 of the aforementioned Constitutional Law stipulates that the Constitutional Court shall not be restrained with evidence, explanations, motions, proposals, objections filed by the participants in the constitutional proceedings and, on its initiative, shall take adequate measures to obtain possible and available information on the actual facts necessary for the disposition of the certain case.

To determine the constitutionality of the contested provision of the law, the Constitutional Court considers it necessary to address, in particular, the following question:

– Does the first sentence of part 6 of Article 94 of the Code comply with Article 49 in conjunction with Article 75, part 1 of Article 164, parts 1-3 of Article 174, point 7 of part 1 of Article 175, and part 2 of Article 175 of the Constitution, in part of providing for a regulation for adopting decisions by the Council on imposed termination of powers of a judge on the ground of an essential disciplinary violation when imposing disciplinary action against the latter, under which conditions the decision can be adopted by half of votes of the total number of the Council members (the

decision shall be adopted by a majority vote of the Council members participating in the session), that is, by five votes cast in favour?

### **Legal positions of the Constitutional Court**

**20.** According to Article 49 of the Constitution, entitled “Right to Enter the Public Service”, “Every citizen shall have the right to enter the public service on a general basis. Details shall be prescribed by law”.

**21.** By the Decision DCC-1488 of 15 November 2019, the Constitutional Court has addressed the constitutional and legal content of the right to enter the public service on a general basis, as prescribed by the first sentence of Article 49 of the Constitution, expressing, in particular, the following legal positions in this regard:

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

For the persons holding the position of judge, as far as this concerns *the judge as the holder of the fundamental right to enter the public service*, there is an additional *constitutional guarantee of immutability*, derived from the fundamental principle of the state governed by the rule of law, the details of ensuring whereof should be prescribed exclusively by a constitutional law, namely, the Judicial Code (...).”

**22.** The aforementioned decision of the Constitutional Court states:

“1) Every citizen of the Republic of Armenia, entering the public service on a general basis, shall also have *the right to hold the office and not to leave their post arbitrarily*;

2) *a citizen holding a judge’s position*, in addition to the general right to hold the office, *receives an ad hoc guarantee* in the form of *immutability*, guaranteeing the consistency of tenure;

3) *a citizen may resign from a judge position or be suspended from the office exclusively on the grounds prescribed by the Constitution, in the manner predetermined by the Constitution*, namely, through a special procedure established by a constitutional law;

4) in the course of interpretation of the grounds prescribed by the Constitution for the automatic or imposed termination of powers of a judge which shall be specified in a constitutional law, the legislator should show restraint and, through legislative regulations, not replace the systemic logic of the Constitution, namely, do not unnecessarily expand the legislative possibility of applying these grounds and prevent arbitrary interpretation, guarantee compliance with all requirements of justice in the course of their application, including proper procedural guarantees in the course of imposed termination of powers of a judge.

The Constitutional Court states that in all cases *when the powers of a judge are imposed terminated, this applies not only to the status of a judge, but also to their fundamental right as a*

*citizen of the Republic of Armenia to enter the public service: they are deprived of the right to continue to hold office, therefore, their right is limited” (point 4.1).*

**23.** Reiterating the above-mentioned legal positions, the Constitutional Court states that in the case where the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation” is imposed on a judge, due to the extremely intensive nature of the latter’s restrictive potential, their fundamental right to enter the public service is limited. In other words, *the scope of the consequential effect of imposing the penalty of “termination of powers on the ground of an essential disciplinary violation” among the types of disciplinary penalties also includes the restriction of the right to enter the public service; therefore, it is necessary that imposing the mentioned disciplinary penalty in each case be accompanied by both substantive and procedural guarantees, the presence of which would exclude the possibility of disproportionate restriction of the above-mentioned constitutional right.*

**24.** The above, inter alia, also refers to the existence of an effective procedure for the Council to adopt decisions on imposing disciplinary action against a judge by selecting and imposing the type of disciplinary penalty “termination of powers on the ground of an essential disciplinary violation”, under conditions in which, on the one hand, the imposed termination of powers of a judge would not lead to an unlawful restriction of the right to enter the public service, and on the other hand, the relevant decision would embody the position formed by the Council as a collegial body as a result of the disciplinary proceedings.

**25.** The Constitution stipulates several fundamental principles that establish the constitutional status of the courts as an independent branch of the unified state power, i.e., the judiciary, and of judges as the sole bearers of the judiciary, thus constitutionally guaranteeing their independence. The laws are designed to create adequate legal guarantees to enhance that independence.

Under part 1 of Article 164 of the Constitution, entitled “*The Status of a Judge*”, “When administering justice, a judge shall be independent (...)”. In the context of the above, the procedure for adopting a decision by the Council on imposing disciplinary action against a judge by imposing the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation” - under which the Council’s decision on imposed termination of powers of a judge on the ground of an essential disciplinary violation can be adopted by a majority vote of half of the total number of Council members cast in favour - seriously jeopardizes the principle of independence of judges, since it entails an unlawful interference in the judge’s further tenure.

According to the assessment of the Constitutional Court, the statement reflected in the Constitutional Court’s Decision DCC-1613 of 12 October 2021, that “(...) the additional protective guarantees established in the regulations on the disciplinary action against judges are not a privilege provided to judges, but (...) an institutional guarantee of their independence” is relevant to this Case in the context of the above (point 4.2.1).

**26.** Under Article 75 of the Constitution, entitled “*Organizational Structures and Procedures for the Exercise of Fundamental Rights and Freedoms*”, “When regulating fundamental rights and freedoms, laws shall define the organizational structures and procedures necessary for their effective exercise”.

27. In that regard, the Constitutional Court's Decision DCC-1757 of 15 October 2024 states: "The requirement above is aimed at the effective and actual implementation of the fundamental rights and freedoms prescribed by the Constitution, since the mere enshrining of a right or freedom is not sufficient for the full realization of the given legal opportunity; therefore, **the enshrining of relevant mechanisms and procedures at the legislative level is a necessary guarantee to ensure the effective implementation of fundamental rights and freedoms**" (point 5.1).

28. Within the framework of the Constitutional Court's Decision DCC-1546 of 18 June 2020, the Constitutional Court referred to the content of Article 75 of the Constitution, stating as follows: "(...) any legislative regulation, and not just any restriction of a fundamental right or liberty, should aim to and provide for (3) *organizational* (4) *structures* and (5) *procedures* (2) *necessary* for the (1) *effective exercise* of all fundamental rights. Only the simultaneous existence of all these conditions in any legislative regulation, especially in a legislative regulation restricting the fundamental right or freedom, can ensure its compliance with the Constitution" (point 4.5).

29. The Constitutional Court's Decision DCC-1571 of 8 December 2020 states: "The State must create the necessary guarantees for the effective realization of human rights and freedoms. The state is obliged not only to recognize, respect and protect rights and freedoms, but also to create state legal structures that can effectively prevent and eliminate any violations, and restore the violated rights and freedoms" (point 4.1).

30. Considering the above, the Constitutional Court finds that the procedure stipulated by the first sentence of part 6 of Article 94 of the Code for adopting a decision by the Council on imposing disciplinary action against a judge by imposing the disciplinary penalty of "termination of powers on the ground of an essential disciplinary violation" must be consistent with Article 75 of the Constitution, without jeopardizing the effective exercise of the fundamental right to enter the public service.

31. According to point 7 of part 1 of Article 175 of the Constitution, stipulating the powers of the Council, the Council shall solve the question of imposing disciplinary action against a judge.

32. Under part 2 of Article 175 of the Constitution, *when discussing the question of imposing disciplinary action against a judge, as well as in other cases prescribed by the Judicial Code, the Supreme Judicial Council shall act as a court*. In that regard, the Constitutional Court's Decision DCC-1488 of 15 November 2019 states: "As for the guarantees provided in terms of the principles and procedures of the Supreme Judicial Council, their main source is part 2 of Article 175 of the Constitution (...) in the sense that the procedure for the formation and activities of an independent state body acting as a court must comply with the relevant characteristics inherent in the courts" (point 4.8).

Following the aforementioned provision of the Constitution, part 2 of Article 90 of the Code specifies *the scope of issues (imposing disciplinary action against a judge and a Council member, imposed termination of powers of a judge and a Council member, initiating criminal prosecution against a judge and a Council member in connection with the exercise of their powers, or giving consent to deprive them of liberty) that the Council shall act as a court when examining such issues*.



33. The powers of the Council listed in points 6-8 of part 1 of Article 175 of the Constitution are essential components of the Council's mission as prescribed by Article 173 of the Constitution, which comprise key public interests and are directly related to both guaranteeing the independence of courts and judges, and strengthening public trust in the judiciary.

34. The procedure for adopting decisions by the Council acting as a court is stipulated in Part 6 of Article 94 of the Code, entitled "Acts of the Supreme Judicial Council and procedure for adopting them", the first sentence of which stipulates that, among other issues, the decisions of the Council on imposing disciplinary action against a judge and a Council member shall be adopted in the deliberation room by a majority vote of the Council members participating in the session held through an open ballot, if at least half of the total number of Council members voted in favor of the decision.

35. *The Constitutional Court states that, following the procedure prescribed by the above provision of the law, when imposing disciplinary action against a judge, the decision of the Council on imposed termination of their powers on the ground of an essential disciplinary violation can be adopted by half of votes of the total number of Council members, that is, by five votes cast in favor.*

36. In this regard, in response to the letters of the Constitutional Court's reporting justice in this case, JCC-14 of 24.02.2025 and JCC-15 of 26.02.2025, the letter No. DD-1 E-1777 of 07.03.2025 (signed by the Head of the Judicial Department) was submitted (upon the instruction of the Chairperson of the Council), according to which "(...) all ten members of the Council participated in the session of 17.06.2024 convened to address the issue on imposing disciplinary action (hereinafter referred to as "the Proceedings") against Judge Artur Stepanyan. At the session convened on the specified day, the issue examination was declared completed, and the Council retired to adopt a decision. The final part of the Council's decision No. SJC-61-O-K-8 on the Proceedings was promulgated on 09.07.2024 (...).

(...) prior to the adoption of the decision by the Council, following the order of the Chairperson of the Council No. 72-A of 19.06.2024, the Council member (...) was on a business trip from 24.06.2024 to 28.06.2024 inclusive, and under the order of the Chairperson of the Cassation Court No. 48-A of 13.06.2024, from 01.07.2024 to 26.07.2024 inclusive, the later was on annual leave. In addition, by virtue of the law (...) **on 21.06.2024**, the five-year term of office of (...) as a Council member was automatically terminated (...).

(...)

**(...) The Council session for the adoption of the decision on the Procedure was convened on 09.07.2024, in which eight out of ten Council members (...) participated, five of whom voted in favor of the adoption of the decision and signed it, and three submitted a dissenting opinion, that is, at least five votes of the Council members were actually required. As a result, the Council's decision No. SJC-61-O-K-8 of 09.07.2024 was signed by the five members who participated in the given session and voted in favor.**

(...) Since the entry into force of the Constitutional Law HO-22-N "On Making Amendments and Supplements to the Constitutional Law of the Republic of Armenia 'On the Judicial Code'", i.e., 25.02.2022, to date, a total of 1 decision has been adopted on imposed termination of powers

on the ground of an essential disciplinary violation by a vote of half (5) of the total number of Council members, namely, the Council's Decision No. SJC-61-O-K-8 of 09.07.2024 on the issue of imposing disciplinary action against Judge Artur Stepanyan of the First Instance Civil Court of General Jurisdiction of Yerevan”.

37. In the context of the issue under discussion, *the Constitutional Court notes that, under part 5 of Article 94 of the Code, in the cases of compiling and approving the lists of judge candidates, including the promotion lists of judge candidates, and proposing to the President of the Republic judge candidates subject to appointment, the decisions of the Supreme Judicial Council shall be adopted by a majority vote of all the Council members held in the deliberations room through a secret ballot.*

38. Considering the above, *the Constitutional Court states that under the provisions of part 5 of Article 94 and the first sentence of part 6 of Article 94 of the Code, the majority vote of all the Council members is required for the adoption of decisions when the Council exercises its court-organizing powers, and, respectively, the majority vote of the Council members participating in the session is required for the adoption of decisions when the Council exercises its powers as a court (in the case of acting as a court, a session of the Council shall have a quorum in the case of the presence of at least two thirds of all the Council members /part 2 of Article 92 of the Code/), where at least half of the total number of Council members voted in favor of the decision.*

39. Taking into account the importance of the legal relations under discussion and the vulnerability of the interests at issue, as well as the sensitivity of the public response to them, the Constitutional Court considers that disciplinary proceedings against judges must be conducted in strict compliance with the constitutional and legal, and procedural principles applicable to judicial proceedings, including *with regard to the procedure for adopting relevant decisions, and the legal regulations stipulating the procedures for adopting such decisions must not be problematic in terms of interfering with the individual right(s) of a person, especially a person with the status of a judge. The above-mentioned acquires particular importance in the context of imposing the disciplinary penalty of "termination of powers on the ground of an essential disciplinary violation" as a result of disciplinary proceedings, which implies the most intensive interference with the individual right(s) of a person, in the context of the adoption of a decision on imposing disciplinary action against a judge.*

40. According to Article 173 of the Constitution, the Council is an independent state body that shall safeguard the independence of courts and judges.

41. According to part 1 of Article 174 of the Constitution, **the Council shall consist of 10 members.**

Following the first sentence of part 2 of the mentioned article of the Constitution, **five of the Council members shall be elected by the General Assembly of Judges from among judges who meet the relevant requirements. Under part 3 of the mentioned article of the Constitution, five of the Council members shall be elected by the National Assembly, from among legal scholars and other reputed lawyers who meet the relevant requirements: the members elected by the National Assembly may not be judges.**

42. *The above constitutionally prescribed proportionality in terms of the composition of the Council promotes the democratic legitimacy of the Council, considering that the composition of the Council shall be formed by both the judicial and legislative branches of government, while at the same time imparting a high quality (degree) of legitimacy to the Council, acting as a court, including when exercising its constitutional power to resolve the issue of imposing disciplinary action against a judge, and to the decisions adopted as a result.*

43. *Considering the consequential effect of imposed termination of powers of a judge by imposing the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation” (the choice and application of the latter is, in essence, the legislative monopoly of the Council) within the framework of the exercise of the said authority by the Council to resolve the issue of imposing disciplinary action against a judge, the Constitutional Court finds that the legislator must provide for such a regulation that, on the one hand, would exclude the possibility of adopting a decision on imposing disciplinary action against a judge by imposing one of the types of disciplinary penalties listed in part 1 of Article 149 of the Code, especially the disciplinary penalty of “termination of powers on the ground of an essential disciplinary violation”, exclusively by the votes of five judges or exclusively by five legal scholars and other reputable lawyers cast in favor, and on the other hand, would guarantee the adoption of the above-mentioned decision by a simple majority of the total number of Council members, that is, by at least six votes cast in favor, since the Council, pursuant to part 1 of Article 174 of the Constitution, shall consist of ten members. Meanwhile, under the regulatory action stipulated in the first sentence of part 6 of Article 94 of the Code, disciplinary action may be imposed against a judge, as a result of which their powers may be imposed terminated on the ground of an essential disciplinary violation where five Council members vote in favor of the respective decision of the Council. In that regard, the Constitutional Court states that, under the conditions of the operation of the constitutional provision on the Council's composition of ten members, the wording “at least half of the total number of Council members” used in the first sentence of part 6 of Article 94 of the Code does not fall under the term “majority”. In this case, it is necessary to take into account the fact that the first sentence of part 6 of Article 94 of the Code refers to the adoption of decisions by the **Council in the exercise of its powers as a court**, which further emphasizes the problematic nature of the above-mentioned legislative regulation in terms of constitutionality, especially in the circumstances when, under part 5 of Article 94 of the Code, the majority vote of all the Council members is required for the adoption of decisions when the Council exercises its court-organizing powers.*

44. Regarding the above, the Constitutional Court notes that, according to the justifications for the draft constitutional amendments of 2015, “The Venice Commission encourages maintaining a balanced proportion between lay and judicial members in the judicial self-governance body to reduce the risk of corporatist management. According to Council of Europe Recommendation CM/Rec(2010)12, no less than half of the Council members should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.

(...) The Venice Commission's opinions most welcome the appointment of lay members by parliament.

(...)

In terms of increasing the efficiency of the Supreme Judicial Council, the establishment of parity between lay and judicial members is also a very important step in the draft. According to the draft, the Supreme Judicial Council shall consist of ten members, five of whom shall be elected by the National Assembly (...), and five by the General Assembly of Judges (...). This significantly emphasizes the broad political consensus among the political forces represented in the parliament during the formation of the key judicial authority (...)” (**“2. Increasing the autonomy and self-regulation of the judiciary”**, p. 42).

45. The Constitutional Court notes that the first sentence of part 6 of Article 94 of the Code in the wording in force at the time of its adoption had the following content: “6. The decisions of the Supreme Judicial Council on imposing disciplinary action against a judge and a member of the Supreme Judicial Council, imposed termination of powers of a judge and a member of the Supreme Judicial Council, as well as on giving consent to instituting criminal prosecution against a judge and a member of the Supreme Judicial Council or depriving them of liberty in connection with the exercise of their powers, shall be adopted in the deliberation room by at least two-thirds votes of the total number of Council members, through an open ballot”.

46. Under point 3 of Article 23 of the Constitutional Law HO-197-N of 25.03.2020 “On Making Supplements and Amendments to the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’”, part 6 of Article 94 of the Code has been reworded as follows: “6. The decisions of the Supreme Judicial Council on imposing disciplinary action against a judge and a member of the Supreme Judicial Council shall be adopted in the deliberation room by a majority votes of the total number of Council members, through an open ballot, and the decisions on imposed termination of the powers of a judge or a member of the Supreme Judicial Council, as well as on giving consent to instituting criminal prosecution against a judge or a member of the Supreme Judicial Council or depriving them of liberty in connection with the exercise of their powers, shall be adopted by at least two-thirds votes of the total number of Council members. (...)”.

47. Under Article 5 of the Constitutional Law HO-22-N of 09.02.2022 “On Making Amendments and Supplements to the Constitutional Law of the Republic of Armenia ‘On the Judicial Code’”, the first sentence of part 6 of Article 94 of the Code has been reworded.

48. Concerning the issue under discussion, the position expressed by the Constitutional Court’s Decision DCC-1598 of 10 June 2021 (the constitutionality of part 5 of Article 94 of the Code was also contested by the respective application) is of key importance, according to which: “The Constitutional Court notes that for adopting decisions by the Supreme Judicial Council on including a candidate for a judge in the respective list in line with the above-mentioned goal of the formation of this instance, the legislator has rightfully chosen such a number of decision-making votes that would ensure the consent of the members of the Supreme Judicial Council elected from both branches of state power, which, in this case, is the majority of the total number of votes of the members of the Supreme Judicial Council, i.e., at least 6 votes. This stems from the requirement of democratic legitimacy imposed on decisions regarding the formation of the judiciary, including the elements considered as the components of the procedure for appointing judges.

(...) Considering that the decisions adopted under the contested legal provisions are among the key decisions of the crucial court-forming function of the judiciary, the Constitutional Court considers the legislator's choice justified in adopting such decisions by votes cast "in favor" of at least 6 members of the Supreme Judicial Council. In this case, the purpose of such legal regulation is the selection of a candidate for the position of judge during the formation of the judiciary who has received the approval of at least six of the members of the Supreme Judicial Council, that is, with the consent of enough members of the Supreme Judicial Council that excludes the decision-making by the members of the Supreme Judicial Council elected only by the General Assembly of Judges or only by the National Assembly, ensuring that in this key procedure for appointing a judge, decision-making is ensured with the consent of the members elected by both branches of state power.

Therefore, the contested legal provisions derive from the goals of the constituent power underlying the establishment and operation of the Supreme Judicial Council" (point 4.8).

*49. The Constitutional Court considers that the positions of the Constitutional Court cited in point 48 of this Decision (mutatis mutandis) are also relevant to the effectiveness of the procedure for adopting a decision of the Council on imposing disciplinary action against a judge, as prescribed by the first sentence of part 6 of Article 94 of the Code.*

**50.** Considering all of the above, the Constitutional Court finds that the regulation prescribed by the first sentence of part 6 of Article 94 of the Code – stipulating that the threshold of votes of at least half of the total number of Council members for the adoption of a decision of the Council on imposing disciplinary action against a judge, under the conditions of the adoption of the respective decision by the Council by imposing the disciplinary penalty of "termination of powers on the ground of an essential disciplinary violation" on a judge by five votes cast in favor of the Council members – leads to an unlawful restriction of a person's fundamental right to enter the public service in terms of failing to ensure a high coefficient of democratic legitimacy of the Council's decision, and therefore is not consonant with Article 49 in conjunction with Article 75, part 1 of Article 164, parts 1-3 of Article 174, point 7 of part 1 of Article 175, and part 2 of Article 175 of the Constitution.

**51.** Under such circumstances, the Constitutional Court no longer considers it necessary to address the issue of the interpretation in legal practice of the respective regulation prescribed by the first sentence of part 6 of Article 94 of the Code.

Based on the results of an examination of the Case and guided by point 1 of Article 168, point 8 of part 1 of Article 169, parts 4-5 of Article 170 of the Constitution, as well as Articles 63, 64, and 69 of the Constitutional Law "On the Constitutional Court", the Constitutional Court **DECIDED:**

**1.** To declare the first sentence of part 6 of Article 94 of the Constitutional Law of the Republic of Armenia "On the Judicial Code" contradicting Article 49 in conjunction with Article

75, part 1 of Article 164, parts 1-3 of Article 174, point 7 of part 1 of Article 175, and part 2 of Article 175 of the Constitution, and void insofar as it provides for a regulation for adopting decisions by the Supreme Judicial Council on imposed termination of powers of a judge on the ground of an essential disciplinary violation when imposing disciplinary action against the latter, under which conditions the decision can be adopted by half of votes of the total number of votes of the members of the Supreme Judicial Council, that is, by five votes cast in favour.

2. Taking into account the need for the inviolability of legal security, in accordance with part 3 of Article 170 of the Constitution, as well as point 4 of part 9 of Article 68, part 19 of Article 68, and part 13 of Article 69 of the Constitutional Law “On the Constitutional Court”, the deadline for invalidating the provision of the Constitutional Law of the Republic of Armenia “On the Judicial Code” declared as contradicting the Constitution by point 1 of the final part of this Decision of the Constitutional Court – in part of the legislative regulation prescribed therein – shall be 1 July 2025, thus enabling the National Assembly to reconcile it with this Decision.

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

**PRESIDING JUDGE**

**A. DILANYAN**

22 April 2025

DCC-1780