

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 2 OF ARTICLE
 236 OF THE RA CRIMINAL CODE, RAISED BY THE APPLICATION OF AT LEAST
 ONE FIFTH OF THE TOTAL NUMBER OF DEPUTIES OF THE NATIONAL
 ASSEMBLY**

City of Yerevan

29 April 2026

The Constitutional Court, composed of:

Presiding Justice: Arman Dilanyan,
 Justices: Artak Zeynalyan,
 Davit Khachaturyan,
 Yervand Khundkaryan,
 Hovakim Hovakimyan,
 Edgar Shatiryan,
 Seda Safaryan,
 Arthur Vagharshyan (rapporteur),
 Vladimir Vardanyan,

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

Applicant: at least one fifth of the total number of deputies of the National Assembly (hereinafter also referred to as “the Applicant”),

Representative: deputy Artsvik Minasyan,

Respondent: the National Assembly (hereinafter also referred to as “the Respondent”),

Representative: Mary Stepanyan, Head of Legal Department of the Staff of the National Assembly,

pursuant to point 1 of Article 168 and point 2 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 68 of the Constitutional Law “On the Constitutional Court”,

examined, through written procedure, in an open session, the case “Concerning the constitutionality of part 2 of Article 236 of the RA Criminal Code, raised by the application of at least one fifth of the total number of deputies of the National Assembly”.

Having examined the application and the documents attached thereto, the written explanations and submissions of the Applicant and the Respondent, the Venice Commission’s Advisory Opinion CDL-AD(2025)037, the amicus curiae brief of the RA Human Rights Defender, as well as having

analysed the challenged provision and other relevant legal provisions, the Constitutional Court **ESTABLISHED:**

A. Proceedings Before the Constitutional Court

1. The Criminal Code of the Republic of Armenia (hereinafter also referred to as “the Code”) was adopted by the National Assembly on 5 May 2021, signed by the President of the Republic on 27 May 2021, and entered into force on 1 July 2022.

2. Part 2 of Article 236 of the Code, entitled “Obstructing or Compelling the Holding of or Participation in an Assembly, as well as Materially Incentivising Participation in or Refraining from Participation in an Assembly”, provides as follows:

“2. Compelling participation in a lawful or unlawful assembly through threats of violence against a person, their close relative, or associate, destruction, damage, or seizure of property, or blackmail, as well as materially incentivising participation in or refraining from participation in an assembly

shall be punished by a fine in the amount of ten-fold to thirty-fold, or by public works for a period of one hundred to two hundred hours, or by deprivation of the right to hold certain positions or engage in certain activities for a term of two to five years, or by restriction of liberty for a term of one to three years, or by short-term detention for a term of one to two months, or by imprisonment for a maximum term of three years”.

3. The article under review was supplemented by Law HO-240-N of 9 June 2022, which introduced the following amendments:

(1) to supplement the title, after the word “assembly”, with the words “, as well as materially incentivising participation in or refraining from participation in an assembly”;

(2) to supplement part 2, after the word “blackmail”, with the words “, as well as materially incentivising participation in or refraining from participation in an assembly”.

4. The present Case was initiated by the application of at least one fifth of the total number of deputies of the National Assembly submitted to the Constitutional Court on 21 June 2024.

5. By Procedural Decision [PDCC-107](#) of the Constitutional Court dated 3 July 2024, the Constitutional Court admitted the case for examination and scheduled the hearing of the present Case for 15 October 2024.

6. By Letter JCC-28 of 6 August 2024, the Justice-Rapporteur in the present Case requested the RA Investigative Committee to provide consolidated information on criminal proceedings initiated under part 2 of Article 236 of the RA Criminal Code that were pending at the pre-trial stage, as well as on criminal proceedings initiated under that provision in respect of which a decision to terminate the criminal proceedings had been adopted. The reply of the RA Investigative Committee was received by the Constitutional Court on 14 August 2024.

7. By Letter JCC-29 of 6 August 2024, the Justice-Rapporteur in the present Case requested the RA Prosecutor General's Office to provide consolidated information on criminal proceedings initiated under part 2 of Article 236 of the RA Criminal Code that were pending at the pre-trial stage, as well as on criminal proceedings initiated under that provision in respect of which a decision to terminate the criminal proceedings had been adopted. The reply of the RA Prosecutor General's Office was received by the Constitutional Court on 19 August 2024.

8. By Letter JCC-30 of 6 August 2024, the Justice-Rapporteur in the present Case requested the Judicial Department to provide consolidated information on criminal cases brought under charges pursuant to part 2 of Article 236 of the RA Criminal Code that were pending before and had been examined by the competent courts of the Republic of Armenia. The reply of the Judicial Department was received by the Constitutional Court on 9 August 2024.

9. By Procedural Decision PDCC-156 of 11 October 2024, the Constitutional Court suspended the proceedings in the present Case on the basis of point 5 of part 1 of Article 56 of the Constitutional Law "On the Constitutional Court", pending receipt of an advisory opinion (*amicus curiae*) from the European Commission for Democracy through Law (hereinafter also referred to as "the Venice Commission") concerning the following question: *is the wording of part 2 of Article 236 of the Criminal Code of the Republic of Armenia, specifically "materially incentivising participation in or refraining from participation in an assembly", compatible with European standards of the principle of legal certainty?*

10. On 13 October 2025, the Amicus Curiae Brief of the Venice Commission of 13 October 2025, CDL-AD(2025)037 (Opinion No. 1252/2025) (hereinafter also referred to as "the Amicus Curiae Brief")¹, was received.

11. By Letter JCC-65 of 19 December 2025, the Justice-Rapporteur in the present Case requested the RA Investigative Committee to provide copies of the decisions on initiating criminal prosecution in criminal proceedings initiated under part 2 of Article 236 of the RA Criminal Code and pending at the pre-trial stage, as well as copies of the decisions on terminating proceedings in criminal proceedings initiated since the entry into force of the said provision. The copies of the documents requested from the RA Investigative Committee were received by the Constitutional Court on 29 December 2025.

12. By Letter JCC-66 of 19 December 2025, the Justice-Rapporteur in the present Case requested the Judicial Department to provide copies of indictments in criminal cases examined before the competent courts of the Republic of Armenia, in which charges had been brought under part 2 of Article 236 of the RA Criminal Code. The copies of the documents requested from the Judicial Department were received by the Constitutional Court on 15 January 2026.

13. By Procedural Decision PDCC-15 of 6 February 2026, the Constitutional Court resumed the proceedings in the Case and scheduled the hearing of the case for 14 April 2026. By Procedural Decision PDCC-53 of 14 April 2026, the Constitutional Court postponed the hearing of the Case and scheduled a new hearing for 28 April of the current year.

¹ Available at the following link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2025\)037-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2025)037-e)

B. Submissions of the Applicant

14. The Applicant believes that the freedom of assembly may lead to interference with public interests or the rights of others exclusively in cases where the fundamental principles enshrined in the Constitution are violated, where the rights and freedoms of others and/or their protection and guarantee are endangered, which has no connection whatsoever with the alleged purpose of prohibiting materially incentivising an assembly participant. Such a purpose is not established in any manner by either domestic or international legal sources. Moreover, international practice unequivocally demonstrates that formally materially incentivising an assembly participant is, in certain cases, not only widespread but also subject to strict regulation.

15. According to the Applicant, an act has been recognised as prohibited under the RA Criminal Code and even criminal liability has been established for such an act, although that act has not been considered prohibited at all by the law which, by virtue of Article 44 of the Constitution, is specifically intended to regulate relations concerning the freedom of peaceful assembly.

16. The Applicant argues that “the Constitution does not establish, in the context of the freedom of peaceful assembly, any objective of excluding the making of participation in an assembly attractive, including through materially incentivising. In particular, given the ambiguity of the phrase ‘materially incentivising’, it becomes all the more evident that the provisions of criminal legislation concerning assemblies and related to the freedom of assembly must contain regulations that are compatible with and in no way restrict the guarantee of the freedom of assembly provided for by the RA Constitution”.

17. Addressing the public danger posed by materially incentivising as a constitutional prerequisite for restricting a fundamental freedom, the Applicant submits that any assembly inherently involves a certain degree of incentive, including material incentive. Moreover, the appeals, proposals and promises made during assemblies may likewise constitute material incentives. By way of example, the Applicant refers to calls for reducing or abolishing various taxes, duties, fines and fees, granting amnesties in relation thereto, and increasing salaries and pensions, which, in the Applicant’s opinion, also contain the mandatory constituent elements of *corpus delicti* of the offence described in the challenged provision, “(...) while, as a consequence thereof, persons are unlawfully and unjustifiably deprived, in a manner contrary to the Constitution, of the opportunity to engage in political activity and to act freely”.

18. The Applicant further submits that the term “materially incentivising” participation in or refraining from participation in an assembly is also problematic in that all actions undertaken by an organiser to provide financial support for participation in an assembly, which are essentially organisational in nature, may be regarded as criminal offences; such actions include, for example, reimbursing or compensating transportation expenses, providing food and attending to other needs; therefore, from the perspective of appropriate conduct, it is reasonably foreseeable – and consequently unacceptable – to enact legislation, in view of the foregoing considerations, that falls outside the principles of necessity and suitability and/or is incompatible with those principles.

19. The Applicant contends that the term “materially incentivising” is, in itself, devoid of any certainty. In the presence of such uncertainty, it is conceivable that a person may be subjected to

criminal prosecution and liability even in circumstances where material incentive is interpreted as encompassing any form of support, such as the provision of transportation, the organisation of food and accommodation, or even the preparation and distribution of placards; such an interpretation goes beyond the bounds of reasonableness, lacks legal certainty, and, consequently, prevents those to whom the provision is addressed from engaging in appropriate conduct.

20. Referring to a number of legal positions expressed by the Constitutional Court, the Applicant submits that the challenged provision provides for a vague and indeterminate interference with the fundamental right to personal liberty, is formulated in terms so imprecise that its meaning cannot be ascertained, and therefore may give rise to unforeseeable and, consequently, arbitrary application; furthermore, it permits an unwarranted expansion of the scope of criminal offences by referring to constitutional norms formulated at an excessively high level of abstraction.

21. The Applicant has concluded that the high degree of uncertainty would not, in itself, be so problematic if this element of the disposition of *corpus delicti* of the offence were formulated with sufficient precision to allow the manner in which the prohibited conduct is manifested to be reasonably identified. However, under the current wording, a person exercising their constitutional rights by organising and holding an assembly, or by undertaking preparatory activities for such an assembly, may be subjected to criminal prosecution for making promises or presenting programmes before or during the assembly where those promises or programmes have a material component or are directly related to social and legal issues; likewise, a person may be subjected to criminal prosecution where, acting as the organiser, they cover certain ordinary expenses that are natural, reasonably foreseeable and predictable.

22. The Applicant maintains that the high degree of uncertainty of the provision, the manifest disproportionality of the liability established thereby, and its application in law-enforcement practice have a substantial impact on other fundamental rights guaranteed by the Constitution, including the freedom of expression of opinion, the freedom of association, and others, which are effectively impeded, thereby undermining the constitutional and Convention guarantees of fundamental human rights.

23. Having analysed a number of international instruments, the Applicant concludes that the challenged norm prescribed by Article 236 of the RA Criminal Code concerning “materially incentivising participation in an assembly” is incompatible with the Constitution since it does not pursue any constitutionally envisaged aim and the restriction imposed thereby exceeds the limitations recognised by the OSCE, while failing to take into account the practice of the bodies established under the international human rights treaties of the Republic of Armenia.

C. Submissions of the Respondent

24. The Respondent submits that an assembly is a person’s right to form or express a common opinion on matters of public interest; this right is not absolute in nature and may be subject to restrictions for the purpose of protecting certain interests.

25. According to the Respondent, compelling a person to participate in assemblies, to express themselves, or to express an opinion, or materially incentivising them to do so, is incompatible with the essence of those rights and constitutes a direct interference with the person's constitutional rights. A personal opinion is formed on the basis of a person's inner convictions, and forcing a person to think contrary to those convictions or, in exchange for material consideration, compelling them to express an opinion that does not reflect their inner convictions violates the constitutional rights of that person.

26. In the Respondent's view, compelling persons to participate in an assembly through materially incentivising calls into question the genuineness of the assembly itself. In other words, if a person participates in an assembly solely for the purpose of being "remunerated", the very nature and concept of participation in assemblies based on personal convictions are undermined. Thus, any attempt to force or compel persons to participate in a peaceful assembly violates their constitutional rights and undermines the voluntary nature of assemblies and associations.

27. The Respondent concludes that the exercise of the constitutional right guaranteed under Article 44 of the Constitution is a matter of the person's own discretion. Forcing a person, through materially incentivising, to exercise their right to participate in assemblies, or otherwise compelling them to exercise that right, in itself constitutes an interference with that person's constitutional right. Taking into account the voluntary nature of assemblies, their essence, concept and purpose, and/or the constitutional rights to freedom of expression, freedom to express an opinion, and freedom of participation in assemblies, as well as the risks of possible impairment of the effective exercise of those rights, the legislature has criminalised such conduct in order to preclude and/or prevent the compelled participation of persons in assemblies or the expression of opinions that do not reflect their genuine convictions.

28. The Respondent maintains that, in order to guarantee the possibility of freely exercising the right provided for in Article 44 of the Constitution and to prevent potential obstructions to the exercise of that right, part 2 of Article 236 of the Code expressly provides that compelling a person to participate in a lawful or unlawful assembly, as well as materially incentivising a person to participate in or refrain from participation in an assembly, shall be punishable.

29. The Respondent notes that the promises made during peaceful assemblies, as well as protests or demonstrations, generally reflect the participants' demands, grievances, aspirations, or wishes. Such promises vary depending on the specific context and/or the issues or matters raised.

30. According to the Respondent, any motive may influence a person's genuine convictions. Therefore, in order to prevent interference with the person's constitutional right to freedom of assembly, the legislature has established criminal liability for all instances in which a person is compelled to participate in an assembly, as well as where a person is materially incentivised to participate in or refrain from participation in an assembly. "Such an approach is not an end in itself; rather, it is intended to guarantee the unhindered exercise of the person's constitutional right by preventing the expression of opinions that do not reflect their genuine convictions or compelled participation in an assembly by a person who is constrained by, or dependent upon, certain circumstances".

31. In the Respondent's opinion, political promises, including promises concerning legislative amendments, reforms, or their implementation made in the course of political activity, should not be equated with materially incentivising a person to participate in an assembly, since, when the essence of the offence prescribed by part 2 of Article 236 of the Code is interpreted in the context of that Article, the respective Chapter and Section, and the regulatory framework of the normative legal act, in general, it is unequivocally clear and precise that materially incentivising a person to participate in or refrain from participation in an assembly constitutes conduct aimed either at preventing that person's participation in the particular assembly or, conversely, at securing that person's participation, rather than a promise to carry out reforms through political activity to be undertaken in the future. In other words, the means of achieving the purpose of the conduct provided for in Article 236 of the Code is material incentivisation, "(...) by means of which the alleged offender pursues their objective, namely, intentionally causing a person to refrain from participation in an assembly or, conversely, ensuring that person's participation in an assembly; and political statements and appeals made during an assembly to persons who are already participating therein cannot be characterised as a means of committing the offence provided for in Article 236 of the Code and, consequently, fall outside the scope of regulation of the said provision".

32. The Respondent concludes that, in the context of the contested provision, the concept of "materially incentivising" refers to a circumstance by means of which, or due to which, a person, being materially incentivised or constrained, participates in or refrains from participation in an assembly; it is therefore necessary to distinguish between a promise made in consideration of participation in, or refraining from participation in an assembly (i.e. materially incentivising) and a promise expressing a firm commitment to implement reforms in the future.

33. Accordingly, the grounds for and the scope of restrictions must be sufficiently precise to enable the holders and addressees of those rights and freedoms to engage in appropriate conduct; namely, the legal regulation must be as clear as possible and ensure foreseeability.

34. The phrase "materially incentivising" is also used in Articles 46 and 210 of the Code, and the interpretation of that concept in the context of those articles also clarifies the meaning of the concept "materially incentivising" used in the contested provision. The concept used in the contested provision is, in itself, unambiguous, precise, and semantically clear and does not give rise to uncertainty. According to the Respondent, the contested provision does not restrict a person's ability to shape their conduct or to foresee the possible actions of public authorities and the legal consequences that may arise from the application of the relevant legal regulation; namely, a person is not deprived of the opportunity to align their conduct with the given provision.

35. The Respondent considers that part 2 of Article 236 of the Code does not raise any issues from the standpoint of legal certainty, nor does it give rise to concerns regarding compliance with the principle of proportionality, since the contested provision employs measures that are proportionate to the objective of punishing encroachments upon the constitutional right of a person to organise and to participate freely in peaceful, unarmed assemblies. The Respondent maintains that the interference with the fundamental right provided for in the said Article is necessary since the aim pursued cannot be achieved by any other equally effective means that would impose a lesser restriction on the legal interest protected by the fundamental right at issue.

36. According to the Respondent, the contested provision complies with the Constitution.

D. The Scope of the Constitutional Dispute

37. Within the framework of the abstract constitutional review to be conducted in the present constitutional dispute, the Court's examination shall concern, within the limits of the substantiations advanced by the Applicant, the constitutionality of the legislative formulation of the criminal offence of materially incentivising a person to participate in or refrain from participation in an assembly, as prescribed by part 2 of Article 236 of the Code, in the context of its compatibility with the right to freedom of assembly enshrined in Article 44 of the Constitution and the principle of legal certainty guaranteed by Article 79 of the Constitution.

E. Issues to Be Determined in the Scope of the Case

38. For the purpose of assessing the constitutionality of the contested provision in the present Case, the Constitutional Court considers it necessary to address, in particular, the following issues:

- (a) whether the establishment of criminal liability for materially incentivising a person to participate in or refrain from participation in an assembly is compatible with the constitutional framework governing the freedom of assembly as enshrined in Article 44 of the Constitution;
- (b) whether the contested legal regulation, in accordance with the standards of the State governed by the rule of law, is formulated with sufficient precision and clarity to enable a person to understand the legislature's requirements, foresee the legal consequences thereof, and align their conduct with those requirements, in the light of the principle of legal certainty enshrined in Article 79 of the Constitution.

F. Constitutional Provisions Relevant to the Resolution of the Dispute

39. Article 1 of the Constitution provides: "The Republic of Armenia is (...) a democratic (...) State governed by the rule of law".

40. Parts 1 and 2 of Article 3 of the Constitution, entitled "**The human being, his dignity, fundamental rights and freedoms**", provide:

"1. In the Republic of Armenia, the human being shall be the highest value. The inalienable dignity of the human being shall be the integral basis of their rights and freedoms.

2. The respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duties of public authorities".

Article 23 of the Constitution, entitled “**Human Dignity**”, provides: “Human dignity shall be inviolable”.

41. Article 44 of the Constitution, entitled “**Freedom of Assembly**”, provides:

“1. Everyone shall have the right freely to organise and participate in peaceful and unarmed assemblies.

(...)

4. The conditions and procedure for the exercise and protection of the freedom of assembly shall be prescribed by law.

5. The freedom of assembly may be restricted only by law for the purposes of protecting State security, preventing crime, protecting public order, health or morals, or the fundamental rights and freedoms of others”.

42. Article 79 of the Constitution, entitled “**Principle of Certainty**”, provides: “When restricting fundamental rights and freedoms, laws shall define the grounds for and the scope of such restrictions and shall be sufficiently precise to enable the holders and addressees of those rights and freedoms to engage in appropriate conduct”.

G. Legal Position of the Constitutional Court

(a) On the Content of the Constitutional Provisions Governing the Fundamental Right to Freedom of Assembly and Their Systemic Interrelationship

43. For the resolution of the present constitutional dispute, it is of particular importance to clarify the legal content of the fundamental right to freedom of assembly prescribed by Article 44 of the Constitution, as well as the relationship between the grounds and the procedure for restricting that right.

44. The literal content of part 1 of Article 44 of the Constitution indicates that the right to freedom of assembly encompasses two distinct legal possibilities: **(1)** everyone shall have the right freely to participate in peaceful and unarmed assemblies (the right to participate in assemblies); and **(2)** everyone shall have the right freely to organise peaceful and unarmed assemblies (the right to organise assemblies).

45. It follows from the Constitution that the holder of the **fundamental right to participate in assemblies** is everyone, while all persons, as well as public authorities, are the corresponding duty-bearers. Accordingly, parts 2 and 3 of Article 6 of the Law of 14 April 2011 “**On Freedom of Assembly**” (hereinafter referred to as “the Law”) provide that an assembly participant shall be a person who, during the conduct of an assembly, is present at the venue of the assembly for the

purpose of participating therein, and that no one shall have the right either to compel a person to participate in any assembly or to obstruct that person's participation in any assembly.

46. The conditions for exercising the constitutional subjective right to participate in assemblies are that such participation be peaceful, unarmed, and voluntary; namely, participation must take place peacefully or be of a peaceful nature; it must be without weapons, and the participant's decision to participate must be made of their own free will and freely expressed; in other words, a person's participation in an assembly must be free from coercion, including threats, blackmail, and any other form of interference with the freedom of will.

47. Consequently, the addressees of the right to participate in assemblies – namely, other persons and public authorities – are under an obligation to refrain from obstructing participation in assemblies, as well as from compelling participation therein (through threats, blackmail, etc.) or from securing a person's participation or non-participation by other means that are inherently dangerous to the public.

48. The subject vested with the constitutional right to **organise assemblies** is the organiser of the assembly. Pursuant to part 1 of Article 7 of the Law, the organiser of an assembly may be any person entitled to participate in an assembly, as well as any legal entity. Under part 2 of Article 7 of the same Law, the organiser of an assembly shall act as the leader of the assembly unless they have entrusted the leadership of the assembly to another person.

49. In relation to the organiser of an assembly, as the holder of the right, the primary duty-bearer is the public authority, which is under an obligation to ensure, in accordance with the criteria established by the Constitution and the procedure prescribed by law, the organiser's constitutional right to hold an assembly. The conditions governing the exercise of this legal relationship are likewise that the assembly be peaceful, unarmed, and organised freely. However, with regard to the right to freely organise assemblies, the constitutional concept of "freely" acquires a distinct meaning and is aimed at guaranteeing a free procedure for organising assemblies, so that organisers may exercise their right to organise assemblies without obstructions.

50. Whereas, in the context of the right to freedom to participate in assemblies, the constitutional concept of "freely" primarily implies the participant's autonomy and freedom of will, in the context of the right to organise assemblies it primarily denotes a liberal procedure for holding assemblies; and ensuring such a procedure is the responsibility of the public authorities, which are obliged to establish rules governing the organisation of assemblies that enable assemblies to be organised and conducted freely, without unnecessary restrictions and obstructions.

51. The Constitutional Court considers it necessary to give particular attention to clarifying the constitutional and legal content of the term "freely" as prescribed by part 1 of Article 44 of the Constitution, in view of the circumstance that it is a key concept with a rich legal content that encompasses the essential constitutional conditions governing both the substantive scope (limits) of the right to freedom of assembly and the exercise of that right.

52. Consistent with the philosophy of freedom as a fundamental constitutional value underlying human rights, the substantive structure of the term "freely" as prescribed by part 1 of Article 44 of

the Constitution encompasses the genuine ability to perform certain acts that constitute the content of the subjective constitutional right, freedom from illegitimate interference by others in the exercise of that right, as well as the autonomy and self-determination of the right-holder, and these elements, taken together as an integrity of internal and external components, form the core of the constitutional and legal content of the right to freedom of assembly.

53. In consonance with the above methodology, the Constitutional Court identifies, within the constitutional content of one of the constituent elements of the right to freedom of assembly – namely, the right freely to participate in assemblies (the right to participate in assemblies) – at least three dimensions of the freedom enjoyed by the holder of that right: **positive freedom, negative freedom, and freedom of will.**

54. Within the constitutional formulation of the right to participate in assemblies, the concept of “freely” implies positive freedom (status activus) – meaning the freedom to do (undertake) something and, in objective law, this is manifested through the right to participate in an assembly and the other subjective rights deriving therefrom – presupposes the practical freedom of action and conduct of the person as the holder of a subjective right, whereby that person has a genuine opportunity to perform a particular act; namely, in the present context, to participate in assemblies, express their views therein, and engage in other related activities.

55. Within the constitutional formulation of the right to participate in assemblies, the concept of “freely” implies negative freedom (status negativus), which is reflected in the individual’s status of being free (unencumbered) from obstructions, restrictions, and coercion originating from other subjects, and in legal terms, it is guaranteed through the equality before the law, the prohibition of discrimination, personal security, autonomy, and related guarantees. Negative freedom gives rise to a corresponding obligation on the part of other persons and public authorities to refrain from violating the rights and interests of those participating in an assembly. At the same time, public authorities also bear the duty to guarantee the negative freedom of the right to participate in assemblies.

56. Within the structure of the right to participate in assemblies, negative freedom relates to the legal and factual environment in which a person may act and exercise that right, and this includes, *inter alia*: **(1) the absence of disproportionate interference by public authorities**, requiring them to refrain from unwarranted interference (for example, unjustified prohibitions, administrative obstacles, and the like); **(2) the exclusion of arbitrary restrictions**, meaning that legislative or administrative regulations – which by their nature or in their application, are arbitrary and disproportionately restrict the fundamental right – must be precluded; **(3) equal access**, whereby the right must be exercised without discrimination: the concept of “freely” embodies the constitutional and legal requirement that everyone must enjoy an equal opportunity to participate in assemblies, regardless of, *inter alia*, their political or other views; **(4) the provision of conditions conducive to the effective exercise of the right**; meaning that the concept of “freely” is not confined to the requirement of non-interference, and also encompasses the State’s positive obligation to ensure an environment in which the freedom to participate in assemblies can be exercised effectively (for example, by ensuring security, preventing clashes between opposing groups, and taking similar measures).

57. Within the constitutional formulation of the right to participate in assemblies, the concept of “freely” implies freedom of will (status libertas voluntatis), which constitutes an individual’s internal characteristic and an inherent quality of the human being. The legislator primarily conditions freedom of will upon the person’s legal capacity. Thus, pursuant to part 4 of Article 8 of the Law, persons under the age of 14 may organise an assembly only with the written consent of their legal representatives. However, an essential manifestation of the freedom of will of the right-holder is also their self-determination, independence, and autonomy as a human being, as well as their ability to think and act – to participate in assemblies of their own free will, without the influence of external negative factors affecting their will.

58. In the process of exercising the right to participate in assemblies, freedom of will is reduced to the person’s internal autonomy to form their conduct without external pressure or other adverse influences, which encompasses: **(1) autonomy of will:** the constitutional and legal quality of “freely” implies that the decision to participate in an assembly is made by the person themselves, without coercion, threats, or other negative influencing factors of a similar nature. The freedom of formation of will is of primary importance here, as a prerequisite for the exercise of the right; **(2) freedom of self-expression:** as a form of collective expression, an assembly implies that a person may freely express their opinion, position, or demands. In this context, the concept of “freely” ensures that such expression is not predetermined or restricted by ideological censorship or other circumstances; **(3) inviolability of inner convictions:** a person is not only free to participate in or refrain from participation in an assembly, but is also free in forming and maintaining their convictions, without interference by the State or other subjects.

59. Thus, the term “freely” enshrined by the Constituent in part 1 of Article 44 of the Constitution should be regarded as a qualitative characteristic of everyone’s right to participate in peaceful and unarmed assemblies, encompassing the freedom of lawful conduct, freedom from adverse influences, and the voluntary nature of participation. Public authorities, having undertaken a commitment to the continuous development of democracy, must pursue a comprehensive legal and practical policy aimed at creating a favourable environment in which the right of persons to participate in and organise assemblies is genuinely exercised freely, and the autonomy of a person’s will be effectively, operationally, and efficiently guaranteed.

60. Public authorities, as the duty-bearing party in the legal relationship concerning participation in assemblies, have the obligation to guarantee the constitutional conditions of the right to freedom of assembly – namely, its peaceful and unarmed nature – as well as the three dimensions of that freedom; this entails that public authorities must establish a comprehensive system of guarantees and mechanisms (including legal mechanisms) that ensure the constitutional conditions for freedom of participation in assemblies, including, the establishment of legal liability for acts that are socially dangerous and infringe upon freedom of participation.

61. Part 2 of Article 44 of the Constitution concerns the right to freedom to organise assemblies, while part 4 thereof provides that the conditions and procedure for exercising and protecting freedom of assembly shall be prescribed by law. Thus, the fundamental substantive provisions of the fundamental right to freedom of assembly enshrined in Article 44 of the Constitution, as the limits of the subjective right, are established in parts 1 and 2 of that article and further detailed in the Law. Parts 3 and 5 of Article 44 of the Constitution establish the general and specific legal

frameworks for restricting the fundamental right to freedom of assembly; however, these provisions have no substantive or systemic relationship with Article 236 of the Code as a prohibitive legal provision; so, the relevant legal regulation does not constitute a method of restricting the constitutional content of the fundamental right at issue; rather, it constitutes a criminal-law guarantee of the principle of “freedom”, which forms part of the constitutional content of the said fundamental right.

62. Based on this initial conclusion, the Constitutional Court finds that, from this perspective, the Applicant’s arguments are unfounded, according to which part 2 of Article 236 of the Code, insofar as it establishes liability for materially incentivising participation in or refraining from participation in an assembly constitutes a restriction of the fundamental right and, as such, contradicts Article 44 of the Constitution, the principle of proportionality enshrined in Article 78 of the Constitution, and Article 81 of the Constitution².

63. In summary, the Constitutional Court considers that the criminal acts stipulated in part 2 of Article 236 of the Code, in particular “materially incentivising participation in or refraining from participation in a lawful or unlawful assembly (...)”, constitute criminal-law guarantees of the constitutional condition of freedom to participate in assemblies.

(b) On the Criminalisation of Materially Incentivising Participation in or Refraining from Participation in an Assembly

64. Considering Article 236 of the Code not as a manifestation of a restriction on the constitutional content of the fundamental right at issue, but rather as a guarantee of the principle of “freedom”, which forms part of the constitutional content of the given fundamental right, the Constitutional Court considers it necessary, in this context, to address the constitutional obligations of public authorities with regard to ensuring the guarantees of fundamental rights enshrined in the Constitution.

65. The constitutional enshrinement of the right to freedom of assembly entails both negative and positive obligations of public authorities aimed at making that right guaranteed, real, and effective. Public authorities are obliged to refrain from interfering with the process of organising and conducting peaceful assemblies where there is no constitutionally justified reason for such interference. However, the practical exercise of any right and its effectiveness in practice also require a positive and active role on the part of the State. If, in terms of guaranteeing freedom of assembly, the State’s negative obligation entails the determination of the limits of public authority interference, its positive obligation relates to the legal, ideological, institutional, material, and procedural components and conditions necessary for the viability of the right, which are intended

² The Constitutional Court considers it necessary to note that the references, on pages 14–21 of the application, to international treaties and advisory documents, as well as the quotations therefrom and from the judgments of the European Court of Human Rights in *Ashughyan v. Armenia* dated 17 July 2008 and *Mkrtchyan v. Armenia* dated 11 July 2007, concern issues relating to the freedom to organise and conduct assemblies, or to the *status activus* or *status negativus* dimensions of the freedom to participate in assemblies, but not to the *status libertas voluntatis* element.

to ensure a predictable and transparent ideological, legal, and administrative (organisational) environment for the exercise of that right. One of the key components of the positive obligation is the protection of assembly participants from interference by third parties.

66. Thus, without effective legislative mechanisms and guarantees ensuring respect for and protection of fundamental rights, such rights would be reduced to merely declaratory rights that cannot be exercised in practice. Moreover, public authorities, through the legislature, may choose to employ criminal-law instruments as a means of guaranteeing and protecting fundamental rights.

67. The Constitutional Court finds that the need to protect all dimensions of the freedom constituting an integral part of the constitutional content of the right to participate in assemblies – particularly freedom of will as a constitutional value – is unquestionably a legal axiom; accordingly, proceeding from this legal rationale, the legislature has classified “obstructing or compelling the holding of or participation in an assembly, as well as materially incentivising participation in or refraining from participation in an assembly” as a criminal offence; consequently, part 2 of Article 236 of the Code establishes “compelling participation in a lawful or unlawful assembly through threats of violence against a person, their close relative, or associate, destruction, damage, or seizure of property, or blackmail, as well as materially incentivising participation in or refraining from participation in an assembly”, as an act prohibited under threat of criminal punishment.

68. In view of the foregoing, the Constitutional Court concludes that the establishment of legal liability for acts infringing upon the constitutional conditions governing the exercise of a fundamental right cannot be regarded as an infringement of that fundamental right by the legislature. At the same time, the Constitutional Court draws attention to the fact that the objective basis for criminalisation – namely, the necessity of ensuring criminal-law protection of certain constitutional values – is inseparably linked to the level of political and legal consciousness within society, the degree of development of democratic institutions, the social and economic characteristics, political experience, and numerous other factors.

69. In conditions where the socio-economic development of society is insufficient, social relations are often characterised by a high degree of material dependency. In such an environment, a significant portion of society, being in a socially vulnerable position, is more susceptible to external influence, which may also result in persons being drawn into social and political processes through material inducements. In this context, materially incentivising participation in or refraining from participation in assemblies ceases to be an “innocent” form of inducement and instead becomes an instrument distorting the very essence of democratic institutions. The latter transforms freedom of assembly, as a form of autonomous and free expression of will, into managed and artificially stimulated “participation”, thereby effectively undermining the authenticity of public discourse.

70. In a democratic society, participation in assemblies presupposes not compelled participation or participation directly remunerated with material benefits, but rather a conscious, independent, and uninhibited expression of will. Where participation is conditioned upon material incentives, the person’s will is distorted and reduced to an object of market exchange, which is impermissible. Objectively, this phenomenon gives rise to a number of systemic threats, including a decline in the

legitimacy of social and political processes, since the public opinion expressed through assemblies no longer reflects genuine public sentiment; persons possessing greater financial resources acquire disproportionate influence over the exercise of the fundamental right; and public confidence in public institutions is artificially undermined.

71. In light of the foregoing, the Constitutional Court finds that in the case of materially incentivising participation in or refraining from participation in an assembly gives rise to genuine public dangers and threats that undermine the constitutional imperative of the free expression of will; social and political processes may become driven by “financial manipulation”, ultimately resulting in the loss of the constitutional essence and content of the right to freedom of assembly. Under these circumstances, criminalisation: **(1)** does not constitute a restriction on the right to participate in assemblies, but rather serves as a means of guaranteeing and preserving its genuine constitutional content; **(2)** is aimed at countering tendencies that endanger the constitutional foundations of a State committed to democracy, namely the commercialisation of social and political processes, the exploitation of social vulnerability, and the distortion of the essence of democracy; and **(3)** pursues not the objective of restricting or prohibiting participation in assemblies, but rather of safeguarding the authenticity of such participation, by preventing socially vulnerable groups from being turned into instruments of political influence through material remuneration.

72. In its previous positions addressing the constitutional and legal content of human dignity as the highest constitutional value³, and relying on the fundamental provision of the Preamble to the International Covenant on Civil and Political Rights that “these rights derive from the inherent dignity of the human person”, the Constitutional Court has held that “(...) human dignity, being the foundation of all rights and freedoms, determines both the content of rights and freedoms and the limits of their exercise” (Decision DCC-1612), and that, *inter alia*, “(...) freedom from moral suffering resulting from individual characteristics” constitutes one of the essential components of human dignity (Decision DCC-1121)⁴. In this context, the Constitutional Court considers that the aforementioned public dangers and threats infringe the constitutional foundation established by the second sentence of Article 3 of the Constitution, namely that “the inherent dignity of the human being shall constitute the integral basis of their rights and freedoms”, and contradict the principle enshrined in Article 23 of the Constitution that “human dignity shall be inviolable”.

73. In summary, the Constitutional Court finds that the establishment, under part 2 of Article 236 of the Code, of criminal liability for materially incentivising participation in or refraining from participation in a lawful or unlawful assembly derives from the principles of a democratic State proclaimed in Article 1 of the Constitution and of the inherent and inviolable nature of human dignity enshrined in Articles 3 and 23 thereof; and it is intended

³ See Constitutional Court Decisions DCC-649 of 4 October 2006, DCC-913 of 14 September 2010, DCC-1121 of 5 November 2013, and DCC-1612 of 5 October 2021.

⁴ The European Court of Human Rights has likewise addressed the issue of elucidating the legal content of human dignity; in particular, it has noted that the case-law developed by the European Court of Human Rights under Article 8 of the European Convention on Human Rights generally recognises the importance of private life and the values associated therewith. Those values include, *inter alia*, psychological well-being and dignity (*Beizaras and Levickas v. Lithuania*, Application No. 41288/15, 14.01.2020, Final 14.05.2020, § 117), as well as physical and psychological integrity (*Söderman v. Sweden*, Application no. 5786/08, 12.11.2013, § 80).

to guarantee the right, enshrined in Article 44 of the Constitution, freely to participate in peaceful and unarmed assemblies.

(c) On the Precision of the Criminal-Law Formulation “Materially Incentivising Participation in or Refraining from Participation in an Assembly”

74. The constitutional principle of legal certainty, through its requirements of clarity, accessibility, and foreseeability in legal provisions, constitutes a fundamental safeguard for giving practical effect within the legal system to the ideas of the rule of law and legal certainty, which derive from the constitutional principle of the rule of law State; and the Constitutional Court has emphasised this principle in numerous decisions (Decisions DCC-630 of 18 April 2006, DCC-753 of 13 May 2008, DCC-1148 of 18 April 2014, and DCC-1270 of 3 May 2016). In those decisions, the positions developed by the European Court of Human Rights concerning the principle of legal certainty require the respective legal provisions to be formulated with a sufficient degree of clarity and precision to enable their addressees to engage in appropriate conduct and to foresee the legal consequences that may arise from their application.

75. The Constitutional Court considers it necessary to note that: (1) the motives underlying the exercise of, or the decision to refrain from exercising, a number of constitutional rights and freedoms may, in certain cases, be significantly influenced by material interests or material incentives, where in certain political and legal processes, such motives are often natural and legitimately foreseeable. Peaceful assemblies may pursue a wide variety of objectives, including the expression of views and the protection of interests and rights that entail certain material expectations. For example, an organiser or convener of an assembly may advocate participation in or refraining from participation in an assembly while also promoting certain material benefits or interests as either the objective of the assembly or an anticipated outcome thereof; (2) on the other side, account must be taken of the dangers arising from an overly broad interpretation of the relevant provision, as noted by the Venice Commission in its Advisory Opinion CDL-AD(2025)037, where in paragraph 25 of that Opinion, the Commission observed that logistics support, such as transporting protesters, providing meals or accommodation, or covering costs for keynote speakers, is a standard part of organising a peaceful assembly.

76. In Decision DCC-1646 of 29 April 2022, assessing the constitutionality of a criminal-law formulation from the perspective of the principle of legal certainty, the Constitutional Court stated as follows: *“At the same time, the Constitutional Court emphasises that legal certainty should not be absolutised. The mere presence of evaluative terms does not, in itself, render a legal regulation problematic; in such circumstances, the task of supplementing the scope of legal certainty and providing legal provisions with the necessary and sufficient content for their application is entrusted to the law-enforcement authorities”*. In the same decision, the Constitutional Court concluded that the general and evaluative nature of the terms and formulations used in legal provisions does not undermine the principle of legal certainty, and, accordingly: *“(…) The content of the general formulations contained in the contested provision must be revealed within the framework of law-enforcement practice, having regard to the circumstances and particular features of each certain case (...)”*.

77. In this regard, the European Court of Human Rights has likewise developed a consistent line of case-law, according to which, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (*The Sunday Times v. the United Kingdom*, Application no. 6538/74, 26.04.1979, § 49).

78. The Constitutional Court indicates that the legislative formulation of the *corpus delicti* of the offence of “materially incentivising participation in or refraining from participation in an assembly” is not characterised by uncertainty arising from vagueness and imprecision; rather, the issue lies in the evaluative nature of the formulation resulting from its abstract wording, which, however, does not undermine the principle of legal certainty. In relation to the abstract legal provision of material incentivisation contained in part 2 of Article 236 of the Code, the appropriate means of ensuring the degree of precision, foreseeability, and accessibility required by the principle of legal certainty is its interpretation and application in conjunction with all the elements of *corpus delicti* of the offence (the object, the objective element, the subject, and the subjective element).

79. Accordingly, the issue of proper interpretation of the concept of “materially incentivising” within the legislative formulation of the *corpus delicti* of the offence of “materially incentivising participation in or refraining from participation in an assembly”, and, consequently, the determination of whether the criminal offence is present or absent in a particular case – based on a comprehensive analysis of all the factual circumstances of the case – fall within the sphere of law-enforcement practice, that is, the assessment of the authority conducting the proceedings, including the three-tier judicial system. Law-enforcement authorities and the courts must be guided by the imperative of developing a consistent practice in applying the contested provision, thereby contributing to greater legal foreseeability and to clarifying the limits of judicial discretion in assessing abstract legal concepts.

80. *“Even where a legal norm is formulated with the utmost precision, judicial interpretation cannot be excluded. There will always be a need to clarify legal provisions and to adapt them to changing circumstances and evolving social relations. Consequently, the certainty and precision of legislative regulation cannot be absolutised; even insufficient clarity may be remedied through judicial interpretation”* (DCC-1270 of 3 May 2016).

81. Accordingly, the Constitutional Court finds that legal certainty is a constitutional standard to which not only the law-maker (the legislature), but also law-enforcement practice must continuously aspire; the interpretative legal positions developed in the context of each *corpus delicti* of the offence must be based on clear methodological foundations deriving from the constitutional principle of legal certainty in the assessment and interpretation of the legislative definition of the criminal act, while giving primary consideration to ensuring the observance and protection of fundamental rights and freedoms.

82. The Constitutional Court considers it necessary to emphasise that the concept of “materially incentivising” cannot be construed as encompassing the legitimate material benefits expected from the objectives pursued or the outcomes anticipated through the holding of an assembly, nor the

organisational expenses necessarily incurred in the organisation and conduct of an assembly. Law-enforcement authorities are obliged to confine the application of the contested formulation exclusively to conduct that influences the formation of a person's will and thereby impairs the person's freedom of decision-making, thereby transforming the decision to participate in or refrain from participation in an assembly into conduct that has, in substance, been "purchased".

83. Law-enforcement practice must be guided by the principle that not every material inducement is criminally prohibited; rather, only those incentives which: (1) are capable of influencing a person's choice of conduct; and (2) fall within the scope of the offender's intent to provide material incentives, to influence the formation of the participant's will to participate in or refrain from participation in an assembly, thereby undermining the principle of freedom in the making of such a decision.

84. Accordingly, the organisational and operational expenses associated with participation in an assembly, where they are not intended to condition a person's participation in the assembly, and therefore do not in fact impair that person's free expression of will to participate in an assembly, cannot be regarded as "materially incentivising participation in or refraining from participation in an assembly" within the meaning of part 2 of Article 236 of the Code. Within the objective element of the offence, "materially incentivising" exists only where the material inducement, by its nature and intensity, is capable of influencing a person's free will.

Based on the results of an abstract review of constitutionality within the scope of the Applicant's submissions, pursuant to the results of the examination of the Case, and proceeding from point 1 of Article 168, point 2 of part 1 of Article 169, and parts 1 and 5 of Article 170 of the Constitution, as well as Articles 63, 64, and 68 of the Constitutional Law "On the Constitutional Court", the Constitutional Court **DECIDED:**

1. The provision "as well as materially incentivising participation in or refraining from participation in an assembly" prescribed by part 2 of Article 236 of the Criminal Code of the Republic of Armenia complies with the Constitution.

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

PRESIDING JUSTICE

[seal]

A. DILANYAN

29 April 2026

DCC-1826