

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

**ON THE CASE OF CONFORMITY OF PARTS 3 AND 4 OF ARTICLE 64, PART 1 OF
ARTICLE 69 OF THE LAW ON LOCAL SELF-GOVERNMENT OF THE REPUBLIC
OF ARMENIA WITH THE DECISIONS N2-N, 7-N, 8-N, 9-N OF VANADZOR
COMMUNITY COUNCIL DATED 31MARCH, 2017 WITH THE CONSTITUTION OF
THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE
DEPUTIES OF THE NATIONAL ASSEMBLY**

Yerevan

9 February 2016

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman),
Justices K. Balayan, F. Tokhyan A. Tunyan, A. Khachatryan V. Hovhanissyan, H. Nazaryan, A.
Petrosyan (Rapporteur),

with the participation (in the framework of the written procedure) of A. Zeynalyan and E.
Marukyan, the representatives of 26 Deputies of the National Assembly of the Republic of
Armenia ,

of the Respondent: V. Danielyan, official representative of the RA National Assembly, Senior
Specialist of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 3 of the Constitution (with
amendments of 2005) of the Republic of Armenia, Articles 25, 38 and 68 of the Law on the
Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case of Conformity of Parts 3 And 4 of
Article 64, Part 1 of Article 69 of the Law on Local Self-Government of the Republic of
Armenia with the Decisions N2-N, 7-N, 8-N, 9-N of Vanadzor Community Council dated on 31

March, 2017 with the Constitution of the Republic of Armenia on the basis of the Application of the Deputies of the National Assembly.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by the deputies of the National Assembly on 9 June 2017.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, having studied the Law on Local Self-Government of the Republic of Armenia, the Decisions N2-N, 7-N, 8-N, 9-N of Vanadzor Community Council dated on 31 March, 2017 and other documents of the Case, the Constitutional Court of the Republic of Armenia ESTABLISHES:

1. The Law on Local Self-Government of the Republic of Armenia was adopted by the RA National Assembly on May 2, 2002, signed by the President of the Republic of Armenia on June 5, 2002, and came into force on June 21, 2002.

The Law on Local Self-Government of the Republic of Armenia (LA-337) was formulated by the new edition in accordance with the LA-237-N Law of the Republic of Armenia on making amendments in the Law on Local Self-Government of the Republic of Armenia, which was adopted by the National Assembly of the Republic of Armenia on December 16, 2016, signed by the President of the Republic of Armenia on December 30, 2016, and came into force on January 1, 2017.

The challenged Parts 3 and 4 of Article 64, titled “The Sessions of the Council” of the Law on Local Self-Government of the Republic of Armenia (hereinafter Law) prescribe:

“3. The session of the Council of Elders is competent if the required number of members of the Council of Elders necessary for the adoption of decision is present at the session. If within half an hour the community leader or his/her first deputy does not appear at the session, a protocol shall be drawn up about the absence of the moderator of the session, which is signed by the members present at the session, after which the session shall be moderated by the senior member Council of Elders.

4. The decisions, announcements and addresses of the Council of Elders shall be adopted by a majority vote of the members present at the session but not less than one quarter of the total number of members of the Council of Elders. "

This Article of the Law has not been amended or supplemented.

The challenged Part 1 of Article 69 of the Law, titled "Early termination of the powers of the Council of Elders" prescribes:

"1. The Government of the Republic of Armenia may early terminate the powers of the Council of Elders, if:

1) during the regular sittings, the session the Council of Elders shall not be held for more than three months;

(2) during the regular sittings, the Council of Elders shall not make any decision on the issues discussed for more than three months.

3) the Council of Elders shall not make a decision on the draft subject to the extraordinary discussion submitted by the head of community within three months of the regular session. "

This Article of the Law has not been amended or supplemented.

"Decision on adoption of Regulation of Vanadzor Community Council of Elders and losing validity of the Decree N2-N of Council of Elders of Vanadzor Community of November 07, 2012 was adopted by the Vanadzor Council of Elders on March 31, 2017 and entered into force on 11 April 2017.

The Decision N 7-N "On Approving the Five -Year Development Plan for Vanadzor Community 2017-2021" was adopted by the Vanadzor Council of Elders on 31 March 2017 and entered into force on 11 April 2017.

The Decision N 8-N "On Approving the Vanadzor Community Annual Budget for 2017" was adopted by the Vanadzor Council of Elders on March 31, 2017 and entered into force on 11 April 2017.

The Decision N 9-N "On Approving the Annual Report on the Implementation of the 2016 Budget of Vanadzor Community" was adopted by the Vanadzor Council of Elders on March 31, 2017 and entered into force on 11 April 2017.

2. The Applicant considers that Parts 3 and 4 of Article 64 of the Law contradict Articles 1, 2, 29 and 179 of the RA Constitution, Article 69, Part 1, Articles 1, 2, Articles 3, 4, 61 and 63 and the Decisions N 2-N, 7-N, 8-N, 9-N of March 31, 2017 of the Vanadzor Council of Elders, Articles 1, 2 and 179 of the RA Constitution.

According to the Applicant, "... presence of more than half of the representation bodies (in general) only ensures the representation and jurisdiction of the body and, as the Constitutional Court has concluded, in the case of less numbers of members, the representative body as a body prescribing the rules of conduct, cannot enjoy the jurisdiction to act. Consequently, the issue of the next jurisdiction, i.e. of decision-making becomes senseless. In other words, the "session jurisdiction" is a prerequisite for the "jurisdiction to make a decision (adopting a law)."

The Applicant considers that in comparison with the rest of the communities there is a differentiated approach to the quorum and jurisdiction of the Council of Elders of Gyumri and Vanadzor communities as well as the regarding decision-making power, which is not legitimate and discriminatory. The Applicant also finds that the lawmaker did not clarify the quorum and jurisdiction criterion for the sessions of the Council of Elders in Gyumri and Vanadzor, but conditioned the number of members of the Council of Elders to make a decision, that is, one quarter of the total number of council members. According to the Applicant, in this case, "the jurisdiction to convene a session" has ceased to act as a precondition for the "jurisdiction to make a decision (adopt a law)," i.e., in case of presence of the total number of members of the Council of Elders at the session of the Council, the quorum is available and the session is competent and the decision is adopted, if all present members have voted for the adoption. The Applicant further emphasizes that the provisions of the constitutional legal dispute have received the same kind of manifestation in the jurisprudential practice.

Regarding the regulation of Article 69 § 1 of the Law, according to which the Government of the Republic of Armenia may terminate the powers of the Council of Elders, the Applicant states that by the formulation "may", the legislator may, in essence, declare a "discretionary

arbitrariness" to the Government. Additionally, according to the Applicant, the disputed legal regulation does not define any procedure for early termination of the powers of the Council of Elders, "guarantees of protection from possible arbitrariness". The Applicant also reaffirms the above-mentioned position that the abolition of the authority of the primary mandate of the people to the executive authority contradicts the principles of democracy, the principle of checks and balance of the powers and the right to a fair trial. The Applicant, in particular, substantiates the alleged anti-constitutionality of the Decisions N 2-N, 7-N, 8-N, 9-N of March 31, 2017 of the Vanadzor Community Council of Elders, "a group consisting of 15 members. which received a mandate of the Council of Elders as a local self-governing body, had no jurisdiction to act and, consequently, the decisions N 2, 7, 8, 9-N adopted by the Vanadzor Community Council on 31.03.2017, do not stem from the interests of the people ... "

3. The National Assembly of the Republic of Armenia, involved as the Respondent in the present case, in its written explanation finds that the provisions of Article 64 §§ 3 and 4 of the Article 69 § 1 are in conformity with the RA Constitution.

The Respondent notes that, as a rule, the criteria for the validity of the decisions of collegial institutions are defined by the quorum requirement, and in countries where this requirement is present, two options may be present - quorum for participation and quorum for approval. The Respondent also notes that the validity of quorum for participation involves voting with a certain percentage of the voting rights, and the quorum of approval involves confirmation of the decision with the certain percentage of those who voted for it. Regarding the Applicant's position that the legislator did not specify the quorum's standard of jurisdiction for the sessions of the Council of Elders in Gyumri and Vanadzor, but conditioned to make a decision by the required number of members of the Council of Elders, as the Respondent finds that it was not substantiated "as the legislator clearly defined the requirement of quorum for approval".

According to the Respondent, the Constitution of the Republic of Armenia does not have a direct provision on the requirement of a quorum on adopting decisions by the Council of Elders of the local self-governing body; it is left to the legislator's discretion. The Respondent mentions that the general rule of quorum and the exceptions are prescribed by the RA Constitution for the RA National Assembly, which does not apply to collegiate local self-governing bodies. And for the latter, the legislator has prescribed the general rule and exception to quorum.

The Respondent also finds that "...the absence of the requirement of a quorum in general can usually provide a higher level of participation, but in practice it is possible to make decisions with a small number of votes in the case of incredibly low participation, which will cause serious problems with the legitimacy of those decisions."

Defining this problem, at the same time, the Respondent states that "the limit of quarterly quota of the quorum dimension solves the discussed issues. Additionally, the laws should be directed to the proper regulation of the work of the conventional institutions, without prejudice to the disruptions of these actions by political motivations. Consequently, the laws should be based on the logic of protecting the possibility of possible political boycotts, but not eliminating them as much as possible. "

Regarding the Applicant's assessment that the differentiated approach in the quorum of Gyumri and Vanadzor Community Councils of Elders is discriminatory in comparison with other communities, the Respondent finds that in specific cases, the exception to the general assembly of the Community Council quorum is a special rule, which follows a legitimate goal.

In regards to the legal regulation of Part 1 of Article 69 of the Law, the Respondent finds that for the Government of the Republic of Armenia this issue has been defined as discretionary and not impermissible powers, so that the Government of the Republic of Armenia can evaluate the inability of the Council without taking into account the possibilities of its elimination and stay in touch with community self-government. Consequently, such an approach, according to the Respondent, does not contradict the principles of local self-governance, "since no other effective mechanism is known for overcoming such inaccuracies in the council".

4. Written explanation with the signatures of the 15 members of Vanadzor community Council of Elders involved as a Respondent in this case indicates that according to Article 64 (3 and 4) of the Law, Article 69 (1), Vanadzor Community Council of Elders Decisions of the N 2-N, 7-N, 8-N, 9-N of March 17 2017 were adopted in the correct interpretation of the RA legislation, proceeding from the interests of the community members and did not contradict Article 1, 2, 3, 4 of the RA Constitution , Articles 29, 61, 63 and 179.

Referring to the RA Constitution, the European Charter of Local Self-Government, as well as a number of provisions of the Law, the above-mentioned explanation also states that the status of the elected representatives of local self-government bodies shall ensure the free exercise of

their functions, and local self-governance shall be exercised through the rights and interests of the residents of the community.

The members of the Council of Elders hold that, based on the "correct interpretation of the provisions of Article 64 §§ 3 and 4, Vanadzor City the Council of Elders has adopted resolutions aimed at regulating relations arising from public interest to protect every resident of the community, guarantees for the rights of local self-government bodies to be expected. "

Touching upon the legal regulation of Article 69 Part 1 of the Law, it states that with this legal regulation "the RA Government has defined an optional, not an imperative power to evaluate the inactivity of the Council of Elders without the possible ways to overcome the interference and avoid interfering community self-governance as much as possible. "

The authors of the explanation regarding the jurisdiction of the Council of Elders believe that the legislation of the Republic of Armenia does not stipulate that the sessions of the Council of Elders of the Vanadzor City are competent if at least half of the total number of council members is present at the session.

Referring to the legal regulations of Part 4 of Article 64 of the Law, it is mentioned that "the adoption of the decisions, announcements and addresses of the Council of Elders, the legislator has allowed by the majority of the members of the Council of Elders, but not less than one quarter of the total number of members of the Council of Elders, which is in the case of the Council of Elders is 8 + 1 votes ".

It is also mentioned that the Law defining the concept principles and bodies of local self-government in the Republic of Armenia simultaneously prescribes some exceptions to the features of local self-governance in Yerevan, Gyumri and Vanadzor communities.

It is also noted that "In a number of contemporary democratic legal systems, besides the quorum of participation, there is also a requirement of quorum approval. From the research it becomes clear that the quota for approval is considerably preferred by quorum participation. The definition of the quorum for the council's decision-making is not only in conformity with the requirements of the RA Constitution but is justified within the framework of the constitutional right. "

5. Within the framework of the constitutional legal proceedings raised in the present case, the Constitutional Court considers it necessary to assess the constitutionality of the challenged legal regulations and adopted legal acts, taking into consideration:

a) The presence of constitutional legal basis for peculiarities of local self-governing and their legal definition in Gyumri and Vanadzor communities;

b) the legality and validity of legislative regulation of determining the jurisdiction as well as the peculiarities of the Council of Elders of the Gyumri and Vanadzor communities;

c) the legitimacy of the discretion granted to the Government by the legal regulation of early termination of the powers of the Council of Elders of Gyumri and Vanadzor,

d) the compliance with the constitutional and legislative order of the the Council of Elders Vanadzor community to adopt and put into effect the decisions challenged in this case.

6. The Constitutional Court of the Republic of Armenia states that the peculiarities of the challenged regulation, first of all, are conditioned by the clarification of the decision of the collegial body of the public authority and, in particular, by the jurisdiction of the community council, in conjunction with the starting point that **“the quorum” is the collective body of public authority is a prerequisite (mandatory) legal requirement for the realization of the will (exercise of this or that authority).**

In terms of legal terms, the term "collegiality" basically refers to the following: **colloquiality is a principle of governance, under which management is exercised by a group of authorized persons. Decision-making on a collective basis implies a preliminary review of the opinions and the elaboration and adoption of an official document as a result of collective debate.**

Implementation of the public authority, both individually and collectively, is a constitutional legal provision, which directly derives from the legal regulation of Article 2 of the RA Constitution and is conditioned by the necessity of the continual implementation of democratic governance principles. The need for collective management, in particular, aims to ensure the effective implementation of publicly - held functions by the Constitution and laws for ensuring pluralism (Article 8 of the Constitution of the Republic of Armenia, amendments to 2015), overcoming subjectiveism and arbitrariness, as well as to guarantee the effective

implementation of the functions of public significance by more public expression of objective interests.

Based on the peculiarities of the legal status (scope of functions) of this or that body, the conditions and procedures for the adoption of official documents (decisions) by public authorities are the criteria for the separation of collegial and single governance in public administration. On the basis of the regulation of the public authorities of the collegial bodies, the legal necessity to adopt a decision (or other official document), and, in some cases, urgency, on the other hand, for the objective reasons it is impossible to ensure the minimum conditions for participation of all the members of the body in the collegial body, that is, the guarantee for the adoption of decision with the minimum number of members of the collegial body. At the same time, any of the cases cannot be preferred. There is a reasonable balance between the above-mentioned cases, in order not to undermine the essence of a democratic state.

According to the Constitutional Court's assessment, such a balance implies the presence of the required number of members of the body at the sessions of the collegial body that will make it recognizable as such and will guarantee their legitimacy of making decision. That is, the legitimate activity of the collegial body in a democratic state is conditioned in the presence of at least a simple majority of the total number of members of the body at the session of the collegial body.

The Constitutional Court of the Republic of Armenia has expressed its clear position on the jurisdiction of the collegial body in its previous decisions, which is also important for the settlement of the constitutional legal dispute in this case. Particularly, the Constitutional Court, in its Decision DCC-1081 of April 16, 2013, prescribed that: "As in the international practice of constitutional law, the jurisdiction of the state power body in our country is conditioned by its ability to exercise its jurisdiction. This, in its turn, is conditioned by quorum presence.

The term "quorum" has a Latin origin (*quorum praesentia sufficit*) and literally means "whose presence is sufficient". In the presence of the representative body, it is **sufficient that the presence** of that body will have the effect of acting in conformity with its constitutional legal status. **The existence of a quorum is the testimony of the jurisdiction of that body and the guarantee of the exercise of the functions. "**

Recalling that the RA Constitution has defined the minimum limits of the jurisdiction of the legislative body in relation to the activity of the National Assembly, the RA Constitutional

Court has also found that the issue has received a clear and complete answer. It is expressed in Article 71 of the Constitution of the Republic of Armenia (with amendments of 2005) according to which "Laws and decisions of the National Assembly shall, except for cases provided for by the Constitution, be adopted by a majority of votes of the deputies that have participated in the voting, provided that more than half of the total number of deputies has participated in the voting". With the amendments of 2015, Article 103 (1) of the RA Constitution also provides a similar legal regulation.

On the basis of a coherent analysis of this and some other articles of the RA Constitution, the Constitutional Court concluded in Decision DCC-1081 that, in particular:

a/ Regarding the RA National Assembly, the RA Constitution **stipulates a general rule** for quorum and exceptions from it in cases set forth in the Constitution /in particular, Article 72, Part 1, Article 74, Article 79, Part 1, Article 83.1, Part 1, Article 84, Part 1, etc/;

b/ The interrelated institutions of validity of a sitting and making a decision (adoption of a law) are differentiated. The National Assembly may adopt a law or a decision by the majority of votes of the Deputies having participated in the voting, provided that the sitting is eligible to be acknowledged as a sitting of the body of legislative authority. The latter is available if more than half of the total number of Deputies has voted. **The presence of more than half of the total number of Deputies is the threshold for eligibility of the RA National Assembly, except for certain cases set forth in the RA Constitution. According to the RA Constitution,** if the number of Deputies is less, the National Assembly may not be eligible to act as a legislative authority;

The Constitutional Court finds that the aforementioned legal positions are also relevant to the local self-governing bodies, insofar as their legal status is consistent with the legitimate activities of these bodies. This also applies to the representative bodies elected by the proportional representation, where the guaranteed protection of the rights of a political minority is an essential condition for the exercise of the rule of law in a democratic state.

Thus, **each representative body, whether it is a parliament or the council of elders of the community, should be guided solely by the principles of a legal and democratic state in the exercise of its powers, including when making decisions, carry out its activities in the collegial body of the public authority on the basis of quorum prescribed by the Constitution or the law decisions are adopted in the guarantees of plurality and**

jurisdiction of the given body. The Constitutional Court signifies the existence of the above-mentioned legal conditions under the legal regulation of the functioning of the collegial body, without which the essence of the constitutional principle of collegiate governance, in general and the institution of "quorum" will become devoid of significance, in particular.

A study of international experience also proves that, as a rule, this approach is also characteristic of the local self-governing bodies. In particular, the legal regulations prescribed in the relevant laws in Germany, Sweden, Slovenia, Lithuania, Estonia, Serbia, Bulgaria, Croatia, the Russian Federation, Belarus, Ukraine and a number of other countries where the municipal councils are considered competent if more than half of the total number of members elected are present.

It should also be noted that a number of legal acts regulating the activities of public authorities in the Republic of Armenia (in particular, in combination with Article 51 of the RA Constitutional Law "On the Rules of Procedure of the National Assembly", amendments to 2015, Article 102 of the RA Constitution, "On the Constitutional Court" Paragraph 2 of Article 35 of the RA Law, Article 62 §§ 3 and 4, Paragraphs 8 and 80 of Article 80, with amendments introduced in 2005 by Article 102 of the RA Constitution, Article 39 of the RA Criminal Procedure Code, Part 5 of Article 5 and Article 416, in conjunction with Article 52, Part 3 of the RA Judicial Code, Article 71, Part 5 of the RA Judicial Code, Article 46, Part 4 of the RA Constitutional Law, "Electoral Code of the Republic of Armenia" and Article 28, paragraphs 4 and 5 of the RA Law on Radio, Article 30, Part 2 of the RA Law on Protection of Economic Competition, Article 11, Article 7 of the RA Law on the Public Services Regulatory Authority, Part 1 of Article 7 of the same Law, Article 10, paragraph 6, of the RA Law on Control Chamber, Part 1 of the same Article, "On Establishing the Procedure for the Organization of the Activities of the Government of the Republic of Armenia and other bodies of state administration subject to it" dated 18.07.2007. Article 82 of the Decree NI-174-N) is based on the logic of legal regulation:

a) the sitting of the collegial body is competent if the majority of the members of the collegial body participate in the meeting,

b) the collegial body shall make decisions by a majority of the members present at the meeting or by a higher threshold of voting.

7. Article 5 of the RA Constitution (as amended in 2015) states that the degree of legal norms has clearly defined that the Constitution of the Republic of Armenia has the supreme legal force. Therefore, when adopting laws, the discretion of the legislature is not absolute, it is restricted by the fundamental principles provided by the RA Constitution, the general logic of legal regulations and specific regulatory requirements. The core of the legal state enshrined in Article 1 of the Constitution of the Republic of Armenia is the principle of legality (Article 6 of the Constitution of the Republic of Armenia), which defines the basis for the implementation of the entire public authority of the RA Constitution or the law. Article 6 of the Constitution of the Republic of Armenia covers the principle of law in a broad sense involving not only the law adopted by the National Assembly or the referendum, but also the RA Constitution, which occupies the highest position in the degree of legal norms (Article 5 § 1). Through such an envisagement, the Constitution of the Republic of Armenia constrains all the bodies of the public authority, including the legislature by the Constitution (the supremacy of the Constitution). It stems from Article 5 § 1 of the RA Constitution that the law is legal insofar as it complies with the Constitution of the Republic of Armenia. And the principle of certainty requires that the legislature, in particular, shall predetermine public authorities' activities to the extent that legitimacy is accessible and appreciated by the essential premises and content of actions equivalent to the constitutional legal status of the authorities.

In addition, according to Article 7 of the RA Constitution, elections of the National Assembly and of community councils of elders, as well as referenda shall be held on the basis of universal, equal, free and direct suffrage, by secret ballot. These provisions laid down in the foundations of the constitutional order are of fundamental importance for the formation and functioning of the public authority. The Constitutor shall endorse the National Assembly and community councils of elders with a priority mandate and a special role for the public authority. While forming and regulating the issues related to functioning of these bodies, the legislator is obliged not only to comply strictly with the requirements envisaged in the various articles of the RA Constitution, but also regulating the issues not regulated by the Constitution directly, to consider the constitutional legal status of the body, the place and role of public authorities in the system. That is, by reason of any issue not being subject to regulatory regulation of the Constitution of the Republic of Armenia, the legislator can not make the desired adjustment

within the frames of absolute discretion, bypassing the constitutional general logic, considering it as the constitutional powers delegated to the legislature.

In view of the foregoing, two aspects of the subject matter of the case are highlighted.

First, it follows from the combined analysis of the provisions of the RA Constitution (in particular, Articles 103, 115, 118, 153, 157, 170 and 205), that at the constitutional level **collective decision-making and legitimacy of the latter presuppose the competence of the relevant body, in the presence of more than half of the members of that body**. Consequently, constitutional approaches mentioned by the Respondent's relating a limited number of countries the (RA National Assembly) cannot be taken as a basis in the Republic of Armenia,.

Secondly, the discretion of the RA National Assembly in the field of local self-government is restricted by the legal regulations as prescribed in Articles 179-190 of the Constitution of the Republic of Armenia. In accordance with Part 1 of Article 181 of the RA Constitution, the legislative power is entrusted with the direct or indirect election of the head of the community by the RA Electoral Code, and Article 187 of the RA Constitution defines the peculiarities of **local self-government in Yerevan**.

8. As a result of the legal analysis of the jurisdiction and decision-making procedure of the Community Council sessions and their subsequent legislative developments, the Constitutional Court states that Article 9 (2) of the Law of the Republic of Armenia "On Local Self-Government" LA-75 of June 30, 1996 prescribes that "the Council of Elders is competent if more than half of the total number of council members is present", and Article 6 of the same article stipulates that "Community Council decisions and messages are adopted at the Council session on a majority of the members' votes. "Similar legal regulations were stipulated by the Law of the Republic of Armenia" On Local Self-Government " LA-337 of 7 May 2002. These legal provisions have not envisaged any exception for any community.

Later, Part 3 of Article 22 of the Law of the Republic of Armenia "On Local Self-Government in Yerevan" of LA-5-N of 26 December 2008 prescribes that "Council decisions, addresses and messages shall be accepted by a majority vote of the members present at the session, but not less than one quarter of the total number of members of the Council of Elders, except for the cases defined by this Law. " Paragraph 3 of Article 29 of the same law stipulates that "The Council session is competent if the required number of members of the Council of

Elders are present at the session. If within half an hour the mayor or his/her first deputy fails to appear in the session, a protocol shall be drawn up on the non-attendance of the session which shall be signed by the members present at the meeting, after which the session shall be held by the eldest present member of the Council.”

The functioning legal regulations on the jurisdiction and decision-making procedures of the Community Council sessions are not the same for all communities. In particular, pursuant to Article 16, Part 3 of the Law, "Community Council session is eligible if more than half of the members of the Council of Eldermen participate in the session. If within half an hour the session's jurisdiction is not ensured, or the community leader does not appear in the session, a protocol is drawn up on the failure to hold the session signed by the members of the council.: "In accordance with Part 4 of the same Article," Community Council decisions are adopted by the majority of the members of the Council of Elders present at the session. "The above-mentioned legal regulations refer to all communities, except Gyumri and Vanadzor, as defined in the Law on Local Self-Government the RA Law LA-237-N of 16 December 2016, with the legal provisions disputed in this case.

As a result of the complex analysis of the former and acting legislative acts on local self-governance in the Republic of Armenia, the Constitutional Court states that the legislator has demonstrated a dual approach **regarding the jurisdiction and decision-making procedure of the community council sessions, setting general rules for the jurisdiction for the presence of more than half of the number the council members stipulated by the law**, and for the Gyumri, Vanadzor and Yerevan Council of Elders, by establishing jurisdiction with decision-making, has set a minimum threshold of a quarter of the total number of council members.

The Constitutional Court does not consider the arguments reasonable and justified presented by the RA Ministry of Territorial Administration and Development to the RA Constitutional Court on the special procedure for the decision of the Council of Elders' Councils in Gyumri and Vanadzor, based on the fact of formation under the proportional system. Any feature of the electoral system at the local level should not disrupt the constitutional status of the Community Council of Elders, contradict the essence of democracy and undermine the local self-government institute in general.

The Constitutional Court finds that the legal definition of the minimum threshold of jurisdiction is necessary as the jurisdiction of the session of the collegial body of the public

authority and the jurisdiction to make decisions are important components of existence and operation, regarding which legislative regulations must be distinct and specific. : However, by the current legal regulation of the Council of Elders and taking as grounds the quorum for a quarter of the total number of council members, for the sessions and decisions of the Council of Elders the representation of the majority of the Council of Elders to democracy process in the community is not supported. Such legal regulation is incompatible with the requirements of Articles 1 and 2 of the Constitution of the Republic of Armenia, as representative bodies of the democratic and legal authorities should not bypass the expression of will of the members of that body while making decisions, and, as a result, expression of will of the corresponding part of the community's inhabitants (whose rights are guaranteed both by the Constitution of the Republic of Armenia (Article 9) and by the European Charter of Local Self-Government) and, consequently, the interest of the majority of their electorate (Article 179 of the RA Constitution).

Additionally, based on the arguments of the Parties and taking into account the fact that elections in the Gyumri and Vanadzor municipalities are held by proportional system, the importance of the political component is the main peculiarity of the local self-governance in the mentioned communities, in the case of which, deriving from the general democratic principles of public administration, the rights of a political minority shall be guaranteed and protected. One of the main aims of the RA constitutional reform of 2015 was to ensure the effective role of the parliamentary minority due to the rising of the threshold of quorum , which did not find its consistent legislative reflection in local self-governance.

Besides, the Constitution of the Republic of Armenia did not provide the legislature with the absolute discretion to define the laws on local self-governing in the towns of Gyumri and Vanadzor, which is present in case of Yerevan city (Article 187 of the Constitution of the Republic of Armenia) as an excerpt from the general constitutional regulation.: The Constitutional Court finds that the legislative meaning and content of Article 187 of the RA Constitution can not be perceived by the legislature as a peculiarity of representation of democracy in other communities in which, in fact, rights of the members of the Community Council guaranteed by Article 179 § 1 of the Constitution of the Republic of Armenia are actually limited. At the same time, the Law of the Republic of Armenia "On Making Changes in the Law of the Republic of Armenia on Local Self-Government" LA-237 of 16 December 2016 contains provisions that hinder, even hamper the full range activity of the Councils of Elders of

the Gyumri and Vanadzor communities. Thus, as noted in the legal regulations of the new edition of the challenged Parts 3 and 4 of Article 64 of the Law on Local Self-Government, **the session of the Council of Elders is eligible if the required number of council members is present at the session.** If the community head or his/her first deputy fails to appear in the session within half an hour, a protocol shall be drawn up on the non-attendance of the chair to the session, which shall be signed by the members present at the session of the Council, after **which the session shall be held by the eldest member of the Council of Elders.** In addition, the decisions, announcements and addresses of the Council of Elders shall be adopted by a majority vote of the members present at the session, but not less than by one quarter of the total number of council members.

Under such a legal regulation, in practice, in the Gyumri and Vanadzor communities, three separate sittings of the same council can be convened and different decisions can be made on the same issue, which is particularly evidenced by the arguments presented in the arguments of the Parties in this case. Such a legal regulation cannot be considered equivalent to the principle of legitimate and legal certainty (Article 6 § 2 of the RA Constitution) and cannot guarantee the effective functioning of local self-governed institutions.

Thus, due to the legal regulation which did not correspond to the constitutional-legal contents of Article 181 of the RA Constitution, the "legal" possibility of simultaneous legal exercise of different groups of members of the Council of Elders in Gyumri and Vanadzor communities, which is also inadmissible from the point of view of the constitutional axiology and the rule of law.

9. In the context of the examination of the case, the Constitutional Court also implemented legal-comparative analysis of the early termination of the authorities of the Council of Elders and states that non-unified legislative approach has also been manifested in this respect. In particular, pursuant to Article 23 (1) of the RA Law on Local Self-Government, "If further community council sessions are convened as a result of the termination of the Community Council member's powers, a protocol is drawn up on early termination of the Council of Elders' powers, which is signed by the remaining members of the council or the community leader."

Paragraph 5 of the same article defines that "The powers of the Council of Elderly shall be terminated early, if,

1) No council session is held for six consecutive months due to the failure of council members to exercise the jurisdiction of the Council of Elders.

2) the community is reorganized as a different administrative-territorial unit in the manner prescribed by law.

The aforementioned legal regulations do not apply to the Councils of Elders in Gyumri and Vanadzor Communities. Moreover, those legal regulations are not identical with the order prescribed for the city of Yerevan.

The Constitutional Court states that in case of availability of **the same** grounds, the legislator did not show consistency, in the case of Gyumri and Vanadzor communities to provide the Government of the Republic of Armenia with **the right to early termination** of the powers of the Council of Elders (Article 69 (1) of the Law), and in the case of the Yerevan Council of Elders, with the jurisdiction to early **termination** of the powers (Article 17 of the RA Law on Local Self-Government in Yerevan).

With regard to the constitutionality of the provisions of Article 69 of the RA Law on Local Self-Government, the Constitutional Court states that the European Charter for Local Self-Government also provides for administrative oversight of local self-governing bodies, indicating **its permissible limits**. Particularly, Article 8 of the European Charter of Local Self-Government, titled “Administrative supervision of local authorities' activities” prescribes: Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. Any administrative supervision of the activities of the local authorities **shall normally aim only at ensuring compliance with the law and with constitutional principles**. In case of early termination of the powers of the Council of Elders by the current legislation, any possible act of arbitrariness by the executive is excluded, as Article 69 (1) of the RA Law on Local Self-Government exhaustively defines the cases, which serve as the basis for early termination of the powers of the Council of Elders. Accordingly, the powers of the Council of Elders of the Community are terminated early, due to the inactivity of the community council, which is incompatible with the constitutional principles of the democratic state and the essence of local self-government and causes the issue of constitutional responsibility of the community council.: The latter, among other things, also includes **the possibility and inevitability** of early termination of the Community Council's powers. This type

of legal regulation also pursues a consistent realization of the requirements of Article 188 of the RA Constitution.

At the same time, as an important guarantee of legal protection of the rights of local self-government body, Article 169 (1) (7) of the RA Constitution defines that local self-government bodies with regard to compliance with the Constitution of regulatory legal acts violating their constitutional rights may apply to the Constitutional Court which is a significant counterbalance to the possible unlawful implementation of the authority of the government of the Republic of Armenia.

10. The Applicant disputes the constitutionality of the decisions , N 2-N, 7-N, 8-N, 9-N of the City Council of Vanadzor on March 31, 2017 disputes not from the point of view of the legal content of the acts but from the jurisdiction of adoption.

The Constitutional Court states that:

First, the Constitution of the Republic of Armenia does not prescribe any order for adopting normative decisions by the community Council of Elders, so the constitutionality of the acts by "form" on the basis of Article 68 (7) of the RA Law "On the Constitutional Court" may be subject to legislative norms in the context of the assessment of constitutionality of the prescribed procedure,

Secondly, the disputed acts were adopted in accordance with the procedure stipulated by the legislative norms at the time of their adoption,

Thirdly, the requirement of Article 68 (11) of the RA Law "On the Constitutional Court", according to which " The relevant provisions of the other acts that provided the implementation of the acts determined as invalid are annulled together with the challenged act" is applicable.

Proceeding from the results of consideration of the case and ruled by Article 100, Point 1, Article 101, Part 1, Points 1, Article 102, Parts 1, 3 and 4 of the Constitution (with amendments of 2015)of the Republic of Armenia, Articles, 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia HOLDS:

1. To declare Part 3 of Article 64 of the RA Law on Local Self-Government as contradicting the requirements of Articles 1,6, 9, 179 of the Constitution of the Republic of Armenia and invalid.

2. Article 64 Point 4 of the Law on Local Self-Government of RA is in conformity with the Constitution of RA in the framework of the legal positions expressed in the decisions of the Constitutional Court.

3. Article 69 Point 1 of the RA Law on Local Self-Government is in conformity with the Constitution of RA in the framework of the legal positions expressed in the decisions of the Constitutional Court

4. To determine 31 March, 2018 as the deadline for invalidation of norms declared as unconstitutional by this decision based on Article 102, Part 3 of the RA Constitution (with the amendments of 2005) and Article 68, Part 15 of the RA Law on the Constitutional Court, considering the legal positions expressed in this decision and the necessity to comply the legislative provisions in dispute therewith and stating the systematic interrelation of legal provision, declared as unconstitutional by Point 1 of the Conclusive Part of this decision, with the legal regulations of Chapter 5 of the RA Law on Local Self-Government as well as considering the legislative requirements on non distortion of legal security, enable the RA National Assembly to provide compliance of the legal regulations of the RA Law on Local Self-Government with the requirements of this decision.

5. Due to Part 11 Article 68 of the RA Law on Constitutional Court upon the deadlines provided by this decision, the decisions N2-N, 7-N, 8-N, 9-N of Vanadzor Community Council dated 31 March shall be unenforceable.

6. In accordance with Article 102, Part 2 of the Constitution of the Republic of Armenia (with the amendments of 2005) this Decision is final and enters into force from the moment of the announcement.

Presiding

G. Harutyunyan

10 November 2017

DCC-1384