



**ON BEHALF OF THE REPUBLIC OF ARMENIA**

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

**THE CASE ON CONFORMITY OF ARTICLE 44, PART 4  
OF THE LAW OF THE REPUBLIC OF ARMENIA ON THE  
RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY WITH  
THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON  
THE BASIS OF THE APPLICATION OF THE DEPUTIES  
OF THE RA NATIONAL ASSEMBLY**

*Yerevan*

*16 April 2013*

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

with the participation of the representative of the Applicant— G. Jhangiryan, Deputy of the RA National Assembly,

official representative of the Respondent — the RA National Assembly: D. Harutyunyan, the Chair of the Standing Committee on State and Legal Affairs of the RA National Assembly,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 3 of the Constitution 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 an oral procedure the Case on conformity of Article 44, Part 4 of the Law of the Republic of Armenia on the Rules of Procedure of the National Assembly with the Constitution of the Republic of Armenia on the basis of the application of the Deputies of the RA National Assembly.

The Case was initiated on the basis of the application submitted to the RA Constitutional Court by 34 Deputies of the RA National Assembly on 6 December 2012.

Having examined the report of the Rapporteur on the Case, the explanations of the Applicant and the Respondent, as well as having studied the RA Law on the Rules of Procedure of the National Assembly and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

**1.** The RA Law on the Rules of Procedure of the National Assembly was adopted by the RA National Assembly on 20 February 2002, signed by the RA President on 21 March 2002 and came into force on 12 April 2002.

The challenged Part 4 of Article 44 of the RA Law on the Rules of Procedure of the National Assembly, titled “Registration of the Deputies for the Sitting of the National Assembly,” states: “The sitting is competent provided that more than half of the total number of Deputies are duly registered (which means that there is quorum).”

**2.** Challenging the constitutionality of the provision of Part 4 of Article 44 of the RA Law on the Rules of Procedure of the National Assembly, the Applicant finds that it contradicts Articles 70 and 71 of the RA Constitution in regard to the part of holding extraordinary session or sitting.

The Applicant’s position is particularly based on the following arguments:

The constitutional power to initiate an extraordinary session or sitting of the National Assembly at the initiative of at least one third of the total number of Deputies is intended to provide the opposition (the minority) of the National Assembly a possibility to convene an extraordinary session or sitting of the National Assembly by the preferred agenda and time-frame, and the Constitution does not associate or condition the above mentioned with any manifestation of the will or wish of the majority of the National Assembly.

According to the Applicant the RA Constitution does not stipulate any threshold for quorum, i.e. for eligibility of sessions or sittings (including extraordinary) of the National Assembly. The requirements of the Constitution concern the number of the voters and adopted decisions.

Based on own analysis of constitutional norms, the Applicant concludes that for convening an extraordinary session or sitting of the National Assembly on the initiative of at least one third of the total number of Deputies, the sittings must be considered as eligible, when the mentioned threshold of one third of the total number of Deputies is ensured.

According to the Applicant, the challenged provision prescribes requirement for eligibility of an extraordinary session or sitting initiated by the minority of the National Assembly, which is not prescribed by the Constitution; and it requires that the number of Deputies registered for the sitting should not be less than half of the total number of Deputies.

**3.** Opposing the arguments of the Applicant, the Respondent finds that Article 44, Part 4 of the RA Law on the Rules of Procedure of the National Assembly is in conformity with the RA Constitution.

To reason his position, the Respondent, in particular, presents the following arguments:

The Applicant's allegation, regarding the part that the constitutional power to initiate an extraordinary session or sitting of the National Assembly on the initiative of at least one third of the total number of Deputies is intended to provide the opposition of the National Assembly (the minority) a possibility **to convene** an extraordinary session or sitting of the National Assembly on the proffered agenda and timeframe, is already a wrong emphasize, and, particularly, regarding the part of application of the term "to convene" a sitting or an extraordinary session; it is not a constitutional term, and causes confusion. According to the Respondent, Article 70 of the RA Constitution precisely applies the terms **to initiate and convene**; attributes the rights of one third of the total number of Deputies not only to the opposition, but also to the authorities and, in general, this constitutional norm is aimed to exercising the powers of the National Assembly.

According to the Respondent, stipulating the framework of eligibility (i.e. quorum, making a decision) of the RA National Assembly, Article 71 of the RA Constitution, in essence, predetermines the scopes in the

availability of which the National Assembly is entitled to exercise its constitutional powers as a legislative authority.

Opposing to the argument of the Applicant, according to which, the Constitution defined at least the discussion of the issue included in the agenda of an extraordinary session or a sitting at the plenary session of the National Assembly, the Respondent finds that the National Assembly not only aims to ensure political deliberations, but also to adopt decisions. According to the Respondent, the given issue could be a matter of consideration if within the scopes of its activity, the National Assembly does not have and does not ensure certain institutions of realization for discussions, in particular, parliamentary hearings etc.

4. The RA Constitutional Court states that international practice of constitutional justice also has referred to the problem of protection of the rights of parliamentary (deputy) minority, especially, taking into account the provisions of Resolution No. 1601 of the Parliamentary Assembly of the Council of Europe dated 23 January 2008, which concern Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament. In particular, the Decision of the Constitutional Court of Czech Republic dated 1 March 2011 makes a special emphasis on consideration of the constitutional principles within the scopes of legal regulations and legislative process, such as separation of powers, pluralism, free competition of political forces and representative democracy. The requirement of protection of the rights of parliamentary minority, publicity and transparency of deliberation of draft laws and hearing of all parties also derive from the above mentioned.

From the aspect of guaranteeing efficiency of representative democracy and political tolerance the aforementioned Resolution defines such procedures of regulation of the activity of the legislator, which, in particular, will ensure the active role of the opposition in parliamentary deliberations and in the process of fulfillment of functional powers of parliaments.

The Report “On the role of the opposition in a democratic parliament” made by the European Commission for Democracy through Law /Venice Commission/ dated 15 November 2010 (Council of Europe) also pursues the same aim. The latter makes a special emphasis on **ensuring functional balance between parliamentary majority and minority** in favor of guaranteeing the efficiency of the activity of the legislator. It also

emphasizes that the rate of democratic maturity can be assessed depending to what extent the certain parliamentary opposition in a given parliamentary system is allowed to fulfill these functions /Point 26/. For resolving such an issue, it lays down the initial approach, according to which parliamentary Rules of Procedure should preferably be regulated “... so as to make it difficult for a simple majority to set aside the legitimate interests of the political minority groups” /Point 96/.

Taking into account the positions of the Parties, as well as international constitutional practice and judicial practice, the RA Constitutional Court finds that based on systemic approach within the framework of this case it is necessary to establish:

- to what extent has the RA Constitution precisely define the scopes of powers of the legislator?
- what guarantees are constitutionally stipulated for realization of the rights of parliamentary opposition and for ensuring functional balance between parliamentary majority and minority?
- to what extent the challenged norms of the RA Law on the Rules of Procedure of the National Assembly and other norms systemically interrelated with them are in concordance with constitutional solutions?

5. In international practice of constitutional law, as well as in our country the competence of the state body is conditioned with its capacity to fulfill its functional powers. In its turn, it is based on the existence of quorum. For example, Part 2 of Article 49 of the RA Law on the Constitutional Court stipulates that “At a fixed time period, after having been assured of the validity of the Session, the Chairman shall declare so and announce the case to be reviewed.” In this case the validity of the Session is directly conditioned with the quorum for considering the issue in dispute and making a decision.

The term “quorum” has Latin origin /quorum praesentia sufficit/, and it literally means “the presence is sufficient.” In the case of representative body the **presence**, which enables the given body to be competent to fulfill activities corresponding to its constitutional legal status is **sufficient**. **The availability of quorum is the evidence of eligibility of the given body and the guarantee of legitimacy of fulfillment of functions**. Quorum is the criterion that provides the specified number of

Deputies with qualitative feature of functional nature, acknowledging it as the National Assembly.

To what extent does the RA Constitution define the scopes of powers of the legislator concerning the activity of the RA National Assembly? The RA Constitutional Court finds that the given issue received a precise and complete response. It is defined in Article 71 of the RA Constitution, according to which “The laws and decisions of the National Assembly, except for the cases set forth in the Constitution, shall be adopted by the majority of votes of the Deputies having participated in the voting provided that more than half of the total number of Deputies has voted.”

It implies from this and several systemically interrelated articles that:

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;

c/ Article 71 of the RA Constitution systemically linked also to Article 74.1 of the Constitution, which touches upon the manifestations of inaction of the legislator that may be grounds for its dissolution. Such inaction, in particular, may be manifested as a result of non-ensuring required quorum for fulfillment of functions or making decisions. In this case, quorum is a feature for carrying out the powers of the National Assembly.

Within the framework of the matter in dispute, a number of other provisions of the RA Constitution are also observable. In particular, Article 62 /Part 4/ defines that the procedure of the activities of the National Assembly are defined not only by the Constitution, **but also by**

**the Rules of Procedure of the National Assembly**, and the latter is a Law. That means that within the framework of constitutional regulation **the legislator is also endowed with certain discretion to set forth the procedure of its activities**. As for stipulation of the rule on at least one third of the total number of Deputies by Article 70 of the Constitution, in this context not the procedure of the activities of the National Assembly is clarified, but the matter of legal personality is resolved due to endowment at least one third of the total number of Deputies with the power of initiating an extraordinary session or sitting of the National Assembly. The President of the Republic and the Government also have such competence.

Within the framework of such constitutional solutions, the following provisions act as constitutional guarantees for protection of the rights of Deputies, including the rights of parliamentary minority are, particularly:

a/ Guaranteeing the activities of the National Assembly based on the fundamental principles of the separation and balance of the powers, ensuring the rule of law and sovereignty of the people, and establishment of a democratic and rule of law state;

b/ Guaranteeing of discharge of the powers by Deputies on a continual basis, based on free and independent mandate;

c/ Based on Article 66 of the Constitution, stipulation of the immunity arising from the status of a Deputy,

d/ Acknowledgement of at least one third of the total number of Deputies as holder of constitutional rights, and endowing the latter with the power to convene an extraordinary session or sitting of the National Assembly;

e/ Recognition of the right to legislative initiative of Deputies on constitutional level;

f/ Endowing Deputies with the constitutional competence to address written and oral questions to the Government, or submit interpellations via deputy groups and factions.

In such a case, the main issue is how these guarantees are legislatively ensured and carried out.

**6.** According to the Applicant, the challenged Part 4 of Article 44 of the RA Law on the Rules of Procedure of the National Assembly, as it was mentioned, impedes the fulfillment of the constitutionally ensured

rights of parliamentary minority, as it is conditional on any manifestation of the will or wish of the majority of the National Assembly.

The Constitutional Court finds that such a conclusion derives not from the main essence of the legal regulation of the given legislative provision, but only reflects the established practice of parliamentary activities.

As for of the constitutional legal content of the challenged provision in dispute:

**First**, the given provision stipulates a general rule and concerns all sittings of the National Assembly. Taking into consideration the latter, the Applicants could raise a question on the additional legal regulation or overcoming the gap in legal regulation in regard to parliamentary minority, which is in the scopes of the legislator's competence;

**Second**, as it was mentioned, quorum is one of the characteristics of eligibility of the given institution, and according to the RA Constitution, particularly, Articles 62, 67 and 71, the functional powers of certain Deputies and the legislator are carried out by casting a vote and participating in the voting;

**Third**, the RA Constitution and the RA Law on the Rules of Procedure of the National Assembly, including Article 5 of the latter, **no Deputy is allowed to be absent from sittings of the National Assembly without valid reason, and evade from the constitutional requirement to execute of his/her powers on a continual basis.** Moreover, Article 6 of the Law on the Rules of Procedure of the National Assembly obligates the Deputy to participate in the sittings of the National Assembly without any reservation;

**Fourth, implying absence from sittings of the National Assembly as a “political boycott” is legally groundless.** The RA Law on the Rules of Procedure of the National Assembly stipulated only two possible institutions for non-participation in the voting, when, in one case, according to Point d/ of Part 3 of Article 99 of the given Law and in a manner prescribed by law, at the sitting of the National Assembly the Deputy makes a statement on refusing to participate in a particular voting, and in other case, based on Point e/ of Part 3 of the given Article, before the voting the faction or deputy group make such a statement.

The RA Constitutional Court states that the RA legislation does not stipulate any legal ground **for refusing to participate in the sittings of the National Assembly** for political reasons. Except for the exhaustive

list of valid absences from the sittings of the National Assembly for valid reason in a manner prescribed by the law (including the absence of Deputies from the sittings based on the mentioned grounds stipulated by Points d/ and e/ of Part 3 of Article 99 of the RA Law on the Rules of Procedure of the National Assembly), all other absences shall be considered as without valid reason, and must lead to adequate legal consequences in the manner prescribed by Article 67 of the RA Constitution.

At the same time the RA Constitutional Court states that the problem of protection of the rights of parliamentary minority does not exist, and it is not conditional on the provision in dispute, but on the legal regulations of Parts 4-8 of Article 99 of the RA Law on the Rules of Procedure of the National Assembly, and proceeding from the requirements of Article 68, Part 9 of the RA Law on the Constitutional Court. the Constitutional Court considers necessary to touch upon the latter.

First, the Constitutional Court states that regardless the initiators stipulated by Article 70 of the RA Constitution for convening an extraordinary session or sitting of the National Assembly, all Deputies **shall be obliged** to participate in the sittings of the National Assembly, proceeding from the requirements of Point a/ of Part 1 of Article 6 of the RA Law on the Rules of Procedure of the National Assembly. The absence may be considered as valid reason only in case of existence of certain grounds prescribed by law. All other cases of non-compliance with the given principle may lead to inaction of the Deputy and the legislator and adequate legal consequences.

The entire problem is what kind of consequences are and to what extent they also guarantee exercising the rights of parliamentary minority. The study of current legislative regulations states that there are solutions that make the direct action of Article 67 of the RA Constitution unfeasible, namely, **termination** of the powers of a Deputy upon absence without valid reason from more than half of floor voting in the course of one session. In practice, regardless the grounds of absence without valid reason stipulated by law, finally, the Article 99 of the RA Law on the Rules of Procedure of the National Assembly provides the National Assembly with the competence to decide whether the absences are with or without reason, and the latter, by merits, is the expression of the will of parliamentary majority. In such conditions, protectiveness of the rights of parliamentary minority or the direct action of the above mentioned pro-

vision of Article 67 of the Constitution shall be touched upon with great reservation.

The Constitutional Court also states that the given legal regulation is a result of apparent non-compliance of Articles 62 and 67 of the RA Constitution, and the Court considers necessary to touch upon it from the viewpoint of finding the effective solution of the current constitutional legal issue.

7. Article 62 of the RA Constitution not only defines the place and role of the RA National Assembly in the system of state power, but also stipulates the procedural scopes of activity of the legislative body. The clarification of the scope of issues, in regard to which the National Assembly adopts decisions, belongs to the latter.

Based on their legal nature, the above mentioned Article includes two types of legal norms; first, substantive legal norms, which regulate legal relations and clarify the competence of the legislator, and second, procedural legal norms, which resolve the issue of exercising of functions.

If in Article 62 of the RA Constitution the provision “the legislative power in the Republic of Armenia shall be vested in the National Assembly” defines the constitutional legal status of the legislator, then the clarification of the scopes for fulfillment of the decision making power, first of all, pursues the aim of regulating the activity of the National Assembly. In addition, all Articles listed by Article 62 Part 1 of the Constitution, except for Article 67 (Article 74.1 may be a certain subject for discussion), provide concrete powers for the National Assembly, and which may be fulfilled via adopting decisions. The mentioned is proved by comparison of constitutional legal content of Article 62, Part 1 of the Constitution with legal regulations of Article 55, Points 13 and 14; Articles 57 and 59; Article 62, Part 2; Articles 66, 69, 73, 74, 75, 77 and 79; Article 80, Part 2; Articles 81, 83, 83.1, 83.2, 83.3, 83.4, 84 and 94.1; Article 101, Part 1, Point 2; Articles 103, 111 and 112. The latter precisely define the powers of the National Assembly within the given legal regulation.

Article 67 of the Constitution entirely regulates substantive-legal relations of public nature and stipulates all exhaustive cases for **termination** of the powers of a Deputy. Meanwhile, the given cases are listed without any specific features and exceptions. Anyway, amongst the listed cases, the reference to Article 65 of the Constitution needs a special approach,

which assumes the legislative fulfillment of the given provision must precisely be linked to legislative assurance of the exercise of the requirements of Article 65 of the Constitution.

In the given context, the term **“termination”** stipulated by Article 76 of the RA Constitution has the constitutional legal nature, according to which, consequences occur *ex jure*, **provided that the fact is present**. In particular, the expiration of the powers of the National Assembly or dissolution of the National Assembly *ex jure* leads to termination of the powers of a Deputy. It is impossible to block the action of the given constitutional norm by any decision or even a law as it will directly contradict the requirements of Article 6 /Parts 1 and 2/ of the Constitution.

It follows from the constitutional legal content of Article 67 of the Constitution that such an approach equally applies also to the absence without valid reason from more than half of floor voting during a successive session, and no certain competence *to dissolve* the powers is defined.

Based on the results of comparative analysis of different constitutional articles, the RA Constitutional Court finds that two fundamental principles of constitutional law must be considered as a basis for overcoming this situation.

**First**, the Constitution is self-sufficient, and apparent textual non-compliance may be overcome based on the system of values and fundamental principles of the Constitution. In this regard, it is essential to **ensure direct action** of Article 67 and for establishment democracy in the country creation of necessary legal background, effective exercise of representative democracy is one of the most significant guarantees for ensuring the functionality of legislative body.

**Second**, the procedural norm of the law shall not be considered as an obstacle for entire and precise implementation of the substantive norm. In this regard, within the framework of fulfillment of the requirements of Article 76 of the Constitution, the RA National Assembly, only regarding the challenged issue, may only “take into account” the presence of the legal fact and the consequence deriving from it and it may not be entitled to suspend the action of the constitutional norm by casting a vote, and, **in practice, to convert the term “termination” into the term “dissolution,”** as the latter supposes availability of precise and adequate powers. The comparative analysis of constitutional legal content of the terms **“termination” and “dissolution,”** stipulated by Article 67, Article 55, Point

10, Paragraph 2, and Article 83, Point 3 of the RA Constitution, also proves the above mentioned. Incidentally, Article 62 of the RA Constitution states that “The powers of the National Assembly shall be defined by the Constitution.” In case of absence without valid reason from more than half of floor voting during a successive session, the Constitution does not endow the RA National Assembly with the power of **dissolution** of the powers of a Deputy, that is, by adoption of a decision.

It is concluded that the provisions of the RA Law on the Rules of Procedure of the National Assembly, in particular, the provisions of Article 99, Parts 4-8, change the legal content of the constitutional norm regarding the discussion of the issue of absence of a Deputy of the National Assembly and adopting a decision on considering the latter with or without valid reason **by casting a vote, and termination of the powers by virtue of law alters into the process of dissolution of the latter.** If in case of the institution of termination of the rights of parliamentary minority are also guaranteed, and the dissolution is conditioned with the expression of the will of parliamentary majority, and it loses its preventive significance. Based on the requirements of Article 67 of the RA Constitution, Parts 4-8 of Article 99 of the RA Law on the Rules of Procedure of the National Assembly shall be envisaged such a possibility of legal regulation, where, in the terms prescribed by law, **the fact of legal significance is taken a note** and a protocol on **termination of powers of the deputy ex jure is drawn.**

It is also necessary the agreed consideration of the circumstance prescribed in Articles 6 and 99 of the RA Law on the Rules of Procedure of the National Assembly, according to which, absence of the Deputy may be considered as for valid reason only provided **that certain basis prescribed by the law is available** and in the manner **prescribed by the law;** and the latter shall not be a result of discretionary assessment. Article 12 of the RA Law on the Rules of Procedure of the National Assembly also requires appropriate amendments within the framework of legal positions expressed in the given Decision.

Proceeding from the consideration of the Case and being ruled by Article 100, Point 1, Article 101, Part 1, Point 3, Article 102 of the Constitution of the Republic of Armenia, Articles 63, 64 and 68 of the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Article 44, Part 4 of the RA Law on the Rules of Procedure of the National Assembly is in conformity with the Constitution of the Republic of Armenia.

2. To declare the provisions of Article 99, Parts 4-8 of the RA Law on the Rules of Procedure of the National Assembly systemically interrelated with the challenged provision of the given case, insofar as the current procedures alter the constitutional institution “termination of powers” of a Deputy into the institution “dissolution of the powers” of the latter by the Decision of the RA National Assembly, contradicting Article 67 of the RA Constitution and void.

3. Pursuant to Article 102, Part 2 of the RA Constitution this Decision is final and enters into force from the moment of its announcement.

**Chairman**

**G. Harutyunyan**

**16 April 2013**

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