IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF

THE REPUBLIC OF ARMENIA

ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE REGARDING THE CONFORMITY OF ARTICLES 12 AND 14 OF THE RA LAW ON "THE RULES OF PROCEDURE OF THE RA NATIONAL ASSEMBLY" WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

Yerevan City 30 June 2009

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (presiding judge), K. Balayan, H. Danielyan, F. Tokhyan (rapporteur), V. Hovhannissyan, Z. Ghukasyan, H. Nazaryan, R. Papayan, V. Poghosyan

With the participation of

the representative of the Applicant party: deputy of the RA National Assembly, Chairman of the Standing Committee on Territorial Management and Local Self-Government H. Margaryan,

the respondent: the official representative of the National Assembly of the Republic of Armenia, A. Khachatryan, the Head of the Department of Analysis of Legislation of the Staff of the RA National Assembly.

Pursuant to Article 100 Point 1 and Article 101 Point 3 of the RA Constitution and Articles 25 and 68 of the Law of the Republic of Armenia on "the Constitutional Court",

Examined in written form in a public hearing the case concerning the determination of the issue regarding the conformity of Articles 12 and 14 of the RA Law on "the Rules of Procedure of the RA National Assembly" with the Constitution of the Republic of Armenia.

The case was initiated through the application of 11.03.2009 submitted to the Constitutional Court by 35 deputies of the National Assembly of the Republic of Armenia.

Having heard the report put forward by the rapporteur judge on this case, the written explanations of the Applicant and the Respondent, having studied the RA Law on "the Rules of Procedure of the National Assembly" and other documents on the case, including the mediations and questions of the Applicant, the Constitutional Court of the Republic of Armenia **FOUND;**

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 President of the Republic of Armenia on 21 March 2002 and came into force on 12 April 2002.
2. Article 12 of the Law defines the grounds for Termination of authority of the Deputy. According to Part 1 of the mentioned article the authority of the Deputy shall terminate, if

   a) the term of authority of the National Assembly has expired;

   b) the National Assembly has been dissolved;

   c) he/she has violated the requirement of part one of Article 65 of the Constitution;

   d) he/she has lost the citizenship of the Republic of Armenia;

e) his/her absence from more than half of the voting during one regular session has been considered unjustified according to the procedure defined by Article 99 of present Law (Amended on 26.02.2007, LA -111);

f) he/she as been sentenced to imprisonment;

g) the court decision on his/her recognition as incapable has come into legal force;

h) the decision of the Constitutional Court on invalidating the registration of his/her election has come into force;

i) he/she has given his/her resignation in accordance with the procedure defined by Article 13 of present Law;

j) he/she died.

Article 14 of the Law defines the procedure for establishment of factions, secession of the deputy from the faction, termination of the activities of the faction. Particularly, by Part 3 of the Article it is defined; "The Deputy may quit a faction by notifying in writing to the head of the corresponding faction".

3. According to the Applicant the disputed Article 12 of the RA Law on "the Rules of Procedure of the National Assembly" does not content any norm, according to which the ground for termination of the authority of a deputy elected under the proportional electoral system may also be secession or expulsion from the respective party or faction. Meanwhile, the proportional electoral system has its own specifics, which are generally expressed in the fact, that in such kind of electoral system the people specifically vote for the political unit - for the party or political block by approbating the election program and ideological orientation of the last ones, and as a result get an opportunity to execute their power by the virtue of the faction, formed by the given political unit. By the results of the proportional electoral system

people according to Article 2 of the RA Constitution delegate their power not to this or that candidate, but to the concrete political force, to the unit, to the party for the purpose of realization of definitive programs. Accordingly, the fact of secession from the given faction of the deputy elected under the proportional electoral system divests the opportunity of the latter to implement the programs, which are delegated by the people fully. According to this, the secession from the faction of the deputy elected under the proportional electoral system, which capability is stipulated by Article 14 of the Law, shall be the ground for termination of his/her authorities.

The Applicant party refers to the fact that before May 1997, the RA Law on "the Rules of Procedure of the National Assembly" as a ground for termination of the authorities of the deputy elected under the proportional electoral system, inter alia, provided the fact of resignation of the deputy from the respective party. Today, according to the Applicant, when the political orientation on increasing the number of the deputies elected under the proportional system is chosen, the objective necessity to restore such ground is risen, in order to provide the existence of the respective party. The existence of such ground is also required under the necessity of guaranteeing the formation of the political system, for prevention of arbitrary change of correlation of the parliamentary political forces as a result of mixed-level impacts.

According to the statement of the Applicant Article 67 of the RA Constitution, that the powers of a Deputy shall terminate upon resignation from office, also considers, that the deputy elected under the proportional system with his/her application on abandoning his/her party shall also present resignation.

In Applicant's judgment, despite of the fact, that Article 66 of the RA Constitution denies the institute of imperative mandate, simultaneously, in the

occasion, when the nationwide principle of the people to exercise their power through its elected representatives, stipulated by the unchangeable Article 2 of the RA Constitution, is violated, the objective necessity to state in the legislation the fact of resignation of the respective deputy from the party as a ground for termination of the deputy authorities is risen.

According to the Applicant Articles 12 and 14 of the RA Law on "the Rules of Procedure of the National Assembly" contradict the requirements of Articles 2, 7, 30 and 67 of the RA Constitution.

4. The Respondent states that in Article 67 Part 1 of the RA Constitution the occasions, in which case the powers of a deputy shall be terminated are defined. Simultaneously, besides the occasions stipulated by the mentioned article of the Constitution, by Article 12 of the RA Law on "the Rules of Procedure of the National Assembly" there are defined the following additional occasions of termination of the authorities of the deputy of the National Assembly; if the decision of the Constitutional Court on invalidating the registration of his/her election has come into force or he/she died. And according to Article 14 Part 3 of the same law the Deputy may quit a faction by notifying in writing to the head of the corresponding faction.

In Respondent's judgment, it follows from the contents of the norms stipulated by the mentioned articles of the RA Constitution and the RA Law on "the Rules of Procedure of the National Assembly", that resignation of the deputy from the parliamentary faction or from the party and expulsion of the deputy from the party can not be considered as a ground for termination of the authorities of the deputy.

The Respondent also makes reference to the fact that the Applicant party conditioned the issue of constitutionality of Articles 12 and 14 of the RA Law on "the Rules of Procedure of the National Assembly" with the fact of existence of the law gap. Factually, indeed, the Applicant does not challenge the issue of constitutionality of Articles 12 and 14 of the RA Law on "the Rules of Procedure of the National Assembly", but denotes the necessity to amend the disputed articles. By the way, the presentation of the mentioned issue of constitutionality has an aim **"to create concrete legal grounds for expulsion of the deputies of the NA elected under the proportional electoral system from the party and faction, who have expressed positions, which are opposite to the election program and political orientation of the party".**

On the basis of the above written, the Respondent considers, that the disputed norms do not contradict the RA Constitution and suggests to recognize Articles 12 and 14 of the RA Law on "the Rules of Procedure of the National Assembly" corresponding to the RA Constitution.

5. After the analysis of the international constitutional practice on the problem and the general tendencies of the European constitutional developments, the Constitutional Court states, that the imperative mandate is unacceptable for the democratic legal systems. It is extraneous for the European democracies and is prohibited by the constitutional norms of several states (Andorra, Article 53; Bulgaria, Article 67; Germany, Article 38; Spain, Article 67; Italy, Article 67; Lithuania, Article 59; Croatia, Article 74, Armenia, Article 66; Moldova, Article 68, Czech Republic, Article 26; Romania, Article 66, etc.).

The idea of necessity of free representative mandate has entrenched in the liberal democratic legal systems gradually and has become an important guarantee for establishment of the constitutional democracy in the state, where the people is the source of legitimacy of power. **The essence of the free representative mandate is the fact, that the deputies are not only representing their voters, but the universal subject, that is the people, whose will surpasses the will of the local electorate.**

Simultaneously, in the international practice there is another institute, which contacts with the institute of imperative mandate, but has other legal contents. That is the **termination of action of the mandate as a result of change of party affiliation.** This institute regards to the proportional electoral system and has various manifestation connected with the specifics of the electoral system. In the countries, where the mixed majority-proportional electoral system is practiced and in which there is stable and developed political system, the principle of free mandate covers all deputies and change of party affiliation does not cause such problem. The problem may be raised in the case, when the candidate for deputy is not presented in the electoral ballot and the voter has not expressed any position about him/her.

6. The international constitutional-legal practice states, that the proportional electoral system, stipulated by the electoral legislation, may also be such one, that the voter gives the vote for any political force on the basis of its political goalposts and the programmatic approaches presented to the society, and does not express discrete position on the persons, who are presented in the proportional list of candidates of the party. **In such circumstances the political force, separate or by the way of formation of the political coalition, is the bearer of the political power which is**

delegated by the people. In such electoral system the people express confidence not to the person, but to the political force and to the programmatic approaches presented by the last one. Also by that confidence is conditioned the legitimacy of the elections and the authority formed as a result of that elections. The political culture must be on such level, that the voter may be able to orientate specially by such programmatic approaches. In the conditions of such electoral system as a candidate in the proportional order are registered the parties or their blocs, which conduct canvass on the basis of such programmatic approaches, which shall orientate the voter in the issue of trust or distrust of the legislative state-power function to the given party. By that is also defined the real stand and role of the political force in the system of the legislative power.

Such electoral system is also acting in the Republic of Armenia. According to the RA Electoral Code (Art.7) the elections of the National Assembly under the proportional system are considered as nationwide elections. Ninety deputies shall be elected under proportional system from a single multi-mandate electoral district covering the entire country, from among candidates included in party electoral lists (Art. 95 Part 2). Parties and party alliances shall have the right to nominate candidates for deputies to the National Assembly under proportional system (Art. 99 Part 1). Parties shall submit applications for running in the National Assembly elections under proportional system to the Central Electoral Commission by the decision of their permanently functioning bodies. Party alliances shall submit applications for running in the National Assembly elections under proportional system to the Central Electoral Commission by a decision approved by permanently functioning bodies of member parties of the alliance (Art.100, Part 1).

The Code also includes a direct provision, that the parties (party alliance) receive mandates in the National Assembly under proportional system (Art.100 Point 8). Simultaneously, Article 115 of the Code stipulates, that National Assembly mandates for the proportional system shall be distributed **among electoral lists** of parties and party alliances that have received at least 5 (in the case of parties) and at least 7 percent (in the case of party alliances) of the sum of the total number of valid votes and the number of inaccuracies, respectively.

The Electoral Code also stipulates (Articles 99, 100) that the parties compile and present their list of candidates and **defined everyone's position in that list.** The voter does not take participation in this procedure. Ballots for National Assembly elections under proportional system shall include the names of parties (party alliances) in alphabetical order, as well as the last names, first names and patronymics of the first three candidates on their electoral lists (Art.114 Part 2).

7. The analysis of the international practice also states, that in the case of the electoral system, which is in Armenia, after receiving mandate under the proportional electoral system, the fact of resignation from the party or change of party affiliation, **from the viewpoint of the parliamentary stability and loyalty to the election, made by the voters,** becomes serious problem, with which faces the modern democracies. Such practice brings to the fact, **that the decision made by the voters frequent in massive scales is graded.** The selection of the methods of solution of this problem essentially is conditioned by the peculiarities of the electoral systems.

The Constitutional Court states, that the different countries have found different methods in order to solve the given problem. If in Spain this problem is solved on the basis of the pact, signed by the mutual understanding of the parties,

in many other countries the efforts are made to find the solution to the problem on the level of legislative regulation. The RA Constitutional Court considers, that for solution of this problem it is necessary to take into consideration some circumstances;

First of all; to evaluate the stand and role of the parties in the political system of the state properly;

Particularly, significance of the role of the parties in the national parliaments in general add to the fact, that they guarantee the cooperation of the state and society and fully express the interests of the voters only in the case, when they are represented appropriately in the parliament pursuant to the impact, which they have on the society.

Any classical determination on parties derives from the certain truth that the task of the activities of the given union is to take participation in the political life of the society and state, to become part of the political authority, to take and to implement political responsibility. It is beyond debate, that the democratic state system can not exist without the necessary political structures. Also there can not be political stability, if **the capable political forces** do not take responsibility for present and future day of the state. **The party can implement its public mission only in the case, when it does not only have program will, but also the necessary and sufficient capability for taking the political responsibility, and that is seen and appreciated by the voter.** The elections which are held under the proportional electoral system do not only have an aim to form stable and capable legislative authority, but also to have crucial role in the process of formation and strengthening of the political structural properties of the state.

The international practice states that so called “clean” proportional electoral system, stipulated by the electoral legislation, is that the voter gives his/her vote

to the political force on the basis of its political orientations and the programmatic approaches presented to the society.

Secondly; to take into consideration not only the technological (organizational and technical) features of the majoritarian and proportional electoral systems, but also their role in the process of formation of the political power and acceptance and execution of the political responsibility;

Basic feature of the proportional electoral system is the fact, that it guarantees more full representation of the political interests and preferences and reflects the political will of the society, it is powerful stimulus for stimulation of formation and development of multiplicity of parties.

Simultaneously, in the case of elections under the proportional electoral system which have entrenched in Armenia, the voter does not give mandate to the concrete representative, but expresses his/her political preferences, elects the political force, which he/she prefers. Accordingly, the result of expression of the voters' will in the elections shall be the existence of the political force in the parliament to which the voter has given his/her political preference and subsequently the mean for retention of the result of that expression of will may be release of mandate on the basis of voluntary resignation from the party (when the voter does not have any influence on compilation of the list of party or the candidate has not been presented in the ballot) because in the case of large-scale extents of such process the will of the voter would not be expressed in the parliamentary correlation of the political forces, moreover, the distortion of will of the voter would take place.

Thirdly; the necessity of programmatic approaches of the parties and political figures in the issue of clarification of political goalposts of the development of the state and concretization of the positions of the voters

regarding them and their role in the process of development and provision of the programmatic approaches of development of the state.

The people by the virtue of elections define in what correlation of political forces the parliament shall work and ipso facto the people delegates the legislative body to implement legislative activity in compliance with the political goalposts preferred by them. When the people vote for any concrete party, it expects the implementation of policy, which has definite orientation. And periodicity of elections has an aim to give the people an opportunity to estimate the activities of the political forces after definite period for appreciation of it or to give preference to the other political force.

Fourthly; the voters right selection of the subject, who is delegated to implement their state-power right

the fact, that in the case of the elections under the majoritarian electoral system, as well as under the proportional electoral system the people is the source of the mandate, is beyond debate. But for disclosure of the essence of the problem and its legitimacy it is necessary to approach to it not only from the viewpoint, which is the source of mandate, but also whom and with what aim the source of mandate, that is the people, has delegated the implementation of its state-power right. The legitimacy of the matter in dispute ground for termination of authorities of a deputy may only be estimated in the scopes of trinity of the answers of the three above mentioned questions. As a result of the answers to those questions it will become clear, that the ground for termination of the operation of mandate of deputy, which is matter in dispute, is not the expression of non accountability of the deputy to the party, but accountability exactly to the source of the mandate, that is to the people. By this mean the political responsibility of the deputy, who has deviated from the political line, for which

implementation the people has delegated to him/her the implementation of its state-power right is guaranteed. The people express its position on the fact of departure of the party from the proposed programmatic way during the regular elections. In this sense the right determination of the time limits of periodicity of the elections also has principal importance.

Fifthly; future avoidance, especially in the transition states, of power influence on the parliamentary political correlation, which has been formed as a result of free expression of the political will of the people, and prevention of new off-electoral correlation, which is acceptable for the power.

The RA Constitutional Court derives from the principled position, that in any case there shall not be barriers for expression of voters' will. The Constitutional Court considers that the norms, that prohibit the resignation from the parliamentary faction, are directed exactly to prevention of such possibility and they guarantee the solution of that issue.

It is necessary to consider in structural correlation the procedure of occurrence of the vacant deputy seats, elected under the proportional electoral system, and the norms concerning the resignation from the party. In the case of occurrence of the vacant seat of the deputies, elected under the proportional electoral system, it is replaced by the next candidate of the same list. This order of replacement of the vacant seat of deputy, as well as termination of operation of the mandate on the basis of change of party affiliation are the basic legal means, which before the next parliamentary elections guarantee the reservation of the political correlation in the parliament, which was primarily formed as a result of expression of the popular will during the elections. The political correlation in the parliament, which is defined by the outpouring of popular will, can not be

changed during the activities of the parliament of the given convocation. **Accordingly, the point at issue ground for termination of authorities of a deputy is lawful mean for providing that aim.** If not, the absence of such ground will result the fact, that the existence of the political parties as a mean for formation and expression of the political will of people is completely assumed phenomenon, because exactly after the elections such reshuffles of deputy groups and factions may take place, that the legislative body, which has been formed as a result of elections, will not express the popular will. That is, the expression of the popular will be defined the political parliamentary correlation, which, however, will be transformed into another correlation, as a result of which will be formed the legislative body, which will not reflect the real results of the elections. While one of the main tasks of the electoral system is the fact, that it shall be able to guarantee correlation of the political forces in the elective organs proportionally to the real support of the voters.

Sixthly; the historical development of the essence and contents of the institute of termination of the operation of mandate on the basis of change of party affiliation;

The international practice states, that so called desertion from the parties is a sufficiently diffused and problematic issue. For example, according to the analysis of the experts of the Venice Commission of the Council of Europe, in Italy during 1996-2001 10 percents of the deputies have changed their party. In the State Duma of Russia during 1993-1995 that number has reached to 31 percents, in the Parliament of the Czech Republic during 1992-1996 it has been 40 percents. In India during 1967-73 2700 deputies changed their party, and 212 of them became ministers in their new party. In Ukraine during 1998-2006 60

percents of the deputies at least once have changed their party; some deputies have changed their factions up to 10 times.

In Armenia before May 1997 the Rules of Procedure of the RA National Assembly stipulated a norm, according to which the deputy was able to resign from the faction, if he/she voluntary abdicate his/her deputy responsibilities (Art. 29). As a result of legislative amendment of 27 May 1997, that norm was replaced by the following provision; "The deputy can resign from the faction if he/she submits written notice about that to the appropriate faction and to the Chairman of the National Assembly, who shall publish it at the next sitting of the National Assembly". Such amendment initiated the so called "Rates Race", which got widespread response in press. 85 deputies of the National Assembly of Armenia have changed their deputy factions during 1997-2007.

Such occurrence, as a serious danger, which is threatening the public stability, in the international practice, as it was mentioned, has got different structural forms of prevention. It is necessary to state, that that institute, which was formed in the nineteenth century, has changed its essence, contents and aim during its historical development. If in its original implication it was used as a measure of responsibility for violation of party discipline in the parliament and was used by the party against the deputy, then today it is generally used as a measure for prevention of desertion of deputies. For example, Article 160 Point C of the Constitution of Portugal explicitly defines, that the deputy losses its mandate if he/she joins a different party from the one that nominated them for election. As it was already mentioned, the more peaceful solution to that problem was given in Spain, there the parties signed an agreement against desertion. In the Russian Federation according to the amendment of July 2005 made to the Federal Law on "the Status of the Members of the Council of the Federation and the

Status of a Deputy of the State Duma of the Federal Assembly" in Article 4 Part 3 was added a provision, according to which the deputy of the State Duma also losses his/her mandate in the case, when he/she on the basis of his/her resignation resigns from the faction by which party lists he/she was allowed to take part in the distribution of the mandates.

In Ukraine on the Constitutional level (as a result of the constitutional amendments) it was determined (Art. 81 Part 6), that if a People's Deputy of Ukraine, as having been elected from a political party (an electoral bloc of political parties), fails to join the parliamentary faction representing the same political party (the same electoral bloc of political parties) or exits from such a faction, the highest steering body of the respective political party (electoral bloc of political parties) shall decide to terminate early his or her authority. The Constitutional Court of Ukraine in its decision N12-pn/2008 of 25 June 2008 especially underlined the important role of the parliamentary factions in the composition of the legislative power, as a parliamentary political organ, as well as, interpreting Article 81 Part 6 of the Constitution, the Constitutional Court recognized unconstitutional the provisions of Article 13 Parts 5 and 6 of the Law of Ukraine on "the Status of National Deputy of Ukraine", according to which a national deputy of Ukraine has a right to unimpeded exit from a deputy faction or not to be affiliated to a deputy faction of a political party (bloc of political parties) on whose election list he/she was elected.

An interesting provision is also stipulated by Article 63 Point d) of the Constitution of Norway, according to which it is the duty of anyone who is elected as a representative to accept such election, unless he is a member of a political party and he is elected on a list of candidates which has not been issued by that party.

It is obvious that taking into consideration the formed political and legal culture different countries by the help of direct and mediated methods are trying to prevent the unwanted fact of the parliamentary change of party. India, the Republic of South Africa and some other states have advanced a lot in this problem, where the practice, when not only the deputy, who has resigned from the given party losses the mandate, but as well as the deputies, who vote against or desist from the voting and contradict to the positions of their party is also used. The ground for that is, that it shall not be allowed to weaken the opposition parties (to destroy them by the gears of power, having an aim to strengthen the positions of the power party), to change the real picture of outpouring of voters will. But the mentioned approach to the interparty relations is not recognized by the European legal system, where the problem of party discipline is demarcated from the problem of expression of the political popular will and adherence to it. The RA Constitutional Court finds such approach lawful. The problems of interparty discipline must be solved in the scopes of strengthening of interparty democracy.

8. The examination of the practice of different countries states, that in all occasions the attempts to resign from the parliamentary factions are essentially initiated by pursuing current political goals, which changes the real picture of outpouring of the voters will. The RA Constitutional Court considers that for strengthening of the political structure of the state, for formation of the political parties, for provision of atmosphere of political tolerance, for guaranteeing the political responsibility especially on the phase of system transformations it is necessary to stipulate in the legislation “anti-desertion” provisions. **Especially it concerns the states, where during the elections under the proportional electoral system the list of the candidates, which are nominated by the party, is not**

presented to the voters, and the voters can not express their positions on the persons, who are included in the list. Moreover, the legal regulation for prevention of "desertion" may be exercised only in such electoral system, where the deputy has been elected not on the basis of the opinion of the voter, but only as a result of approval of the party's program, that is, when the accentuation is made on political responsibility and on the structures, which are guaranteeing it.

The RA Constitutional Court considers**, that any change of correlation of the political forces in the parliament, which is pursuing current interests and is changing the political balance in the legislative organ, which has been formed by free outpouring of popular will, is incompatible with the fundamental democratic principles and can not be considered as lawful.**

9. The RA Constitution stipulates some norms, which provide the Republic of Armenia with the statures of the democratic state.

There are the fundamental principles of the electoral system, particularly the principles of **obligatory and periodicity** of the elections (Article 2 of the Constitution in interrelation with the constitutional-legal characteristic of the state as "democratic", stipulated by Article 1, as well as with Articles 4, 30), the principles of **pluralism and multiparty system** (Article 7 of the Constitution), **freedom of expression, associations and assemblies** (Articles 17, 28 and 29 of the Constitution), **the right to submit letters and recommendations and the right to receive appropriate answers to them** (Article 27.1 of the Constitution) and etc.

Besides of these general principles, it is necessary to separate out also two structural principles, which specify the essence of the democratic institutes in the Republic of Armenia;

First of all; **the principle of free mandate**; that is, **the independence** of the deputy of the National Assembly from any reference, dictation and his/her subjection exclusively to his/her conscience and convictions (Article 66 Part 1 of the Constitution). By the force of the free mandate the deputy is not even bounded by the voters will, he/she is free in his/her deputy activities, including the voting in the parliament. The principle of free mandate together with the other basic guarantees, which determine the constitutional status of the deputy(*indemnity*/ Article 66 Part 2 of the Constitution/, *immunity*/ Article 66 Parts 3 and 4 of the Constitution/), gives an opportunity to form the National Assembly, **the legislative power, which is independent** from the other branches of power, and to consider the deputies as the representatives of **the people,** and not only as the representatives of their voters or of all electorate.

The principle of free mandate, as one of the bases of **the representative democracy**, makes possible the clash of views in the parliament and provides the ability of the National Assembly to come to a settlement. Accordingly, by virtue of the free mandate in the parliament the balance between different partial (political) interests is provided, which determines the capacity of one of the highest constitutional organs to adopt laws, to make decisions and to exercise its other authorities.

Secondly, on the RA Constitution level is stipulated the constitutional function of the parties that is **to promote the formulation and expression of the political will of the people** (Article 7 Part 2 of the Constitution). In other words, the Constitution stipulates another principle which is characteristic to the

Republic of Armenia, as a democratic state, that is the principle of **party democracy.**

This principle conditions the essential role of the parties in the issue of formulation and expression of the political will of the people, including also the capability of the elections by the party lists (under the proportional electoral system) for giving to the electoral system maximum representativeness, but not excluding the use of the majoritarian electoral system, and the issue concerning the determination of proportionality between these two methods is left at the discretion of the Legislator.

Consequently, the deputy which has been elected by the list of candidates of any party is being burdened by his/her party affiliation to a certain extent, because his/her voluntary resignation from that party faction or termination of his/her membership in that party is resulting the clash between the party affiliation and his/her freedom to be guided only by his/her conscience and convictions, in other words, the clash between the principles of free mandate and the principle of party democracy.

Simultaneously, Article 67 of the RA Constitution has defined comprehensive list of the grounds for termination of the powers of a Deputy and has not delegated to the law opportunity to amend it. According to that article "The powers of a Deputy shall terminate upon the expiration of the term of office of the National Assembly, dissolution of the National Assembly, violation of the provisions stipulated in Part 1 of Article 65 of the Constitution, loss of citizenship of the RA, absence from more than half of voting in the course of a single regular session, prison sentence, legal incapacity and resignation from office". By the way, the provisions stipulated in Article 65 regard to the fact, that a deputy may not be engaged in entrepreneurial activities, hold an office in

state and local self-government bodies or in commercial organizations, as well as engage in any other paid occupation, except for scientific, educational and creative work. A Deputy shall discharge his/her responsibilities on a permanent basis. It is obvious, that the provisions of Article 12 of the RA Law on "the Rules of Procedure of the National Assembly" are recitation of the grounds stipulated in Article 67 of the RA Constitution and they do not raise the issue of constitutionality.

The RA Constitution in the scopes of the issue, which is matter at issue, provides the Law on "the Rules of Procedure of the National Assembly" to determine only the order of termination of the authorities of a deputy. Accordingly, it shall not be determined the new ground for termination of authorities of a deputy by the law, but the prior provision shall be restored. As it was mentioned until May 1997 the Rules of Procedure of the RA National Assembly stipulated, that a deputy may resign from the faction, if he/she voluntary disclaims the deputy authorities (Art. 29). Such law legal regulation existed in the case of availability of the same constitutional grounds for termination of authorities of a deputy, which also exist today. That is, the ground for termination of the authorities of a deputy is the resignation stipulated by Article 67 of the Constitution, and the right for such act belongs to a deputy.

On the basis of the above-stated, the Constitutional Court considers, that in the scopes of the electoral system, which exists in the Republic of Armenia, when the deputy gets the mandate by the virtue of the votes, which have been given to the party, he/she has not been presented in the electoral ballot and the voter has not expressed any outpouring on him/her, but he/she wants to resign from the parliamentary faction, he/she may do that only in the case of voluntary abdication of the mandate, because if not, he/she will promote to **the change of**

the correlation of the political forces in the parliament, which is changing the political balance in the legislative organ, which has been formed by the free outpouring of popular will and does not drives from the constitutional fundamental principles of "the rule of law" state and democracy.

Concluding the hearings and being ruled by Point 1, Articles 100, 102 of the RA Constitution, Articles 63, 64 and 68 of the RA Law on "The Constitutional Court" the Constitutional Court of the Republic of Armenia **held:**

1. Article 12 of the RA Law on "The Rules of Procedures of the National Assembly" is in conformity with the Constitution of the Republic of Armenia.
2. To recognize the provision "The Deputy may quit a faction by notifying in writing to the head of the corresponding faction" stipulated by Article 14 Part 3 of the RA Law on "the Rules of Procedure of the National Assembly" in respect of the deputies, which have not been in the electoral ballots as a candidates, as far as it promotes to the change of the political balance in the National Assembly, which has been formed by the free outpouring of popular will, contradicting the requirements of Articles 1, 2 and 7 of the RA Constitution and invalid.
3. Pursuant to Article 102, Part 2, of the RA Constitution this decision is final and is in force from the date of publication.

Presiding Judge **G. Harutyunyan**

30 June 2009

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