

ON THE 15TH ANNIVERSARY OF THE RA CONSTITUTION

G. G. Harutyunyan,

President of the Constitutional Court of the Republic of Armenia

Mr. President of the Republic of Armenia,

Your Holiness,

Dear participants of the ceremony,

The phenomenon of Constitution has had cornerstone importance in the historical destiny of our nation. The founder of the Armenian history Movses Khorenatsi connected the canonical constitution, adopted by in 365 in Ashtishat by the National-Religious Assembly, with the establishment of mercy and overcoming brutality in Armenia.

In Armenian reality the legal regulation has never been an end in itself; it has not been cut off from our social life and there was the imperative to convert it, even in the conditions of the loss of statehood. The law and the right have been of vital importance in issue of our existence and preservation of identity. The monuments of the Armenian Law of pre-Christian and post-Christian periods, the canonical constitutions adopted by the national-ecclesiastical assemblies, Armenian Code of Hovhanness Odznetsi, the Codes of Law of Armenian communities, introductions to the Code of Law of Mkhitar Gosh and the Shahamiryans' 'The Vanity Trap' which, particularly, are presented as complete legal theories.

Historical realities clearly witness that when in the Armenian reality, an emphasis was made on mutual agreement reached by all the rules, which regulated the public life, a significant progress was achieved in all spheres. Even in embryonic state, the constitutional culture had key importance for our existence and development at the dawn of history of human society. On the contrary, the discordance or attempts to overcome them by force had caused failures. There are numerous such examples not only in our history, but also in the histories of many other countries. The origin of liberal legal mentality of the Renaissance in Europe put forward the need of guarantee of human rights and freedoms, which on the revolutionary wave of thinking found its first systematic and practical expression in the Bill of Rights adopted in England in 1689. It later found its reflection in the American Declaration of Rights in 1789, as well as in the French Declaration of the Rights of Man and of the Citizen. The latter contains an excellent resolution

according to which, **' Every society in which the guarantee of rights is not assured or the separation of powers not determined has no constitution at all'.**

A new logic of formation of social-public life was developed, the focus of which were the significance of right and limitation of power. In 1773 Hakob and Shahamir Shahamiryans named the Constitution written for the future independent Armenia as 'The Vanity Trap' which summarized the entire meaning and logic of the constitutional regulations.

Nourished by sources of the constitutional legal mentality, the liberal-legal developments gradually revived the genius summarization, which was already known in the Middle Ages and according to which that if human life laws derive from natural right and natural laws, they are not laws, but their perversion. **For the western civilizations, the realization of reasonable democratic potential of the society became the main and permanent guarantee of progress on the ideological background.**

The next millennium brought numerous, turning point solutions, as well as systemic and unprecedented conflicts and crashes, which dictated the need for new constitutional solutions for dozens of countries. The last two great waves of the latter revolved after the Second World War and the collapse of the Soviet Union. In both cases, developments went by historically proven and non-alternative value system route and the way of comprehension and guarantee of the necessity of establishment of constitutional democracy.

The modern history of formation of the constitutional legislation restarted at the beginning of XX century by the renaissance of the Armenian statehood and continues until nowadays. It has passed three historic stages, each of which, naturally, possesses its own special quality of constitutional law.

The newly independent Republic of Armenia has started its first steps from the attempt to establish the national-state legal system on the stable and completely new basis. The Declaration of Independence of Armenia adopted by the RA Supreme Council on 23 August 1990 was the first such document. A special parliamentary committee was formed for preparation of the declaration and comparison of different projects.

The nature of the work of latter, the process of consideration of various projects had a lot in common with the constitutional assemblies convened in the Armenian reality meetings with the public, first of all in terms of providing an atmosphere of social agreement. Not by chance that the declaration was adopted with great enthusiasm. In terms of content, the Declaration of

Independence opened qualitatively new page in the history of the constitutional culture. It is fundamental, consistently coordinated, and contains historically logical precise generalizations, takes into account the national priorities of the nascent national identity, it derives from the common logic of the international constitutional legal developments, and is a system integrity of norms and principles, which will never lose its both historical and legal – axiological significance.

On the basis of this, newly independent Republic of Armenia settled to the drafting of the Basic Law in such a historical period when the difficulties of systemic collapse of our reality was accompanied by the reality of war, devastating consequences of unprecedented natural disaster, deep crisis of reproduction, which has left its trace on the public and political life and legal processes. Nevertheless, the Constitutional Commission, headed by the President Levon Ter-Petrosyan, with the help of the working group, especially backed by Edward Yegoryan’s active efforts, managed to summarize numerous suggestions, which had made in projects and presented to the referendum a project, which was approved by the Supreme Council and which became a turning point in our country's legal life. The greatest mission of the adopted Constitution was the fact that it conveyed an irreversible charge to the establishment of our statehood and was revealed as a Basic law, which ensured the constitutional stability of the country. A number of countries in transition were unable to overcome it mainly because the prevention of the danger of illegitimizing of the state bodies was not insured at the constitutional level.

The further steps of the constitutional developments were natural in our country as they were equivalent to the developments of the social life, extension of international integration of Armenia, undertaken international commitments and imperatives of insuring the rule of law. In 2005, the initiatives of the President Robert Kocharyan and various political forces led to the amendments in the sphere of constitutional developments, which resulted a number of constitutional solutions for the establishment of prerequisites for the creation rule of law.

Constitutional developments in the country must have necessary and balanced dynamics. It is dictated by the natural logic of development. The following episode is symbolic: Albert Einstein during the examinations at the university used to ask the students the same questions, which they had answered the previous year. One of the students asked in surprise. “Dr. Einstein, aren’t these last year exam questions?” Einstein answered, “You are absolutely right, but the answers of these questions are not the same for me anymore.”

The Constitution aims to ensure the dynamics of the public life balance and act as a public consent, which is being repaired continuously in the frames of the fundamental rules of existence. Constitutions and constitutionalism cannot be considered only in a narrow legal sense, in the context of pragmatic legal relations or abstract concepts. Both of them are thorough cultural phenomena; they possess with value of systemic, mutually arranged strong roots, distinct civil orientations, and level of the comprehension, perception, and cognition. In the complementary framework, the constitutional culture, in its turn, connects to the constitutional model of democracy, the selection of the strategy of its development.

Each nation's culture is its comprehensive existence, valued presence in time being. The constitutional value orientations of each country and nation are conditioned by its social-cultural features and dictate the specific peculiarities of constitutional solutions. **In its turn, the constitutionality is the systemic and comprehensive availability of the constitutional values in the social life and manifestation of all forms of social behavior of an individual.** The problem does not concludes to the simple application of the Constitution, but the formation of the social system in which the Constitution is realized by each cell of the system as its **condition of its existence** and where constitutional normative values become the rules of real life. State formation is a long lasting and difficult process. Each systemic error can become a reproductive chain and can have destructive consequences, especially if it relates to axiological orientations. For the state of Armenia the harmonization of the constitutional axiology with the complete legal system both in legislative and law enforcement practice, evasion of distortions of fundamental constitutional values, insuring of stable guarantees of rule of law are key problems. It is unquestionable truth, that where the right comes without democracy dictatorship starts, and democracy without the right is just a farce. The invariant characteristics of the constitutional passport of our state is the accomplishment of the legal, democratic, and social state. The integrity of these qualities is organic and dictates equivalent behavior by both the state and civil society. Each deviation from these qualities is a threat to our future and our national security. The fifteen-year-old constitutional chronology of our state shows that no matter how great the public role of the Constitution was in avoiding deep crisis, the rupture between the Constitution and social reality remains significant. This phenomenon is typical of all transition countries, which, based on objective realities, have chosen the way of the introduction of model constitutions.

The current generalizations of the transitology show that in such circumstances greater efforts are needed for constitutionalization of public relations, ensuring of self-sufficiency of the Constitution and new quality to the constitutionalism, parliamentarism and justice. The imperative of the adequate reflection of the current challenges demands a qualitatively new level of interaction of the state and civil society and more active systemized steps on the way of establishment of strengthening the democracy.

What do prompt the lessons of history and international experience of constitutional developments in the sphere of the current issues of development the Armenian constitutionalism? They, in particular, dictate:

- without reasonable meaning of public life, as states the Father Founder of Armenian History, we cannot obtain science to laic order and study political categories,
- without public consent, mutual trust, tolerance and solidarity, civil establishment of constitutionality is not possible in the state,
- the constitutional values can become a living reality only in the case when they are realized as necessity both for the state power and each member of society,
- overcoming the disharmony of constitutional legal consciousness between the members of the public and state institutions is a crucial condition for overcoming the social disagreements and possible cataclysms in the country,
- the supreme issue of the constitutional legal state is insuring the right, guarantee and protection and limitation of power,
- without constitutional stability in the country the insurance of dynamic and progressive development is impossible,
- the Constitution cannot be viewed as a legal tool in the hands of state power, it is the Basic Law of civil society and, first of all; it limits the power and guarantees the people's natural rights and fundamental freedoms.

Ensuring the rule of Constitution is the supreme task of the state power. In this aspect an important role is reserved for in the constitutional courts. Judicial constitutional control in our country has not only been established but has received international wide recognition. The influence of the constitutional court on the local constitutional legal developments has increased. Only during the recent two and half years, the Constitutional Court of the Republic of Armenia on the basis of extensive legal positions has adopted decisions on more than 160 cases, which is

more than the Russian Federation, Georgia, Azerbaijan, Latvia, Lithuania and Moldova together. In addition, in 29 cases the challenged provisions of the law have been recognized as contradicting and invalid, which unprecedented according to the international standards. The Constitutional Court presented the comprehensive analysis of such a situation, both from the positive and negative aspects in its annual reports of last two years.

The Constitutional system of diagnosis and control needs future development in our reality. The last constitutional developments are only half a step in this direction. The decade practice of the Federal Republic of Germany and many other Western European countries shows that in this system the gaps are incompatible with the fundamental principles of establishment of the state. General warranty of ensuring the rule of Constitution, direct implementation of the constitutional human rights and further increasing of the constitutional review are the dynamic harmony of the chain of function - institute – power.

The ensuring of the rule of Constitution is a normative requirement of the Constitution and follows from axiological orientations and basic principle of the basis of the constitutional order of the Constitution. As the President of the Republic of Armenia Mr. Serge Sargsyan mentioned in his message to the Council of Europe on the occasion 20th anniversary of formation of the European Commission for Democracy through Law, for the Republic of Armenia the human dignity, freedom, democracy, non-discrimination, pluralism, tolerance, respect for human rights, implantation of which are priorities for our state agenda and is very important nowadays. As the cornerstone values of the constitutionality, they require immediate implementation to make the Constitution a living reality for each resident of our country a day before.

Dear participants of the ceremony,

Dear compatriots,

I would like to congratulate all of us, the population of the Republic of Armenia and all Armenian nation on the occasion of 15th anniversary of the Constitution and I end my speech with the precept of the Father Founder of our history:

Do not disturb peace in our souls and in the country,

Avoid establishment of heresy because of illiteracy,

Remain true to our apostolic convictions,

Establish mercy with the help of Constitution in the land of Armenia.

These are imperatives of our historical destiny and the duty and responsibility of each for generations.

Alternative simply does not exist.

G. Harutyunyan

03 July 2010