

# ARMENIA

## Constitutional Court

### Introduction

#### 1. Date and context of creation

In December 1988, a Constitutional Control Committee was set up under an amendment to the Constitution of the Soviet Union. The Law of the Union relating to this Committee also provided for creating a Constitutional Control Committee in each Republic of the Union, which never actually happened.

In 1991, moreover, the Armenian legislative had considered setting up a Constitutional Court, although it never actually did so (two laws, namely the Law on the President of the Republic of 1 October 1991 and the Law on the Supreme Council of the Republic of Armenia of 19 November 1991, simply alluded to such a Constitutional Court). However, no law or amendment to the Constitution of the Armenian SSR was ever adopted to put this declaration of intention into effect.

The new Constitution promulgated by referendum on 5 July 1995 finally set up the Armenian Constitutional Court. The Law on the Constitutional Court was adopted by the National Assembly on 20 November 1995 and signed by the President of the Republic on 6 December 1995. On 5 and 6 February 1996 the members of the Constitutional Court were appointed and the Court began operating on 6 February 1996, when its members were sworn in before the National Assembly.

In 2005 Constitutional reforms took place in the Republic of Armenia (in 2005, November 27 the text of the RA Constitution (with the Amendments) was adopted by the referendum). The Amendments directly concerned the system of constitutional justice. Firstly, Article 93 of the Constitution enshrined: “The Constitutional Court shall administer the constitutional justice in the Republic of Armenia.” According to Article 94 of the Constitution “The powers, the procedures of formation and activities of the courts shall be defined by the Constitution and laws. “ As a result of the Constitutional Amendments the scope of the persons applying to the Constitutional Court, as well as the scope of the objects of the constitutional control, was substantially extended, the Institute of the Individual Constitutional Complaint was established in the Republic of Armenia (Article 100 Point 6 of the RA Constitution).

The Constitutional amendments objectively put forward the necessity of fundamental amendments to the RA Law on “The Constitutional Court”. By the legislative initiative of the RA Government the new draft of the RA Law on “The Constitutional Court” was presented to the RA National Assembly. The draft Law passed detailed examination in the European Commission for “Democracy through Law”. The new Law came into force on 1 July 2006.

According to the requirements of the Law, the RA Constitutional Court adopted the new Rules of Procedure, on the basis of which the organization of the admission of Individual Complaints and the preliminary works for the examination of the cases is ensured, as well as the peculiarities of the judicial service in the Constitutional Court are determined.

The Law on “The Constitutional Court” more clearly defined the state-power status of the Constitutional Court, stating in Article 1 of the Law that ““The Constitutional Court is the highest body of the constitutional justice which provides supremacy and direct enforcement of the Constitution in the legal system of the Republic of Armenia (RA).” The Law made serious amendments to the procedures of the constitutional proceedings, stipulated the principle of ex officio clarification of the case circumstances, the procedural specifics of the examination of various cases were determined, the legislative prerequisites for the inculcation of the institute of the Individual Complaints were created.

According to Article 116 of the Constitution Article 101 Point 6 came into force on 1 July 2006. By July 1st all necessary legislative and organizational guarantees for admission and consideration of the Individual Complaints were created. The Judicial Compositions of the Constitutional Court were formed.

## 2. Position in the judicial hierarchy

The Armenian Constitutional Court is a judicial body which is separate and independent from the executive, the legislative and the judiciary. It is responsible for supervising the constitutionality of laws and other legislative instruments.

According to the Constitution, the legal system of the Republic of Armenia comprises three judicial levels: Courts of First Instance, Courts of Appeal and the Court of Cassation. The Constitutional Court does not form the apex of any judicial hierarchy, as it is outside to the ordinary judicial system, of which the Court of Cassation constitutes the highest level of jurisdiction. The case-law of the Constitutional Court cannot be criticised by the other Courts.

## I. Legislative bases

- Articles 51, 55.10, 57, 59, 83, 86, 109 and Article 92, 93, 94, 96, 97, 98, 99, 100, 101 and 102 of Chapter 6 of the Constitution;
- The Law on the Constitutional Court of 1 July 2006.

## II. Composition and organisation

### 1. Composition

The Constitutional Court comprises nine members. Membership of the Constitutional Court is open to any citizen of the Republic aged 35 or over. The members (including the President) discharge their duties until the age of 65 (according to transitional provisions, namely Article 117, Paragraph 13 of the RA Constitution, the incumbent members of the Constitutional Court shall continue to remain in office until the age of 70 years).

The National Assembly and the President of the Republic are jointly empowered to appoint members of the Constitutional Court.

Five members of the Constitutional Court are elected by the National Assembly upon the recommendation of the Chairman of the National Assembly. The other four members are appointed by the President of the Republic, at his/her discretion.

The President of the Constitutional Court is not elected by the members of the Constitutional Court. He/she is appointed from the Court membership by the National Assembly on a nomination from the Chairman of the Assembly. However, if the National Assembly fails to appoint the President of the Constitutional Court within 30 days after the office of the President of the Constitutional Court is vacant the President of the Republic must do so in its place.

Persons fulfilling the following conditions are eligible for membership of the Constitutional Court:

- citizens of the Republic aged at least 35 who holds electoral rights and does not have citizenship of any other country;
- higher legal education qualifications or an academic degree in Constitutional Law;

- at least 10 years of legal work experience;
- command of the Armenian language.

Members of the Constitutional Court may not be engaged in any entrepreneurial activity nor shall he/she hold any office in state or local self-government bodies not related to his/her duties, hold any position in commercial organizations, as well as engage in any other paid occupation, except for scientific, educational and creative work, which shall not hinder from fulfilling the duties of the Member of the Constitutional Court.

The constitutional principle is that a member of the Court Constitutional Court cannot be dismissed. Decisions to dismiss a Court members must be taken by the person or body (ie the President of the Republic or the National Assembly; in the latter case, by a majority vote of the total number of Deputies) having appointed the member in question. Where such a question has been raised, the Constitutional Court must consider the case in the member's absence, and must issue a conclusion on the termination of the member's office by a majority of at least two thirds of the Court membership (ie 6 out of 9). Once the conclusion has been issued, the actual decision on the Constitutional Court member's dismissal must be taken by the authority having appointed him or her (although in fact no member of the Constitutional Court has ever been dismissed since its inauguration).

The independence of the members of the Constitutional Court is guaranteed by their submission to the Constitution and the Law on the Constitutional Court. It is prohibited to influence a member of the Constitutional Court, and anyone attempting to do so is liable to prosecution.

Court members cease to discharge their functions when they:

- 1) has reached the age of 65;
- 2) has died;
- 3) has had his/her citizenship withdrawn or has been granted a foreign citizenship;
- 4) has applied in writing to the body that has appointed him/her, requesting to terminate his powers and has informed the Constitutional Court of that appeal and at least in 10 days has reiterated his/her resignation.
- 5) is determined by a Court of Law to be unable to work, missing or dead;

6) has been found guilty by a Court of Law.

7) has been appointed with a violation of Constitution, which was proved by a Court of Law.

On a conclusion from the Constitutional Court, members of the Court must be dismissed if they:

- 1) has been absent for three times within one year from the sessions of the Court without an excuse;
- 2) has been unable to fulfill his/her powers as the Constitutional Court for six months member because of some temporary disability or other lawful reason;
- 3) violates the rules of incompatibility related to the Constitutional Court Member that are prescribed by this Law.
- 4) expressed an opinion in advance on the case being reviewed by the Constitutional Law or otherwise raised suspicion in his/her impartiality or released information on the process of the closed door consultation or broke the oath of the Constitutional Court Member in any other way.
- 5) is affected by a physical disease or illness, which affected the fulfilment of the duties of a Constitutional Court Member.

## 2. Proceedings

Proceedings before the Constitutional Court are governed by the Law on the Constitutional Court.

According to the Constitution, the following are entitled to apply to the Constitutional Court:

- 1) the President of the Republic - in cases stipulated in es 1, 2, 3, 7 and 9 of Article 100 of the Constitution;
- 2) the National Assembly – in cases stipulated in Paragraphs 3, 5, 7 and 9 of Article 100 of the Constitution;
- 3) at least one-fifth of the total number of the deputies - in cases stipulated in Paragraph 1 of Article 100 of the Constitution;
- 4) the Government - in cases stipulated in Paragraphs 1, 6, 8 and 9 of Article 100 of the Constitution;
- 5) bodies of the local self-governance on the issue of compliance to the Constitution of the state bodies' normative acts violating their constitutional rights;

- 6) every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged;
- 7) courts and the Prosecutor General on the issue of constitutionality of provisions of normative acts related to specific cases within their proceedings;
- 8) the Human Rights' Defender – on the issue of compliance of normative acts listed in Paragraph 1 of Article 100 of the Constitution with the provisions of Chapter 2 of the Constitution;
- 9) candidates for the President of the Republic and Deputies – on matters listed in Paragraphs 3.1 and 4 of Article 100 of the Constitution.

The Constitutional Court issues decisions and conclusions on application only: it is not empowered to consider cases on its own initiative. Applications are transmitted to the Constitutional Court in writing and presented to the President of the Constitutional Court.

If it is evident that the issue brought in the appeal is not subject to the review of the Constitutional Court or if it is presented to the Court by bodies, person(s) who are unauthorized to make an appeal to the Court, the Court Staff shall return the application within five days.

The procedure of admission of an individual constitutional application to the Constitutional Court prescribed by Paragraph 6 of Article 101 of the Constitution is determined by the Rules of Procedure of the Constitutional Court.

Every application submitted to the Court is considered at meetings of its members; if the application concerns a subject within the Court's jurisdiction, if it complies in formal terms with all the procedures set out in the Law on the Constitutional Court and if the applicant is entitled to apply to the Constitutional Court, the President of the Court appoints one or more members of the Court to conduct the preliminary study of the case.

On completion of the preliminary study of the case, the Constitutional Court member(s) who conducted the study must report to the President of the Court on the results of the case study.

The President of the Constitutional Court must convene the Court members to settle the issue of admissibility. If the application is ruled admissible, the President of the Constitutional Court then

convenes a sitting of the Constitutional Court. The persons and bodies concerned are informed of the Constitutional Court's decision to accept the case for adjudication.

The Constitutional Court appoints one or more rapporteurs. The rapporteur(s) and the President of the Constitutional Court select the persons to be summoned to the sitting. The case-file created by the rapporteur(s) must be sent to each member of the Constitutional Court, must mandatorily be transmitted to the parties, and may be sent to other persons summoned to the sitting (experts and witnesses), on a decisions from the President of the Constitutional Court.

The parties may appear before the Constitutional Court either in person or through their representatives. No party may have more than three representatives. Parties are entitled to consult all the documents in the case-file.

The Court may request and obtain additional information and documentation. Requests and invitations from the Constitutional Court are binding upon State bodies, public figures, institutions, enterprises, organisations and citizens.

As a general rule, sittings are public and adversarial. By a majority vote, the Constitutional Court shall decide to hold a session or part of a session in the absence of the media and the public for the interest of community morals, public order and state security, and for the privacy of the parties and the case. With the initiation of the Constitutional Court or with the motion of any party of the trial the issue of hearing in camera is also examined and solved in the closed session.

During the sitting the President of the Constitutional Court must verify the presence of the majority of Court members, the parties and the other persons summoned. He/she then declares the sitting open and informs the parties of their rights and duties. After the opening presentation by the rapporteur(s), the Court members and parties may put questions to the latter. All the parties express their points of view and put forward arguments on the case, without any limit on speaking time.

The Constitutional Court may adjourn proceedings if it considers that it needs to clarify any circumstances that will decisively affect the final decision or conclusion.

The Court deliberates in camera. Members of the Constitutional Court are not entitled to abstain or refuse to vote. The Court can only adjudicate if the majority of its membership attends the sitting (the Court has no separate chambers). The President holds the casting vote. While making decisions on the

cases determined by Paragraph 1 and 2 of Article 100 of the Constitution the Constitutional Court Member can present a descending opinion on the final as well as on the reasoning part of the decision, which is published in the Constitutional Court Bulletin together with the Court decision.

Proceedings before the Court must in all cases be recorded in writing. The decisions and conclusions adopted by the Court are announced publicly at the sitting.

Any Court decision or conclusion must be sent within three days of their adoption to all the parties involved and to the President of the Republic, the National Assembly, the Government, the Court of Cassation, the Ombudsman and the Chief Prosecutor.

During 2006-2007 on the basis of 62 individual constitutional applications the challenged norms of the laws have been declared as contradicting to the RA Constitution in 24 cases. The general statistics indicate, that 11.9 percent of individual application has been admitted as constitutional compliant. The 31 percent of the admitted individual applications have been satisfied recognizing the challenged provisions contradicting to the RA Constitution.

### 3. Organisation

The Head of the Staff is responsible for all the Court's administrative work. This includes appointing staff and managing human resources, running the library and publishing the Bulletin of the Constitutional Court.

There is a total staff of 41 (excluding technical services). Nine of the staff members are assistants to the members of the Court.

The Constitutional Court has five advisers.

Legal aid is provided by the Legal-advisory Department, which comprises three divisions: Division of analyze of individual applications, Expertize-analitic Devision and Dvision of International treaties.

### III. Powers of the Court

The Constitutional Court shall, in conformity with the procedure defined by law:

- 1) determine the compliance of the laws, resolutions of the National Assembly, decrees and orders of the President of the Republic, decisions of the Prime Minister and bodies of the local self-government with the Constitution;
- 2) prior to the ratification of international treaties determine the compliance of the commitments stipulated therein with the Constitution;
- 3) resolve all disputes arising from the outcomes of referenda;
- 3.1) resolve all disputes arising from decisions adopted with regard to the elections of the President of the Republic and Deputies;
- 4) declare insurmountable or eliminated obstacles for a candidate for the President of the Republic;
- 5) provide a conclusion on the existence of grounds for impeaching the President of Republic;
- 6) provide a conclusion on the incapacity by the President to discharge his/her responsibilities;
- 7) provide a conclusion on terminating the power of a member of the Constitutional Court, detaining him/her, agreeing to involve him/her as an accused or instituting a court proceeding to subject him/her to administrative liability;
- 8) provide a conclusion on the grounds to discharge the head of community;
- 9) in cases prescribed by the law adopt a decision on suspending or prohibiting the activities of a political party.

#### IV. Nature and effects of judgments

The Constitutional Court shall adopt decisions and conclusions in conformity with the procedure and terms stipulated in the Constitution and the Law on the Constitutional Court.

The decisions and conclusions of the Constitutional Court shall be final and shall come into force following the publication thereof.

The Constitutional Court may adopt a decision stipulating a later term for invalidating a normative act contradicting the Constitution or a part thereof.

On matters stipulated in Paragraphs 1-4 and 9 of Article 100 of the Constitution the Constitutional Court shall adopt decisions whilst on matters stipulated in Paragraphs 5-8 it shall issue conclusions. The conclusions and the decision on matters stipulated in Paragraph 9 shall be adopted by at least

two-thirds of the total number of the members whilst the remaining decisions shall be adopted by a simple majority of votes.

If the conclusion of the Constitutional Court is negative, the issue shall be removed from the scope of competence of the relevant body.

The decisions and conclusions of the Court are published in the official press and the Bulletin of the Constitutional Court (Teghekagir).