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

IN THE CASE OF DETERMINING THE ISSUE OF COMPLIANCE WITH THE CONSTITUTION OF THE OBLIGATIONS PRESCRIBED IN THE REGULATION ON JOINT ACTIVITY OF THE COMMISSION ON DELIMITATION AND BORDER SECURITY OF THE STATE BORDER BETWEEN THE REPUBLIC OF ARMENIA AND THE REPUBLIC OF AZERBAIJAN AND THE STATE COMMISSION ON DELIMITATION OF THE STATE BORDER BETWEEN THE REPUBLIC OF AZERBAIJAN AND THE REPUBLIC OF ARMENIA, SIGNED ON 30 AUGUST 2024

City of Yerevan 26 September 2024

The Constitutional Court composed of A. Dilanyan (Presiding Judge), V. Grigoryan, H. Tovmasyan, D. Khachaturyan, H. Hovakimyan, E. Shatiryan, S. Safaryan, A. Vagharshyan,

with the participation of (within the framework of written procedure):

Deputy Prime Minister of the Republic of Armenia M. Grigoryan, the Representative of the Government,

according to point 3 of Article 168, paragraph 3 of Article 169 of the Constitution, as well as paragraph 1 of Article 23, Articles 40 and 74 of the Constitutional Law "On the Constitutional Court",

examined in an open session through written procedure the case on determining the issue of compliance with the Constitution of the obligations prescribed in the Regulation on Joint Activity of the Commission on Delimitation and Border Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan and the State Commission on Delimitation of the State Border between the Republic of Azerbaijan and the Republic of Armenia, signed on 30 August 2024.

In its Decision No 1399-A of 5 September 2024, the Government approved the legislative initiative of the Government concerning the draft Law “On Ratifying the Regulation on Joint Activity of the Commission on Delimitation and Border Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan and the State Commission on Delimitation of the State Border between the Republic of Azerbaijan and the Republic of Armenia signed on 30 August 2024” and decided to apply to the Constitutional Court to determine the compliance with the Constitution of the obligations specified in the Regulation in question.

The case is being examined because the Government filed an application with the Constitutional Court on 5 September 2024.

Having studied the written explanation of the Government Representative before the present Case, examined the Regulation mentioned above, and the other documents available in the case, the Constitutional Court **ESTABLISHED**:

1. The Regulation on Joint Activity of the Commission on Delimitation and Border

Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan and the State Commission on Delimitation of the State Border between the Republic of Azerbaijan and the Republic of Armenia (hereinafter referred to as "the Regulation") was signed on 30 August 2024 *to carry out the delimitation of the state border between the Republic of Armenia and the Republic of Azerbaijan.*

Deputy Prime Minister M. Grigoryan, the Commission on Delimitation and Border Security Chairperson of the State Border between the Republic of Armenia and the Republic of Azerbaijan, signed the Regulation on behalf of the Republic of Armenia. The Government approved the proposal to sign the Regulation by Decision No 1225-A of 8 August 2024. The Letter of Authorisation from the Prime Minister for signing the Regulation (L-28) was issued to Deputy Prime Minister M. Grigoryan on 19 August 2024.

1.2. According to the Statement of Information from the Ministry of Foreign Affairs on the Expediency of Ratification of the Regulation and the written explanation of the Government Representative before the Constitutional Court in the present Case:

1.2.1. The agreement to establish a commission on delimitation of the interstate border between the Republic of Armenia and the Republic of Azerbaijan was reached in Sochi on 26 November 2021, during the trilateral meeting of the leaders of Armenia, Azerbaijan and Russia, where the Parties agreed to take steps for enhancing the level of stability and security of the Armenia-Azerbaijan border and to establish a bilateral commission on delimitation of the state border between the Republic of Armenia and the Republic of Azerbaijan.

1.2.2. At the trilateral meeting in Brussels on 6 April 2022 between the Prime Minister of the Republic of Armenia, the President of the European Council, and the President of the Republic of Azerbaijan, Armenia and Azerbaijan agreed to establish, by late April 2022, a bilateral commission for delimitation of borders between Armenia and Azerbaijan, which would be vested with the power to ensure security and stability along the border as well.

1.2.3. As part of the first Meeting of the European Political Community held in Prague on 6 October 2022, at the meeting between the Prime Minister of the Republic of Armenia and the Republic of Azerbaijan, on the initiative of the President of the Republic of France and the President of the European Council, Armenia and Azerbaijan confirmed their commitment to the Charter of the United Nations (UN) and the Alma Ata 1991 Declaration through which Armenia and Azerbaijan recognise each other's territorial integrity and sovereignty. The Parties confirmed that this would serve as the basis for the activities of the border delimitation commissions.

1.3. By the Decision of Prime Minister No 570-A of 23 May 2022, the Commission on Delimitation and Border Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan was established, and its composition was approved.

By Decision of Government No 2154-A of 14 December 2023, the rules of procedure for organising and holding sittings and joint working meetings between the Commission on Delimitation and Border Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan and the State Commission on Delimitation of the State Border between the Republic of Azerbaijan and the Republic of Armenia (hereinafter referred to jointly as "Commissions") was approved.

According to the Minutes of the 8th Meeting of the Commissions of 19 April 2024, the Commissions agreed that in the delimitation process, they would be guided by the Alma Ata 1991 Declaration, and they preliminary agreed - at the initial stage of the delimitation process in accordance with the fundamental principle defined the Declaration - upon passing of the borderline in the relevant sections to bring it into compliance with the legally justified

inter-republican border that existed within the Soviet Union at the moment of its dissolution. The Commissions also agreed to stipulate the fundamental principle laid down in the Alma Ata 1991 Declaration in the Regulation.

According to the Protocol signed between the Commissions as a result of the 9th Meeting of the Commissions on 15 May 2024, the Parties agreed on the jointly prepared Protocol-description of the borderline sections immediately between the settlements of Baghanis (Republic of Armenia) — Baghanis Ayrum (Republic of Azerbaijan), Voskepar (Republic of Armenia) — Ashaghi Askipara (Republic of Azerbaijan), Kirants (Republic of Armenia) — Kheyrimli (Republic of Azerbaijan) and Berkaber (Republic of Armenia) — Ghizilhajili (Republic of Azerbaijan) in accordance with the 1976 topographic map of the General Staff of the USSR Armed Forces, that passed duty procedure in 1979.

1.4. The written explanation of the Government Representative before the Constitutional Court in the present case particularly states that the delimitation and demarcation of the state border have security significance for the Republic of Armenia, and in that process Armenia is guided by the principles of protection of the territorial integrity of the Republic of Armenia, ensuring of the security of the Republic of Armenia and of the international commitments assumed by the Republic of Armenia, as well as of peaceful settlement of border issues.

The Regulation particularly provides for organising delimitation works and adopting relevant guidelines and documents within the framework thereof, preparing the Protocol description for passage of the state borderline, drawing a delimitation map to the relevant scale, performing activities of the delimitation expert groups, and preparing and publishing delimitation documents.

According to the Regulation, in the delimitation process the Commissions use all relevant cartographic documents, as well as all regulatory and other legally justified documents. Moreover, the fundamental principle of guidance by the Alma Ata Declaration determines the scope of relevant documents, since in line with the Alma Ata Declaration these documents must be legally justified documents and maps existing at the moment of dissolution of the Soviet Union that reflected the administrative border between Soviet Armenia and Soviet Azerbaijan.

Implementing the mechanisms provided for by the Regulation will allow for the prescription of the international legal status of Armenia's state border on a bilateral level.

The Regulation and the documents adopted on the basis thereof complement the legal grounds for the Commissions' activities, aiming at the regular course of delimitation works.

At the same time, the Regulation outlines opportunities to ensure the security of the bordering settlements, create conditions for the economic activities of residents of border areas, and apply additional mechanisms for other purposes (in particular, regulations on optimising the passage of the borderline).

It also regulates procedural issues related to the future Agreement on the State Border between the Republic of Armenia and the Republic of Azerbaijan to be concluded between the two States as the result of activities of the Commissions, where stipulation of the international legal grounds for the state border of the Republic of Armenia is an important legal guarantee for strengthening the security and ensuring the inviolability of the borders and territorial integrity of the Republic of Armenia.

The Regulation establishes sustainable mechanisms, relevant toolkits, and institutional grounds for regulating border issues between the two States.

As of 12 September 2024, the Azerbaijani side has not completed the internal procedures necessary for the Regulation to enter into force.

1.5. In response to Letters of Reporting Judges in the present Case SDD-35 and SDD-36

of 10 September 2024, addressed to the Government Representative before the Constitutional Court in the present case, the Constitutional Court, on 16, 17, 18, 23 and 24 September 2024, received (additional) letters of response, attached to which the Constitutional Court was provided with the required documents, materials and data, including the Letter of Authorisation (L-28) of 19 August 2024 issued by the Prime Minister to Deputy Prime Minister M. Grigoryan for signing the Regulation; a copy of the Russian original of the Regulation; the electronic copies of the required archival materials available at the "National Archives of the Republic of Armenia" SNCO, provided by the Ministry of Justice.

1.6. According to point 2 of Article 1 of the Regulation, the Commissions shall engage experts and specialists in their activities, if necessary

1.7. Under the Regulation, the Republic of Armenia shall, based on reciprocity, assume, particularly, the following obligations:

1.7.1. ensure that the Commission on Delimitation and Border Security of the State Border of the Republic of Armenia and the Republic of Azerbaijan (hereinafter referred to as "the Commission of the Republic of Armenia"), in coordination with the Commission of the other side, organises and oversees the implementation of satellite photography and aerial photography, geodesic, cadastral and cartographic works, reconnaissance and survey works for the sections of the area where the borderline passes, and other works related to the implementation of delimitations (delimitation works) (Article 2, point 2);

1.7.2. ensure that during the delimitation works, the Commission of the Republic of Armenia exchanges — as prescribed by the legislation of the Republic of Armenia — relevant satellite photography, aerial photography, cartographic and geodetic materials to create the delimitation map for the state border (delimitation map) prescribed by Article 5 of the Regulation (Article 2, point 3);

1.7.3. ensure that the Commission of the Republic of Armenia elaborates, coordinates with and adopts the following documents;

(1) guidelines on the rules of procedure for expert groups;

(2) guidelines on preparing the delimitation map;

(3) guidelines on the procedure for displaying on the delimitation map Armenian geographical names in Azerbaijani and Azerbaijani geographical names in Armenian;

(4) guidelines on the procedure for drawing up the Protocol-description for passage of the state borderline;

(5) guidelines on the procedure for preparing and publishing delimitation documents (Article 2, point 4);

1.7.4. ensure that a delimitation expert group(s) are established by the Commission of the Republic of Armenia during the delimitation process, which would implement a set of complex delimitation measures on-site, and as a result of conducted works, documents would be drawn up for submission to the Commission of the Republic of Armenia (Article 3, point 1, sub-point 1);

1.7.5. ensure that the Commission of the Republic of Armenia manages and oversees the activities of the delimitation expert group(s) and studies, verifies and adopts the documents presented by that group(s) during the delimitation process (Article 3, point 1, sub-points 2, 3);

1.7.6. cover the costs of the Commission of the Republic of Armenia; moreover, in specific cases, the issue of costs shall be separately agreed upon (Article 3, point 2);

1.7.7. ensure the implementation of the delimitation works by the Commission of the Republic of Armenia in the sections/parts of the borderline separately agreed upon, the preparation of the description of the passage of the borderline for each such section/part,

which shall be considered as agreed upon until the full completion of delimitation process (Article 5, point 1);

1.7.8. ensure that the Commission of the Republic of Armenia prepares the Protocol-description for passage of the entire state borderline and the documents provided for by point 2 of Article 5 of the Regulation attached thereto, based on the results of complex delimitation works, where appropriate, in addition to the mentioned documents, other materials prepared during the performance of complex delimitation works may also be added (Article 5, points 2, 5).

1.8. According to Article 4 of the Regulation, in implementing delimitation works, the Commissions may consider optimisation possibilities for the passage of the borderline and agree on the process criteria and forms for the following purposes:

(1) ensuring the security of bordering settlements;

(2) creating conditions for the traditional economic activities of residents in border areas;

(3) ensuring the operation of transboundary objects of engineering, energy, transportation, melioration and other infrastructural facilities, reserves, national parks, continuation of ecological and environmental activities, as well as the use of water resources;

(4) protecting objects of worship, cemeteries, cultural and historical heritage;

(5) straightening tortuous lines;

(6) passage of the borderline through natural geographic objects and relief features.

1.9. According to Article 6 of the Regulation, the latter may be amended and supplemented upon mutual agreement, which shall be formalised in protocols constituting an integral part of the Regulation and shall enter into force in accordance with Article 7 of the Regulation.

1.10. In accordance with Article 7 of the Regulation, it shall enter into force on the date the final written notification about the completion of all internal procedures necessary for its entry into force is received from both the Republic of Armenia and the Republic of Azerbaijan, , and it shall remain effective until the full completion of the delimitation works.

The Regulation is signed in two original copies, each in Armenian, Azerbaijani, and Russian, with all texts equally authentic. In case of divergence regarding the interpretation of the Regulation, the Russian text shall prevail.

2. Scope of examination of the present Case

The Declaration on the Independence of Armenia (hereinafter referred to as "the Declaration"), adopted on 23 August 1990 (the Supreme Council adopted the final text on 24 August 1990), is cited in the Preamble of the Constitution, adopted through a nation-wide referendum held in the territory of the Republic of Armenia on 5 July 1995, with the following phrasing: "*The Armenian people — taking as a basis the fundamental principles of the Armenian Statehood and the nation-wide objectives enshrined in the Declaration on the Independence of Armenia, (...)*".

Taking into account the Joint Decision of the Supreme Council of the Armenian SSR and the National Council of the Nagorno-Karabakh "On reunification of the Armenian SSR and the Nagorno-Karabakh" of 1 December 1989, which is stated in the Preamble of the Declaration, and the fact that the Constitutional Court has not, till this day, expressed a doctrinal interpretation on the issue of the possible impact of the Declaration on the content of the Constitution, the Constitutional Court considers it necessary to establish the extent the principle for determination of the territory of the Republic of Armenia, provided for by the Regulation (within the meaning of the Alma Ata 1991 Declaration — "*existing borders*") complies with the Constitution.

3. Position of the Constitutional Court

3.1. In its several decisions, the Constitutional Court has referred to the meaning of the Preamble of the Constitution and the guiding importance of the provisions enshrined therein in the interpretation of the provisions of the Constitution (SDV-1590, SDVo-1680).

In particular, by referring to the scope of the non-amendable provisions of the Constitution in Decision SDV-1590 of 29 April 29 2021, the Constitutional Court stated that the Preamble of the Constitution also unavoidably amounts to the non-amendable provisions of the Constitution. The Constitutional Court has particularly stated:

> 5.1. (…) The stability of the Constitution is one of the important principles of modern constitutional systems and also serves as an important guarantee for the strengthening and development of constitutionality. Moreover, the stability of the Constitution is ensured by the stability of the norms, which guarantee the non-amenability of the fundamental principles and values underlying the Constitution, regardless of the frequency of amendments to the text of the Constitution.
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> For the effective observance and protection of the fundamental principles and values underlying the Constitution, the Constitutional Court notes that, regardless of the volume of amendments to the text of the Constitution or the scope of subjects empowered to amend it, in the course of development of societal relations, the dynamic stability of the Constitution as the primary regulator can be ensured by observing the rules of the hierarchy of its norms.
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> 5.2. The Constitutional Court considers it necessary to class the provisions prescribed by the Constitution, according to the authority of the subjects adopting them, into the following groups:
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> (a) The Preamble to the Constitution, Articles 1-3 and 203, as non-amendable provisions of the Constitution;
>
> (…)
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> The objectives of differentiating the procedure for amending the provisions of the Constitution are to ensure the supremacy of the values and principles enshrined in the non-amendable provisions established by the founding constituent power of the Republic of Armenia, the Armenian people, internal stability of the Constitution, foreseeability of interpretation of the provisions of the Constitution, and prevention and, if detected, solution of possible internal collisions.
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> The Constitutional Court notes that the non-amendable provisions of the Constitution are the fundamental and central axis based on and around which the legal system of the Republic of Armenia has formed and shall develop.

By developing this interpretation, the Constitutional Court states that this conclusion is based on the consideration that endowing any provision of the Constitution with immutability refers to not only its wording but also to the entire content of the relevant non-amendable provision, for the disclosure of which the purpose of the constituent power to prescribe the given provision has guiding importance. The latter plays a crucial role in applying the purposive interpretation of the relevant provision and, per se, constitutes a decisive starting point for the interpretation of the constitutional provision by this method. Therefore, the endowment of the Preamble of the Constitution with immutability is not conditional upon the conclusion of the decision mentioned above of the Constitutional Court on the immutability of the Preamble of the Constitution. The quality of immutability of the Preamble of the Constitution directly stems from the objectives pursued by the constituent power in prescribing the non-amendable provisions enshrined in the Constitution, which are specified in the Preamble of the Constitution, turning into a component of the legal content of the given non-amendable provision. That is to say, the Preamble of the Constitution is endowed with the quality of a non-amendable provision immediately by the constituent power given that both non-amendable provisions are defined in the Constitution for the purposes stated in the Preamble, and they are endowed with the quality of immutability. The Constitutional Court is neither empowered to exercise this exclusive authority reserved only

to the constituent power nor shall tolerate it while ensuring the supremacy of the Constitution by constitutional justice, the exercise by others of this exclusive authority reserved to the constituent power.

Due to its quality of immutability, the Preamble of the Constitution and other non-amendable provisions of the Constitution have features of superiority to other norms of the Constitution and guiding significance for their interpretation. In other words, within the internal hierarchy of the Constitution, non-amendable provisions are given the highest degree, which also contains practical importance for the interpretation of the Constitution in its entirety and each constitutional provision.

Along with the above-mentioned qualitative characteristics, non-amendable provisions of the Constitution (due to the quality of their immutability) have another clearly distinguished key feature relevant for the consideration of this Case: these provisions are the expression by the constituent power of the will to restrict (self-restrict) thereby the scope of issues to be resolved by the constituent power within the scope of its sovereign jurisdiction. In particular, the overall purpose of non-amendable provisions is to ensure their immutability and stability to the highest degree as a guarantee for stability, longevity, and uninterferable continuity of the constitutional axiology. To achieve this objective, by introducing the non-amendable provisions the constituent power has self-restricted the authority of their own interference with the non-amendable provisions. Endowment by the constituent power of any provision with the quality of immutability protects that provision from the intervention of the authority that is competent to amend the Constitution, and as such, the non-amendable provisions of the Constitution are the provisions (self)-restricting the authority of the constituent power to amend or revoke them.

According to paragraph 1 of Article 2 of the Constitution, in the Republic of Armenia, the power belongs to the people. The Constitution provides that the competent authority to amend any (amendable) provision of the Constitution, *i.e.* the people, through the relevant procedure. The National Assembly is also endowed with limited authority provided by the Constitution to amend the provisions exhaustively listed in the Constitution (Article 202, parts 1-2 of the Constitution with amendments of 2015). At the same time, the non-amendable provisions of the Constitution are protected against interference by the people and, especially, the National Assembly, to amend or revoke them. It expressly derives from paragraph 1 of Article 2 of the Constitution, and this specific and exclusive nature of self-restriction on the will of the constituent power, which is the exclusive authority to both stipulate the non-amendable provision of the Constitution and to endow already stipulated constitutional provision with a feature of immutability is vested only with the people according to the paragraph 1 of Article 2 of the Constitution.

Consequently, in selecting the method of interpretation of the non-amendable provisions the Constitutional Court is under the duty to exercise extreme care in interpreting those provisions by applying only the method of "*narrow*" interpretation in the sense of specifying decisive semantic guides of the provision in question, in particular the list of relevant "*principles*" and "*objectives*" in the constitutional provision "*the fundamental principles of the Armenian Statehood and the nation-wide objectives enshrined in the Declaration on the Independence of Armenia*", taking into account that the consequential effect of going beyond the scope of the method of "*narrow*" interpretation (as opposed to "*broad*" or "*wide*" interpretation) will lead to restriction of the scope of jurisdiction of the constituent power by expanding the substantial scope of the provisions restricting the sovereign jurisdiction of the constituent power (beyond the scope expressly stipulated in the Constitution), contrary to Article 1 ("*the Republic of Armenia is a (…) democratic (…) state*") and part 1 of Article 2 ("*In the Republic of Armenia, the power belongs to the people*")

of the Constitution.

3.2. To answer the question in point 2 of this Decision requires, first of all, a comparative analysis of the Declaration and the 1995 Constitution texts that contain several obvious wording differences but some overlapping and, simultaneously, differing principles and objectives. In particular, but not limited to the following:

a. According to paragraph 3 of the Declaration, "*the bearer of the Armenian statehood is the people of the Republic of Armenia, which exercises the authority directly and through its **representative bodies** on the basis of the constitution and laws of the Republic of Armenia (…)*", which has partial difference and overlapping content, but obviously different wording with parts 1 and 2 of Article 2 of the Constitution, which read as follows: "*In the Republic of Armenia, the power belongs to the people. The people shall exercise their power through free elections, referenda, as well as through **state** and local self-government bodies and **officials** provided for by the Constitution.*"

b. With respect to the systemic principle of subordination of the defence and security systems of the Republic of Armenia within the framework of the principle of separation and balance of powers, paragraph 5 of the Declaration defines that "*To guarantee the security of the Republic of Armenia and the inviolability of its borders, the Republic of Armenia creates its own armed forces, internal troops, organs of state and public security under the jurisdiction of the Supreme Council. (...) The armed forces of the Republic of Armenia can be deployed only by a decision of its Supreme Council.*" While, according to point 12 of Article 55 of the Constitution of 1995, the President of the Republic "*is the Commander in Chief of the armed forces and shall appoint the staff of the highest command of the armed forces*", and according to point 13 of the same Article, the President of the Republic "*shall decide on the use of the armed forces. In the event of an armed attack against or of immediate danger to the Republic, or a declaration of war by the National Assembly, the President shall declare a state of martial law and may call for a general or partial mobilisation.*" Although later on, upon entry into force of the Constitution with the amendments of 2015, the Republic of Armenia was transferred into the parliamentary governance system, according to Article 155 of the Constitution with amendments of 2015, the structural principle of subordination of the defence and security systems to the executive power remained intact, contrary to paragraph 5 of the Declaration.

Some provisions specified in the Declaration, which may, in a broader context, be considered as provisions containing objectives, have not been defined in the Constitution (and in its further amendments), in particular (but not limited to only):

c. "*based on December 1, 1989, Joint Decision of the Supreme Council of the Armenian SSR and the National Council of the Nagorno-Karabakh "On reunification of the Armenian SSR and the Nagorno-Karabakh"*;

d. "*developing the democratic traditions of the independent Republic of Armenia established on 28 May 1918*".

The objective of "*creation of a democratic, legal order*" specified in the Preamble of the Declaration, received the following stipulation in having a non-identical wording but overlapping in terms of content in non-amendable Article 1 of the Constitution: "*The Republic of Armenia is a (…), democratic (…) state governed by the rule of law.*"

The distinct inconsistencies between the provisions of the Constitution of 1995 and the Declaration (among the examples as mentioned above the ones concerning the Preamble of the Declaration and sub-paragraphs (a)-(b) of paragraph 3.2 above) related to differences in their wording and content manifestly indicate that by defining the provisions of the Constitution of 1995, the constituent power did not provide them with identical meaning with the provisions of the Declaration, considering the meaning of the expression "*taking as*

a basis the fundamental principles of the Armenian Statehood and the nation-wide objectives" exceptionally within the framework of the provisions stipulated at its sole discretion in the Constitution with the content only prescribed by itself in the 1995 Constitution.

Applying such meaning to the expression "*taking as a basis*", according to which any *principle* or *objective* stipulated in the Declaration which has a scope different from the one specified in the Constitution, also has other independent meaning given in the Declaration and different from the semantic scope stipulated in the Constitution, directly contradicts the objective of ensuring constitutional stability and security through constitutional certainty by adopting the Constitution: given this, paragraph 12 of the Declaration pre-determined one of significant milestones of the process of independence, *i.e.* adoption of the new Constitution of the Republic of Armenia. Article 6 of the Constitution of 1995 has defined a provision on the supreme legal force of the Constitution, which serves as a basis for an unequivocal conclusion that from the moment of entry into force of the Constitution, the Constitution has been the only legal act with supreme legal force. Under the circumstances of this constitutional reality, the Constitutional Court finds no reason that the constituent power, pursuing an aim to incorporate the legal content of any *principle* or *objective* enshrined in the Declaration into the Constitution of 1995 or guided by the hypothesis of incorporating its entire content into the Constitution of 1995, could create by norms containing distinct differences between the provisions of the Declaration and the provisions of the Constitution of 1995 such a system of legal regulations, where *principles* and *objectives*, enshrined in the Declaration, as part of the Preamble's content, would have apparent inconsistencies with other provisions of the Constitution of 1995.

The same indeed is relevant to all those *objectives* that have not been enshrined in any provision of the Constitution. In this respect, it should also be noted that the constituent power has not only abstained from stipulating in the non-amendable provisions of the Constitution adopted in 1995 any objective enshrined in the Declaration and outlined in points (c)-(d) of paragraph 3.2 of this Decision, but also has not stipulated them in its amendable provisions. Meanwhile, the abstention to stipulate any "*objective*" of the Declaration with quality of "*nation-wide*" in any provisions of the Constitution of 1995, in the case when the considerable part of the provisions of the Constitution of 1995 contains detailed regulations (for example, detailed constitutional regulations focused on activities and organisation of the state power bodies in Chapters 3-7 of the Constitution of 1995, or specifically, the detailed regulations of transitional provisions in Chapter 9), in the absence of any clarity as to inclusion of any *objective* with a quality of *nation-wide* in the content of the Preamble of the Constitution, seriously contradicts with the approach that by referring to the Declaration in the Preamble of the Constitution, the constituent power has pursued an aim to include in the Constitution any *objective* enshrined in the Declaration but not stipulated in the Constitution of 1995.

The apparent difference in the wording of the discussed provisions of the Constitution and the Declaration, and accordingly the possible difference in the content in the part which is not included in the content of the provisions of the Constitution, is a constitutional reality which serves as a starting point for determining the substantive scope of the provision "*taking as a basis the fundamental principles of the Armenian Statehood and the nation-wide objectives enshrined in the Declaration on the Independence of Armenia*" in the Preamble of the Constitution. The application of "*narrow*" interpretation to this constitutional reality excludes the possibility that any *principle* or *objective* enshrined in the Declaration could be included in the substantive scope of the provisions of the Constitution while having the principle or objective in question is not stipulated in the Constitution.

3.3. With respect to the differences in the wordings of the provisions of the Constitution of 1995 and the Declaration given in examples listed in sub-paragraphs (a)-(b) of paragraph 3.2 of this Decision and, to the substantive differences derived therefrom, the Constitutional Court also notes that no measure for eliminating these differences has been undertaken in the course of constitutional amendments in 2005 and 2015: there has never been set a task to stipulate in the Constitution any *nation-wide objective* or *fundamental principle* enshrined in the Declaration that has not been specified in the Constitution.

3.4. The Constitutional Court also finds it necessary to address the issue of the significance of the provisions of the Declaration for the interpretation of the provisions of the Constitution within the context of legal positions established in the practice of constitutional justice.

3.4.1. Reference to the issue of correlation between the Declaration and the Preamble of the Constitution is made in Decision SDV-850 of 12 January 2010, the relevant part of which reads as follows:

> ... the provisions of the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey cannot be interpreted and applied in the legislative process and their application in practice in the Republic of Armenia as well as in the interstate relations in a way that would **contradict the provisions of the Preamble to the RA Constitution and the requirements of Paragraph 11 of the Declaration of Independence of Armenia.**

The part cited from the Decision of the Constitutional Court, which is the only part in the entire Decision that addresses the correlation between paragraph 11 of the Declaration and the Preamble of the Constitution, neither in preceding nor in subsequent parts of the mentioned decision contains any doctrinal consideration and any reasoning in general, which would allow considering even remotely that this conclusive position stipulated in the cited part as a doctrine with such a fundamental impact for the entire Constitution as any provision of the Declaration (in this case - paragraph 11 of the Declaration) to be considered as an *objective* stipulated in the Preamble of the Constitution. Moreover, the Constitutional Court notes that in the above-mentioned Decision, the Constitutional Court has clearly differentiated the substantive scope of the concepts "*Provisions of the Preamble of the Constitution*" and "*requirements of paragraph 11 of the Declaration on the Independence of Armenia*": these phrases were connected with conjunction "and", and the latter was not ("*requirements of paragraph 11 of the Declaration on the Independence of Armenia*") considered as a part of the substantive scope of the former ("*Provisions of the Preamble of the Constitution*"). Consequently, the referred part from the Decision of the Constitutional Court SDV-850 has no doctrinal inconsistency with this Decision of the Constitutional Court, thus excluding the necessity to override the *res interpretata* nature of Decision SDV-850.

3.4.2. By referring in Decision SDV-1680 of 24 March 2023 to the interpretation of the constitutional term "*allegiance to universal values*" stipulated in the Preamble of the Constitution, the Constitutional Court has relied — for the meaning and impact of the constitutional term "*allegiance to universal values*" specified in the Preamble of the Constitution — on the fact that such a provision *per se* has been explicitly stipulated in the Preamble of the Constitution. In particular, to interpret the assurance of the "allegiance to universal values", the Constitutional Court, in the same Decision, underlined the importance of preventing genocides based on the fact that the Declaration referred thereto in the process of independence of Armenia. Otherwise (with no stipulation of the assurance of the "*allegiance to universal values*" in the Preamble of the Constitution), paragraph 11 of the Declaration *per se* provided no legal ground for the Decision mentioned above of the Constitutional Court. As such a ground, there has been the assurance to the "*allegiance to*

universal values" stipulated in the Preamble of the Constitution, by interpreting and developing of which the Constitutional Court has observed that:

> "In the Preamble of the Constitution, the Armenian people adopted the Constitution, among other aspirations and principles, by "assuring the allegiance to universal values." The indication of this assurance in the Preamble of the Constitution makes the constitutional term "universal values" the primary guideline for the purposeful interpretation of the norms of the Constitution.
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> (...)
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> The Constitutional Court emphasises that the basis of the constitutional imperative to consider the commitment of the Armenian people to universal values, as prescribed by the Preamble of the Constitution, especially with regard to their relation to the fight against the grave crimes and impunity that threaten the peace of the world, as a value guideline for the interpretation of the provisions of the Constitution also includes the historical, ethical and civilisational criterion that the importance of the fight against such grave crimes and related impunity, as prescribed by the Preamble of the Statute, was already stated in the process of Armenian independence with the declaration of support for the task of achieving international recognition of the Armenian Genocide (Declaration of Independence of Armenia, paragraph 11). The provision on supporting the international recognition of the Armenian Genocide, as prescribed by the Declaration of Independence of Armenia, is not only aimed at retroactive recognition of the historical reality, but even more so, it is of a civilisational commitment to participate in international efforts aimed at the protection of the peace and security of the world through the fight against such grave crimes and related impunity in the future." (Points 6.2, 6.5 of Decision SDVo-1680 of 24 March 2023).

The Constitutional Court has clearly stated that the provision stipulated in paragraph 11 of the Declaration means a "***commitment of civilisational nature***" to which the Constitutional Court has attached importance only within the scope of interpretation of the constitutional provision "*assuring the allegiance to universal values*" expressly stipulated in the Preamble of the Constitution, by considering as "*the primary guideline for the purposeful interpretation of the norms of the Constitution*" exclusively the constitutional provision "*universal values*" stipulated in the Preamble of the Constitution. That is to say, the Constitutional Court did not consider paragraph 11 specified in the Declaration as an autonomous part of the substantive volume of the Preamble of the Constitution by virtue of the provision "*Taking as a basis the fundamental principles of Armenian statehood and the national aspirations engraved in the Declaration of Independence of Armenia*" of the Preamble of the Constitution.

3.5. Taking into account that the Constitutional Court deals with the issue of regulatory correlation between the provisions of the Declaration and the Constitution for the first time with the depth of analysis made in the previous parts of this Decision (for the description of such previous references see point 3.4), the substantiations of the analyses mentioned above cannot be complete without an analysis of the impact of the Declaration on other acts and the ratio of its value.

Firstly, by heralding the beginning of the independence process under the Declaration, the indicative principles of the constitutional order of the Republic of Armenia were also declared throughout the whole process, to which the Supreme Council applied supra-constitutional meaning and legal force under the Constitutional Law adopted on 10 December 1990. The adoption of legal acts with such profound legal transformative and supra-constitutional potential was an absolute necessity for the implementation of the independence process of Armenia, taking into account the obvious fact that under the rule of the Constitution of the USSR of 1977 and the Constitution of the Armenian SSR of 1978 that were thoroughly imbued with highly aggressive and intolerant ideology of the totalitarian regime towards to the ideals of democracy, state governed by the rule of law and

self-determination and independence of people, any perspective of restoration of the independence of Armenia and its democratic order could have been seriously obstructed. In this respect, the Declaration also carried ideological protective power that fenced as a protective shield the entire legal order and the state authorities of Armenia until the moment the results of the referendum of independence of 21 September 1991, in order to realise the possibility of free expression of the people's will in the independence of Armenia into a constitutional reality. This reality was the first key milestone in the independence process that was directly predetermined in the Declaration.

Secondly, in the sphere of influence of its power of supra-constitutional act that was conferred thereto, the Declaration played the role of a strategy in the process of independence and until 13 July 1995, i.e. the entry into force of the Constitution in order to achieve the objective of Armenia's state power bodies activity towards independence, formation of democratic and legal social order. Without the existence of such a legal ground for the state authorities, as has already been mentioned in the previous paragraph, during the rule of the Constitution of the USSR of 1977 and the Constitution of the Armenian SSR of 1978, when these acts continued to serve as the base of legal legitimacy of state power, the protection of the vital sectors of the Republic of Armenia, in particular, the activities necessary to establish legal and constitutional bases for defence and security, market economy, democratic freedoms and rights, separation of the powers, sovereign and democratic State (the list is non-exhaustive) would be considerably endangered, if at all possible. The Declaration has been a critical act that served to provide solutions to those mentioned above and non-exhaustive vital issues.

Thirdly, the Declaration was an act that had a guiding legal-political and ideological content, the provisions of programme-paragraph 12 of which resulted in the adoption of the Constitution. This introduced in Armenia a period of constitutional stability through establishment of the sovereignty of the Republic of Armenia, democratic, and social state governed by the rule of law, stipulations of the nation-wide objectives "*taking as a basis the fundamental principles of the Armenian Statehood and the nation-wide objectives enshrined in the Declaration on the Independence of Armenia, having fulfilled the sacred behest of its freedom-loving ancestors for the restoration of the sovereign state, committed to the strengthening and prosperity of the fatherland, with a view of ensuring the freedom of generations, general well-being and civic solidarity, assuring the allegiance to universal values*" indicated in the Preamble of the Constitution, having semantic guiding designation in the legal act which was vested with supreme legal power of Constitution, thus profoundly excluding the legal possibility of any extremely dangerous manifestation of "*constitutional dinarchy*".

The historical value it carried for its legal mission before 13 July 1995 and for achieving those as mentioned above and other objectives through its implementation will neither be increased by recognising the independent regulatory impact of the provisions of the Declaration on the Preamble of the Constitution nor diminished by excluding such impact. Its historical value has already been recognised with the highest honour it deserved by being mentioned in the non-amendable provision of the Constitution.

Under the rule of the solid and coherent legal order of the USSR, thoroughly imbued with the ideology radically contradicting the ideas of independence, sovereignty, democratic freedoms and the state governed by the rule of law and highly intolerant to them, the Declaration, effectively breaking through the barrier of the Soviet legal stability, provided a legal window, whereby Armenia, through the exercise of the right to self-determination of the people, gradually achieved the milestones mentioned above. The consecutive result of following the path that any provision of the Declaration is vested with the legal force of the

constitutional provision (moreover, the non-amendable provision of the Constitution), beyond the scope expressly stipulated by the Constitution of the sovereign, democratic, social Republic of Armenia governed by the rule of law, is full of potential risk of "*constitutional dinarchy*", which will turn the Declaration into "*a parent devouring its own child*": neither the Declaration not the Constitution pursued such aim.

3.6. As a result of a cumulative combination of all the observations mentioned above and in reply to the question set forth in paragraph 2 of this Decision, the Constitutional Court concludes that the provision "*taking as a basis the fundamental principles of Armenian statehood and the nation-wide objectives enshrined in the Declaration of Independence of Armenia*" contained in the Preamble of the Constitution does not refer to any principle or objective not stipulated in the Constitution.

3.7. This conclusion of the Constitutional Court makes it no longer necessary to examine the issue concerning the provision stipulated in the Preamble of the Declaration "*based on the December 1, 1989, joint decision of the Armenian SSR Supreme Council and the Nagorno-Karabakh National Council on the "Reunification of the Armenian SSR and the Nagorno-Karabakh*", specified in paragraph 2 of this Decision.

4. Legal regulations concerning the territory of the Republic of Armenia

Taking into account that in accordance with the Alma Ata 1991 Declaration, the Republic of Armenia and the Republic of Azerbaijan recognise and respect each other's territorial integrity and inviolability of the existing borders, and in accordance with the Regulation, the Commissions will rely on the declaration mentioned above as a fundamental principle for the delimitation process of the state border between the Republic of Armenia and the Republic of Azerbaijan (if (...)), the Constitutional Court emphasises that, within the framework of this Decision, with respect to the formulation "*existing borders*" of the declaration mentioned above, the Constitutional Court refers the legal regulations concerning the territory of the Republic of Armenia as a general principle.

According to the Regulation, the Commissions will rely on the Alma Ata 1991 Declaration as a fundamental principle for the delimitation process of the state border between the Republic of Armenia and the Republic of Azerbaijan (if, in future, the agreement on establishing peace and interstate relations between the Republic of Armenia and the Republic of Azerbaijan will provide for other regulations, the given fundamental principle will be aligned with the principle defined by the agreement mentioned above).

The Alma Ata Declaration entered into force for the Republic of Armenia on 21 December 1991. According to the declaration, independent States, including the Republic of Armenia and the Republic of Azerbaijan, recognise and respect each other's territorial integrity and the inviolability of their existing borders.

It is stated in the *Alma Ata Declaration* that the Republic of Armenia and the Republic of Azerbaijan are faithful to the objectives and principles of the Agreement on the establishment of the Commonwealth of Independent States. *In the mentioned Declaration, the independent States, including the Republic of Armenia and the Republic of Azerbaijan, have declared that with the establishment of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist.*

The Agreement on establishing the Commonwealth of Independent States was signed on 8 December 1991.

By the Decision of 18 February 1992, the Supreme Council of the Republic of Armenia ratified the Agreement on the establishment of the Commonwealth of Independent States signed by the Republic of Belarus, the Russian Federation (RSFSR) and the Ukraine in Minsk on 8 December 1991, with several reservations. In particular:

"1. in paragraph 4 of the Preamble of the Agreement, the words "inalienable right to self-determination" shall be replaced with the words "inalienable right to self-determination of people".

(...)

3. The first paragraph of Article 5 shall read as follows:

"The High Contracting Parties acknowledge and respect the right to self-determination of the nations, each other's territorial integrity and the inviolability of the borders".

(...)

10. In paragraph 2 of Article 13 of the Agreement, the words "including for the previous autonomous units of the USSR that held nation-wide referendum on declaring independence before the adoption of the Declaration of the Supreme Council of the USSR "On dissolution of the USSR", and based thereon the highest executive body of the power of the autonomous unit has applied to the Commonwealth of Independent States requesting to accede thereto" shall be added after the words “open for accession by all member states of the Union of Soviet Socialist Republics”.

In 1990, *the Supreme Council of the Armenian SSR declared the beginning of the process to establish an independent statehood. According to Article 2 of the Declaration, the Republic of Armenia is a self-governing state endowed with the supremacy of state authority, independence, sovereignty, and plenipotentiary power. Only the Constitution and laws of the Republic of Armenia are valid for the whole territory of the Republic of Armenia.*

According to Constitutional Law H.N.-0217-I adopted by the Supreme Council of the Republic of Armenia on 10 December 1990, *before the adoption of the Constitution of the Republic of Armenia, the provisions of the effective Constitution that contradict the laws adopted by the Supreme Council of the Republic of Armenia based on the Declaration on the Independence of Armenia, shall be revoked.*

Governed by the provisions and objectives of the Declaration on the Independence of Armenia and based on point 5 of Article 98 of the Constitution of the Republic of Armenia, *the Supreme Council of the Republic of Armenia on 1 March 1991 decided*: TO HOLD A REFERENDUM WITHIN THE TERRITORY OF THE REPUBLIC OF ARMENIA ON SECEDING FROM THE USSR, BY PUTTING THE FOLLOWING QUESTION TO VOTE: "DO YOU AGREE THE REPUBIC OF ARMENIA TO BE AN INDEPENDENT DEMOCRATIC STATE OUTSIDE OF THE USSR" (No N-0269-I).

Based on the results of the referendum on seceding from the USSR held on 21 September 1991, *the Supreme Council of the Republic of Armenia* declared the Republic of Armenia an independent state on 23 September 1991 (Decision No N-0393-I).

Article 77 of the Constitution of 1978 defined that the Republic of Armenia determines its regional division and resolves other issues related to administrative-territorial structure. According to Article 78 of the same Constitution, the Republic of Armenia had the following regions: Abovyan, Azizbekov, Akhuryan, Amasia, Ani, Ashtarak, Aparan, Aragats, Ararat, Artik, Artashat, Goris, Gugark, Yeghegnadzor, Etchmiadzin, Talin, Tumanyan, Ijevan, Kalinino, after Kamo, Krasnoselski, Hoktemberyan, Hrazdan, Ghapan, Baghramyan, Ghukasyan, Masis, Martuni, Meghri, Nairi, Noyeberyan, Shamshadin, Sevan, Sisian, Spitak, Stepanavan, Vardenis, and the following cities under the republican subordination: Abovyan, Alaverdi, Ararat, Artik, Artashat, Ashtarak, Goris, Dilijan, Yerevan, Etchmiadzin, Ijevan, Leninakan, Kamo, Kirovakan, Hoktemberyan, Hrazdan, Ghapan, Jermuk, Sevan, Spitak, Stepanavan.

According to the first sentence of Article 104 of the 1995 Constitution, the administrative-territorial units of the Republic of Armenia shall be marzes and communities. The same provision is also reflected in Article 11.1 and part 1 of Article 121 of the

Constitution, with amendments of 2005 and 2015.

Law HO-18 "On administrative-territorial division of the Republic of Armenia" was adopted on 7 November 1995. According to Article 2, the territory of the Republic of Armenia shall be divided into 10 marzes, with the city of Yerevan holding the status of a marz. The marzes of the Republic of Armenia are Aragatsotn, Ararat, Armavir, Gegharkunik, Lori, Kotayk, Shirak, Syunik, Vayots Dzor and Tavush marzes (Article 3 of the Law relates to the territories of the marzes of the Republic of Armenia).

According to the first sentence of Article 108 of the 1995 Constitution, the city of Yerevan had the status of a marz. According to the first sentences of Articles 108 and 187 of the Constitution, with amendments of 2005 and 2015, respectively, Yerevan is a community.

According to Article 1 of the Law of 17 July 1994, *"On the state border of the Republic of Armenia"* adopted by the Supreme Council of the Republic of Armenia (repealed on 25 December 2001 by Law HO-265 adopted on 20 November 2001), the state border of the Republic of Armenia shall be the line and the vertical surface along that line that determine the scope of the territory — the land, waters, subsoil, air space of the Republic of Armenia. According to the first sentence of Article 2 of the same Law, the state border shall be determined under the international treaties of the Republic of Armenia and laws of the Republic of Armenia, and in accordance with Article 6 of the Law, the border issues with bordering states shall be resolved by the Republic of Armenia upon mutual consent, in compliance with the Constitution of the Republic of Armenia, this Law, other legislative acts of the Republic of Armenia and international treaties of the Republic of Armenia.

Current Law HO-265 "*On the State Border*" was adopted on 20 November 2001, Article 1 of which identically reproduces the content of the above-mentioned legislative definition of the state border.

According to Article 2 of the same Law, *when pinpointing and altering the state border, regulating the relations with bordering states, as well as legal relations in the border areas and international communication channels, the Republic of Armenia shall be governed* by the *principles* of protection of the territorial integrity of the Republic of Armenia, security of the Republic of Armenia, and ensuring the implementation of international obligations assumed by the Republic of Armenia, comprehensive and mutually beneficial co-operation with foreign states, peaceful settlement of border issues.

The issues of geographic adjustment of the interstate borders, in this case — through delimitation of the state border between the states, fall within the jurisdiction of the executive branch of power, taking into account that in accordance with Article 205 of the Constitution, the issues relating to territorial alterations of the Republic of Armenia shall be resolved through referenda, the decision on holding of which shall, upon recommendation of the Government, be adopted by the National Assembly by majority votes of the total number of deputies. According to the first sentence of part 2 of Article 169 of the Constitution, the National Assembly shall, in the cases prescribed by point 2 of Article 168 of the Constitution, apply to the Constitutional Court in respect of the question of territorial alterations.

Based on the results of an examination of the case and guided by point 3 of Article 168, parts 1 and 4 of Article 170 of the Constitution, Articles 63, 64 and 74 of the Constitutional Law "On the Constitutional Court", the Constitutional Court **DECIDED**:

1. The obligations prescribed in the Regulation on Joint Activity of the Commission on Delimitation and Border Security of the State Border between the Republic of Armenia and the Republic of Azerbaijan and the State Commission on Delimitation of the State Border between the Republic of Azerbaijan and the Republic of Armenia, signed on 30 August

2024, comply with the Constitution.

2. According to part 2 of Article 170 of the Constitution, this Decision shall be final and enter into force upon its promulgation.

PRESIDING JUDGE **A. DILANYAN**

26 September 2024
SDV-1749