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***KARLOS ADAMYAN***

*4<sup>th</sup>-year student of the  
Russian-Armenian University  
Faculty of Jurisprudence*

## THE CONSTITUENT ASSEMBLY OF AGHVEN AND THE CONSTITUTION CANONICAL AS THE EXPRESSION OF THE ARMENIAN CONSTITUTIONAL THOUGHT

### Annotation

In this work, the author, from a historical, political and legal point of view, represents the Constituent Assembly of Aghven and the Constitution canonical as a result of this assembly. The article presents and reveals the constitutional and legal processes carried out in Armenian society in the 4<sup>th</sup>-6<sup>th</sup> centuries, in particular, the procedure of the Constituent Assembly and the act adopted as a result of this - under the Armenian King Vachagan II. The latter are surprisingly progressive phenomena for their time.

The author's goal is to show the Armenian and international community that in ancient times (4-6 centuries) Armenian society was one of the first to express its constitutional thought by the Constituent Assembly and Constitution.

**Keywords:** the Constitution canonical, rule, Constitution, assembly, Aghven.

### Introduction

There are many provisions on constitutions and procedures for their adoption in the modern theory of constitutional law. The current picture has been formed for centuries, but reliable historical sources indicate the presence of such processes in ancient times.

Before revealing the constitutional and legal content of the Constituent Assembly of Aghveran Constitutional Assembly and the Constitution canonical adopted as a result of this assembly, first of all, it is necessary to briefly address the current constitutional and legal reality.

1. In light of the diversity of the processes of adoption of the Constitution, the basic principles of its adoption can be distinguished: it is adopted by a referendum or a Constituent Assembly, adopted by voting. The publicity of the adoption of the Constitution and the presence of historical and political prerequisites are noteworthy.

The above principles and qualities are also endowed with the Constituent Assembly of Aghven (more on this below).

2. Currently, the Constitution is understood as the basic law of the state, expressing the will and interests of the people or its individual social groups, fixing the most important principles of public order and organization of this state<sup>1</sup>. The Constitution is always a legal act that has many functions such as constituent, organizational, extrapolitical, ideological, legal, etc. Each Constitution has its own figure, which, as a rule, is endowed with a preamble. The main features of the Constitution emphasize its connection as a political and legal document with social development. The role of the Constitution in the real processes (historical and political) of the country's life is extremely important.

The Constitution regulates the most important social relations and is endowed with a number of characteristics, the presence of which is clearly visible in the Constitution canonical (more on this below).

**1. The Constituent Assembly of Aghven from the historical, political and legal points of view**

**1.1. Historical overview**

According to Armenian historian M. Kagankatvatsi:

*"During the years of the Aghven king Vachagan, there were many contradictions between laymen and bishops, priests and chorepiscopuses, nobles and the common people"<sup>2</sup>.*

<sup>1</sup> See: **Avakian S.A.** The Constitution of Russia: nature, evolution, modernity: 2nd ed. - M.: RYUID, "Sashko", 2000.

<sup>2</sup> See: **Kagankatvatsi M.** The History of the Aghvanian World. Translation, preface and notes by Varag Arakelyan. "Hayastan" production, Yerevan 1969, 321 pages.

That's why he decided to join a large assembly. Following the results of the meeting, 21 rules were adopted by voting, which, by their nature, predetermined and regulated the most important relations and issues of society of that time. The crown of King Vachagan's activity can be considered the canonical Constitution, which has been completely preserved and has reached our days<sup>1</sup>. Whether King Vachagan is considered to be the initiator of the assembly in Armenian historiography, is definitely not clear, since some sources point to Vachagan III the Pious<sup>2</sup>, and other scientific analyses point to Vachagan II<sup>3</sup>. Having studied these works, we believe that the most reliable is the statement according to which the Constituent Assembly was convened by Vachagan II during the reign of Shuphagisho in 372-387 on the first day of June<sup>4</sup>. Based on historical features, in order not to be mistaken, it can be argued that the Constitution canonical was adopted at the turn of 4-6 centuries, in the village of Aghven in the Utik province of the Great Armenia, which indicates that Armenian society had constitutional thought back in those days. According to K. Khahramanyan and V. Hovhannisyan:

*"About 1500 years ago, a remarkable document came into the arena in Armenian reality, which was called the "Constitution canonical".*

It was adopted and approved at a meeting held in the village of Aghven in the Utik province of Great Armenia ...". According to scientists, there is an ancient Armenian manuscript in which the expression "Constitution" was used for the first time in the history of legal thought and that this reality has not become the subject of serious legal research<sup>5</sup>.

<sup>1</sup> See: **Khahramanyan K.** "The Constitution of King Vachagan: The origins of law and order in the NKR". Er., "De facto" IVG, 2010, 48 pages.

A number of other scientists and historians also testify about these events, for example. **A. Sukiasyan, K. Gandzakeci, Strabon, V. Araqelyan, K. Khahramanyan, V. Hovhannisyan, R. Avagyan, Sh. Smbatyan** and others.

<sup>2</sup> See: History of the 10<sup>th</sup> grade. General and natural-scientific-mathematical flows // **A. Melkonyan, H. Avetisyan, A. Movsisyan, P. Hovhannisyan, E. Danielyan, V. Barkhudaryan, G. Harutyunyan, P. Chobanyan.** - Er.: "Zangak". 2014. 240 pages.

<sup>3</sup> See: **Oganesyan S.** The Rules of the Constituent Assembly of Aghven and their plea to the rules of Ashtishat: The Fundamental Scientific Library of the National Academy of Sciences of the Republic of Armenia. Historical and Philological Journal. 1967. 4. pp 265-274.

<sup>4</sup> See: from same source, p. 274.

<sup>5</sup> See: **Avagyan R.** The treasury of Armenian legal thought. Book 1 (B. C. 9 c. - A. C. 19 c.). - Er.: MNII EM-21st century, 2001, 672 pages, 67 NL. 5 cards.

## 1.2. Political review

Touching upon the political foundations, M. Kagankatvatsi explains that after the abolition of the unified Armenian kingdom, Persia and Byzantium took all steps to make the restoration of this kingdom and the establishment of Armenia's independence impossible<sup>1</sup>. This destructive policy in the middle of the 5<sup>th</sup> century raised the Armenian people to their feet. A nationwide liberation movement was born throughout the country, which resulted in the holding of the Constituent Assembly of Aghven and the adoption of the Constitution canonical.

According to historian S. Hovhannisyan:

*"The decisions of the Constituent Assembly of Aghven were based on the rules of the Ashtishat Assembly and the events of Nerses, taking into account the new balance of forces of the secular and spiritual classes of Aghvank and local peculiarities"*<sup>2</sup>.

It should also be noted that the Constituent Assembly of Aghven was held in the kings country house, which, combined with other historical and political circumstances of that time, indicates the relationship of secular and spiritual forces where, before the meeting, secular forces played a dominant role. This is how G. Harutyunyan describes this circumstance:

*"At the end of the fifth century, an extremely important event takes place in Armenian reality from the point of view of the issue under consideration. If in the past the initiator of the convocation of national church assemblies was the church for the purpose of "repairing" all spheres of public life, then in the V century, King Vachagan shows such an initiative"*<sup>3</sup>.

It was for this reason that the clergy were interested in creating a Constituent Assembly. as a result of the latter, more "favorable conditions" were created for the clergy. As V. Arakelyan notes:

*"These rules of the Aghven Assembly are valuable from the point of view that they reveal the rights of the owners of churches and monasteries existing in Armenia in the 5<sup>th</sup> century, the types and amount of tribute to the church, the*

<sup>1</sup> See: **Khahramanyan K.** "The Constitution of King Vachagan: The origins of law and order in the NKR". Er., "De facto" IVG, 2010, 48 pages.

<sup>2</sup> See: **Hovhannisyan S.** The Rules of the Constituent Assembly of Aghven and their plea to the rules of Ashtishat: The Fundamental Scientific Library of the National Academy of Sciences of the Republic of Armenia. Historical and Philological Journal. 1967. 4. pp 265-274.

<sup>3</sup> See: Constitutional Culture: History lessons and challenges of the time. (ed. **G. Danielyan, R. Avagyan, K. Mirumyan**). - Reissue (with modifications) - Er.: 2016, 672 pages.

*amount of punishment for crimes committed, the boundaries of the rights of the people and clergy, and other issues"*<sup>1</sup>.

### 1.3. Legal review

As G. Harutyunyan points out:

*"Having studied the nature of national church assemblies, we were convinced that they are essentially constituent assemblies and adopted rules of conduct that are the result of public consent, having universally recognized and priority legal force"*<sup>2</sup>.

According to G. Harutyunyan, we note that from a legal point of view, the convocation of the Constituent Assembly of Aghven, the specifics of its holding, the adoption of a decision by voting, the involvement of secular and spiritual strata of society, the content of the adopted rules and the final rule **IB** (see below) resemble modern Constitutions with their specific content, forms of adoption and/or procedures. The announcement by the king and the catholicos about the upcoming assembly and the public summing up of the assembly, naming the meeting by historians and participants in the concept of "constitutional", which is used as such for the first time in comparison with the law-making activity, preceding the meeting, make it possible to establish and fix the existence of constitutional thought and its priority (since there was no such precedent in history). The adoption of a decision by voting, as many types of legal acts are currently being adopted, indicates the existence of manifestations of democracy in Armenian society back in those days and the application of procedures inherent in current constitutions. As K. Khahramanyan notes:

*"With all its characteristics, it (the Constitution canonical. adding by author) can be said, that this is the embodiment of democracy, even by today's standards, it is understandable, bearing in mind historical conditions"*<sup>3</sup>.

The presence of these values strengthens the presence of broad secular and spiritual strata at the Constituent Assembly with the opportunity to represent their interests and participate in voting.

<sup>1</sup> See: **Avagyan R.** The treasury of Armenian legal thought. Book 1 (B. C. 9 c. - A. C. 19 c.). - Er.: MNII EM-21st century, 2001, 672 pages, 67 NL. 5 cards.

<sup>2</sup> See: Constitutional Culture. History lessons and challenges of the time. (ed. **G. Danielyan, R. Avagyan, K. Mirumyan**). - Reissue (with modifications) - Er.: 2016, 672 pages.

<sup>3</sup> See: **Khahramanyan K.** "The Constitution of King Vachagan: The origins of law and order in the NKR". Er., "De facto" IVG, 2010, 48 pages.

*"The initiative of King Vachagan was carried out in two stages. The first stage was the development of laws (rules), we can say, the project. The second stage was the discussion and adoption of this project. The first one is appreciated because it summarizes the legal thought and historical traditions not only of this region, but also of the entire Armenia, makes all prominent Armenian thinkers of that time participants in solving the problem. The second stage is appreciated by the fact that it was adopted not by order of the king, but with the participation of representatives of all social strata. (...). That is, in today's presentation, formation of the highest legislative body of the country by the king,"* Khahramanyan K. notes.

In addition to the legal procedures for holding the Constituent Assembly of Aghven, the document adopted at the end of the meeting is of rather great constitutional value and interest (which we will discuss below).

## 2. The Constitution canonical

### 2.1. Preface

*"Every Constitution, law or set of rules is the birth of its era. Mainly in ancient times, they expressed the material and spiritual interests of the ruling secular and spiritual classes, the relationship of forces, their will. They bear the stamp of the legal consciousness of the epoch<sup>2</sup>".*

As already noted, as a result of the Constituent Assembly of Aghven, favorable conditions were created for spiritual forces. For this reason, most of the rules adopted as a result of the Constituent Assembly are explicitly (pronounced) of a spiritual nature, and the rest of the rules, although clearly not of a spiritual nature, however, follow from spiritual (Christian) ideas or are accepted for their implementation, although they regulate secular relations.

The Constitution canonical establishes clear rules of conduct, sanctions, incentive norms (see about this below), which are not only norms, but also endowed with the Armenian and high moral value of their era.

*"They played an important role in spiritual and secular life, stemming from the basic principles of the ideological value system of that time"<sup>3</sup>. "The*

<sup>1</sup> See: From same source.

<sup>2</sup> See: **Oganesyan S.** The Rules of the Constituent Assembly of Aghven and their plea to the rules of Ashtishat: The Fundamental Scientific Library of the National Academy of Sciences of the Republic of Armenia. Historical and Philological Journal. 1967. 4. pp 265-274.

<sup>3</sup> See: Constitutional Culture: History lessons and challenges of the time. (ed. **G. Danielyan, R. Avagyan, K. Mirumyan**). - Reissue (with modifications) - Er.: 2016, 672 pages.

*mentioned legal document, not only by name, but also by the method and content of its adoption, has common facets with the Constitution as a legal document*<sup>1</sup>.

All the rules adopted at the end of the meeting can be found in the work of M. Kagankatvatsi "History of the Aghvanian World"<sup>2</sup>, and below we will consider their most attention-grabbing passages.

## 2.2. Canons analysis

*"When a priest and a deacon are ordained, the priest should be given four coins, and the deacon two"*<sup>3</sup>.

The mentioned Constitution is rule **B** of the canon, which, in fact, establishes social guarantees for the spiritual class. A similar social guarantee, but with a different form of payment (natural), also establishes rule **A**. This logic continues in rules **G**, **D** and **E**. They establish requirements for the secular class, to transfer some material mores to the clergy.

The latter also testifies to the systematic and logical arrangement of the Constitution canonical.

Rule **Y** defines:

*"If a Christian fights and sheds blood, they represent the bishop and punish according to the laws"*.

Despite the fact that there was no hierarchy of legal norms at the time of the adoption of the rules, nevertheless, there was such a perception in the constitutional thought of the Armenian people (it is clear from the wording that the constitutional rule is above the law). In addition to establishing a sanction, this rule differs in that it used the concept of "law". This indirectly suggests that the Constitution canonical have a higher legal force than the laws (since the law is left to more careful regulation of these relations), and this once again confirms the rules, in the modern sense, are constitutional. As you can see, the subjects carrying out the punishment are spiritual forces, which follows from the political foundations of the Constituent Assembly. And also from these foundations come the rules **JE**, **JZ**, **JE** and others aimed at protecting spiritual representatives.

<sup>1</sup> See: **Khahramanyan K., Hovhannisyan V.** The 1500-year-old Armenian Constitution. Circumstances and significance of acceptance; Yerevan, 1999, p. 17.

<sup>2</sup> See: **Kagankatvatsi M.** History of the Aghvanian World. Translation, preface and notes by Varag Arakelyan. "Hayastan" production, Yerevan 1969, 321 pages.

<sup>3</sup> See: from same source, p. 66.

*"No man should get a wife, a relative of the third navel" and should not marry the wife of a brother", "The one who eats ugly, and the one who eats meat while keeping post, works on sunday and does not go to church, the priest, united with the people, punishes".*

Accordingly, the rules of **J** and **JG** establish rules of conduct in the spheres of personal and family life, making the Constitution canonical act, regulating multifaceted and multilevel relations.

Of particular interest is **JA** rule with the following content:

*"He who lets a woman alone without a reason and marries without a crown, who is a criminal and a murderer or is engaged in witchcraft, must attracted to king (underline by author) by binding him in order to approach and kill maliciously".*

Having studied the rule in a systematic way with the rest of the rules, one can come to the conclusion that when the question arises of depriving a person of life, the "presence" of the king is necessary. That is, despite the existence of the death penalty and the historical era, the Constitution canonical established a high figure and guarantees of the protection of the right to life at the level of the first person of the country.

Rule **IB** is also noteworthy, which by its nature resembles the preamble of the Constitution, despite the fact that it is placed in the end of the Constitution canonical. This fact in no way detracts from the preamble to rule **IB**. It is endowed with the following content:

*"These conditions were written by bishops, priests, nobles in the presence of the king. May our bishops, priests and the church bless the king with the queen, his son and the whole earth. May those who participate in this meeting also be blessed. This order was sealed with rings by the commander of the king, Muzik, the overseer of the palace, Mirkhorik, and the heads of the family, Marut, Tiradom (...) all the nobles of Aghvanks, and for greater authenticity of the inscription was also sealed with the ring of the king of Aghvanks Vachagan".*

In addition to the fact that this is, in fact, a preface to the Constitution, the above-mentioned rule directly indicates and fixes its own legitimacy, communicating the rules inherent in the Constitution, the highest legal force.

G. Harutyunyan addressed to rule **IB** as follows:

*"The procedure for guaranteeing the validity of the adopted document is also worthy of attention, when the Constitution canonical ends with the following article: (...) The expression "the order was sealed with rings" simply indicates*

ՍԱՀՄԱՆԱՂՈՐԾԱԿԱՆ ՂԱՏԱՐՈՍ ԸՆԴՀԱՆՈՒՐ ԵՐԱՅԻՆ ԿՐԹԱԿԱՆՈՒԹՅԱՆ ԿԵՆՏՐՈՆ 4(112)2023



*confirmation of the fact that the accepted norms are mandatory. It is also important that special attention was paid to the issue of the validity of rules that are the result of broad public consent and have a priority character<sup>1</sup>.*

*"The legal norms of the Constitution canonical seem to be different in their legal nature and content compared to modern constitutional norms, nevertheless, in a specific historical period and in the conditions of specific social realities, they had an equally and perhaps more important role and law enforcement significance to guarantee the orderly development of public life<sup>2</sup>.*

### Conclusion

1. In the 4th-6th centuries, the Armenian society carried out constitutional processes in the form of the Constituent Assembly of Aghven and the adoption of the Constitution canonical.
2. These processes were endowed with historical, political and legal prerequisites, and are adopted by the national agreement.
3. The process of the Constituent Assembly of Aghven is endowed with the features of the current constitutional and legal processes.
4. The Constitution canonical, with its adoption procedure and content (rules and preamble), is unequivocally considered, ahead of its time, the Constitution.
5. The adopted rules by their legal force prevailed over other acts and are characterized as constitutional.
6. In fact, it can be argued that the constitutional and legal processes studied in the work, express the Armenian constitutional thought, are among the first and should find a place in the doctrine of the current constitutional law.

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<sup>1</sup> See: Constitutional Culture: History lessons and challenges of the time. (ed. **G. Danielyan, R. Avagyan, K. Mirumyan**). - Reissue (with modifications) - Er.: 2016, 672 pages.

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### Ամփոփագիր

Սույն աշխատանքում հեղինակը պատմական, քաղաքական և իրավական տեսանկյունից ներկայացնում է Աղվենի սահմանադիր ժողովը և դրա արդյունքում ընդունված Սահմանադրություն կանոնականը: Ներկայացվում և բացահայտվում են 4-6-րդ դարերում իրականացված սահմանադրաիրավական գործընթանները հայ հասարակությունում, մասնավորապես, սահմանադիր ժողովի ընթացակարգը և դրա արդյունքում ընդունված ակտը՝ հայոց արքա Վաչագան 2-րդի օրոք: Վերջիններս իր ժամանակի համար զարմանալիորեն առաջադիմական երևույթներ են:

Հեղինակի նպատակն է ցույց տալ հայ և միջազգային հանրությանը, որ դեռևս հին ժամանակներում (4-6-րդ դարեր) հայ հասարակությունը ունեցել և առաջիններից մեկն է արտահայտել իր սահմանադրական միտքը՝ սահմանադրական ժողովի և սահմանադրության տեսքով:

**Հիմնաբառեր.** սահմանադրություն կանոնական, կանոն, սահմանադրություն, ժողով, Աղվեն:

## УЧРЕДИТЕЛЬНОЕ СОБРАНИЕ В АГВЕНЕ И КАНОНИЧЕСКАЯ КОНСТИТУЦИЯ КАК ВЫРАЖЕНИЕ АРМЯНСКОЙ КОНСТИТУЦИОННОЙ МЫСЛИ

### Аннотация

В данной работе автор с исторической, политической и правовой точки зрения представляет Учредительное собрание в Агвене и принятую в результате этого Каноническую конституцию. Представляются и раскрываются конституционно-правовые процессы, осуществленные в IV-VI веках в армянском обществе, в частности, процедура Учредительного собрания и принятая в результате этого по инициативе армянского царя Вачагана II Каноническая конституция. Последние являются удивительно прогрессивными для своего времени явлениями.

Цель автора - показать армянскому и международному сообществу, что еще в древние времена (IV-VI вв.) армянское общество одним из первых выразило свою конституционную мысль в виде конституционного совета и конституции.

**Ключевые слова:** Каноническая конституция, правило, Конституция, собрание, Агвен.

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