
**Rapport national / National report / Landesbericht / национальный доклад**

# REPUBLIC OF ARMENIA / REPUBLIK ARMENIEN / РЕСПУБЛИКА АРМЕНИЯ

## The Constitutional Court of the Republic of Armenia

## Конституционный Суд Республики Армения

## Հայաստանի Հանրապետության սահմանադրական դատարան

**Anglais / English / Englisch / английский**

NATIONAL REPORT

# TO THE XVII CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

## Role of the Constitutional Courts in Upholding and Applying the Constitutional Principles

### I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. *Does the constitutional court or equivalent body exercising the power of constitutional review (hereinafter referred as the constitutional court) invoke certain constitutional principles (e.g. separation of powers; checks and balances; the rule of law; equality and non-discrimination, proportionality, reasonableness, human dignity, etc.) in the process of constitutional adjudication? To what extent does the constitutional court go in this regard? Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning*
2. *What constitutional principles are considered to be organic in your jurisdiction? Are there any explicit provisions in the constitution setting out fundamental principles? Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?*

In accordance with Article 167 of the Constitution of the Republic of Armenia (2015) "Constitutional justice shall be administered by the Constitutional Court…". The Constitutional Court which has been formed in 1996 and already adopted more than 1281 decisions, has systematically invoked and/or referred to numerous constitutional principles i.e. principle of legal certainty and proportionality[1], equality[2], separation of powers[3], checks and balances[4], the rule of law[5] etc.

[1] See decision DCC-630 of the Constitutional Court of the Republic of Armenia of April 18, 2006 "On the case concerning the determination of the issue of the conformity with the Constitution of Article 218 of the Civil Code of the Republic of Armenia, Articles 104, 106 and 108 of the Land Code of the Republic of Armenia and

The Constitution does not specify a specific list of legal sources that the Constitutional Court would be obliged to apply, however the Law on the Constitutional Court specifies the list of factors which have to be taken into consideration while deciding the issue of conformity with the Constitution. According to Part 7 of Article 68 of the above mentioned Law "The Constitutional Court shall determine whether the legal acts referred to in the appeal are in conformity with the Constitution or not, proceeding from the following factors:

1) the type and the form of the legal act;
2) the time when the act was adopted, as well as whether it got into force in compliance with established procedures;
**3) the necessity of protection and free exercise of human rights and freedoms enshrined in the Constitution, the grounds and frames of their permissible restriction;**
**4) the principle of separation of powers as enshrined in the Constitution**;
5) the permissible limits of powers of state and local self-government bodies and their officials;
6) the necessity of ensuring direct application of the Constitution".

It should also be stated, that, as a result of constitutional reforms, the list of laws which need to be harmonized with the constitutional amendments also includes the Law on the Constitutional Court, which would receive the status of a constitutional law and can be adopted by at least a three-fifths majority vote of the total number of parliamentarians. Based

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Decision of Government no. 1151-N of 01.08.2002 on the basis of application by The Human Rights Defender of the Republic of Armenia".

[2] See decision DCC-881 of the Constitutional Court of the Republic of Armenia of May 4, 2010 "On the case concerning the determination of the issue regarding the conformity of the provision stipulated by the first sentence of Article 55 Part 13 of the Law of the Republic of Armenia "On Prosecutor's Office" with the Constitution of the Republic of Armenia on the basis of the application of the citizen Vardan Harutyunyan".

[3] See decision DCC- 864 of the Constitutional Court of the Republic of Armenia of February 5, 2010 "On the case concerning the determination of the issue regarding the conformity of Articles 151 and 152 of the Administrative Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the NGO "Centre of Freedom of Information".

[4] See decision DCC-1236 of the Constitutional Court of the Republic of Armenia of November 17, 2015 "On the case of conformity of Part 4, Article 21 of the RA Criminal Procedural Code with the Constitution of the Republic of Armenia on the basis of the applications of the RA Human Rights Defender and Prosecutor General"

[5] See decision DCC- 1114 of the Constitutional Court of the Republic of Armenia of September 18, 2013 "On the case concerning the conformity of Article 204.38, Part 2 of the Administrative Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the NGO "Office of the Helsinki Civil Assembly of Vanadzor".

on the Decree of the President of Armenia of February 10, 2016 the stated draft should be presented to the Parliament no later than February 1, 2017.

The power of deciding conformity with the Constitution basically implies the determination, of a challenged norm of a legal act, as well as any other provision of the act from the perspective of systematic interrelation of those, with compliance of any norm of the Constitution. Therefore while adopting a decision there are no limitations for the Constitutional Court regarding the scope of making references to basic principles or other norms stipulated in the Constitution. However, as it was stated, the Law on the Constitutional Court specifies the duty of the Court to determine whether the specific challenged norm *inter alia* is in compliance i.e. with the principle of separation of powers as enshrined in the Constitution, the necessity of ensuring direct application of the Constitution etc.

Chapter 1 of the Constitution contains the foundations of constitutional order. Prior to the constitutional amendments taken place in 2015, the Constitution did not explicitly mention the term "constitutional principle(s)". However the Constitutional Court of the Republic of Armenia in its decision DCC-766 of 14 October, 2008 stated that " The constitutional order of the State, represents the constitutionally established system of regulation of social relations, organization of state power and the relationship between the individual and the state. The integrity of the values and the **principles** which the latter is based on, distinguishes the constitutional order of the State". Based on the above mentioned analyses we can state that the Chapter 1 of the Constitution specifies the basic constitutional principles of the State.

As a result of the December 6, 2015 constitutional reforms the headings of certain articles stipulated in Chapter 1 of the Constitution were amended and the term "principle" was explicitly mentioned, i.e. "The Principle of Separation and Balance of the Powers ", "The Principle of Legality" etc. Although such wording is not explicitly used regarding other foundations of constitutional order, taking into account the above mentioned decision of the Constitutional Court, other provisions such as the principles of democratic and social State, rule of law, economic order, guaranteeing of ownership, ideological pluralism and the

multipartisan system, etc. are also guaranteed by the Constitution and should be considered as basic constitutional principles.

As stated above in its decisions the Constitutional Court has numerously referred to the importance of those principles. Furthermore in one of its decisions the Constitutional Court has explicitly specified that in cases of *prima facie* contradictions between constitutional norms, such situations "…can be overcome based on the fundamental principles and values system of the Constitution".

It should be noted that the Constitution of the Republic of Armenia adopted in 1995 played a significant role for the establishment of democracy in the Republic of Armenia, strengthening the grounds of a rule-of-law State, finding constitutional solutions in crisis situations, for the gradual development of the institutions of the State power, and prescribing the constitutional safeguards for the protection of human rights. However the clear policy in regards to the constitutional recognition and stipulation of human rights as the highest value was absent in the Constitution, no reference regarding the principle of rule of law was made, and the constitutional-legal model was predominantly power-centered.

Even though the constitutional reforms carried out as a result of the referendum held in the Republic of Armenia on 27 November 2005, achieved certain progress in terms of integral solutions with regard to the above-mentioned issues, they did not provide complete solutions to them. Although the rule of law principle was stipulated in Paragraph 3 of Article 3 of the Constitution, according to which "the State is confined by fundamental rights and freedoms of the person and citizen as the directly applicable law," it mostly remained a wishful statement, because the constitutional prerequisites needed at the systemic level for its implementation were not prescribed.

It should be noted that the Armenian academic scholars also played an important role in the development of the principle of rule of law, by identifying its prerequisites, according to which:

The rule of law, being the essence of the rule-of-law state, implies that:

- Human rights must be constitutionally stipulated, guaranteed by law, as well as ensured and protected by adequate structural solutions;

-The principle of equality of everyone before the legal law must be respected and guaranteed;

-Laws and other legal acts must be in conformity with the principle of legal certainty, must be predictable, clear and free from gaps and ambiguities;

-The administration of power must be hinged on the guaranteeing the harmonization of functions and vested powers;

-The principle of legitimacy must underlie the administration of public authority;

-The principle of legality shall be in the basis of exercise of public authority, principle of prohibition of arbitrariness must be guaranteed and the extent of discretion of the public authorities must be clarified;

-The State must bear a positive obligation in respect of guaranteeing, ensuring and protecting rights and must assume adequate public-legal responsibility;

-Any interference with fundamental rights and any action of the authorities must derive from the principle of proportionality;

-There must be necessary mechanisms for effective solution of legal disputes exclusively through legal measures;

-The judiciary must be independent and impartial.

Guaranteeing the principle of rule of law implies the simultaneous existence of all these interdependent and complementary legal conditions and **the assurance of constitutional guarantees required therefore.**

The aforementioned approaches also derive from the positions presented in Resolution No 1594 (2007) of the Parliamentary Assembly of the Council of Europe regarding the rule of law, descriptive document CM (2008)170 of the Committee of

Ministers of the Council of Europe as of 21 November 2008, CDL-AD(2016)007 and CDL-AD (2011)003rev. reports of the Venice Commission of the Council of Europe as of 18 March 2016 and 4 April 2011 and the provisions of the UN Resolution on Rule of Law adopted on 24 September 2012. The results of the discussions held at the forum on "Rule of Law as a Practical Concept" (London, 2 March 2012) held within the scope of the presidency of the United Kingdom in the Committee of Ministers of the Council of Europe and the forum on "European Standards of Rule of Law and the Limits of Discretion of National Authorities" (Yerevan, 3-4 July 2013) held within the scope of the presidency of the Republic of Armenia in the Committee of Ministers of the Council of Europe.

It should be noted that the constitutional reforms of December 6, 2015 in general had implemented the mentioned necessary prerequisites for ensuring the principle of rule of law.

3. *Are there any implicit principles that are considered to be an integral part of the constitution? If yes, what is the rationale behind their existence? How they have been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or European law; newly-adopted principles or ones re-introduced from the former constitutions)? Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?*

It should be noted that as stated in the decision of the Constitutional Court[6] the Constitution of the Republic of Armenia is a self-sufficient document, therefore implicit or alleged constitutional principles cannot be a part of it. The Constitution only prescribes explicit constitutional principles which have been stated above.

[6] See decision DCC-1081 of the Constitutional Court of the Republic of Armenia of April 16, 2013 "On the case concerning the determination of the issue regarding the conformity of Article 44, Part 4 of the Law of the Republic of Armenia "On rules of procedure of the National Assembly" with the Constitution of the Republic of Armenia on the basis of the application of the Deputies of the RA National Assembly".

4. *What role does the constitutional court has played in defining the constitutional principles? How basic principles have been identified by the constitutional court over time? What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles? How much importance falls upon travaux preparatoires of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles? Do universally recognized legal principles gain relevance in this process?*
5. *What is a legal character of the constitutional principles? Are they considered to be the genesis of the existing constitutional framework? What emphasis is placed upon the fundamental principles by the constitutional court in relation to a particular constitutional right? Are basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe fundamental principles in connection with a specific constitutional right as complementary means of latter's interpretation? Can the basic principles in your jurisprudence constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm? Is there any requirement in law placed upon the judicial acts of enforcement of constitutional principles?*
6. *What are the basic principles that are applied most by the constitutional court? Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution does the constitutional court has made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.*

The Constitutional Court has the explicit power to provide official interpretation (commentaries) to the Constitution. The Constitutional Court of RA in its decision DCC-943 had stated that "…the Constitutional Court basically interprets the Constitution". Throughout

the process of interpreting constitutional norms including the constitutional principles, the Court is not bound by a specific method such as grammatical, textual, logical, systemic, teleological etc. The Constitutional Court uses a combination of interpretation methods.

The travaux preparatoires of international legal instruments is considered a complementary means for interpretation, however the Armenian legislation does not consider it as means for interpretation, and the Constitutional Court in its decisions has never referred to the travaux preparatoires of the Constitution.

In numerous decisions of the Constitutional Court there are references to universally recognized principles, especially to the principles of the European Convention for the Protection of Human Rights and the Protocols thereto contained in many decisions of the Constitutional Court of the Republic of Armenia on the determination of issues of compliance of the national legislation with the Constitution of the Republic of Armenia[7], as well as to documents which are considered core parts of international law, such as The UN

[7] Relevant references to European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular, are made in the following decisions of the Constitutional Court of the Republic of Armenia: Decision DCC-563 of the Constitutional Court of the Republic of Armenia of May 6, 2005 "On the case concerning the determination of the issue regarding the conformity of the provision set forth in the second sentence of the second paragraph of the first point of article 7 of the Law of the Republic of Armenia "On human rights' defender", adopted by the National Assembly on 21st of October 2003, with the Constitution of the Republic of Armenia"; Decision DCC-720 of the Constitutional Court of the Republic of Armenia of December 11, 2007 "On the case concerning the determination of the issue regarding the conformity of article 419 point 6 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the Citizen Emma Karapetyan"; Decision DCC-914 of the Constitutional Court of the Republic of Armenia of September 14, 2010 "On the case concerning the determination of the issue regarding the conformity of article 228 part 2 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the RA human rights defender"; Decision DCC-919 of the Constitutional Court of the Republic of Armenia of October 5, 2010 "On the case concerning the determination of the issue regarding the conformity of article 53 part 3 of the Family Code of the Republic of Armenia with the constitution of the Republic of Armenia on the basis of the application of the citizen Igor Hakobjanyan"; Decision DCC-931 of the Constitutional Court of the Republic of Armenia of December 28, 2010 "On the case concerning the determination of the issue regarding the conformity of article 375.1 part 1 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the Court of General Jurisdiction of Syunik Region"; Decision DCC-943 of the Constitutional Court of the Republic of Armenia of February 25, 2011 "On the case concerning the determination of the issue regarding the conformity of point 4, part 1, article 426.3 and point 1, part 1, article 426.4 of the Criminal Procedure Code of the Republic of Armenia, part 12, article 69 of the RA Law on the Constitutional Court with the Constitution of the Republic of Armenia on the basis of the applications of the citizens S. Asatryan and A. Manukyan".

Universal Declaration of Human Rights[8] the international covenants on civil and political rights[9] and on economic, social and cultural rights[10], the UN convention on the rights of the child[11] etc. Taking into account the fact, that the European Convention for the Protection of Human Rights has been ratified by the Republic of Armenia and is an integral part of the Armenian legal system, the Constitutional Court of RA while examining cases systematically studies the case law of the European Court of Human Rights, and frequently forms its legal positions taking into account the stated practice.

Moreover, according to Part 1 of Article 81 (Amendments dated to 2015) "The practice of bodies operating on the basis of international human rights treaties, which have been ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions of the Constitution on fundamental rights and freedoms".

While examining the conformity of separate norms with the constitutional principles enshrined in Chapter 1 of the Constitution, the Constitutional Court referred to the practice of the European Court of Human Rights. For instance:

- In the Decision DCC-983 of 12 July 2012 the Constitutional Court of the Republic of Armenia emphasized: "The European Court of Human Rights defining the scopes of State duties in the sphere of protection of the right of property guaranteed by Protocol No. 1, Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, developed the idea of positive duties of the State. The latter,

[8] See decision DCC-720 of the Constitutional Court of the Republic of Armenia of December 11, 2007 "On the case concerning the determination of the issue regarding the conformity of Article 419 Point 6 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the citizen Emma Karapetyan".

[9] See decision DCC-997 of the Constitutional Court of the Republic of Armenia of November 15, 2011 "On the case concerning the determination of the issue regarding the conformity of Article 1087.1 of the RA Civil Code with Article 14, Article 27 parts 1, 2 and 3 and Article 43 of the Constitution of the Republic of Armenia on the basis of the application of the RA Human Rights Defender".

[10] See decision DCC-1048 of the Constitutional Court of the Republic of Armenia of September 19, 2012 "On the case concerning the determination of the issue regarding the conformity of Article 169.8 of the Administrative offences code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Artak Ghazaryan".

[11] See decision DCC-919 of the Constitutional Court of the Republic of Armenia of October 5, 2010 "On the case concerning the determination of the issue regarding the conformity of Article 53 part 3 of the Family Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Igor Hakobjanyan".

in particular, is expressed in the fact that that the real and effective implementation of the right to property does not depend only on the State's duty not to interfere, but also demands certain positive actions of defense in particular, when there is a direct link between the effective implementation of the property rights of the person and the activities the person can lawfully anticipate from the authorities (§ 134 of the Grand Chamber judgment, dated 30 November 2004 on the Case of Öneryildiz v. Turkey). According to the European Court, in the sphere of protection of the right to property the positive duty of the State, among the others, can include the duty to provide compensation". The right to property and its protection is not only considered as a fundamental right, but also is a principle established in Chapter 1 of the Constitution.

- In the Decision DCC-630 of 18 April, 2006 the Constitutional Court of the Republic of Armenia emphasized: "Taking into account the legal position established in numerous judgments of the European Court of Human Rights, according to which a legal norm cannot be considered "lawful", if it is not in compliance with the principle of legal certainty (res judicata), i.e. it is not formulated clearly enough, which would allow the citizen to combine his behavior with it". The principal of legal certainty is established in Paragraph 2 of Article 6 of the Constitution (Amendments dated to 2015) and it derives from the principle of the rule-of-law State established in Article 1 of the Constitution.

- In the Decision DCC-1061 of 14 December, 2012 the Constitutional Court of the Republic of Armenia in accordance with the characteristics established in the precedential law of the European Court of human rights had stated "…a wide margin is usually allowed to the State when it comes to general measures of social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (Carson and Others v. The United Kingdom [GC], cited above, p. 61; Andrejeva v. Latvia [GC], cited above, p. 83; as well as Moskal v. Poland, no. 10373/05, p. 61, 15 September

2009). The Constitutional Court referred to the above stated legal position in the context of interpreting the principle of social state and the right to pensions[12].

In international practice as well as in the studies of numerous legal scholars, the Preamble of the Constitution is considered as the essence and value-system of the Constitution, and certain scholars believe that it should have a higher force in comparison with other provisions of the Constitution. The legal character and status of the Preamble is not explicitly stated in the Constitution of the Republic of Armenia. Nevertheless the Constitutional Court of the Republic of Armenia in one of its decisions had stated that "The Constitutional Court of the Republic of Armenia also finds that the provisions of the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey cannot be interpreted or applied in the legislative process and application practice of the Republic of Armenia as well as in the interstate relations in a way **that would contradict the provisions of the Preamble to the Constitution of RA**..[13]".

The stated doctrinal approach of the Constitutional Court of RA does not essentially differ from the legal positions of various constitutional courts of European countries and with it once again was confirmed that the axiological significance and legal importance of the Preamble of the Constitution cannot be questioned (put under doubt) in any way.

In international practice there is the approach to provide constitutional principles with a certain level of superiority. For example Part 2 of Article 16 of the Constitution of the Russian Federation clearly states that "No other provisions of this Constitution may conflict with the fundamental principles of the constitutional order of the Russian Federation". Although the Constitution of the Republic of Armenia does not explicitly provide a level of superiority for constitutional principles, however as it was stated they are enshrined in Chapter 1 of the Constitution entitled as the foundations of constitutional order which is not a

[12] It should be noted that only a few examples of references to the European Court of Human Rights are reflected in the Report, however, as stated above, such references are found in almost all decisions of the Constitutional Court of the Republic of Armenia

[13] See decision DCC-850 of the Constitutional Court of the Republic of Armenia of January 12,2010 "On the case on determining the issue of conformity with the Constitution of the Republic of Armenia of the obligations stipulated by the protocol on the establishment of diplomatic relations between the Republic of Armenia and the Republic of Turkey and by the Protocol on development of relations between the Republic of Armenia and the Republic of Turkey signed in Zurich on 10 October 2009".

coincidence at all, as it expresses the approach established in the Constitution regarding the legal character of those principles, as that Chapter consists of the basic principles, which are the foundations of the constitutional order of the State and are a benchmark for all the other chapters of the Constitution and for the regulation of any kind of legal relations. Moreover, in its decision DCC-1081 of April 16, 2013 the Constitutional Court of the Republic of Armenia had found a *prima facie* unconformity between the norms established in Article 62 and Article 67 of the Constitution.

In the above stated the decision the Constitutional Court of the Republic of Armenia had stated "The Constitution is self-sufficient and the textual *prima facie* inconsistencies can be overcome based on the fundamental principles and values system of the Constitution". Therefore it can be stated that the fundamental principles established in Chapter 1 of the Constitution indirectly enjoy a certain level of superiority. The stated issue will be discussed more in the second Chapter of the questionnaire.

As it has been stated the principle of rule of law is one of the basic constitutional principles enshrined in Article 3 of the Constitution of the Republic of Armenia, according to which "The public power shall be bound by fundamental rights and freedoms of the human being and the citizen as the directly applicable law".

The stated constitutional regulation guarantees that the principles and the rights established in the Constitution have a direct link in all given cases. We believe that the principle of rule of law is one of the core foundations of state order in general, from which other constitutional norms are derived. It is no coincidence that the principle of rule of law is enshrined in the first Chapter of the Constitution.

In light of the foregoing, we believe that the basic constitutional principles cannot be interpreted separately from the constitutional rights or vice versa. The connection of constitutional principles and the rights and freedoms of people can also be interpreted as the connection between the positive and negative duties, as the constitutional principles include the philosophy behind negative duties.

As it has already been stated the Constitutional Court of the Republic of Armenia has referred to basic constitutional principles i.e. principle of legal certainty and proportionality[14], equality[15], separation of powers[16], checks and balances[17], the rule of law[18] etc. numerous times. Nevertheless we would like to attach an emphasis to the principle of rule of law, because the Constitutional Court in almost all of its decisions discusses the issue whether the norm and/or and the existing law enforcement practice is in conformity with the principle of rule of law or not. Furthermore, in one of its decisions the Constitutional Court, while discussing the issue of not accepting the legal positions of the constitutional court as new circumstances, emphasized that the deadlock of the principle of rule of law leads to the violation of the supremacy of the Constitution.

As for the question whether the basic principles can constitute a separate ground for unconstitutionality without their connection with a concrete constitutional norm, there is no possibility for the stated to take place, because the Constitutional Court of RA while recognizing a norm as contradicting to the Constitution, explicitly states to which norm of the Constitution it contradicts. Moreover, a decision without the presence of the connection of a concrete constitutional norm, can cause in issue in regards of conformity with the principle of legal certainty. It also should be noted, that Part 2.1 of Article 61 of the RA Law on the Constitutional Court states that "The decisions and resolutions of the Constitutional Court

[14] See decision DCC-630 of the Constitutional Court of the Republic of Armenia of April 18, 2006 "On the case concerning the determination of the issue of the conformity with the Constitution of Article 218 of the Civil Code of the Republic of Armenia, Articles 104, 106 and 108 of the Land Code of the Republic of Armenia and Decision of Government no. 1151-N of 01.08.2002 on the basis of application by The Human Rights Defender of the Republic of Armenia".

[15] See decision DCC-881 of the Constitutional Court of the Republic of Armenia of May 4, 2010 "On the case concerning the determination of the issue regarding the conformity of the provision stipulated by the first sentence of Article 55 Part 13 of the Law of the Republic of Armenia "On Prosecutor's Office" with the Constitution of the Republic of Armenia on the basis of the application of the citizen Vardan Harutyunyan".

[16] See decision DCC- 864 of the Constitutional Court of the Republic of Armenia of February 5, 2010 "On the case concerning the determination of the issue regarding the conformity of Articles 151 and 152 of the Administrative Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the NGO "Centre of Freedom of Information".

[17] See decision DCC-1236 of the Constitutional Court of the Republic of Armenia of November 17, 2015 "On the case of conformity of Part 4, Article 21 of the RA Criminal Procedural Code with the Constitution of the Republic of Armenia on the basis of the applications of the RA Human Rights Defender and Prosecutor General"

[18] See decision DCC- 1114 of the Constitutional Court of the Republic of Armenia of September 18, 2013 "On the case concerning the conformity of Article 204.38, Part 2 of the Administrative Procedure Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the NGO "Office of the Helsinki Civil Assembly of Vanadzor".

shall be in conformity with the requirements of the principle of legal certainty". Despite of the absence of a direct requirement in the Armenian placed upon the judicial acts of guaranteeing the enforcement of constitutional principles, however Article 8 of the Judicial Code of RA explicitly states that, courts shall administer justice in accordance with the **Constitution**, international treaties ratified by the Republic of Armenia, and the laws of the Republic of Armenia.

**II**. **Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in Constitutions and judicial review of constitutional amendments.**

1. *Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law? How are constitutional principles and other constitutional provisions related to international law and/or to the European Union law? Are there any provisions in international or the European Union law that are deemed superior than the national constitutional principles? If yes, how such higher international provisions are applied with regard to the national constitutional principles? What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?*

2. *How are the constitutional principles related to each other? Is there any hierarchy within those principles? What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?*

Paragraph 1 of Article 5 of the Constitution of the Republic of Armenia[19] states that "The Constitution shall have supreme legal force". From this provision we can imply that the Constitution in general, with all its norms have supreme legal force, thus a hierarchy within the Constitution *per se* is absent. In theory of law, a concept has been developed regarding the hierarchy among constitutional norms, in accordance with which the "norm-principles" of the Constitution should have superiority.

From the jurisprudence of the Constitutional Court of Armenia, we can state that the Court has referred to certain norms of the Constitution as "norm-principles". In its decision DCC-649 of October 4, 2006 the Constitutional Court referred to the norms established in Paragraph 3 of Article 3 (The state shall be limited by fundamental human and civil rights as a directly applicable right) and Paragraph 1 of Article 6 (The Constitution of the Republic has shall have supreme legal force and the norms thereof shall apply directly) of the Constitution of RA (Amendments dated to 2005) as "core norm-principles". Nevertheless such approach did not pursue the aim to give superiority to those norms in comparison to other constitutional norms, but to illustrate their paramount importance. However in its decision DCC-1081 of April 16, 2013 the Constitutional Court of the Republic of Armenia had found a *prima facie* unconformity between the norms established in Article 62 and Article 67 of the Constitution. In the above stated the decision the Constitutional Court of the Republic of Armenia had stated "The Constitution is self-sufficient and the textual *prima facie* inconsistencies can be overcome based on the fundamental principles and values system

[19] In accordance with the transitional provisions of the Constitution of the Republic of Armenia (Amended in December 6, 2015), starting from December 22, 2015 Chapters 1,2 and 3 of the Constitution of Armenia entered into force

of the Constitution". Therefore it can be stated that the fundamental principles established in Chapter 1 of the Constitution indirectly enjoy a certain level of superiority.

The connection between constitutional principles and principles of international law, have to be discussed in the context of the hierarchy of legal norms enshrined in the Constitution of RA, according to which, if a ratified international treaty, provides norms that differ from those provided by laws, then the treaty norms shall be applied. However any provision of international law cannot prevail over the national constitutional principles, as only the Constitution is endowed with supreme legal force, thus international treaties which contradict to the provisions of the Constitution *per se* cannot be ratified.

The question regarding superiority of certain norms of the Constitution should also be discussed in the context of unamendable constitutional provisions. The Constitution of the Republic of Armenia has always explicitly provided provisions with the status of unamenadlbe constitutional (eternal) provision. As a result of recent constitutional amendments the list of such provisions was expanded. According to Article 203 (Amendments dated to 2015) "Articles 1, 2, 3, and 203 of the Constitution shall not be amended". It should be noted that previously only three Articles of the Constitution (Amendments dated to 2005) had the status of an "unamendable" constitutional provision. Specifically Article 1,2 and 114. Article 1 states that "The Republic of Armenia is a sovereign, democratic, social state governed by rule of law." Article 2 states that "In the Republic of Armenia the power belongs to the people. The people exercise their power through free elections, referenda, as well as through state and local self-governing bodies and public officials as provided by the Constitution. The usurpation of power by any organization or individual constitutes a crime." Article 114 stated that "Articles 1, 2 and 114 of the Constitution may not be amended." Article 3 of the Constitution (Amendments dated to 2015) entitled "The human being, his dignity, fundamental rights and freedoms", stipulates:

"1. The human being shall be the supreme value in the Republic of Armenia. The inalienable dignity of the human being shall be the integral basis of his rights and freedoms.

2. The respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duties of the public power.

3. The public power shall be bound by fundamental rights and freedoms of the human being and the citizen as the directly applicable law".

Article 3 of the Constitution guarantees the principle of rule of law. As it has already been stated, previously it was not given the status of an unamendable (eternal) article, however as a result of constitutional amendments Article 3 also received the status of an unamendable constitutional provision, which only further emphasized the crucial role of the principle of rule of law.

3. *How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law? How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions? Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law? Has the constitutional principles ever been subjected to change in your jurisdiction? If yes, what were the reasons behind it?*

The Constitution of the Republic of Armenia was adopted on July 5, 1995 through a referendum. The Constitution specified the provisions regarding the procedure for constitutional amendments. Article 111 of the Constitution (as of 1995) specified that "The Constitution shall be adopted or amended by referendum which may be initiated by the President of the Republic or the National Assembly" and that "The President of the Republic shall call a referendum upon the request or agreement of the majority of the Deputies of the National Assembly". Article 113 of the Constitution specified that "…a referendum shall be considered to have been passed if it receives more than fifty percent of the votes, but not less than one third of the number of registered voters".

Therefore constitutional amendments could take place only through a referendum and the constitutional amendments would receive legal force only if it received more than fifty percent of the votes, but not less than one third of the number of registered voters. The right for the initiative of such amendments belonged only to the President and The National Assembly.

Despite of the major constitutional amendments on November 27,2005, the regulations regarding the procedure for constitutional amendments remained the same. However, as a result of the most recent constitutional amendments dated December 6, 2015 a new mechanism was presented regarding the procedure for constitutional amendments. As a result of the new regulations in the Constitution, the list of subjects with the right to initiate constitutional amendments was seriously reviewed.

Instead of the previous regulations which prescribed the right to initiate constitutional proceedings only for the President and the National Assembly, the new regulations prescribe the above mentioned right for at least one third of the total number of parliamentarians, the Government, or 200,000 citizens having the right of suffrage (Paragraph 1, Article 202). The mechanism for making amendments to the Constitution was also reviewed. As we stated, in accordance with previous constitutional regulations, the Constitution could have been amended only through a referendum.

However the new regulations offer an alternative to the referendum, by giving the National Assembly the power to amend the Constitution. However this alternative method cannot be applied in cases of Chapters 1-3, 7, 10, and 15, as well as Article 88, the first sentence of Paragraph 3 of Article 89, Paragraph 1 of Article 90, Paragraph 2 of Article 103, Articles 108, 115, 119-120, 123-125, 146, 149, and 155, and Paragraph 4 of Article 200 of the Constitution, as Paragraph 1 of Article 202 explicitly states that the above listed provisions may be amended only through a referendum. Besides the mentioned provisions, as regulated in Paragraph 2 of Article 202, amendments to the other Articles of the Constitution shall be adopted by the National Assembly by at least a two-thirds majority vote of the total number of parliamentarians and the right of the respective initiative shall belong to at least one quarter of the total number of parliamentarians, the Government, or 150,000 citizens having the right of suffrage.

Thus the new constitutional regulations provide for a more flexible system for constitutional change, which was also welcomed by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe in its Second Opinion on the Draft Amendments to the Constitution[20]".

From the perspective of development of constitutional principles, we would like to state, that in comparison with the 1995 and 2005 editions of the Constitution, the constitutional amendments adopted as a result of the referendum held in the Republic of Armenia on 6 December 2015, systemic changes were made in the first Chapter of the Constitution, where the constitutional principles are enshrined.

The principle of legality which is a separate crucial component of the rule-of-law State principle was fully enshrined in Article 6 of the Constitution, Article 3 which regulates the principle of rule of law, was amended, Article 10 of the Constitution which is dedicated to an important component of the principle of social state, for the first time guaranteed the

[20] See: European Commission for Democracy through Law (Venice Commission) of the Council of Europe, Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), electronic source: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)038-e

social market economy as the basis for the economic order in the State, in Article 16 of the first Chapter of the Constitution the special protection of family which is the natural and fundamental cell of society was stipulated, and for the first time in was included in the list of foundations of constitutional order etc. The aim of the stated amendments were to fully guarantee the principle of rule law and to define a system of state power in conformity with the requirements of democracy and rule-of-law State, and to fully solve the issue of transition to a human-centered Constitution in the Republic of Armenia.

4. *Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?*
5. *Does the Constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?*
6. *Is the constitutional court authorized to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds? In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court's reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? What is legal effect of a decision of the constitutional court finding the constitutional*

*amendment in conflict with the constitution? Please, provide examples from the jurisprudence of the constitutional court.*

The constitutional regulations established in 1995 and amended in 2005 regarding the procedure for constitutional amendments reserved a serious role in general for political actors, as the subjects for such initiative were the National Assembly and the President. Both of those subjects should be considered as political actors.

The only constitutional mechanism for constitutional overview of the the above stated procedure was reserved for the Constitutional Court based on Clause 3 of Article 100 of the Constitution (Amendments dated to 2005), according to which "The Constitutional Court shall, in conformity with the procedure defined by law…resolve all disputes arising from the outcomes of referenda. However the Court was not authorized to review the constitutionality of the constitutional amendments per se, but merely the procedural grounds regarding it, specifically the disputes arising from the outcome of the referendum. Clause 2 of Article 101 of the Constitution (Amendments dated to 2005) sets forth the scope of applicants-subjects, who may apply to the Constitutional Court in conformity with the procedure prescribed in the Constitution and in the RA Law on the Constitutional Court. Particularly the President of the Republic and at least one-fifth of the total number of the deputies of the National Assembly may apply to the Constitutional Court regarding disputes arising from the outcomes of referenda. Paragraph 3 of Article 73 of the Law "On the Constitutional Court" of the Republic of Armenia states that "In cases of disputes related to the results of referenda it is allowed to appeal to the Constitutional Court on the fifth day, till 18.00". Paragraph 7 of the above stated Article establishes that " In cases of disputes related to the results of referenda the Constitutional Court makes one of the following decisions:
1) leave unchanged the decision on the summary of the results of the referendum;
2) announce invalid the decision on the summary of the results of the referendum and determine the draft, put on a referendum, as adopted or not adopted or announce invalid the results of the referendum".

It should be noted that throughout these years the Constitutional Court had never received an application concerning disputes arising from the outcomes of referenda from the above stated subjects, as a result of which the Court cannot present any practice regarding it.

Article 94 of the Constitution (Amendments dated to 2005) prescribes, that the procedure for the activities of the Constitutional Court shall be defined by the Constitution and the. As prior to the Constitutional amendments taken place on December 6, 2015 neither the Constitution nor the Law on the Constitutional Court did not authorize the constitutional court to assess or review the draft of constitutional amendments, the Court taking into account the principles of the rule-of-law State, could not conduct actions for which it is not authorized by Constitution or by law. Therefore the Court has never assessed or reviewed the drafts of constitutional amendments.

However as a result of the December 6, 2015 constitutional reforms a new power was prescribed regarding the Constitutional Court, according to which, before the adoption of constitutional changes and/or putting it for referendum the Constitutional Court has to decide conformity of the stated with the Constitution. Therefore, the Constitutional Court hereinafter is not only authorized to determine the constitutionality of the procedural grounds but also the substantive basis of the amendments to the Basic law.

7. *Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law? Do academic scholars or other societal groups advocate for such development? How the judicial review is observed in this regard? Would the expansion or recognition of constitutional court's authority encourage the realization of constitutional ends or threaten its viability? Please, elaborate on existing discussion in your jurisdiction.*

In 2015, as the Draft Amendments to the Constitution of Armenia was presented for public discussion, numerous opinions among academic scholars and other social groups were presented regarding the necessity of a mechanism for constitutional review of the Draft

Amendments to the Constitution, before they were put to a referendum. The constitutional amendments of December 6, 2015 adopted the policy of expanding the powers and the role of the constitutional court in regards to the procedure of the constitutional amendments, by presenting a mechanism for constitutional overview of the Draft of Constitutional amendments. Paragraph 2 of Article 168 of the Constitution prescribed that "The Constitutional Court shall, in accordance with the procedure prescribed by the Constitution and the Law on the Constitutional Court… **prior to the adoption of the Constitutional amendments draft, as well as drafts of legal acts put to the referendum, determine their conformity with the Constitution**". Paragraph 2 of Article 169 presented the subjects who may apply to the Constitutional Court regarding the above mentioned question, which are the National Assembly and in case of a popular initiative, the authorized representative of the latter. Such approach cannot in any way threaten the viability of the constitutional court, but would only make the procedure of constitutional amendments more democratic and appropriate for a rule-of-law State, and most importantly would be an effective mechanism for preventing the occurrence of possible unconstitutional solutions and norms.