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**CONSTITUTIONAL JUSTICE:
FUNCTIONS AND RELATIONSHIP WITH
THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress
of the Conference of European Constitutional Courts by
The Constitutional Court of the Republic of Armenia*

I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

The President of the Republic of Armenia and the National Assembly appoint nine members of the Constitutional Court. Pursuant to Point 1, Article 83 of the RA Constitution, the National Assembly appoints five members of the Constitutional Court. Pursuant to Point 2 of the given Article, the President of the Constitutional Court is appointed within 30 days after the office of the President of the Constitutional Court becomes vacant and upon the recommendation of the Chairman of the National Assembly.

The National Assembly is authorized in the cases and procedures prescribed by Law, on the basis of the conclusion of the Constitutional Court and by a majority vote of the total number of Deputies terminate the powers of any of its appointees to the Constitutional Court.

The grounds for termination of the powers of the member of the Constitutional Court are envisaged in Part 3, Article 14 of the Law on "The Constitutional Court." Pursuant to it, the membership in the Constitutional Court shall be terminated on the basis of a conclusion of the Constitutional Court by the appointing body when the Member:

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

2. To what extent is the Constitutional Court financially autonomous – in the setting up and administration of its own expenditure budget?

Pursuant to the RA Law on “The Constitutional Court”, by essence, the independence of the Constitutional Court in the formation and administration of its budget is ensured. Pursuant to Article 6 of the Law, according to the procedure envisaged by the Rules of Procedure of the Constitutional Court, the President of the Constitutional Court presents the estimate of expenditures of the Constitutional Court (the budgetary claim) to the Government for inclusion in the draft state budget in the time frame envisaged by the Law on Budget System. If accepted by the Government, the budgetary claim of the Constitutional Court is included in the draft state budget and in case of any objection is presented to the National Assembly together with the draft state budget. The Constitutional Court disposes its resources independently.

For ensuring the regular activity of the Constitutional Court and for financing the unexpected expenses a deposit fund is prescribed, which is presented by a separate line of the budget.

3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?

It should be mentioned in advance that pursuant to Article 94 of the RA Constitution **the powers and the order of organization of the Constitutional Court shall be defined by the Constitution, while the order of activity thereof shall be defined by the Constitution and the Law on the Constitutional Court.**

Taking into consideration that the order of organization of the Constitutional Court is defined not by the Law, but by the Constitution and the amendments to the Constitution are adopted by the referendum, the National Assembly is not authorized to change the order of organization of the RA Constitutional Court. What concerns the changes of the order of activity of the Constitutional Court, as this order is not only defined by the Constitution but also the Law, then so far as this order is defined by the RA Law on “The Constitutional Court”, the National Assembly can change the order of activity of the Constitutional Court. What concerns the issue of making such changes after consultation with the Constitutional Court, the National Assembly is free to make these changes without consulting with the Constitutional Court.

Moreover, such consultations with the Constitutional Court are impermissible taking into consideration the fact that these changes in the frames of constitutional review towards the law can later become a subject of examination at the Constitutional Court.

4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?

The Rules of Procedure of the National Assembly of the Republic of Armenia has the status of law. As the Constitutional Court is competent to exercise review of the constitutionality of the laws, the Rules of Procedure of the National Assembly is also the object to the constitutional review. For instance, by the decision CCD – 810 of the RA Constitutional Court of June 6, 2009 Part 3, Article 14 of the RA Law on “The Rules of Procedure of the National Assembly” is recognized as contradicting the RA Constitution and invalid.

What concerns the issue of the fragment concerning the government, the procedure of functioning of the government of the Republic of Armenia is defined by a decree of the RA President (Decree of the RA President of 18 July, 2007, on Defining the order of organization of the activity of the RA government and other state governing bodies subject to the latter). Taking into consideration, that the RA President’s decrees are the object to constitutional review, the legal act, which defines the procedure of functioning of the government, is also subject to review by the Constitutional Court.

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

The frame of the legal acts subject to the constitutional review is defined by Article 100 of the RA Constitution. According to the latter, the Constitutional Court decides on the conformity of the laws, National Assembly decisions, Decrees of the President of the Republic, decisions of Government, Prime minister, local self-government bodies, duties envisaged in the international treaties with the Constitution.

6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court’s decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.

The answer to this question is in Decision CCD – 866 of 23 February 2010 of the RA Constitutional Court. In particular, Point 3 of this decision states “...The RA Law on “The Rules of Procedure of the National Assembly” and RA Law on “Legal Acts” do not envisage yet a legal regulation on the necessary steps, which the National Assembly has to undertake as a consequence of a decision of the Constitutional Court on recognizing a Law or its provision and a decision of the RA National Assembly contradicting the Constitution and invalid by the Constitutional Court on the basis of Point 1, Article 100 of the RA Constitution, and, this circumstance was emphasized

also in the annual reports of 2008 and 2009 on the summary of the condition of execution of the Constitutional Court decisions”.

6. b) Parliament can invalidate the constitutional court’s decision: specify conditions.

The National Assembly of the Republic of Armenia is not authorized to invalidate the Constitutional Court’s decisions.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

Such institutional mechanisms do not function in the Republic of Armenia.

Although, it should be mentioned that in accordance with Point 5, Article 46 of the RA Law on “The Constitutional Court” “The representatives of the President of the Republic, the National Assembly, the Government, the Court of Cassation, the Ombudsman, the Chief Prosecutor that are interested in participation in the Constitutional Court session can apply to the Constitutional Court and receive the materials of the case under review in advance and can give clarifications to the questions of the Constitutional Court in a status of invitees to the case hearing.” This is a unique way of cooperation in the frames of rules of the constitutional procedure. Besides, the RA National Assembly has formed a separate working group from the deputies that after each decision of the Constitutional Court prepares suggestions on necessary legislative amendments on the basis of the given decision.

II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT

- 1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

The RA Constitutional Court does not have competence to solve legal disputes, which arise between the state bodies on the issues of constitutional powers.

The Constitutional Court indirectly refers to the issue in the framework of its power to decide the constitutionality of the normative acts.

- 2. Specify whether the Constitutional Court is competent to resolve such litigation.**

As an addition to the abovementioned, the Constitutional Court is competent to examine only the disputes connected with the decision made on the results of the elections adopted by the Election Commissions.

- 3. Which public authorities may be involved in such disputes?**

In the frames of solution of the issue of constitutionality of normative acts, the constitutional dispute subject to the solution can concern any state body.

- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

In the RA Constitutional Court, the cause for the discussion and solution of the constitutional dispute can be only the normative act, the constitutionality of which is disputed and these disputes include only the cases, when one state body disputes the constitutionality of the act adopted by other state body.

- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

With the request to solve such disputes (as much as it refers the constitutionality of the normative acts) the application to the Constitutional Court may be filed by:

- the President of the Republic;
- at least one-fifth of the total number of the deputies;

- the Government;
- bodies of local self-governance on the issue of compliance with the Constitution of normative acts by state bodies violating their constitutional rights;
- the courts and the Prosecutor General on the issue of constitutionality of provisions of normative acts related to specific cases within their proceedings;
- the Human Rights Defender – on the issue of conformity of normative acts listed in Point 1 of Article 100 of the Constitution with the provisions of Chapter 2 of the Constitution.
- candidates for the President of the Republic and Deputies on matters listed in Points 3.1 and 4 of Article 100 of the Constitution which concern them.

6. What procedure is applicable for the adjudication of such dispute?

As far as such disputes are solved only in the frames of solution of the constitutionality of the normative act, then a general procedure of deciding the issue of constitutionality of the normative acts is implemented.

7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.

The Constitutional Court can adopt only one of these decisions:

- On recognizing the disputed act in conformity with the Constitution;
- On recognizing the disputed act entirely or partially contradicting the Constitution and invalid.

It has to be mentioned, that the Constitutional Court in its practice has had cases, when it has recognized the disputed unconstitutional norm within its interpretation given to it by the law-enforcement practice (as an example see the decisions CCD-844, 07.12.2009, CCD-782, 02.12.2008) or has recognized the disputed norm as constitutional within the legal positions of the Constitutional Court (as an example see the decisions CCD-833, 13.10.2009, CCD-849, 22.12.2009, CCD-852, 19.01.2010, CCD-903, 13.07.2010).

8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.

The normative act or the provision, which is recognized as unconstitutional on the basis of the Constitutional Court decisions, either loses its legal force or the bodies, which earlier adopted it, make necessary amendments in it.

III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:
 - a) final;
 - b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
 - c) binding *erga omnes*;
 - d) binding *inter partes litigantes*.

Pursuant to Article 102 of the RA Constitution, the decisions and conclusions of the Constitutional Court shall be final. Pursuant to Part 1, Article 65 of the Law on "The Constitutional Court" within three days after their adoption, the decisions and the conclusions of the Constitutional Court shall be sent to the trial parties, to the corresponding state bodies, including the RA National Assembly and the RA Court of Cassation and they are published in the Official Bulletin of the Republic of Armenia and Bulletin of the Constitutional Court. In accordance with Part 5, Article 61 and Article 66 of the RA Law on "The Constitutional Court", the decisions of the Constitutional Court on the substance of the case are mandatory for all the state and local self-government bodies. Simultaneously, Part 2, Article 9 of the RA Law on "Legal Acts" states: "The laws shall be in conformity with the Constitution and shall not contradict the Constitutional Court decisions." In accordance with Part 2, Article 12 of the mentioned Law, "The decisions of the National Assembly of the Republic of Armenia shall not contradict the Constitution of the Republic of Armenia, laws of the Republic of Armenia, Constitutional Court decisions and international treaties ratified by the National Assembly."

According to Part 2, Article 13 of the mentioned Law "The decrees of the President of the Republic of Armenia shall not contradict the Constitution of the Republic of Armenia and laws of the Republic of Armenia, decisions of the Constitutional Court of the Republic of Armenia, decisions of the National Assembly of the Republic of Armenia, international treaties ratified by the National Assembly."

Thus, the RA Constitutional Court decisions are final, are not subject to appeal, are not restricted by the legal consequences for the parties of trial, and by causing legal consequences for everybody and each obtain with *erga omnes* obligatory nature.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:
 - a) repealed;
 - b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
 - c) suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;
 - d) other instances.

Pursuant to Part 8, Article 68 of the RA Law on “The Constitutional Court”, the Constitutional Court, while finding the challenged act or its provision contradicting the Constitution, simultaneously recognizes it as invalid, which means that the normative act or its provision which is recognized as contradicting the Constitution and invalid, on the basis of the decision of the Constitutional Court loses its legal force and it is no more subject to implementation.

In accordance with the general rule, the normative act or a part of it, which is recognized as unconstitutional by the Constitutional Court, loses its legal force from the moment of Constitutional Court’s decision entering into force, i.e. from the publication thereof. The exception is, that the provisions of the Criminal Code or the law on administrative liability, recognized unconstitutional, lose their legal force from entering into force thereof.

Simultaneously, it should be mentioned that pursuant to Part 3, Article 102 of the RA Constitution, the Constitutional Court by its decision may define a deferred effective date for the losing of a legal force of a normative act contradicting the Constitution or a part thereof. This constitutional norm is referred to in Part 15, Article 68 of the RA Law on “The Constitutional Court” according to which if the Constitutional Court finds that declaring the challenged general act or any provision of it contradicting the Constitution and invalid from the moment of the announcement of the Court decision will inevitably cause such hard consequences for the public and for the state that it would harm the legal security expected from the annulment of the given general act, then the Constitutional Court has the right to declare the act as unconstitutional and at the same time to postpone the period of invalidation of the act.

3. Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

For the ordinary courts, the mandatory nature of the Constitutional Court’s decisions concerning the unconstitutionality means that:

- Pursuant to Part 3.3 and Part 12.1 of the RA Civil Procedure and Criminal Procedure Codes, the Constitutional Court’s decision on recognizing the normative act or its provision contradicting the Constitution and invalid is a new circumstance which serves as a ground for the review of the court’s judicial act adopted by the ordinary court against the person, on the basis of whose individual application the Constitutional Court recognized that norm as contradicting the Constitution and invalid. Moreover, pursuant to Article 204.31 and Article 426.2 of the RA Civil Procedure Code, on the basis of the Constitutional Court’s decision on unconstitutionality, the acts of ordinary courts against those persons are subject to review too which upon the date of adoption of the decision of the Constitutional Court on the issue of constitutionality of the provision of the Law enjoyed the possibility to

exercise the right to apply to the Constitutional Court in accordance with the requirements (deadlines) of Law of the Republic of Armenia on “The Constitutional Court” (the legislature has envisaged the possibility of review of judicial acts of the mentioned persons as a result of execution of the Constitutional Court’s decision CCD – 833, October 13, 2009);

- The norm which has been recognized as unconstitutional and invalid by the Constitutional Court is not applicable by the ordinary courts;
- If the Constitutional Court recognizes the challenged norm unconstitutional and invalid “in part of legal positions expressed in the decision” or in “this or that part”, the obligatory nature of such decisions of the Constitutional Court’s demand the ordinary courts to implement the given provision in accordance with the Constitution and legal positions of the Constitutional Court.

4. Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?

Taking into consideration that the fact of recognizing the challenged norm as unconstitutional and invalid by the Constitutional Court brings to the loss of legal force of the given norm and this norm is no more subject to implementation, as a rule, the decision of the Constitutional Court on unconstitutionality does not demand the legislature to undertake steps to liquidate the unconstitutional situation. Although frequently such situations occur when the legislature is demanded to undertake consequent amendments for bringing the normative act in conformity with the Constitution. In particular, the necessity of such an interference of the legislature occurs when the Constitutional Court recognizes the disputed norm as unconstitutional “in the frames of legal positions expressed in the decision” or in “this or that part”.

The legislature’s interference is necessary also in the case when the Constitutional Court by its decision registers a legislative lacuna. The registration of the legislative lacuna cannot be left without consequences. The Constitutional Court decision causes obligations to fill in the lacuna of law by proper legal regulation and abolish non-qualified legal regulation.

On the basis of the Constitutional Court decision, the legislature has an obligation to bring the legal regulation, which is recognized as unconstitutional, in conformity with the Constitution, also when the Constitutional Court by its decision postpones the losing of the legal force of the norm, which is recognized as unconstitutional, up to a definite date. The legislature is obliged to make changes during the mentioned period and amend the corresponding law.

In general, the legislature reacts properly to the Constitutional Court’s decisions concerning unconstitutionality. The Constitutional Court’s decisions have become an essential source of law. Only during the last two and half years, the RA National

Assembly on the basis of the legal positions of the RA Constitutional Court has made amendments in more than 30 laws.

5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.

As it is already mentioned above, the deadlines are not prescribed by the RA Constitution or the current laws in the frames of which the legislature shall correct the unconstitutional legal regulation. Such a deadline can indirectly be defined only by the Constitutional Court's decision in the case when the Constitutional Court postpones the deadline of losing the legal force of the norm recognized as unconstitutional. If the legislature does not change the legal regulation, which is recognized as unconstitutional, after the mentioned deadline the mentioned norm loses its legal force. The RA Constitutional Court postponed the deadline of losing the legal force of the challenged norm in its decisions of CCD – 765 of October 8, 2008, CCD -753 of May 13, 2008, CCD – 780 of November 25, 2008 and CCD – 873 of April 13, 2010.

The legislature did not make amendments in the timeframe defined in the decision CCD – 753 of the Constitutional Court concerning the challenged Part 3, Article 53 of the RA Law on “The Television and Radio”, as a result of which, on December 1, 2008 (the date, which was determined by the Constitutional Court), the norm which was recognized as unconstitutional lost its force.

In another case, in concern with the Constitutional Court's decision CCD – 780, although the legislature in the defined timeframe reacted to the Constitutional Court's decision and made consequent amendments in the RA Administrative Procedure Code trying, in accordance with the Constitutional Court's decision, to ensure the effectiveness of dual grade system of administrative justice, these amendments were not in power to realize fully the requirements of the Constitutional Court's decision. The fact is that, on the basis of another individual application the amended and changed provisions made as a result of the execution of the Constitutional Court's decision later became a subject to examination by the Constitutional Court, and which by the RA Constitutional Court in the decision CCD – 873 of April 13, 2010 were again recognized as in non-conformity with the Constitution and invalid on the grounds of not ensuring the efficiency of the two grade system of the administrative justice.

6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.

As it is mentioned above, in accordance with Part 5, Article 61 and Article 66 of the RA Law on “The Constitutional Court”, all adopted decisions shall be mandatory for all state bodies and local state government bodies.

Pursuant to Part 2, Article 9 of the RA Law on “The Legal Acts” the laws must be in conformity with the Constitution and shall not contradict the Decisions of the Constitutional Court of the Republic of Armenia.

Consequently, the legislature is not allowed to adopt the norm again which by the Constitutional Court is recognized as contradicting the Constitution and invalid.

7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?

The Constitutional Court of the RA does not possess with such a possibility.