



**3rd Congress of the World Conference on Constitutional Justice
'Constitutional Justice and Social Integration'
28 September – 1 October 2014
Seoul, Republic of Korea**

Reply by

The Constitutional Court of the Republic of Armenia

Below, you will find the Reply of the Constitutional Court of the Republic of Armenia to the questionnaire for the preparation of introductory reports on sub-topics for the 3rd Congress of the World Conference on Constitutional Justice "Constitutional Justice and Social Integration", Seoul, Republic of Korea, 28 September – 1 October 2014

A. Court description

Unless your Court¹ has already provided a description for the CODICES database (www.CODICES.coe.int), we kindly invite you to prepare a short presentation of your Court. This will allow the member courts to get to know each other better. Please briefly set out your Court's composition and competences under the headings below:

Introduction

- I. Basic texts**
- II. Composition, procedure and organisation**
- III. Jurisdiction / Powers**
- IV. Nature and effects of judgments**

Conclusion

The Armenian Constitutional Court is already provided a required description for the CODICES database.

B. Social integration

As concerns the specific sub-topics for the 3rd Congress, please reply to the following questions in a succinct manner, in any of the languages of the conference - but if possible with a translation into English.

1. Challenges of social integration in a globalised world

Please give two or three typical examples (please refer to the précis in the CODICES database, when you have already contributed these cases. Otherwise, please consider sending précis / summaries to be included in the CODICES database).

¹ Hereinafter "your Court" will refer to your institution, be it a Constitutional Court, a Supreme Court, Constitutional Council or a Constitutional Chamber within a Supreme Court.

1.1. What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

The Constitutional Court several times encountered challenges in the abovementioned fields. In the field of asylum law special attention should be drawn to the Decision DCC-834 of 20.10.2009 on the conformity with the Constitution of Article 25 of the RA Law on Refugees. The applicants challenged Article 25 of the Law on Refugees in terms of the status of children, born in the Republic of Armenia of persons granted refugee status. According to applicants the disputed Article 25 of the Law does not comply with the principles of legal certainty, proportionality, equality, thus contradicts requirements of the Constitution. Applicants found that Court of Cassation by its decision gave an interpretation of Article 25 of the Law, in which they, as children born of persons granted refugee status are denied refugee status. The applicants also argued that due to the legal position of the Court of Cassation, based on legal uncertainty of Article 25 of the Law, they are in the uncertain status, do not have any legal document establishing their status, as a result of which their rights and freedoms guaranteed by the Constitution and international treaties of the Republic of Armenia are violated. The respondent objecting the mentioned arguments, according to the results of comparative analysis of articles 1 and 25 of the RA Law on Refugees argued that the applicants born in the Republic of Armenia and registered by the Civilian Registry Office could not be considered refugees, irrespective of the circumstances of their parents forced relocation. The Constitutional Court noted that the objective of Article 25 of the Law was not to establish the legal status of children born in the Republic of Armenia of persons granted refugee status. Such a legislative policy is justified, since the origin of persons granted refugee status under birth in the Republic of Armenia, by itself can't create indispensable condition of refugee status, since such a condition does not fit in scope of the term "refugee", established by Article 1, Section A. of the 1951 Geneva Convention on the Status of Refugees and the RA Law on Refugees. For this reason Constitutional Court stated that Article 25 of the Law on Refugees doesn't create legal uncertainty.

In the field of taxation law it's worth mentioning the Decision DCC-1073 of 30.01.2013 (ARM-2013-1-001) on the conformity with the Constitution of provisions of the Law on taxes. The provisions of the Law on Taxes concerning the mechanisms for the seizure of property were challenged. The applicant contended that the implementation of such seizure leads to deprivation of the possibility of full performance of the right to property, which means that the seizure of property is, per se, deprivation of the right to property, which, in its turn, may be performed only by the decision of a court according to the Constitution, whereas, in practice, it is performed by tax bodies. The Constitutional Court considered the challenged legal provisions in the context of the constitutional regulations relating to the deprivation of property. The Court emphasized the necessity to ascertain whether the challenged provisions aim to deprive the person of the property or to ensure the performance of tax obligations, and whether there are sufficient guarantees which prevent breaches of the human rights within the implementation of the power to seize property. The Court highlighted the peculiarities of the deprivation of property to ascertain whether seizure per se constitutes such limitation to the right to property. The Court referred to key features of the deprivation of property, such as; deprivation of the right to property without any compensation, against the will and express wishes of the person, simultaneous suspension of all components of the right and without any guarantee of continuation, and lastly deprivation as a civil sanction. Taking into consideration all these features the Court held that seizure of property definitely differs from the deprivation of property. In the field of social security it is due to mention the Decision DCC-649 of 04.10.2006 on the conformity with the Constitution of Article 11 of the RA Law on Social Security Cards. Pensioners applied to the Constitutional Court for the reason that because of their religious beliefs they didn't get social security cards and as a consequence of that the payment of their pensions was suspended. The applicants initiated a civil suit before the Court demanding to ensure payment of their pensions. On 12.01.2006. their claims were satisfied by the Shengavit

Court of First Instance of Yerevan. Nevertheless, the Court of Appeal refused their demand for payment of pensions. The applicants stated that Article 11 (Paragraphs 2 and 4) of the RA Law on Social Security Cards contradicted the RA Constitution. It is prescribed in Paragraph 2 of Article 11 that accounting and reporting documents for the operations mentioned in Paragraph 1 for those who haven't got social security card are void if they don't indicate social security number. Paragraph 4 says that social card is not related to spiritual matters and can't be used against the conscience and religious beliefs of a person. The Constitutional Court of RA ruled to declare invalid Paragraph 2 of Article 11 of the RA Law on Social Security Cards.

1.2. How were issues of social integration or conflict transformed into legal issues?

There were some cases when the issues of social integration were transformed into a legal issue. In particular the relevant case in the field of labor relations were considered by the Constitutional Court and the Decision DCC-792 of 24.02.2009 (ARM-2009-1-002) on the conformity with the Constitution of Articles 113.1.9 and 114.4.5 of the Labor Code was adopted. The provisions of Labor Code in question allow early dissolution of employment contracts where the employee has reached pension age - this being 65 for the purposes of the Code. The applicant raised concern that such a legal regulation violates the constitutional principle of equality before the law, which forbids discrimination on the basis of the age or personal, social or other circumstances. The Constitutional Court stated that freedom of choice of employment prescribed in Article 32 of the Constitution affords everybody the opportunity for free expression of their professional and other capacities and entry into the workforce without discrimination. Under Articles 14.1 and 32 of the Constitution, the free and non-discriminatory realization of the right to work shall be guaranteed in all spheres of labor relations. In view of the international experience of free, non-discriminatory choice of employment and the realization of this right, the Constitutional Court stated that any discrimination (including that on the grounds of age), or illegal restrictions of freedom of employment in domestic legislative practice contravene the fundamental principles of the democratic and social state, based on the rule of law.

1.3. Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

There is a trend towards an increase in cases on legal issues related to social integration. The dominant questions in the past were related to social security law and pension system and at present the questions arise also in the sphere of education.

2. International standards for social integration

Please indicate a few typical examples (if possible by reference to cases in the CODICES database).

2.1. What are the international influences on the Constitution regarding issues of social integration/social issues?

Most of the international standards on social integration/social issues/social rights are stipulated in international treaties. The Republic of Armenia has acceded to the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly on 16 December 1966, the European Social Charter(revised) signed on 3 May 1996 in Strasbourg, the Framework Convention for the Protection of National Minorities signed in Strasbourg on 1 February 1995, the Convention on Abolition of Forced Labor signed on 25 June 1957 in Geneva, the Forced Labor Convention signed on 28 June 1930 in Geneva, the Minimum Wage Fixing Convention signed on 22 June 1970 in Geneva, the Convention concerning Workmen's Compensation for Occupational Diseases adopted on 10 June 1925 in Geneva, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women signed on 6 October 1999 in New York, The UN Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto

adopted on 13 December 2006 in New Delhi and other international treaties on the social rights or social issues.

Participation of the Republic of Armenia in international treaties and agreements on social integration has given an opportunity to synchronize the national legislation and constitutional-legal practice with international legal standards. Such social rights as the right to rest, the freedom to choose an occupation, the right to social security, the right to receive medical assistance and service, the right to education, the right to preserve national and ethnic identity and other social rights are also stipulated on the Constitution of the Republic of Armenia.

2.2. Does your Court apply specific provisions on social integration that have an international source or background?

The Constitutional Court of the Republic Armenia applies specific provisions on social integration that have an international source or background. In numerous decisions of the Constitutional Court on the determination of issues of compliance of the national legislation with the Constitution of the Republic of Armenia there are references to the international sources on social integration. For example, Constitutional Court applies not only the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, but also the legal positions of the European Court of Human rights on social issues. For example, there are references to the decisions of the European Court of Human Rights in the Decision DCC-1073 of the Constitutional Court of the Republic of Armenia of January 30, 2013 on the case concerning the determination of the issue regarding the conformity of article 30.2, parts 1, 2 and 5 of the Law of the Republic of Armenia on Taxes with the Constitution of the Republic of Armenia on the basis of the application of the Human Rights Defender of the Republic of Armenia (there are references to the case of Hentrich v. France (Application no. 13616/ 88) 22 September 1994, Case of Dossier and Fordertechnik GmbH v. The Netherlands (Application no. 15375/89) 23 February 1995).

2.3. Does your Court directly apply international instruments in the field of social integration?

In accordance with Article 1, Paragraph 2 of the Law of the Republic of Armenia on the Constitutional Court "In the course of administering of constitutional justice the Constitutional Court is independent and follows only the Constitution". Due to abovementioned provision, the Constitutional Court has never applied directly any international instrument in the field of social integration as well as in any other relevant field. Nevertheless there are a lot of examples of references to the relevant international treaties in various decisions of the Constitutional Court (Please, see reply to the question 2.4 below)

2.4. Does your Court implicitly take account of international instruments or expressly refer to them in the application of constitutional law?

In numerous decisions of the Constitutional Court on the determination of issues of compliance of the national legislation with the Constitution of the Republic of Armenia Constitutional Court directly referred to international instruments in the field of social integration. For example, in decision DCC-649 of October 4, 2006 on the case concerning the determination of the issue regarding the conformity of article 11 of the RA Law on Social Security Cards with the Constitution of the Republic of Armenia on the basis of the applications of the citizen M. Qocharyan and the citizen H. Davtyan Court referred to the

Convention on the Rights of the Child, in the Decision DCC-1073 of January 30, 2013 on the case concerning the determination of the issue regarding the conformity of Article 30.2, parts 1, 2 and 5 of the Law of the Republic of Armenia on Taxes with the Constitution of the Republic of Armenia on the basis of the application of the Human Rights Defender of the Republic of Armenia Constitutional Court referred to the Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. There are references to the International Covenant on Economic, Social and Cultural Rights and the European Social Charter in the Decision DCC-716 of October 23, 2007 on the case concerning the determination of the issue regarding the conformity of article 57 of the RA Law on State Pensions with the Constitution of the Republic of Armenia on the basis of the application of the citizen Albert Movsesyan, as well as references to the [Convention on the Status of Refugees](#) in the Decision DCC-834 of October 20, 2009 on the case concerning the determination of the issue regarding the conformity of article 25 of the RA Law on Refugees with the Constitution of the Republic of Armenia on the basis of the applications of Aram Qaramyan and Hayk Hayrapetyan.

2.5. Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how were these conflicts solved?

It has not been encountered any conflicts between the international standards and constitutional standards on the social issues during the examination the cases on the determination of issues of compliance of the national legislation with the Constitution of the Republic of Armenia. Probably it is due to the mandatory preliminary constitutional control of obligations enshrined in international treaties of the Republic of Armenia before their ratification due to Paragraph 2 of Article 100 of the Constitution. Before the ratification of any international treaty, which can establish social standards, the Constitutional Court of the Republic considered the obligations enshrined in it for compliance with the Constitution of the Republic of Armenia.

But Constitutional Court has encountered conflicts between the national legal provisions concerning social issues and international social standards. For example, in decision DCC-649 of October 4, 2006 on the case concerning the determination of the issue regarding the conformity of Article 11 of the RA Law on Social Security Cards with the Constitution of the Republic of Armenia on the basis of the applications of the citizen M. Qocharyan and the citizen H. Davtyan Constitutional Court established, that there are conflicts between the RA Law on Social Security cards and [Convention on the Rights of the Child](#) concerning the issue of the children's right to social security. Constitutional Court on this case applied the international standard.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1. What kind of constitutional law does your Court apply in cases of social integration – e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, Staatszielbestimmungen, ...?

In cases of social integration the Constitutional Court of the Republic of Armenia is entitled to apply any kind of constitutional law - e.g. fundamental rights, principles of the Constitution (“social state”), “objective law”, Staatszielbestimmungen, ... For instance, in the Decision DCC-997 of 15.11.2011, considering the case concerning the constitutionality of Article 1087.1 of the Civil Code, which concerns civil liability for insult and defamation, the RA Constitutional Court stated that human dignity has primary importance to the free and guaranteed enforcement of a person's basic rights and freedoms. Legal restrictions on the implementation of these rights and freedoms should be proportional and emanate from the nature of democratic principles of international law and national legislation, which should not endanger basic human rights (ARM-2011-3-003). In the Decision DCC-792 of 24.02.2009,

considering the constitutionality of the provisions of the Labor Code, which allow early dissolution of employment contracts where the employee has reached pension age, the RA Constitutional Court stated that any discrimination (including that on the grounds of age), or illegal restrictions of freedom of employment in domestic legislative practice contravene the fundamental principles of the democratic and social state, based on the rule of law (ARM-2009-1-002). In the Decision DCC-731 of 29.01.2008 concerning the constitutionality of the provision of the Law on State Pensions, under which it was only possible to obtain confirmation in a judicial manner of a ten year period of one's labor record, although twenty five confirmed years were needed, the RA Constitutional Court stated that the implementation of the disputed provision violates the principles of equality, prohibition of discrimination, and the constitutional principles of rule of law and legal certainty (ARM-2008-1-002).

3.2. In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

Individuals can invoke various types of constitutional law provisions to the extent necessary to justify the application (e.g. the unconstitutionality of the challenged provision). For instance, on 25.12.2007 Radio Hay Limited applied to the Constitutional Court, expressing concern over provisions of the Law on Television and Radio, which obliged television and radio companies to pay annual over-the-air fees for using broadcasting frequencies. The applicant suggested that the provision lacked clarity, and that it infringed Article 45 of the Constitution in that it did not stipulate an amount for the annual over-the-air fee for using broadcasting frequency, neither had it appointed a specific body to consider the amount of such an annual fee (ARM-2008-2-006).

3.3. Does your Court have direct competence to deal with social groups in conflict (possibly mediated by individuals as claimants/applicants)?

According to Article 101 of the RA Constitution in conformity with the procedure set forth in the Constitution and the Law on the Constitutional Court the application to the Constitutional Court may be filed by: ... 6) every person in a specific case when the final judicial act has been adopted, the possibilities of judicial protection have been exhausted and the constitutionality of a legal provision applied by the act in question is being challenged ... Article 25 of the RA Law "On the Constitutional Court", in turn, prescribes that in the cases determined in Paragraph 6 of Article 101 legal persons are also eligible to appeal to the Constitutional Court according to Article 42.1 of the Constitution. Moreover, according to Article 39 of the RA Law "On the Constitutional Court" before the start of the case review the cases referring to the same issue can be combined and considered during one session by the decision of the Constitutional Court. Hence, in these cases the Constitutional Court can directly deal with the corresponding social group in conflict. For instance, the RA Constitutional Court examined the issue of the constitutionality of Article 10.3 of the Electoral Code and adopted the Decision DCC-803 of 08.05.2009 on the basis of application of the Armenian National Congress pre-election alliance (ARM-2009-2-003).

3.4. How does your Court settle social conflicts, when such cases are brought before it (e.g. by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

According to Part 8, Article 68 of the RA Law "On the Constitutional Court" in cases concerning the constitutionality of the legal acts **determined by paragraph 1 of article 100 of the Constitution** the Constitutional Court can make one of the following decisions: 1) finding the challenged act or its challenged provision in conformity with the Constitution, 1.1) finding the challenged act or its challenged provision in conformity with the Constitution by

the constitutional legal contents revealed by the decision of the Constitutional Court, 2) finding the challenged act fully or partially invalid and in non-conformity with the Constitution. Hence, the Constitutional Court settles social conflicts by annulling the corresponding legal provision or by revealing its constitutional-legal content, within the frames of which the legal provision can be considered constitutional. For instance, considering the case concerning the constitutionality of Article 1087.1 of the Civil Code, the Constitutional Court decided that Article 1087.1 complied with the Constitution within the constitutional-legal content emanating from the legal positions expressed in the decision and international commitments undertaken by the Republic of Armenia (ARM-2011-3-003). In the Decision DCC-753 of 13.05.2008 the Constitutional Court noted the various contradictions in the legal regulation of radio frequency usage, the uncertainty of the provision in dispute, and the implementation of the norm that stemmed from an incorrect interpretation of the norm due to that very uncertainty. It ruled that the norm did not allow economic organizations to deduce the aim of exacting over the air fees, the content of the fee and the legality of the duty to pay it. The norm was therefore incompatible with the requirements of the Constitution. Hence, it was declared as contradicting the RA Constitution and void (ARM-2008-2-006).

3.5. Can your Court act preventively to avoid social conflict, e.g. by providing a specific interpretation, which has to be applied by all state bodies?

The Constitutional Court of the Republic of Armenia isn't vested with an authority to exercise preventive constitutional supervision of the corresponding legal acts, as well as to give an abstract interpretation of the Constitution. At the same time, the Constitutional Court interprets the constitutional norms and reveals the constitutional-legal content of corresponding legal norms while exercising its other competences and such an interpretation becomes mandatory for all the state authorities and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. Therefore, in many cases it can become a tool for preventively avoiding social conflicts.

3.6. Has your Court ever encountered difficulties in applying these tools?

Cases, when the Constitutional Court of the Republic of Armenia has encountered difficulties in applying these tools, can't be mentioned.

3.7. Are there limitations in the access to your Court (for example only by State powers), which prevent it from settling social conflicts?

Please provide a few typical examples (if possible also by reference to cases in the CODICES database).

After the Constitutional amendments of 27 November 2005 not only state powers, but also individuals are entitled to apply to the Constitutional Court of the Republic of Armenia. At the same time, Point 6, Article 101 of the RA Constitution prescribes that individuals may file an application just in concrete cases when the final judicial act has been adopted, the possibilities of judicial protection have been exhausted and the constitutionality of a provision of law applied by the act in question is being challenged. The circumstance that individuals may apply to the Constitutional Court just concerning the constitutionality of a provision of law and not of other legal acts is a limitation, which may prevent the effective realization of constitutional justice, including the competence concerning the settlement of social conflicts.

4. The role of constitutional justice in social integration

Please provide a few typical examples (if possible by reference to cases in the CODICES database).

4.1. Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

According to Clause 6 of Article 101 of the Constitution of the Republic of Armenia every person may file the application to the Constitutional Court of the Republic of Armenia in a specific case when the final judicial act has been adopted, the possibilities of judicial protection have been exhausted and the constitutionality of a legal provision applied by the act in question is being challenged. In conformity with this constitutional provision any act regulating any social issue may be challenged in the Constitutional Court of the Republic of Armenia. Consequently, Constitution of the Republic of Armenia implicitly enables Constitutional Court of the Republic of Armenia to act in settling or avoiding social conflicts.

4.2. Does your Court de facto act as ‘social mediator’, or/and has such a role been attributed to it?

In a lot of cases Constitutional Court of the Republic of Armenia has acted as ‘social mediator’, such as ARM-2013-1-001 (DCC-1073 On the conformity with the Constitution of the provisions of Law on Taxes), ARM-2009-1-002 (DCC-792 On the conformity with the Constitution of Articles 113.1.9 and 114.4.5 of the Labor Code), ARM-2008-1-001 (DCC-723 On the conformity with the Constitution of Article 73.2 of the Law on State Pensions), ARM-2008-1-002 (DCC-731 On the conformity with the Constitution of Article 47.2 and 47.3 of the Law on State Pensions), ARM-2008-1-004 (DCC-735 On the conformity with the Constitution of Article 3.2 and 3.2.B of the Law on Bankruptcy), ARM-2008-3-010 (DCC-780 On the conformity with the Constitution of several provisions of the Civil Code, Law on Taxes, and Articles 15 and 118 of the Administrative Procedural Code), ARM-1999-3-003 (DCC-179 On the conformity with the Constitution of Article 3.2 of the Law on Local Self-Government, Articles 2.1 of the Electoral Code of the Republic of Armenia and Article 18.8 of the Law on Refugees), ARM-1998-2-002 (DCC-92 On the conformity of several provisions of the Law of the Republic of Armenia «On Real Estate» with the Constitution of the Republic of Armenia).

4.3. Have there been cases, when social actors, political parties could not find any agreement, they would ‘send’ the issue to your Court which had to find a ‘legal’ solution, which normally should have been found in the political arena?

Usually it happens when at least one-fifth of the total number of the deputies applies to the Constitutional Court of the Republic of Armenia according to Clause 3 of Article 101 of the Constitution of the Republic of Armenia. As examples the following cases could be mentioned - May 5, 2012, DCC – 1027 on the case concerning the determination of the issue regarding the conformity of Article 11, Part 1, Article 31, Part1, Point 3 and Article 33, Part 1, Point 2 of the Electoral Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the deputies of the National Assembly of the Republic of Armenia; April 16, 2013, DCC – 1081 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 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 National Assembly of the Republic of Armenia.