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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT REVISED CONSTITUTION OF THE REPUBLIC OF ARMENIA

AND

EXPLANATORY MEMORANDUM

CONSTITUTIONAL REFORMS

(working version – 21/6/2001)

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FOR OFFICIAL USE

THE CONCEPTUAL APPROACHES FOR REFORMS OF THE CONSTITUTION OF THE REPUBLIC OF ARMENIA[1[1]]

THE NECESSITY OF CONSTITUTIONAL REFORMS

The RA Constitution adopted in 1995 has played an essential role in the development of democracy and the ensuring of its irreversibility, in finding constitutional solutions in crises, in the gradual establishment of the institutions of state power, and in ensuring constitutional guarantees for the protection of human rights. The accession of the Republic of Armenia to the Council of Europe is also evidence of that.

At the same time, the current processes in the social domain, the experience of constitutional practice, the new problems relating to the development of social relations and the establishment of democracy, the legal obligations assumed in connection with joining the Council of Europe, also dictate certain constitutional reforms. The necessity of that has matured amongst professionals, as well as in social and political thought, and has become a subject for broad discussions.

The necessity of constitutional reforms is first of all explained by the presence of the following problems:

1. Armenia's current international integration processes evidence that it is necessary to more thoroughly consider those basic values that, especially in the area of the protection of human rights, are currently laid at the foundation of the intrastate and interstate legal relationships of the European countries in particular, and which many countries of classical democracy and also Eastern Europe have taken into consideration and, in so doing, have likewise made significant changes in their own constitutions in recent years.

2. The RA Constitution lacks a clearly defined attitude to the recognition of human rights as an ultimate value; besides, human dignity is fixed not as an object of constitutional law but as an object of criminal and civil law; the approach to this issue characteristic of the former Soviet legal system has not been overcome.

The state, with its three branches of power, as well as the local self-government, act as a mechanism for implementing human rights and freedoms. Hence, the main direction of constitutional reforms is viewed as the reinforcement of the constitutional guarantees for the protection of human rights and the clarification of the scopes of the possible limitation of

[1[1]] Basic provisions of the concept paper have been approved by the Working Group of the Venice Commission during the discusssions held on April 25-26, 2000, Strasbourg. Later the general approaches and the specific recommendations were discussed with the Working Group during the meetings held on November 16-17, 2000, Yerevan, February 13-14, 2001, Paris and June 5-6, 2001 in Strasburg. The results of those discussions have been considered in the document presented.

those rights on the basis of the provisions of international law, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. The RA Constitution does not provide for the consistent realization of the principle of the separation of powers; the existence of separated, mutually checking and balancing legislative, executive and judicial powers is inadequately provided. In particular, the place of the RA President is not clear in the system of state power, including the President's scope of responsibility in the sphere of executive power. Also, there is a need to specify the place and role of the Prime Minister's institution within the system of executive power. There is a necessity to clarify more the functional authorities of the different institutions of power, to strengthen the balance sheet of checks and balances.

4. The efficiency of the lawmaking activity and the active oversight role of the RA National Assembly are not high. The problem of materially increasing it may be solved as a result of certain constitutional reforms, particularly, by granting the National Assembly greater independence in the fulfillment of its political responsibility, by strengthening its lawmaking role, by overruling the absolute abstract right of the RA President to dissolve the National Assembly, and by reinforcing the counterbalancing influence of the National Assembly when other branches of power perform their functional responsibilities.

5. The problems of securing constitutional guarantees for the independence and systemic completeness of the judicial power require a number of new approaches of principle. In this respect, Articles 91, 92, 94, 95, 100 and 103 in the Chapter on Judicial Power of the Constitution require review in particular. As a result of the reforms the Constitution must guarantee the real independence of the judicial power, resolve the problem of establishing administrative justice (since, at present, this system is almost lacking in Armenia), ensure clear-cut functional interrelationships among the institutions exercising judicial power. No less important is the clarification of the issues connected with the creation of specialized courts (economic, military, taxation, etc.).

The necessity for the formation of a representative body to guarantee the self-governance of the judicial power and an independently functioning magistrate (justice) council, consistent with the present criteria of international law, has emerged.

6. The system of constitutional justice must become more active and efficient by supplementing and completing the list of objects and subjects of constitutional oversight, by establishing a system for the settlement of disputes that have emerged on issues of constitutional authorities, and by strengthening the guarantees for the protection of human rights.

7. The methodological approaches of the Chapter on *Territorial Administration and Local Self-Government* of the Constitution must be fundamentally reviewed in order to overcome the confusion, and to consider the local self-government as an independent democratic institutional system of society, by fixing necessary and sufficient constitutional guarantees for ensuring the independence of local self-government for the purpose of overcoming the perception of regarding the local self-government not as a subordinate link of governance derived from state governance, but rather fixing it as an independent democratic sub-system of society.

8. There is also a need to introduce clarifications, editorial corrections, and overcome separate internal contradictions in a number of Articles.

THE BASIC PRINCIPLES UNDERLYING THE CONSTITUTIONAL REFORMS

The following approaches of principle underlie the concept of the RA constitutional reforms, taking into consideration also the results of the meetings with the working group of the Venice Commission of the Council of Europe held on April 25-26, 2000, in Strasbourg, November 16-17, 2000, in Yerevan, and February 13-14, 2001, in Paris:

1. The starting-point is the fundamental principle, according to which natural and inalienable human rights and freedoms must be recognized by the state as an ultimate value, must be protected in a guaranteed manner, and must prescribe the nature and limits of the exercise of power by the state and the people, having as their basis the need for establishing constitutional guarantees for human dignity.

2. Constitutional norms must declare not only the constitutional human right, but also to the extent of maximum clarity define the guarantees for their realization, the obligations of the state, the permissible limits for the restriction of separate rights. Human rights must be viewed as realizable rights, and their limitation must be based on the norms of international law, be unitary, must not distort the contents and meaning of the law, must be clearly defined by law.

3. It is necessary to provide unitary nature and clear harmony between the fundamental constitutional principles and the norms and mechanisms ensuring their realization.

4. The principles of the supremacy of right and the rule of law must be clearly fixed in the Constitution; the supreme role of the Constitution in the system of legal acts and the supreme role of law over other normative and sub-legislative acts must be specified.

5. During the Constitutional reforms it is necessary to comprehensively observe the requirements of the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 December 16 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and universal norms fixed in other documents on human rights.

6. It is necessary to overcome the drawbacks and shortcomings in the implementation of the principle of separation of powers by means of applying a systemic approach, in particular:

a) to clarify the place of the institution of the RA President in the system of state power;

b) to clarify the RA President-National Assembly-Government interrelationships, to complete and harmonize the framework of functions, authorities, checks and balances within these relationships;

c) to clarify the RA President-Judicial Power interrelationships, with the aim of reinforcing the constitutional guarantees for independence of the judicial power.

7. The Constitutional provisions concerning the judicial power require necessary reforms. They should be based on the requirements of defining such principles, jurisdictions and structural procedures which provide and guarantee:

a) the functional, institutional, material and social independence of the judicial power, which will ensure the smooth execution of the obligations of this branch of power;

b)securing the competence, independence and impartiality of judges, as a guarantee for efficient judicial protection of human and citizen rights;

c) the participation of an independent constitutional body in the selection and appointment of judges, in ensuring their independence in the performance of their duties and in disciplinary supervision and termination of their authorities;

d) the formation of a clear system of the authorizations for the institutions of the judicial system and their functional interrelationships;

e) the uninhibited realization of the citizens' constitutional right for justice, and the guaranteed provision of supremacy of the Constitution;

f) the creation of real guarantees for self-government of the judicial system.

8. The reform of Constitutional provisions concerning local self-government requires a clear methodological approach. The fundamentals of the European Charter of Local Self-Government shall serve as a basis for the latter, ensuring the formation of a clear democratic system of local self-government in the Republic of Armenia.

CONCEPTUAL APPROACHES ON THE ISSUE OF THE PROTECTION OF HUMAN AND CIVIL CONSTITUTIONAL RIGHTS AND FREEDOMS

The problem of human rights can become a subject for analysis and discussions from different angles. The methodological approach to this problem, and constitutionally fixing this approach, has exceptionally important significance. The thing is that the problem of the protection of human rights passes through constitutional practice like a red line, whereas the issue of the supremacy of the Constitution is eventually determined by the guarantee of the protection of human rights.

As correctly formulated in Article 2 of the 1789 French Declaration on Human Rights and Freedoms, "the aim of all political association is the preservation of the natural and inalienable rights of man." The latter is the basic contents of any Constitution and the supreme objective of the state system. To ensure that in real life it is necessary, first of all, to demonstrate a clear-cut methodological approach towards the concept of "Right", as well as the issues of the perception of the priority of natural human rights.

Without having any intention to restart the theoretical dispute with its deep historical roots over the concepts of "Right" and "Law", which form the core of the issues concerned, and which in itself has importance as a starting point in giving an exhaustive answer to the problem raised, it is necessary nevertheless to make a short historical excursion.

One of the first biggest generalizations of the public thought of the pre-Christian era was the statement of Democritus (470-366 BC.) about the fact that the criterion of justice in politics, morality and legislation is its concordance with nature.[2][2] He saw justice and truth in the natural and considered the law as artificial, while differentiating "truth" from "public opinion" and natural truth from the law.[3][3]

If subsequently, Socrates related the reflection of truth in the law with knowledge, then with Plato's distinguishing between the "world of things" and the "world of ideas" and with the characterizing of truth in terms of everyone having the mission of doing his own job, the law was presented as born from reason[4][4]. According to Plato, any state where the law has no force and is under the power of someone is condemned to collapse.

Aristotelian philosophical thought postulated that political justice is possible only between free and legally equal people belonging to the same society. Characterizing political justice as a political right, Aristotle distinguished political right from natural and conventional right by fixing those exceptionally important generalizations that, first of all, the law may not turn violence into a right, nor present power as a source of right, and next, that the conventional

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2[2] Materialists of Ancient Greece Ì., 1955.p. 53-178.

3[3] V.S. Nersisyants, Philosophy of law, Ì., 1997. P.. 404.

4[4] Plato, Republic, Laws, Politics. Ì., 1998.p. 171.

right must be in harmony with natural right. Political justice must lie at the basis of the Law. One should never forget that political justice or political right with Aristotle were represented as justice or right, in general. Aristotle very clearly and unequivocally stated that **the right should be the basis of every law, and that right should be protected via law**. Aristotle calls a legal state in our perception the one where the **legal** law prevails. The foundation for the foundations of democracy was considered only the fact that the people are equal (the slaves also have equal right), but also and, even more, the fact that they are legally capable. **5[5]**

It is well-known that that old Roman law was represented not only as an independent science, by clarifying the limits of public and private law, but also the natural right was represented in the wholeness of its natural origin.**6[6]**

Without referring to the details of the genius generalizations of the greatest figures of ancient Greek and Roman philosophical-legal thought, let us add that the 17th –18th century theorists John Locke, Montesquieu, Jean-Jacques Rousseau, and later also Kant and others distinctly specified not only the idea of the separation of powers, but also the perception of the supremacy of right, the substance of the natural right acquired a new quality**, by retaining the red line according to which the law should be the embodiment of the right.**

Whatever legal philosophical characterization we give to the concept of right, it is, in reality, a **social phenomenon, 7[7] has a natural base, and is the condition and means for the self-determination of the social nature of the rational creature.**

Besides, in Christian thought the human being is created in the image of God (Bible, Old Testament, Genesis, Chapter 1) and deserves respect. In the introduction to the book of Leviticus it is stated: "the God of holiness, the God of love and life wants to turn this people into participants in his holiness, so that they in their turn will turn into the bearer of life, love and holiness."[8]

It is for that purpose that the Bible reminds and teaches the rules for living correctly, living human-like and with dignity. One of the best lessons learned from it is that the state must exist for the human being and not the human being for the state.

The main issue of the relationship between law and right has become a subject for examination under the legal-philosophical thought also in terms of morality. The thing is that a **legal l**aw "…increases the moral significance of the power"[9], harmonizes and brings to a common denominator the mutually recognized and publicly acceptable interests of individuals, **becomes a criterion for justice and a ground for the execution of justice**.

[5[5]] Aristotle, *Ethics, Politics, Rhetoric, Poetics, Categories*. Ì., 1998. p. 616, 623, 624.

[6[6]] J. Harold Berman, *Western tradition of the law, epoch of formation,* Ì., 1998. p. 28-34.

[7[7]] S.S. Alexseev, *Philosophy of the law,* Ì., 1999.p. 2.

[8] *Bible*, Saint Echmiadzin, 1994, p.117, editor's introductory note to Leviticus.

[9] B. N, Chicherin, *A course in the science of state*, Part. 3. Ì., 1898. p. 401

As precisely formulated by B. Chicherin, the whole moral significance of the power is based on the fact that it holds in its hand the sword of justice, and justice consists in the fact that to each is reserved what belongs to him/her.

And if that sword, called for the protection of the right, turns into a weapon for the violation of the right, it thereby loses its moral power in the eyes of the people, which has a destructive significance for both the powerless and the power itself.[10]
This short historical background intended to precisely record the following irrefutable truths formulated by legal-philosophical thought:

-A human being, as a social phenomenon, enters into public relationships with his/her natural and inalienable rights and his/her human dignity.

-The state is bound to recognize the human rights as an ultimate and inalienable value, as a constitutionally fixed directly applicable right.

-Every law derives from those rights, protects those rights, may limit them solely and only to the extent it is necessary for the recognition and safeguarding of the rights of others in a democratic society, for the purpose of harmonious social co-existence.

-Those rights are universal and have not only intrastate but also international guarantees for their protection.

By fixing a certain methodological position towards the recognition and protection of human rights, the Constitution predetermines legislatively the nature of its materialization, institutional ensuring and systemic guaranteeing. The Constitution itself must not turn into an obstacle to the complete and full-value effectiveness of the principle of the supremacy of right. Hence, the purely constitutional position on human rights and freedoms is exceptionally important.

As was mentioned, the principle of legal equality receives flesh and blood when combined with legal capacity. In democratic and legal systems we are speaking about the legal equality of legally capable entities, i.e., with recognized rights, respected and guaranteed with protection. While the law is not only the recognition of the right, but also the rational limitation of that, to not violate the rights of others. The question of questions is the recognition of the natural rights of the human being, their fixing by legislation and their guaranteed protection.

An example of the best, justified and complete constitutional formulation may perhaps be "…the state recognizes and guarantees the principle of supremacy of right and rule of law." Such a formulation guarantees an appropriate methodological approach, acceptance of the priority of natural rights, recognition of the right as the substance of the law, underlining of the public consensus on the limitation of that, fixing of a clear-cut concept for the freedom of rights and limitation of power. The law becomes the defender of the individual's freedom, safety and property, the guarantor of the realization of his/her rights.[11]

[10] Ibid, pp.133-134.

[11] V.A. Chetvernin, *Concept of law and state. Introduction to the theoretical course of law and state,* M., 1997.P.

The main constitutional requirement is the recognition and fixing of the supremacy, priority, starting-point nature and inalienability of those rights. If such a recognition is missing then the role of power as dictating rights may be unavoidably pushed forward to the first plane, and the Constitution, in this case, will "put a limit" not on the rights of power but on the freedoms of people, thereby fixing principles of dictatorship.

Under such a circumstance the state will likewise involuntarily play the role not of a regulatory tool dictated by society's general requirements, but rather an abstract self-reproducing requirement, which has started to act with the logic of self-preservation and the unrestrained strengthening of influence.[12] This will lead to the fact that the law will simply become a tool for the compulsion of the right. And the illustrated historical-logical analysis shows that the law should be the guarantor of freedom, rather than its restriction and compulsion.

This problem is more actual and acutely stated in the continental legal systems. In the precedential Anglo-Saxon systems justice precedent lies at the basis of the materialization of the right; in the continental systems, the positive right fixed through mutual political consensus. Under such a circumstance, the clarity, completeness and internal systematization of constitutional principles and norms acquire an exceptionally important significance.

The etymological analysis of the concept of "Constitution" represents also a separate interest. The "Constitution" in Russian, English and other languages carries the direct meaning of the Latin word "constitutio=definition" , i.e., define the fundamental rules for social existence. In addition to that, this word in Armenian also displays other exceptionally interesting nuances. To the first plane is pushed not only the idea of defining, but also the idea of setting a limit. But to set a limit to what? This is a question that is raised naturally and unavoidably. The answer to that is brilliantly given by Shahamir and Hakob Shahamiryan still in 1773-1788, which is, in fact, the first written Constitution in the world, named "Vorogayt Parats (trap of glory)."[13] A trap for whom and why?[14] For the limitation of power and restraining of glory. This was the formulation when familiarized with which Dominique Rousseau, the French famous constitutional expert, considered a whole legal theory. Fortunately, in this context as well, the essence of the concept and the word that utters that concept in Armenian are in total harmony with each other. In such a circumstance, the conclusion is also unequivocal: if it is the glory and power that are trapped, then we are dealing with a Constitution that is built on accurate methodology. If it is the natural and inalienable freedoms that are trapped, then the given society is endangered in general.

What does the international experience show? The comparative analysis of the constitutions of more than 100 countries evidences that in the constitutions or declarations on human rights having the nature of constitutional norms, the conceptual approach to the human rights is fixed in almost all countries. And in the constitutions of more than 65 countries there is also

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[12] The state may not be created for making a few individuals happy . The goal of that is to make the society happy (Plato, *Republic*, Collection of works v. 3. M., 1994, p. 189).

[13] Book titled "*Vorogait Parats"* , Tbilisi, 1913.

[14] Ibid pp. 17, 29-30, 32, 47, 51, 63 and other pages , through the complete and conceptual coverage is provided the organic linkage between the law and justice, the ideology of the supremacy of natural right.

a clear-cut approach demonstrated towards the constitutional principle of personal dignity. One or more articles are devoted to the latter, the immunity of personal dignity as an indivisible right, its inalienability, the obligation of the state for its respect and protection, as well as the relations to human rights and freedoms are emphasized.

In the first place, it is worth separating examples from those countries where there is a constitutional clear-cut position about the priority and supremacy of the right in terms of the connection between right and law.

Point1 of Article 1 of the Constitution of the German Federation fixes that human dignity is immune. Its protection and respect is the obligation of every public authority. Under point2 of the same Article it is defined that the German people accept the human immune and inalienable rights as a basis of every human society, peace and justice in the world. Point3 completes the conceptual approach, by fixing that the fundamental rights presented are mandatory for the legislative, executive and judicial powers as a directly effective right.

Such an approach, perhaps, is a classical, complete, consistent and exemplary approach. A similar approach is also reflected in Articles 2, 17,18 and 21 of the Constitution of the Russian Federation, Article 10 –Spain, Articles 1-3 –Czech Republic, Article 7-Georgia, Article 8-Ukraine, Article 30 – Poland, Article 1 –Romania, Article 15- Slovenia, Articles 1, 18 –Portugal. As an example of clear and complete wording may be presented also Article 7 of the Constitution of Georgia, in which it is stated that Georgia shall acknowledge and protect the universal human rights and freedoms as an ultimate human value. Afterwards it is added: “The people and the state are bound by these rights and freedoms, as a directly operating right, in the exercise of state power.” Everything is clear and unequivocal. It is worth emphasizing the following, conceptually very important, considerations:

1. The country acknowledges the fundamental human rights and freedoms;

2. It accepts it as an ultimate and inalienable value;

3. Those rights and freedoms are the limitations of the exercise of power not only by the state, but also by the people.

It is evident that **it is the power which is limited by right rather than the right limited by the power.** Those constitutions which have not adopted this methodological approach with such certainty are deficient, essentially imperfect and also contain a huge potential danger for the establishment of dictatorship.

It is appropriate to also refer to international legal documents:

In the preamble of the Universal Declaration of Human Rights it is stated: “.. the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Further it is also added: “…human rights should be protected by the rule of law.” Particularly, Articles 1, 6, 8, and 29 of the Declaration not only clearly fix the principles of the inalienability, freedom and legal equality of the human natural rights, but also the obligations towards the society and the status of the legal subject. And Article 8 unequivocally defines the right to human justice, i.e., to restore his violated rights defined by the Constitution or law through the authorized courts.

The same methodological approach is reflected in the UN Charter, in the Preamble of which is also shown the devotion to the fundamental human rights, his /her dignity. In the International Covenant on Civil and Political Rights as well (16.12.1966) it is likewise fixed that the acknowledgment of the human dignity and equal and inalienable human rights is the foundation for freedom, justice and universal peace, that those rights derive from the dignity characteristic for the human being. Article 16 of the same Covenant identifies the principle for the human legal subject. The Covenant, based on the fundamental provision that "…in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights," provides also the permissible limits for the possible restriction of those rights by law.

By becoming a member of the Council of Europe Armenia joined the Statute of this organization signed in London on May 5, 1949, Article 3 of which clearly states that: "Every member of the Council of Europe must accept the principles of **the rule of law** and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms."

Perhaps it is necessary to specially emphasize also the Convention for the Protection of Human Rights and Fundamental Freedoms (4.11. 1950), the Preamble of which not only fixed the above mentioned provisions, but also emphasizes such concepts and formulations as "universal and effective recognition and observance of … Rights", "fundamental freedoms… are best maintained … by an effective political democracy", "freedom and the **rule of law**"[15], etc. The last wording is especially worthy of attention. It is used in the preamble of the Convention as an expression of the political traditions and ideals, uniform value-perception of the European countries. This convention is specific also for the fact that the latter's norms are norms of direct effectiveness and are protected by the European Court of Human Rights. By fixing the fundamental human rights and freedoms, the Convention also defines the permissible limits for their restriction and deviation from obligations under extraordinary situations. Moreover, **those restrictions must be defined by law, must be proportional and not distort the essence of the right**. A requirement of the Convention is also the distinction of the fundamental rights and the social-economic and cultural rights, by demonstrating towards each of them a corresponding approach defined by the norms and principles of international law. The convention and the protocols appended to it contain such norms on the fundamental human rights and freedoms the direct application of which must be guaranteed in every member state of the Council of Europe. Consequently those norms must have constitutional stipulation and protection with depth and clarity.

Of special attention is worthy also the Charter of Paris for a New Europe (21.11.1990.). The new democratic processes have made it necessary to fix in the Charter of Paris on the level of international legal norms that "Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace."

[15] Collection of documents of the Council of Europe in the protection of human rights and struggle against crime, Moscow, 1998. p. 34.

Let us also add that in the French Declaration of the Rights of Man of 1789, it is clearly specified that "... the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments ."[16]

All the mentioned examples unequivocally evidence that the problem of ensuring the supremacy of the constitution, in the final analysis, leads to the guaranteed protection of human rights and freedoms, through the harmonized cooperation of the separated powers. And since those rights are "… directly effective rights", the chief guarantees for their protection are their constitutional fixing through an appropriate methodological approach and a viable justice system.

In particular, the experience of recent decades in the European countries irrefutably shows that the protection of human rights is more guaranteed, if the human being has the constitutional right to judicial protection of his violated rights. That is, the right to justice becomes the important guarantee for the protection of human rights.[17] However, such a formulation is incomplete and defective, if it is anchored on the discretionary perception of human rights. The thing is that human and civil rights, even if they have not found their complete reflection in the Constitution (RA Constitution, Article 43), may not, by being alienated from it, become a function of public administration. If those rights are recognized and fixed in the Constitution, if the frames of their restriction are defined by the Constitution, and if these rights can also be violated not only by multifarious actions and inaction, but also by laws or other normative acts that are "the result of political consensus", the protection of those rights will be guaranteed solely and only in the case when the human being is endowed also with the right to constitutional justice. This problem has acquired a more complete solution in the international constitutional practice during the last 40-50 years.

Based on the above-mentioned conceptual approaches, let us try to present in general terms the picture within the frame of the Republic of Armenia constitutional solutions. In methodological aspects the problems of human rights are directly reflected in the following Articles of the Republic of Armenia Constitution:

Article 4.

The state guarantees protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law.

Article 5.

State power stall be exercised in accordance with the Constitution and the laws, based on the principle of the separation of the legislative, executive and judicial powers.
State bodies and public officials may execute only such acts as authorized by legislation.

Article 6.

The supremacy of the law shall be guaranteed in the Republic of Armenia.

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[16] All the international documents were studied with the help of the "search" computer software.

[17] Justice is the right in effect, during the process of implementation – S.S. Alekseev, Law:alphabet –theory – philosophy. Experience of Complex Research Ì., 1999. v 50.

The Constitution of the Republic has supreme juridical force, and its norms are applicable directly.
Laws found to contradict the Constitution as well as other juridical acts found to contradict the Constitution and the laws shall have no juridical force.
Laws shall be applied only after official promulgation. Unpromulgated legal acts relating to human rights, freedoms and obligations have no juridical force… .

Article 19.

No one may be subjected to torture and to treatment and punishment that are cruel or degrading to the individual's dignity.
No one may be subjected to medical or scientific experimentation without his or her consent.

Article 38.

Everyone has the right to defend his or her rights and freedoms by all means not prohibited by Law.
Everyone has the right to defend in court his rights and freedoms fixed in the Constitution and the laws.

Article 43.

The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms.

Which are the main deviations from the above-mentioned internationally established criteria?

1. There is no clear attitude to the recognition of the human rights as an ultimate and inalienable value.

2. The human dignity is fixed as an object of criminal-civil law rather than as that of constitutional law. That approach typical for the former Soviet legal system has not been overcome in Armenia yet.

3. There is no clear distinction between the right and the law, moreover, the danger to subordinate the right to the law is considerable.

4. The concepts of "supremacy of the right" and the "rule of Law" are presented in the form of the concept of "supremacy of Law," which may serve as a dangerous prerequisite for the so-called absolutism of the "right of power."

5. The constitutional-legal nature of the fundamental human rights as a directly effective right is not clarified.

6. The human right of constitutional justice is rejected.

In addition to the above-mentioned, the classification of the rights in Chapter 2 of the Constitution is not clear, the restrictions that are provided in both general and extraordinary

situations are not in harmony with the principles of international law, many fundamental human rights are only reserved to citizens, etc. (the detailed description will follow below).

All these are essential gaps, which seriously weaken the constitutional guarantees for the protection of fundamental human rights and freedoms. Hence it is not accidental either that the legislative and institutional systems in our country are not only the reflection of this situation, but also its irrational reproducer.

The solution is to clarify and make certain the constitutional methodology about human rights, to consider the current international criteria on the constitutional guarantees for human rights in the second chapter of the Constitution, as well as for the human right to constitutional justice to become a fundamental guarantee for the protection of his/her rights and freedoms.

CONCEPTUAL APPROACHES TO THE PRINCIPLE OF SEPARATION OF POWERS

TO BE FIXED AND CARRIED OUT THROUGH THE CONSTITUTION

One of the core issues of the Constitution is the clear-cut separation of powers and the ensuring of functional balance. It is not a secret that this problem is more difficult to resolve in the so-called semi-presidential systems of government. At the same time, the experience of international constitutional developments evidences that even in such systems there have likewise been found efficient solutions that have withstood the test of social practice. The point here is to first of all have the problem of harmony of the "function-institution-jurisdiction" system resolved. Second, it is necessary to adjust and harmonize the scopes of the functional, checking and balancing authorities of each branch of power, to ensure the relatively independent and complete activity of each branch of power without disrupting the balance in the system of "function-institution-jurisdiction" on the one hand, and to retain that harmony in dynamics through the necessary and sufficient checks and balances, on the other hand.

It is necessary to take into consideration the fact that, at present, in the theory of constitutional law the following basic criteria for the separation of powers are more acceptable: a) the relative independence of the branches of power, b) the existence of the necessary constitutional institutions, the completeness of their authorities and their equivalence with their functions, c) the guarantee of the interruptedness of the balanced activity of the state power, which in its turn assumes the establishment of such intra-constitutional guarantees, with the help of which it will be possible to reveal, evaluate and restore the disrupted functional balance. Only under this circumstance will it be possible to provide for the dynamic and harmonious development, avoid political and social "explosive" resolutions.

The RA Constitution has three major "weak links" with regard to the resolution of the mentioned problem. First, the place of the presidential institution in the system of state power is not specified, second, the legislative, executive and judicial powers, from the viewpoint of all the presented criteria, do not have the necessary functional independence and the dynamic balanced condition, and third, the mechanisms for the revelation, evaluation and restoration of the distorted balance are imperfect.

In systems of semi-presidential government a contradiction often occurs between the President and Government, when they do not represent the same political power (it is typical not only for Armenia but also for France). In such systems, it is very difficult to give a precise answer to the question for which layer of the executive power activities the Republic of Armenia President bears responsibility, and for which part of that power are the Government and the Prime Minister responsible.

Under the circumstance when the President has a clear majority in the Parliament, naturally there is no problem like that, since the political responsibility is integrated. At the same time, the system assumes that the President may be obliged to appoint a prime minister acceptable for the National Assembly or, in fact, yield the initiative to the Parliament by accommodating

the latter. Such a situation assumes the existence of a strong and viable parliament, which is able to assume political responsibility for the activities of the Government, as well as the existence of such checks, which, in the event of not displaying the necessary and sufficient capacity by the National Assembly and the Government, will help to recover the distorted balance. Under this circumstance the essential emphasis is that in the semi-presidential government system the President of the country first of all has the function of ensuring the natural and balanced activity of the branches of power, which characterizes his/her place and role as **Head of State.**

The President of the country as Head of State is distinctly prescribed as such in the Constitutions of a number of countries. For example, in the Constitutions of Italy- Article 87, Russia - 80, Estonia - 77, Croatia- 94, Georgia - 69, Azerbaijan - 7, Bulgaria - 92, Kirgizstan - 42, Belarus - 79, Ukraine- 102, Nicaragua- 184, Czech Republic - 54, Slovakia- 101, etc. Besides, in the last two countries the President is elected by the parliament.

The principle of the separation of powers is also considered to be one of the fundamental principles of the fundamentals of the constitutional order of the Republic of Armenia fixed by the Constitution. This is expressed in Article 5 of the RA Constitution, according to which state power is exercised on the basis of the principle of the separation of the legislative, executive and judicial powers.

However, the perception of the separation of powers as a principle of the RA Constitution requires to withdraw from the discretionary idea, according to which the separation of powers is viewed as a distribution of integrated state power between different institutions. That principle must be interpreted as the limitation, balancing, co-operation and interrelation of the real factors of the state power. It is not accidental that the majority of the countries emphasize by the Constitution ensuring the real separation and co-operation between powers and the fixing of that conceptual approach in the Basic law rather than the principle. For example, in Article 10 of the Constitution of the Russian Federation it is defined: “State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent.” Moreover, in the Constitutions of many countries the emphasis is also put on the interdependence of the powers (Portugal, Article 114), co-operation (Moldova - 6), mutually agreed activities and co-operation (Kirgizstan- 7), balance (Poland - 10), balanced power (Estonia - 4) etc. Such multifarious approaches are determined also by various concepts of the theoretical interpretation and practical application of the criteria of the separation of powers and those important constitutional principles.

In the opinion of many theoretical experts of modern constitutional law (particularly, German statehood expert K. Hesse) the main characteristics of that principle are the regulation and discipline of the joint activities undertaken by people, the identification of the separate branches of power, the determination and limitation of their competence, the regulation of the common work, the balancing of the competence of the state bodies and as a result the integrity of the limited state power.[18] The thing is that the circumstance of the separation of powers is not absolutized. This principle assumes also the cooperation and balance between the various branches of the integrated power endowed with functionally distinguished and independently implemented authorities. In this respect the Constitution attempts to define

[18] See, K. Hesse, *Basics of Constitutional Law* GFR. Ì., 1981, p. 237

the limitations of the power, create system of correlation between the powers, "forced" consensus for actions (approval of the Government plan by the Parliament, the right of the President to veto, the right to overrule the veto of the President by the Parliament, the right of the President to release the parliament, the right of the parliament to declare no confidence in the Government, etc.). In its turn, a critical condition for the preservation of the balance of power is the existence of an effective system for the revelation, evaluation and restoration of the balance of the constitutional authorities of the state power through the constitutional jurisdiction.

By one other approach (for example, according to the English political scientist M. Vile), the matter is not limited to the formal-legal study of the interrelationships of the legislative, executive and judicial bodies, rather it is viewed in the context of the interaction of the whole legal, social and political system in terms of the establishment of the "balance " between the state and society.[19]

In general terms, one may state that, at present, two models for the application of the principle under consideration have been established in the international constitutional practice: "flexible" and "coarse" separation of powers, depending on the nature of the system of state power. The first of them is based on John Locke's ideas on the interaction between the powers with legislative power supremacy, and the second one derives from Charles Montesquieu's considerations on the balance of powers with the considerably clear-cut separation between them. The European constitutional and political experience is relying on both of the models, while the rather classical example of the second model may be found in the USA.

Each of the mentioned models functions under certain conditions. Those conditions are: the society's political culture, legal traditions and thinking, psychology, level of legal awareness and the development trends of the various branches of power, the dialectics of their functional and structural developments etc.

One of the marked tendencies of the recent decades in separate countries is the relative strengthening of the executive power. That process in Britain is characterized as a transition from the "system of cabinet governance" to the "system of the Prime-Minister's governance", a fact which is particularly characteristic for contemporary Great Britain[20].

In Britain, the distortion of the balance between the legislative and executive powers is stated in many studies.[21] At the same time, the dominant role of the Government towards the Parliament does not evidence a refusal of parliamentarism. The Parliament retains the functions of overseeing, adjusting and ratifying the Government policy. The political responsibility of the Government before the parliament is retained.

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[19] See Vile M. G. *Constitutionalism and Separation of Powers.* Oxford, 1967, p. 1-10.

[20] See Rush M. *Parliamentary government in Britain*. N. Y., 1981. The Political System of Great Britain, pp. 111, 147-153.

[21] See, e.g. Beloff M., Peel G. *The Government of the United Kingdom. Political authority in a changing society.* L., 1980, 1981:

A. Sampson, *The New Anatomy of Britain*, M., 1975.

The strengthening of the vertical function of the executive power is noticeable also in the constitutional practice of non-parliamentary or monarchical countries. The gradual expansion of the nature and scope of Presidential authorities in the USA is viewed by American constitutional law and political science as one of the main characteristic traits of American constitutional practice and the Constitution itself, when the process of expansion of Presidential authorities is carried out without constitutional amendments. A number of American scholars certify that the expansion of that power may endanger freedom and democracy.[22]

Noteworthy are also other trends in the West-European countries. For example, Finland, as a result of the 1992-95 constitutional reforms, made a transition from the semi-presidential system to the parliamentary form of republican government. At the same time, serious approaches have emerged in Italy towards the opposite process, i.e., a transition from a parliamentary system to a semi-presidential republic.

It is obvious that such trends are determined not only by the multifarious interpretation of the principle of the separation of the powers, but also and moreover, by the problems faced by the state power system of the given country. However, regardless of which model of the state system has been chosen, whether presidential, semi-presidential, parliamentary or other, any way the general provision is that the separation of powers and the ensuring of their harmonized interaction is an unavoidable necessity, and that must be carried out within the scopes of the unreserved preservation and constitutional guarantees of the fundamental principles of democracy and the supremacy of right. In their turn, the clear-cut separation of powers by the Constitution, the dynamic balance and the guaranteed protection of the latter is the most important prerequisite for the development and acceleration of democracy.

Naturally, in this particular matter, for the adjustment of the conceptual approaches, the study of the international practice of constitutional amendments of various countries also acquires extreme importance. From the study of the recent 20 years of constitutional amendments and constitutional laws of Austria, USA, Belgium, Germany, Denmark, Spain, Italy, Greece, Portugal, France, Finland and a number of other countries, as well as the new constitutions of many East-European and former USSR countries (Poland, Slovenia, Czech Republic, Slovakia, Bulgaria, Russian Federation, Lithuania, Estonia, Georgia, Kirgizstan etc.) it became clear, that there are a number of steady trends regarding the subject matter under examination:

1. A universal common desire on the issues of the gradual limitation of the power, the dispersion of force (political, administrative, economic) and the broadening of the possibilities for self-government and strengthening of guarantees is noticeable.

2. The functional authorities of the branches of power are made more precise, they are harmonized with the functions of the given branch of power, and the guarantees for the independent possession of these authorities are strengthened.

3. The checking and restraining authorities are made more precise and strengthened.

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[22] See Cass Sunstein. *Changing Constitutional Powers of the American President.*

EECR, Vd 2, N4. Fall 1993, Vol 3. N1 Winter, 1994, p. 99.

4. The guarantees for intra-constitutional stability are strengthened.

5. The interaction of the powers is to a greater extent anchored on the principle of cooperation and on solutions ensuring dynamic balance.

6. The legal system for the restoration, evaluation and recovery of the distortions in the constitutional guarantees of human rights and the constitutional balance of the authorities of powers is strengthened.

7. The active interaction of the branches of power in the normative–juridical activities based on the principle of the supremacy of right.

Alongside with the mentioned general trends also of importance are the issues of the development of the institutions of the branches of power, the clarification of their functional role and endowing them with necessary and sufficient authorities.

Given also the exceptionally important role of the stable power in transitional regimes, one may undoubtedly accept that these mentioned general trends are extremely actual in terms of the conceptual approaches pertaining to the constitutional reforms of our country, and new solutions may be sought in this context.

CONCEPTUAL APPROACHES IN THE ISSUE OF STRENGTHENING THE CONSTITUTIONAL GUARANTEES FOR LOCAL SELF-GOVERNMENT

In international constitutional practice, a special importance is given to the issue of fixing the constitutional principles of and ensuring the guarantee for local self-government, as one of the most important grounds of a democratic society. As a rule, they are presented in a separate section and are clearly distinguished from state government (e.g., Constitution of the Russian Federation, Chapter 8, Estonia-Chapter 14, Ukraine-section 11, Slovenia –section 5, Bulgaria-Chapter 7, Lithuania-Chapter 10, Poland- section , etc.).

It also has methodologically important significance when in the fundamentals of the constitutional order of any country's Basic law a provision is fixed about the recognition and guarantee of local-self-government by the state (e.g., Article 12 of the Constitution of the Russian Federation, Article 7 of the Constitution of Ukraine, Article 9 of the Constitution of Slovenia etc.).

The European Charter of Local Self-Government adopted on October 15, 1985 is based on the following fundamental approaches, according to which:

a) local self-government is an independent and effective means for the people's power,

b) it is an extremely important tool for the decentralization of power,

c) the principle of local self-government must be fixed by legislation and, within the limits of possibility, by the Constitution.

The same Charter characterizes local self-government as a right and ability of local self-government bodies based on their own responsibility and the local population's interests to resolve problems of community importance. Naturally, it is assumed that the authorities of the community may be its own or delegated, the procedure for the implementation and oversight over each of which must legislatively be clearly distinguished and defined. The objective here is to ensure the completeness, independence, full-value and uninterruptedness of local self-government.

One of the important guarantees for the independence of local self-government bodies is the clear stipulation by the Constitution of the functional and institutional interrelationships with other institutions of state power and the existence of a clear legal procedure for recovery of the distorted balance.

It is also necessary to clearly define Constitutionally the concept of the community as the main link of local self-government, its legal status, and the circumstances under which:

a) the community, while performing local self-government, shall be considered an individual branch of public power,

b) the community, as a link of local self-government, shall derive its sources from civil rather than political society,

c) the community interrelationships with the state power shall be built on the basis of the principle of co-operation.

From the above mentioned obviously derives one of the key directions of the reforms in Chapter 7 of the RA acting Constitution, according to which it is necessary to clearly distinguish between the local self-government and regional administration functionally, institutionally, and with regard to the establishment and implementation of their authorities. The latter is a function of state governance and should be regulated under the relevant sections of Constitution.

It is also necessary to ensure consistency in the constitutional approach. That is particularly lacking in the case of Yerevan city. The Republic of Armenia's local self-government is recognised only on the level of settlements with the rejection of that on the regional level. However, according to the previous conceptual item an exception has been made for the city of Yerevan, which has hindered the creation of a uniform framework for the local self-government on the level of settlements. The new conceptual approach is that local self-government is carried out in all the communities, however, they may have various delegated authorities. At the same time, the formation of the local self-government bodies in all the communities must be carried out through a uniform procedure and on the same principles. Consequently, without the formation of local self-government elected bodies and an independent budget in the city of Yerevan it is impossible to guarantee a complete self-government, and naturally, the law shall provide for the specific circumstances, as well as the status and the specifications of the self-government on the level of district communities.

There is also a necessity to clarify the system of the bodies that implement the right to local self-government of the community, the main directions of activity of the representative body of local self-government and the legal status of its acts.

A clear and consistent approach is also required for the basic issue of material guarantees for local self-government. First, the institution of the property of local self-government must have a specified legal status. In addition to that, Article 9 of the above-mentioned European Charter defines that "Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers." Besides, "local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law."

It is also extremely important that the state benefits provided to the local self-government bodies, to the extent possible, must not be foreseen for the funding of specific projects. The state benefits must not endanger the basic freedom of the selection of policy by the local self-government bodies within the area of their own jurisdiction.

As has been mentioned, when drafting the conceptual approaches about the local self-government, it is exceptionally important, on the one hand, the clear identification of the interrelationships ensuring the independence of local self-government, and the guarantee of the lawfulness of local self-government, on the other hand. Article 8 of the European Charter of Local Self-Government considers administrative oversight over the activities of local self-government bodies possible. Such oversight is mandatory, so that local self-government

bodies do not come out of the framework of the authorities outlined for them by law and act in harmony within the state. The problem here is that local self-government is independent of state power, but not from the state. However, the above mentioned Article of the European Charter defines such limits of oversight, which will prevent the abuse of the latter and the impact of that on the independence of local self-government. This matter may acquire its clear resolution by the fixing of a norm in the Constitution about the fact that the procedure for the state oversight over the implementation of the authorities delegated to the community shall be defined by law, and to ensure the lawfulness of the general activities of the community it is subject to oversight in the manner defined by law.

Article 10 of the European Charter of Local Self-Government also prescribes that the bodies of local self-government, while performing their authorities, have the right to operate and, within the frames defined by law, be consolidated with other bodies of self-government for the purpose of resolving problems of mutual interest. Hence, every state must recognize the right of local self-government bodies to form unions, for the purpose of ensuring the protection and progress of common interests, as well as the right of local self-government bodies to join international associations. All this ensures the possibility of uniting for the protection and development of common interests, the creation of larger communities. However, in some cases such a consolidation is also required by the general interest of the state, which must not pressure, but which the community interests should be harmonized.

This frame of issues, which directly relates to the interrelationships between state power and local self-government, is again clearly regulated under the acting Constitution.

With regard to the strengthening of the constitutional guarantees for local self-government an especially important factor is turning local self-government bodies into a subject of constitutional justice and the existence of a system of judicial constitutional oversight for the adjudication of disputes deriving from the problem of the constitutional authorities relating to the bodies of the state power and local self-government. At present, such systems effectively operate in Austria, Czech Republic, Germany, Hungary, Italy, Russian Federation, Slovenia, Spain and in more than 35 other countries.

RECOMMENDATIONS AND RATIONALE FOR CONSTITUTIONAL REFORMS

Given the mentioned conceptual approaches the following main amendments and supplements are required to be made in the RA Constitution.

CHAPTER 1. The Foundations of Constitutional Order[2]

Article 1. The Republic of Armenia is a sovereign, democratic state, based on social justice and rule of law.

Article 2. In the Republic of Armenia power lies with the people. The people exercise their power through free elections and 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 3. The elections of the President, the National Assembly and local self-governing bodies of the Republic of Armenia, as well as referenda, are held based on the right to universal, equal and direct suffrage by secret ballot.

Article 4.

The Republic of Armenia recognizes the fundamental human rights and freedoms as an inalienable and ultimate value. In the exercise of power the people and the state shall be limited by those rights stipulated by the Constitution , as a directly functioning right.[3]

The state guarantees the protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law.[4]

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[2] Chapters 1-7 of the Constitution have been edited with a new wording, taking into consideration:

a) a) the recommendations made by the Constitutional Reforms Commission under the RA President,

b) b) the recommendations made during the discussions held with the experts of the Venice Commission of the Council of Europe on November 16-17 in Yerevan, on February 13-14 in Paris and on June 5-6, 2001 in Strasburg

c) c) the requirements of the Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 December 16 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and universal norms fixed in other documents on human rights,

d) d) the experience of the international constitutional practice,

e) e) the conclusions of various experts (particularly, those of Professors H.Schwartz, Otto Luchterhandt, W.Shults, R.Rubell, members of the Venice Commission Mr. M.Hertzog and Mr. H. Torfason).

[3] Supplements and amendments are presented in such an underlined italic shift.

[4] The provisions presented in this gray shade have been either deleted or moved (in this case it has been moved to Article 14).

Article 5. State power shall be exercised in accordance with the Constitution and the laws based on the principle of the separation *and balancing* of the legislative, executive and judicial powers.

State *and local self-government* bodies and public officials are competent to perform only such acts, for which they are authorized by legislation.

Article 6. The supremacy of the law *supremacy of right and the rule of law* shall be guaranteed in the Republic of Armenia.

The Constitution of the Republic has supreme juridical force, and its norms are applicable directly, *unless otherwise provided by the Constitution.*

Laws found to contradict the Constitution as well as other legal acts found to contradict the Constitution and the laws shall have no juridical force.

Laws of the Republic of Armenia shall comply with the Constitution. Other normative and individual legal acts shall be consistent with the Constitution, Laws and international treaties ratified by the Republic of Armenia.

Laws shall be applied only after official publication. *Laws and other normative legal acts that contain universally mandatory rules of conduct shall take effect only after official publication.* Unpublished legal acts pertaining to human rights, freedoms and duties shall have no juridical force.

International treaties shall take effect for the Republic of Armenia *only after they have been ratified or approved.* International treaties signed on behalf of the Republic of Armenia shall be applied only after ratification. International treaties of the Republic *of Armenia* that have been ratified are a constituent part of the legal system of the Republic *of Armenia*. If other norms are provided in these treaties *ratified international treaties* other than those provided by the laws, then the norms provided in the treaty shall prevail.

International treaties that contradict the Constitution may be ratified only after making a corresponding amendment to the Constitution.

The procedure for concluding international treaties shall be defined by law.

Article 7. The multiparty system *ideological pluralism and the multipartyism system* is recognized in the Republic of Armenia.

Parties are formed freely and promote the formulation and expression of the political will of the people. Their activities may not contravene the Constitution and the laws, nor may their structure and practice contravene the principles of democracy. Parties shall ensure the openness of their financial activities.

7.1 The church in the Republic of Armenia shall be separate from the state. The Republic of Armenia recognizes the historically exceptional role of the Armenian national Apostolic Church in the spiritual life of the Armenian people, in the work of developing national culture and preserving the nation preserving national identity. At the same time The freedom of activities of all the religious organisations operating in the manner defined by law shall be guaranteed in the Republic of Armenia.

7.2 The armed forces of the Republic of Armenia are called upon to ensure the security, defence and territorial integrity of the Republic of Armenia, the inviolability of its borders. The armed forces shall maintain neutrality in political matters and shall remain under civil supervision.

Article 8. The right to property is recognized and protected in the Republic of Armenia.

The owner of property may dispose of, use and manage the property at his or her discretion, *the results of his/her intellectual property.* The right to property may not be exercised so as to cause damage to the environment or infringe on the rights and lawful interests of other persons, society or the state.

The state shall guarantee the free development and equal legal protection of all forms of property, the freedom of economic activity and free economic competition.

Economic freedom, free economic competition based on the principles of market economic relationships are guaranteed in the Republic of Armenia.

Abuse of monopoly status, illegal restriction of competition and bad faith competition in the market are prohibited.

In the interests of the state and society, the possible forms of monopoly and their permissible limits may be defined by law.

Article 9. The foreign policy of the Republic of Armenia shall be conducted in accordance with the norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states.

Article 10. The state shall ensure the protection and reproduction of the environment and the rational utilization of natural resources.

Article 11. Historical and cultural monuments and other cultural values are under the care and protection of the state. *The state shall contribute to the free access to the national and world cultural heritage.*

Within the framework of principles and norms of international law, the Republic of Armenia shall promote the protection of Armenian historical and cultural values located in other countries, and shall support the development of Armenian educational and cultural life.

Article 11.1 The marzes (provinces) and communities shall be the administrative-territorial units of the Republic of Armenia.

The names and borders of the administrative-territorial units shall be defined by law.

Article 11.2 The Republic of Armenia shall recognize and guarantee the local self-governance as an independent democratic system of public self-governance.

Article 11.3 The procedure for the acquisition and termination of citizenship of the Republic of Armenia shall be defined by law. Armenians by ethnicity shall acquire citizenship of the Republic of Armenia through a simplified procedure. A citizen of the Republic of Armenia may not be a citizen of another state simultaneously.

No person may be deprived of citizenship of the Republic of Armenia, or the right to change citizenship.

A citizen of the Republic of Armenia may not be handed over to a foreign state, except for the cases prescribed by international treaties of the Republic of Armenia. The decision on the handing over may be appealed to the court.

The citizens of the Republic of Armenia shall be under the protection of the Republic of Armenia within the territory of the Republic of Armenia and beyond its borders.

Article 12. The state language of the Republic of Armenia is Armenian.

Article 13. The flag of the Republic of Armenia is tricolor made of three horizontal and equal strips of red, blue and orange. The coat of arms of the Republic of Armenia depicts, in the center on a shield, Mount Ararat with Noah's ark and the coats of arms of the four kingdoms of historical Armenia. The shield is supported by a lion and an eagle while a sword, a branch, a sheaf, a chain and a ribbon are portrayed under the shield. The national anthem of the Republic of Armenia is the "Our Fatherland." The capital of the Republic of Armenia is Yerevan.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER ONE[5]

1. ARTICLE 4. The amendment was made based on the requirements of the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 December 16 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1990 November 21 Charter of Paris and universal norms fixed in other international documents on human rights.

In accordance with those documents and current international tendencies of constitutional developments, in real democratic systems human rights are recognized as an ultimate and inalienable value, are constitutionally stipulated as a directly applicable right and are placed at the foundation of the realization of state power. The fixing of such a provision at the foundation of the constitutional order of any country has exceptionally important methodological significance and evidences a clear position on the democratic principles adopted. It has found its reflection also in the Preamble and Article 3 of the Charter of the Council of Europe, where a starting point for the member states is considered the adoption of the principle of the supremacy of right.

Given also the advice provided by the Venice Commission experts, the references with regard to the provisions of direct effectiveness are made to the rights stipulated by the Constitution. This approach is stipulated also in the Constitutions of many countries of Western Europe (in particular, see Article 1 of the Constitution of Germany, Article 18 of the Constitution of Portugal, etc.).

The 1st and 2nd Articles of the RA Constitution, which are not subject to change under Article 114 of the Constitution, acquire a consistent elaboration and completion in the new wording presented.

The provisions of Article 4 of the acting Constitution, as a guarantee for the realization of the constitutional principle presented with the new wording of the same Article, are moved to the beginning of the Chapter "Fundamental Human and Civil Rights and Freedoms" of the Constitution.

2. ARTICLE 5. The amendment, based on the current theoretical generalizations of the principle of separation of powers, is aimed at fixing constitutionally not the adoption of the given principle in general, but the real separation of powers on the basis of that principle. Such an approach has been adopted by the overwhelming majority of countries that have chosen the democratic way of development (in particular, see Article 20 of the Constitution of Germany, Article 10 of the Constitution of the Russian Federation, Article 2 of the Constitution of the Czech Republic, Article 8 of the Constitution of Bulgaria, Article 5 of the Constitution of Lithuania, etc.) Besides, the separation of powers is not absolute; it cannot be viewed as a mechanical division between the unified state power and the institutions executing that power. Branches of power that are independent of one another and have various functional authorities may actively co-operate and secure the effective realization of state power, the dynamic and stable development of society, only in the event of balance. Such an approach is prevailing in the current international constitutional practice (in particular, see Article 114 of the Constitution of Portugal, Article 6 of the Constitution of

[5] The objective of Constitutional reforms is not the presentation of a new Constitution, but resolution of the above stated problems through supplements and amendments. Consequently, the algorithm of making necessary amendments was the mechanism chosen.

Moldova, Article 10 of the Constitution of Poland, Article 4 of the Constitution of Estonia, Article 7 of the Constitution of Kyrgyzstan, etc.).

3. ARTICLE 6. The amendment of the first paragraph is based on the logic of Articles 1 and 4 and is their further elaboration. The acceptance of the supremacy of right is finalized, and the organic link that exists between right and law is fixed here, law is based on right and becomes a rule for obligatory conduct and, as noted in the preamble of the Universal Declaration of Human Rights, it is necessary "…that human rights should be protected by the rule of law." Only under the supremacy of right, when the law must emerge from the right, is it possible to avoid such conditions when, without violating the letter of the law, the power is made to serve the establishment of an authoritarian political regime, as happened in Nazi Germany.

With the recommended amendments, the repeated formulations of the provision on the direct application of the constitutional norms relating to human rights are deleted, simultaneously the hierarchy of the legal acts is clearly defined, with the ultimate juridical force of the Constitution recognised, by which the provision that all the legal acts shall be based on the Constitution and comply with it becomes clearer, with the particular emphasis not on the contradiction, but the positive, constructive approach. In this Article (part three) the supremacy of the law over other legal acts is recognised, and it is provided that other legal acts that contravene the laws shall not bear juridical force either.

The amendment of the first sentence of the fourth part is necessary, given the fact that the existing version is not properly worded and leaves room for misunderstandings. The impression is created that even before publication there is an effective law, which may not be applied yet. In reality the law acquires juridical force only after publication. Such a nature is given also to other legal acts of normative type, as well as sub-legislative legal norms referring to human rights and freedoms.

The fifth section has been clarified more and the "ratification" and "approval" legal institutions are clearly separated. It is emphasised that only the norms of the international treaties ratified by the parliament prevail over the norms of the domestic laws.

4. ARTICLE 7. The new wording makes the constitutional norm clearer: not only has the phrasing been refined, but also the content has become clearer, it reveals the political prerequisites of the main constitutional principles, i.e., the creation of a democratic, legal state, the establishment of civil society.

5. ARTICLE 7.1. The international constitutional practice clearly stipulates the secular nature of democratic states, the independent nature of the state and the church from each other. In many countries a special attitude is also expressed towards the historical role played by the national church, but also stressing the necessity for equally guaranteeing by the state the freedom of activities of all the religious organisations operating in the manner defined by law. For example, in Article 9 of the Constitution of Georgia it is stated: "The state recognises the special importance of the Georgian Orthodox Church in Georgian history but simultaneously declares complete freedom of religious belief and confessions, as well as independence of the church from the state."

The Republic of Armenia is even more responsible, after the reestablishment of statehood, to express a proper attitude towards the historical role of the Armenian Apostolic Church, given the fact that it is an exceptional example of a national church that for centuries has performed the difficult historical mission of preserving the nation, under the conditions of the loss of statehood, in numerous cases taking upon itself the functions of the state. The first

nation in the world adopting Christianity as a state religion is simply obliged to constitutionally fix its own attitude as a general value.

In addition to that, the current processes of democratic development, the norms of international law recognised and adopted by the Republic of Armenia, in particular, the universal recognition of the freedom of thought, conscience and religion require guaranteeing non-discriminatory equality for the free activities of all the religious organisations acting in the lawful manner.

In all the mentioned respects, Article 7.1 is in complete harmony with the provisions of international documents on human rights and international constitutional practice.

6. ARTICLE 7.2. The addition of the Article is very important with regard to the significance the armed forces have in the maintenance of the Republic's security and territorial integrity, the inviolability of its borders. At the same time, the principles mentioned in the Article are in full compliance with the principles of democracy and a legal state, take into account the social practice existing in the country during the last decade, the requirements of the regular and active development of the political system, effective realization of representative democracy, as well as the necessity of creating a sustainable defence system anchored by patriotic and high moral traits, far from any political processes.

Such an approach has found its reflection in the new constitutional solutions of a number of countries. In particular, in Article 26 of the Constitution of Poland adopted in 1997, it is stated: "(1) The Armed Forces of the Republic of Poland shall safeguard the independence and territorial integrity of the State, and shall ensure the security and inviolability of its borders. (2) The Armed Forces shall observe neutrality regarding political matters and shall be subject to civil and democratic control."

7. ARTICLE 8. In the opinion of the experts of the Venice Commission of the Council of Europe, it is necessary to include the provisions relating to individual rights stipulated by Article 8 of the Constitution in the second chapter of the Constitution, which is absolutely logical. Aside from that, in the third part of Article 8 of the Constitution the use of a concept such as "forms of property" comes from the Soviet perception of property deriving from the reconstruction period. In the given case the problem does not refer to the differentiation of the subjects of property or the fixing of the right of property (which, with new wording, is realized in Article 28), but the aim is to specify constitutionally the nature of economic relationships.

The new wording of the Article secures a guarantee for the healthy expansion of market economic relationships, with new formulations of the principle of antimonopoly regulation.

Such a re-wording of the Article is in greater harmony with the foundations of the constitutional order. As far as the provisions relating to individual rights are concerned, then they, as was mentioned, have been re-worded and moved to Article 28. This approach has also overcome the somewhat inconsistent approach of the provisions of the former Articles 8 and 28 with regard to the possible limitation reserved to law on the right of property.

8. ARTICLE 11. The addition is based on the provisions of the 1966 International Covenant on Economic, Social and Cultural Rights. The state must not only play the role of a defender of cultural values, but also create the maximum possible favourable prerequisites for their reproduction and development. The main condition to achieve this goal shall be the guarantee of the freedom of creativity and free access to national and universal cultural heritage.

9. ARTICLE 11.1. The unitary nature of the state does not preclude the fixing of the principles of its territorial structure in the Constitution, which will provide certain stability to the settlement of problems relating to the territorial structure of the country.

According to the experts of the Venice Commission of the Council of Europe such an addition is necessary.

10. ARTICLE 11.2. An extremely important factor in the principles of the Constitutional order is the safeguarding of local self-governance. The main problem here is the stipulation and guarantee of that independent democratic institution of public self-government. As examples of such a clear formulation may serve, in particular, Article 12 of the Constitution of the Russian Federation, Article 17 of the Constitution of Ukraine, Article 9 of the Constitution of Slovenia, Article 16 of the Constitution of Poland. The recommended supplement is also based on the provisions of the European Charter of Local Self-Government adopted on October 15, 1985.

11. ARTICLE 11.3. This Article, together with the supplements, has been moved from the second section of the Constitution. The supplements have been made on the basis of the provisions of the December 16, 1966 International Covenant on Civil and Political Rights. The rationale for moving it is explained by the fact that the issue of citizenship is not only a human rights issue, but also the specific territory and citizenship are first of all considered the main characteristic features of the state, and consequently of the constitutional order**.**

The elimination of the constitutional obstacle to the institution of dual citizenship and the reservation of the regulation of this problem to law is an exclusively political matter. A number of countries have resolved the problem in a similar manner.

CHAPTER 2. Fundamental Human and Civil Rights and Freedoms

Article 14[6].

Article 15 14. The natural and inalienable dignity of the human being, as an indissoluble basis of his freedoms and rights, shall be respected and protected by the state.

The Republic of Armenia shall secure the protection of the human and civil rights and freedoms fixed by the Constitution, in accordance with the principles and norms of international law, on the basis of the Constitution and the laws.

Article 14.1. Citizens *People,* regardless of race, sex, language, creed, political or other persuasion, *national or* social origin, wealth or other status, are *legally equal,* have all the rights, freedoms and obligations defined by the Constitution and laws *and shall be given equal protection of the law without discrimination.*

Article 16. All are equal before the law *and the court* and shall be given equal protection of the law without discrimination.[7]

Article 17 15. Everyone has the right to life.

Until such time as it is abolished, the death penalty may be prescribed by law for particular capital crimes, as an exceptional punishment.

The death penalty is prohibited in the Republic of Armenia, except in time of war or in the event of an unavoidable threat of war, on the basis of law.

Article 18 16. Everyone has the right to freedom and immunity. No one may be arrested or searched except as prescribed by law. A person may be detained only by court order and in accordance with legally prescribed procedures.

Everyone has the right to apply to a superior court with a request to check the legality and justified nature of his/her detention.

Everyone has the right, pursuant to the bases and procedure defined by law, to indemnification of damage caused by his/her illegal arrest or detention.

No one may be deprived of freedom otherwise than in the following cases and by the procedure defined by law:

1) *1) when a person is convicted to deprivation of freedom by a competent court,*
2) *2) for not executing the lawful verdict of the court or for the purpose of ensuring the performance of any obligation provided by law,*
3) *3) in the event there is a substantiated suspicion of having committed a crime or if it is necessary to prevent the commission of a crime by him or his flight after its commission,*
4) *4) to supervise the education of a minor,*
5) *5) to prevent the spread of infectious diseases, as well as other dangers to the public,*
6) *6) to prevent the illegal entry of a person into the country, to deport him or to hand him over to another state.*

Every arrested person shall, in a language understandable to him, be immediately informed about the reasons for his arrest and any charge presented against him.

In accordance with the provisions of sub-point (3) of this Article every person arrested or detained shall, within 48 hours, be subject to be brought to the court, which shall, not later than within 24 hours, make a decision on his detention or choosing other precautionary measures. The free release of the person may be conditioned upon guarantees to be present at the trial.

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[6] See Chapter 1, Article 11.3

[7] See Article 14.1 with new wording.

Every person has the right to appeal the legality and justification of his/her detention through judicial procedure.

Every person has the right to compensation on the grounds and by the procedure defined by law against the damage caused for having been kept under illegal arrest or detention.

Every person who is deprived of freedom because of detention has the right to appeal the legality of his detention.

Every person who, in violation of the provisions of this Article, has become a victim of arrest or detention, has the right to compensation endowed with the power of claim.

No one may be arrested, put into detention or be deprived of freedom solely for the non-performance of his contractual obligations.

A person may not be searched otherwise than according to the procedure defined by law.

Article 19 17. No one may be subjected to torture and to treatment and punishment that are cruel or degrading to the individual's dignity. *All persons that are arrested, detained or deprived of freedom have the right to humane treatment and respect towards their dignity.*

No one may be subjected to *scientific, including* medical experimentation without his or her consent.

Article 38 18. Everyone has the right to defend his or her rights and freedoms by all means not forbidden by law. *If the constitutional rights and freedoms of a person have been violated, then he has the right to effective means of legal protection before state bodies.*

Everyone has the right to defend in court the rights and freedoms fixed in the Constitution and the laws.

Everyone has the right to receive, on the grounds and in the manner defined by law, the support of the Defender of Human Rights for the protection of his rights and freedoms.

Everyone has the right in accordance with the international treaties of the Republic of Armenia to apply to interstate bodies of protection of human rights and freedoms for the protection of his rights and freedoms, if all the intrastate legal protection means have been exhausted.

Article 39 19. Everyone has the right to restore any rights which may have been violated, as well as to a public hearing by an independent and impartial court *within a reasonable period*, under the equal protection of the law and fulfilling all the demands of justice, to clear himself or herself of any accusations. The presence of the news media and representatives of the public at a judicial hearing may be prohibited by law wholly or in part, for the purpose of safeguarding public morality, the social order, national security, the safety of the parties, and the interests of justice, *however, the final judicial acts are subject to promulgation in an open-door court session.*

Article 40 20. Everyone has the right to receive legal assistance. Legal assistance is provided free of charge *at the expense of state resources* in cases prescribed by law. Proceeding from the interests of justice, legal assistance is provided free of charge to an accused not having sufficient resources to pay for the services of a defender, as well as in other cases prescribed by law.

Everyone has the right, from the moment he or she is arrested, detained or charged, *to be informed about his or her rights, as well as the causes for arrest or detention, and* to have a defender.

Every convicted person has the right to have his or her conviction reviewed by a higher court, in a manner prescribed by law. Every convicted person has the right to request a pardon or mitigation of any given punishment.

Compensation for the harm caused to the wronged party shall be provided in a manner prescribed by law.

Article 41 21. A person accused of a crime shall be presumed innocent until proven guilty in a manner prescribed by law, and by a court sentence properly entered into force.

The defendant does not have the burden to prove his or her innocence. Accusations not proven beyond a doubt shall be resolved in favor of the defendant.

Article 42 22. A person shall not be compelled to be a witness against himself or herself, or be a witness against his or her spouse or against a close relative. The law may foresee other circumstances relieving a person from the obligation to testify.

Illegally obtained evidence shall not be used.

A punishment may not exceed that which could have been meted by the law in effect when the crime was committed.

A person may not be considered guilty of a crime if at the time of its commission the act was not legally considered a crime.

A law eliminating the punishability of an act and or mitigating the punishment has retroactive effect.

A law prescribing or increasing liability does not have retroactive effect.

No one can be convicted a second time for the same act.

Article 20 23. Everyone has the right to defend his or her private and family life from unlawful interference and defend his or her honor and reputation from attack. *Everyone has the right for his personal and family life to be respected.*

The gathering, maintenance, use and dissemination of illegally obtained information about a person's private and family life are prohibited.

The bodies of state power cannot gather, keep, and provide other information about a person than prescribed by law.

Each citizen, except in cases prescribed by law, has the right to become acquainted with official information and documents about him and can demand their correction or elimination, if they are not reliable or have been obtained by illegal means.

Everyone has the right to confidentiality in his or her correspondence, telephone conversations, mail, telegraph and other communications, which may be restricted only *in the manner prescribed by law*, by court decision, *and, in urgent cases prescribed by law, prior to the court order.*

Article 21 24. Everyone has the right to immunity of his or her own dwelling. It is prohibited to enter a person's dwelling against his or her own will except under cases prescribed by law.

A dwelling may be searched only in the manner prescribed by law by court decision *and, in individual urgent cases provided by law, prior to the court decision.*

Article 22 25. Every citizen *person* has the right to freedom of movement and residence within the territory of the Republic.

Everyone has the right to leave the Republic.

Everyone residing in the Republic of Armenia legally and every citizen has the right to return to the Republic.

Article 23 26. Everyone has the right to freedom of thought, conscience, and creed. The freedom to exercise one's religion and beliefs may be restricted only by law on the grounds prescribed in *Articles 43 and 44 of* the Constitution.

Article 24 27. Everyone has the right *to freely assert* his or her opinion. It is prohibited to force a person to retract or change his or her opinion.

Everyone has the right to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of state borders.

The freedom of the media and other means of information is guaranteed.

Article 24.1 27.1 Everyone has the right to submit applications or proposals to competent state and local self-government bodies with respect to the protection of his/her individual or social interests and to receive adequate answers.

Article 25 28. Everyone has the right to form associations with other persons, including the right to form and join trade unions.

Every citizen has the right to form political parties with other citizens and join such parties.

The rights to create and become members of parties and trade unions may, in the manner defined by law, be limited for individual groups of servants of the armed forces and public servants.

These rights may, *in the manner provided by law,* be restricted *for persons* in the armed forces *and state service*.

No one shall be forced to join a political party or association.

The activities of associations, including parties, may be suspended or prohibited only in cases prescribed by law, by court decision. court procedure.

Article 26 29. Citizens have *Everyone* has the right to hold peaceful and unarmed meetings, rallies, demonstrations and processions.

This Article does not prohibit prescribing limitations by law on the exercise of those rights by persons in the armed forces and state service.

Article 27 30. Citizens *of the Republic of Armenia who have attained the age of eighteen years* have the right to participate in the government of the state directly or through their freely elected representatives.

The law may provide for suffrage in elections of local self-government bodies for persons who are not citizens of the Republic of Armenia.

Citizens found to be incompetent by a court ruling, or duly convicted of a crime and serving a sentence may not vote or be elected. *The law may define additional limitations on suffrage in elections of local self-government bodies.*

Article 30.1 Citizens have the right to be accepted into state service on general terms stipulated by law.

The principles and the procedure for organization of state service shall be defined by law.

Article 28 31. Everyone has the right to private property and inheritance.

The owner, at his/her discretion, may possess, use and dispose of the property belonging to him, the results of his intellectual activity. No one may be deprived of property, except by the court, *by court procedure* in cases prescribed by law.

Foreign citizens and persons without citizenship shall not have the right to own land, except in cases prescribed by law.

The law may provide limitations on land ownership for foreign citizens and persons without citizenship.

Private property may be alienated for the needs of society and the state only under exceptional circumstances, on the basis of law, and with prior equivalent compensation.

The implementation of the right to property shall not cause harm to the environment, violate other persons', the public's and the state's rights and legal interests.

Article 29 32. Every citizen *one* has the right to freedom of choice in employment.

Everyone has the right to wages that are fair and that are no lower than the minimum established by *law* the state, *as well as* to working conditions which meet sanitary and safety requirements.

Everyone has the right to get involved in entrepreneurial activity not forbidden by law. The limitations relating to the execution of this right shall be defined by law.

Citizens *Employees* have the right to strike in the defense of their economic, social and work interests. The procedures and restrictions applicable to the exercise of this right shall be prescribed by law.

The state carries out effective employment and unemployment reduction programs. The hiring of children under 16 on a permanent job shall be prohibited. The procedure and conditions for their hiring to a temporary job shall be defined by law.

Compulsory labor is forbidden, except in cases prescribed by law.

Article 30 33. Everyone has the right to rest.

The maximum work period, rest days, and minimum duration of annual paid vacation shall be prescribed by law.

Article 33.1 Everyone has the right to live in an environment favourable for his or her health and well-being and is obliged personally as well as together with others to preserve and improve the environment.

The state shall conduct policies ensuring environmental security for the present and future generations.

Public officials shall be held responsible for concealing environmental information and or refusing to provide it.

Article 31 34. Every citizen *one* has the right to an adequate standard of living for himself or herself and his or her family, including to adequate housing, as well as to the improvement of living conditions. The state shall undertake necessary measures to enable the exercise of these rights *of citizens*.

Article 32 35. The family is the natural and fundamental cell of society. Family, motherhood, and childhood are placed under the care and protection of society and the state.

Women and men *of marital age have the right to marry and create a family,* they enjoy equal rights when marrying, during marriage, and in divorcing.

All the legal relationships related to marriage and family are regulated by law.

Article 36. Parents shall have the right to and shall carry an obligation to care for the upbringing, health, full and harmonious development and education of their children.

Depriving of parental rights or limiting thereof may be implemented only by a court decision in a procedure defined by law.

Adult capable persons are obliged to take care of their incapable and needy parents.

Article 33 37. Every citizen *one* has the right to social security during old age, disability, sickness, loss of an income earner, unemployment and in other cases *and procedure* prescribed by law.

Article 34 38. Everyone has the right to the preservation of health. The provision of medical care and services shall be prescribed by law. The state shall put into effect health care protection programs for the population and promote the development of sports and physical education.

Article 35 39. Every citizen *one* has the right to education.

Basic general education is mandatory for citizens in the Republic of Armenia, with the exception of cases provided by law. The law may define a higher level of mandatory education.

Secondary education shall be free of charge in state *and community* educational institutions. Every citizen is entitled to receive higher education and other professional education free of charge and on a competitive basis, in state educational institutions. The establishment and operation of private educational institutions shall be prescribed by law.

In the cases and by the procedure defined by law the state shall provide financial and other assistance to educational institutions implementing professional educational programs and to students therein.

The limits and the principles of the autonomy of higher educational institutions shall be determined by law. Higher educational institutions may not be for profit.

The procedure for the creation and operation of educational institutions shall be defined by law.

Article 36 40. Everyone has the right to freedom of literary, artistic, scientific and technical creation, to benefit from the achievements of scientific progress and to participate in the cultural life of society.

Intellectual property shall be protected by law.

Article 37 41. *Persons* Citizens belonging to national minorities have the right to the preservation of their traditions, *to freely express, preserve and develop their ethnic, linguistic, cultural and religious identity* and the development of their language and culture.

Article 43 42. The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms.

The rights and freedoms set forth in the Constitution are not exhaustive and do not exclude other fundamental human and civil rights and freedoms stipulated by law or by the international treaties of the Republic of Armenia.

Everyone is free to do what is not prohibited by law and does not violate the rights and freedoms of others. No one may bear obligations that are not defined by law or on the basis of law.

Laws and other normative acts that worsen the legal status of an individuals shall not have retroactive effect.

Legal acts that improve the legal status of an individuals, remove or mitigate their his/her liability shall have retroactive effect, if that is provided by those acts.

Article 44 43. The fundamental human and civil rights and freedoms established under Articles 23 27 *23-30 and part four of Article 32* of the Constitution may be restricted only by law, if necessary for state and public security *state security and public tranquility,* the preservation of public order, *the prevention of crime,* the protection of public health and morality, the *constitutional* rights, freedoms, honor and reputation of others *in democratic society. The limitations of human rights and freedoms may not exceed the scopes defined by the effective norms of international law.*

Article 45 44. Some human and civil rights and freedoms, except for those provided under Articles 17, 19, 20, 39, 41 - 43 *15, 17-22, 26 and 42* of the Constitution, *within the scopes of international obligations assumed in respect of derogating from the obligations in emergency situations,* may *to the extent equivalent to the situation* be temporarily limited in a manner prescribed by law, in the event of martial law, or in cases prescribed under paragraph 14 of Article 55 of the Constitution.

Article 44.1. The limitations of human and civil rights and freedoms may not exceed the scopes defined by the effective norms of international law or shall not violate the essence of freedoms and rights.

Article 46 45. Everyone is obliged to pay taxes, duties, and make other mandatory payments in the amounts and manner prescribed by law.

Article 47 46. Every citizen is obliged to participate in the defense of the Republic of Armenia in the manner prescribed by law.

Article 48 47. Everyone is obliged to uphold the Constitution and the laws, and respect the rights, freedoms and dignity of others.

The exercise of rights and freedoms for the purpose of the violent overthrow of the Constitutional order, for the instigation of national, racial, or religious hatred or for the incitement to violence and war is forbidden.

Article 48. Legal persons are also endowed with fundamental human and civil rights and freedoms insofar as such rights and freedoms are applicable to them by their essence.

RATIONALE FOR AMENDMENTS AND SUPPLEMENTS TO CHAPTER TWO

1. ARTICLE 14. The fixing of the constitutional provision of human dignity is the logical elaboration of Article one of the Constitution, it reveals and completes the position about consistent approaches on the formation of a civil regime anchored on permanent values and the principle of the supremacy of right and complies with the best international standards. In particular, this is evidenced by Article 1 of the Constitution of Germany, Article 10 of the Constitution of Spain, Article 18 of the Constitution of Portugal, Articles 18 and 21 of the Constitution of the Russian Federation, Article 7 of the Constitution of Georgia, Article 30 of the Constitution of Poland and corresponding articles stipulated by the constitutions of a number of other countries. Aside from that, in the preamble of the December 16, 1966 International Covenant on Civil and Political Rights, it is stated that the State Parties to the Covenant shall agree with the Articles stipulated therein, first, taking into consideration that "in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", as well as recognizing that "…these rights derive from the inherent dignity of the human." The same approach is also fixed in the preamble of the 1966 International Covenant on Economic, Social and Cultural Rights.

The draft of the reforms of the RA Constitution, in the chapter on the Foundations of the Constitutional Order, with special emphasis and consistent with the principles of international law, recognizes human rights as an inalienable and ultimate value, and their direct operation by the power of the Constitution. Human rights are characterized by the fact that they belong to an individual independent of his or her citizenship. For that reason, the correct methodological approach is to have the approaches of principle relating to the human individual rights fixed at the beginning of Chapter 2, and the general individual, political, social-economic and spiritual-cultural rights stated afterwards. Such a view was expressed also by the experts of the Venice Commission, in accordance with which the articles of Chapter 2 of the Constitution are reworded in the mentioned sequence.

2. ARTICLE 14.1 Taking into consideration Article 2 of the Universal Declaration of Human Rights, as well as Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the December 16, 1966 International Covenant On Civil and Political Rights, paragraph two of Article 2 of the 1966 International Covenant on Economic, Social and Cultural Rights, the requirements of the universal norms stipulated by other international documents on human rights, the general principle of legal equality and the prohibition of discrimination must pertain to all persons and not only to citizens. However, that does not exclude the introduction of limitations by the Constitution and the laws on the political rights and activity of aliens (see Article 16 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

The mentioned approach of principle becomes clearer and more complete with the presented new wording of the combined Articles 15 and 16 of the acting Constitution, since both of them relate to the internationally recognized provision on the prohibition of discrimination. The obviously existing contradiction between the areas regulated by both Articles (Article 15 - civil rights, Article 16 - human rights), is thereby also eliminated, which was emphasized also by the experts of the Venice Commission. It is necessary to have one unified regulation for legal equality and the prohibition of discrimination.

The partial additions made to the Article have been based on the formulations of the mentioned international conventions.

3. ARTICLE 15. The Protocol N6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Strasbourg on April 28, 1983 states that:

"The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty,
Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations[1]

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

1. **Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.**
2. **Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.**
3. **Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.**

Article 6 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 and 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance

or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8 – Entry into force

1. **This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.**
2. **2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval."**

Taking into consideration the fact that with regard to the accession to the Council of Europe the Republic of Armenia has committed itself to sign the European Convention for the Protection of Human Rights and Fundamental Freedoms and the attached Protocols the moment it becomes a member of the Council, and to ratify them within one year after its membership, therefore this Article has been reworded on the basis of the Protocol requirements.

4. ARTICLE 16. The supplements to the fundamental right of an individual's immunity are critical improvements to guarantee that fundamental right. They stop the serious risks of the violation of an individual's right of immunity. Such supplements are consistent with the provisions of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol 4 to the same Convention, Article 9 of the December 16, 1966 International Covenant on Civil and Political Rights and conform the constitutional regulation of the matter to international standards. In particular, the provision defined in Artcle 1 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms has been considered here, according to which "no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation."

5. ARTICLE 17. In Article 10 of the December 16, 1966 International Covenant on Civil and Political Rights it is provided: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The fixing of such a provision is prioritized especially because of the fact that the rights of such category of people are more frequently subjected to violations.

The international practice has also evidenced the necessity to declare psychiatric and multifarious scientific experiments towards a healthy person as beyond the law.

6. ARTICLE 18. The supplements take into account the approaches of principle pertaining to the right to effective remedies as defined by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as create additional intrastate and international guarantees for the protection of human rights and are consistent with the norms of international law. The third supplement is particularly necessary in terms of accession to the Council of Europe, when the RA citizens acquire the right to apply to the European Court of Human Rights. Such a supplement derives, in particular, from the provisions of Article 1 of the Protocol attached to the December 16, 1966 International Covenant on Civil and Political Rights, according to which the state party to the Covenant

shall recognize the right of each person to the remedies for violations of his/her rights through interstate bodies.

7. ARTICLE 19. The supplement derives from the provisions of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 14 of the December 16, 1966 International Covenant on Civil and Political Rights, in which the conduct of the trial within a reasonable time and the other supplements are viewed as important components of the right to a fair trial. According to paragraph 1 of Article 6 of the mentioned convention "Everyone is entitled …to public hearing within a reasonable time…" This Article guarantees a rapid completion of the court hearing, as well as fixes the general principle of the rapid administration of justice. The goal of the Article is for the person to not remain in the status of accused for long and to have a decision made on the offences charged against him. This viewpoint has been reaffirmed numerous times in the judicial practice of the European Court of Human Rights. In particular, it has been fixed in the cases of "Wemhoff" vs. Germany-27.06.68, Golder vs. the United Kingdom-21-02.75, Deumeland vs. Germany-29.05.86, Capuano vs. Italy-25.06.87 and in many others.

8. ARTICLE 20. The amendments first of all make the conditions for the realization of the given right clearer, the concepts are more accurately used, and then the supplement, in terms of the contents, enforces the guarantees of the protection of minimum human rights and complies with the provisions of Article 6 (paragraph 3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 14 of the December 16, 1966 International Covenant on Civil and Political Rights.

9. ARTICLE 22. The supplement on the retroactive power of a law mitigating punishment complies with the classical principles of the legal state and is an important supplement for the protection of the judicial rights of an individual (in particular see Article 15 of the December 16, 1966 International Covenant on Civil and Political Rights). The last paragraph fixes a very important norm of international law, which is provided for in the constitutions of many countries and is reflected as well in point 7 of Article 14 o the mentioned covenant.

10. ARTICLE 23. The first paragraph of the Article has been reworded based on the provisions of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Here one should not speak of the self-defense rights of a person, but rather about the positive approach, i.e., the right to respect for private and family life. This circumstance has been emphasized also by the experts of the Venice Commission.

The rewording of the second paragraph is conditioned by the necessity of strengthening the guarantees of the right of protection of personal data related to an individual and emphasizes that not only can the data not be gathered in an illegal manner, but also that data acquired through illegal means cannot be used, they must be eliminated, and the citizen must have the right to become acquainted with them and present such a demand. Such an approach springs from the principles of new constitutional developments and a very characteristic example is Article 51 of the Constitution of Poland.

The addition to the third paragraph is necessary, since from the point of view of international law the limitation of rights otherwise than in the manner defined by law is impermissible. The wording mentioned is also prevailing in international constitutional practice (see Article 10 of the Constitution of Germany, Portugal-34, Lithuania-22, Denmark-Paragraph 72, Ukraine-31, Georgia –20, Kazakhstan-18, etc.). In particular, in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

among other rights, regarding the right to correspondence confidentiality, it is stated: "2. There shall be no interference by a public authority with the exercise of this right except **such as is in accordance with the law** and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

11. ARTICLE 24. The problem here is to establish a legally acceptable balance between the legal requirement of the protection of the individual's fundamental right, on the one hand, and the equally legal requirement of the state's effective struggle against danger threatening public security and the prevention of danger, on the other hand. However, in such cases the right to the judicial appeal of actions must serve as a check.

12. ARTICLE 25. The formulation of the RA acting Constitution is not consistent with the norms of international law. In particular, in Article 2 of Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms it is provided:

"**Freedom of movement**

1. 1. **Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence**.

2. 2. **Everyone shall be free to leave any country, including his own.**

3. 3. **No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of "ordre public", for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

4. 4. **The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interests in a democratic society."**

In the first sentence with the new wording the consideration of the right to movement and in the second part the right to leave, as a human right, as well as the stipulation of the right to return by the third part, as a right of a person legally residing in the country and as a citizen's right, make the Article more consistent and complete.

Aside from that, in Article 12 of the December 16, 1966 International Covenant on Civil and Political Rights the right to more freely within the borders of the territory of the state party is likewise recognized as a right of everyone legally present in the territory of that state.

13. ARTICLE 26. The second sentence is recommended to be deleted to preserve the consistency of the wording and in particular, in terms of considering the provisions of Articles 9 and 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The fact is that according to the mentioned Article 9:

"**1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.**

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Both such a permissible scope of the limitations of the given right and the procedure for the derogation from the obligations in emergency situations are regulated in Articles 43 and 44 presented with the new wording.

14. ARTICLE 27. In international documents on human rights the person's right to the freedom of expression of opinion (see Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 19 of the December 16, 1966 International Covenant on Civil and Political Rights) is fixed. In addition to that, there is a difference between the right to free expression of opinion and to holding an opinion or insisting on an opinion, as a particular case of the former. For example, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: "**Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers**." And Article 19 of the December 16, 1966 International Covenant on Civil and Political Rights provides:

"**1. Everyone shall have the right to hold opinions without interference.**

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

As we see, the right to the free expression of opinion includes the freedom to hold an opinion, to receive and impart information and ideas without interference by state authorities and regardless of state frontiers. But the stipulation of the constitutional guarantee for the freedom of the media is a critical progressive step in terms of the constitutional guarantees for the protection of democracy.

15. ARTICLE 27.1. The addition of this article fills the significant gap in the acting Constitution, since the right to appeal (petition) was not clearly stipulated. Similar specific Articles are contained in the Constitutions of the overwhelming majority of countries (in

particular, see Article 17 of the Constitution of Germany, Article 33 - Russian Federation, 40-Ukraine, 46-Croatia, 45-Bulgaria, 63-Poland, 27-Slovakia, 45-Slovenia, 46-Estonia, etc.)

16. ARTICLE 28. The supplement to the third part has been made on the basis of the provisions of Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 22 of the December 16, 1966 International Covenant on Civil and Political Rights. Also the concept "law preserving body" characteristic of the Soviet legal mentality has been deleted and the new wording is phrased with the main concepts of international law (in particular, see the mentioned Articles). The objective is to have the scopes of the possible limitations of the given right clearer and harmonious with international law.

The supplement to the last part is an important guarantee for the legal protection of democratic developments and guarantees with the force of a constitutional norm that the bases for suspending or forbidding the activities of associations, including parties, must be prescribed by law.

17. ARTICLE 29. The existing wording is not in harmony with the principles of international law. In particular, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides:

"**Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

As we see, the given right is the right of every person. It should be recognized first, and then the question of limiting it should be raised. At the same time, the fixing of the given right on the basis of Article 16 of the same Convention does not hinder the introduction of limitations on the political activity of aliens either.

With regard to this matter the study of the judicial practice of the European Commission and the Court of Human Rights is also interesting. It shows that the existence of the procedure of receiving prior permission for public assembly, if it is necessary to ensure the peaceful nature of the assembly by the authorities, does not in itself violate Article 11 of the Convention (the appeal made against Switzerland, decision No 8191/78 – 10.11.79). At the same time, during the hearing of the appeal against the United Kingdom, the Commission

on Human Rights rejected the argument presented by the government, that the strike could have led to resistance with the application of violence by counter-protesters (appeal 8440/78-16.07.80). The state shall reasonably undertake measures to guarantee the realization of the right to the freedom of assembly (e.g. Leben vs Austria-24-06-88).

18. ARTICLE 30. The extension of the right to local self-government to persons that have no citizenship corresponds to the current international approaches, as well as the provisions of the October 16, 1999 decision by the RA Constitutional Court. The international practice shows that on the issue of suffrage for non-citizens there is such a tendency that at the level of local self-government such a right is prescribed in a significant number of countries. For example, in the European countries suffrage on the local level is provided both to persons that are citizens of the European Union member states and the Scandinavian countries and other foreign residents living in the country (not considered a citizen of the given state and legally residing in the territory of that state). Characteristic is the fact that suffrage in the sphere of local self-government is related to the residence requirement.

Such an approach has found its reflection both in the agreement on the European Union signed on February 1992 and entered into force from January 1995, and the European Convention on the Participation of Foreigners in Public Life at Local Level (05.02.1992). In Paragraph 1 of Article 6 of latter the active and passive suffrage of foreigners in local bodies is defined, on the condition that they have 5 years of residence in the given country, as well as undertake those legal obligations that citizens have.

This and other initiatives relating to local self-government within the framework of the Council of Europe have the objective of making foreign residents step by step, to the extent possible, full participants in local life and decision-making at the local level. One of the means to achieve this goal is granting the right of vote and to be elected in the local self-government elections to foreigners having special residence status. However, the authors of the Convention by considering it logical to define a period of less than 5 years in respect of a residence requirement, anticipate a separate provision, according to which the contracting party may define a lesser period by its legislation.

Since the matter here refers to local governments, the Convention also considers the principles prescribed in the European Charter of Local Self-Government (15.10.1985), in particular taking as a basis the fact that local self-government and the decentralization of power are important foundations of any democratic system. Here we refer to the formation of such local self-government bodies, as are endowed **with the jurisdiction of making decisions,** are formed on the democratic principle, and which have great independence within the scope of their jurisdiction, as well as a clear procedure and necessary means for its realization.

19. ARTICLE 30.1. The necessity for a new Article is determined by the stipulation of the equal right to state service, which is lacking in the acting Constitution. The mentioned formulation derives also from the provisions of the Labour Relations (Public Service) Convention, January 27, 1978.

20. ARTICLE 31. The right to property is, first of all, presented as a human right, which corresponds to the norms of international law.

Second, by the advice of the experts of the Venice Commission the provisions relating to individual rights, which had found their place in Article 8 of the acting Constitution, have

been moved to this Article. Also the provisions stipulated in Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms have been taken into account, according to which:

" Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The new wording of the Article, while complying with the mentioned standards, at the same time fixes the scopes of property protection and the possible permissible limitations.

21. ARTICLE 32. The supplements are highly necessary, since here we speak about the realization of the human right of labor. The new formulations stated are in harmony with the provisions of Articles 6 and 7 of the 1966 International Covenant on Economic, Social and Cultural Rights, as well as the July 9, 1964 Convention on Policy in the Field of Employment, which also, among other issues, consider the issues of provision of employment and assistance to the unemployed as one of the major issues for the state.

In the constitutions of a number of countries the right to employment is clearly reserved to every person: for example in Article 37 of the Constitution of the Russian Federation, 43-Ukraine, 38-Romania, 43- Moldova, 41-Azerbaijan, 54-Croatia, 58-Portugal, etc.

The problem of prerequisites for the realization of the right to employment becomes more urgent in those transitional regimes, where there are also strict limitations of resources. It is not coincidental that a number of East European countries pay special attention to this matter in their constitutional amendments. In particular, part 5 of Article 65 of the Constitution of Poland adopted in 1997 stipulates that:

"5) Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention."

The problem of employment is clearly stipulated also in Article 58 of the Constitution of Portugal, 157-Brazil, 41-Belarus, 40-Spain, 113-Ukraine and the constitutions of other countries. Such an approach, as well as the matters referring to the regulation of minors' right to employment, derive from the requirements of the European Social Charter adopted on October 18, 1961, in particular Articles 1 and 7 of the latter.

The last addition springs from the requirements of the 4th Article of the European Convention on Human Rights and Fundamental Freedoms, as well as Article 8 of the December 16, 1966 International Covenant on Civil and Political Rights.

22. ARTICLE 33.1. This Article has been formulated taking into account both the norms of international law and the specifically tense environmental situation in Armenia.

23. ARTICLE 34. In the constitutions of a number of countries, it is stipulated that this right, in particular, the right to dwelling is a right of the human being and is reserved to every person (see Article 65-Portugal, 40- Russia, 47-Ukraine, etc.) At the same time, while not limiting that right, the state undertakes measures for its citizens targeted at the realization of those rights, conducts a certain policy, which also derives from the principles of a social state as stipulated by Article 1 of the Constitution.

23.1. ARTICLE 35. The amendment has been made based on the provisions of Article 12 of the European Convention on Human Rights and Fundamental Freedoms and Article 5 of the Protocol N7 of the same Convention.

24. ARTICLE 36. The article is absolutely consistent with our national character and traditions, regulates important social relationships and is in harmony with the norms of international law. It is interesting that already in the Armenians' first written Constitution, the Shahamiryans' "Vorogait Parats" written in 1773-1788, these norms were paid special attention.

24.1. ARTICLE 37. The amendment has been made in accordance with Article 9 of 1999 International Covenant on Economic, Social and Cultural Rights.

25. ARTICLE 39. The right to education in the acting RA Constitution has been reserved only to citizens, which does not comply with the requirements of the norms of international law. In particular, Article 2 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that no one may be refused the right to education. That is completely consistent with the provisions of the December 14, 1960 Convention Against Discrimination in Education. Besides, it is also characteristic that the European Court of Human Rights has given its interpretations in a number of cases on Article 2 of Protocol 1 of the European Convention for the Protection of Human Rights (5962/72, 7671/71, the Case on Languages in Belgium-1986, the Case of Kemble and Kozens-1982, etc.). The main meaning of those and subsequent interpretations arrives at the following:

- - the right stipulated by the mentioned Article refers to primary education,
- - this Article does not obligate the state to ensure the possibility to obtain subsequent education,
- - it does not obligate the state to provide such an educational system that corresponds to parents' approaches, but obligates it not to hinder the activity of private education and to ensure the pluralism of opinions in the field of education.

The amendment presented is at the same time a new approach in the realization of the right to education in a democratic society, when the scopes of policy realized in this area are clarified, free secondary education is guaranteed, a more flexible approach is shown towards the obligations of the state in professional education, by reserving that to regulation under law. By that approach the harmonization of the resolution of problems to the capabilities of the state becomes more realistic. Otherwise, we shall have to deal with unrealized or partially realized rights, which is extremely dangerous from the point of view of the devaluation of human rights.

Such approaches derive also from the provisions of Articles 13 and 14 of 1999 International Covenant on Economic, Social and Cultural Rights. In particular, Article 13 fixes that:

(a) Primary education shall be compulsory and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.

26. ARTICLE 41. The rewording has been made for the purpose of harmonizing the guarantees for the protection of the rights of national minorities to the norms of international law. In particular, the new formulation is consistent with the provisions of Articles 4 and 5 of

the October 21, 1994 Convention on Guaranteeing the Rights of Persons Belonging to National Minorities.

27. ARTICLE 42. The amendment is determined by the requirement of clarifying the necessary scopes for the invocation of natural right based on international constitutional practice. The issue is that uncertain formulations may deprive the right of the necessary protection. The protected rights guaranteed are the rights fixed by the Constitution or international legal acts and laws. Such a clear wording, exists in particular, in Article 16 of the Constitution of Portugal. Such an approach is also supported by the experts of the Venice Commission.

The supplements derive from the fundamental principles of the protection of human rights and are among the important characteristics of the legal state. They are represented particularly in this Article, taking into consideration the fact that the supplements represent not a concrete individual right but an internationally accepted principle.

28. ARTICLES 43, 44 and 44.1. In the mentioned Articles, the amendments are made on the basis of the permissible possible limitations, equivalent to the situation, of the main human and civil rights and freedoms ("...**such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others"** - see Articles 8, 9, 10, 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 2 of Protocol 4), as well as provisions of the mentioned Convention (Article 15) referring to the derogation from obligations in emergency situations. It has been considered that the limitations of the main rights and freedoms not only must be defined by law, but also must be proportional, must not affect the essence of each right, and may not exceed the permissible frames of the limitation of each right defined by the acting norms of international law. The requirements of Article 4 of the International Covenant on Civil and Political Rights have also been taken as a basis, according to which: "**1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.**

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11 ,15, 16 and 18 may be made under this provision.

3. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

Article 44.1. has been formulated on the basis of the provisions of Articles 4, 6, 14 and 42 of the Constitution and provides an unequivocal, complete and finalized nature to the problem of the potential limitations on the human and civil rights and fundamental freedoms. The faithfulness to the principles and norms of international law in the protection of human rights and freedoms requires in the first instance to exclude any discretionary limitations of those rights not prescribed by the norms of international law.

29. ARTICLE 48. The extension of the fundamental rights to legal persons is necessary, even if we take into account the general basis of the right to property or right to freedom of

entrepreneurial activity. It was possible to enumerate all the individual rights applicable also to legal persons. However, the formulation presented is more flexible, when the legal practice will make its clarifications in that as well.

A similar formulation exists in the constitutions of a number of countries, in particular, see Article 19 of the Constitution of Germany, 12-Portugal, 9-Estonia, 45-Georgia, etc.

CHAPTER 3. The President of the Republic

Article 49. *The President of the Republic is the head of state.*

The President of the Republic of Armenia shall uphold the Constitution, and ensure the normal functioning of the legislative, executive and judicial authorities.

The President of the Republic shall be the guarantor of the independence, territorial integrity, security *and the succession of state power* of the Republic.

Article 50. The President of the Republic shall be elected by the citizens of the Republic of Armenia for a five year term of office.

Every person having attained the age of thirty five, having been a citizen of the Republic of Armenia for the preceding ten years, having permanently resided in the Republic for the preceding ten years, and having the right to vote is eligible for the Presidency.

The same person may not be elected for the post of the President of the Republic for more than two consecutive terms.

Article 5l. Elections for the post of President of the Republic shall be held fifty days prior to the expiration of the term of office of the President in office and in accordance with procedures set by the Constitution and the laws.

The candidate who received more than half of the *valid* votes cast for the presidential candidates shall be considered as having been elected President of the Republic. If the election involved more than two candidates and none received the necessary votes, a second round of elections shall be held on the fourteenth day following the first round of the election, at which time the two candidates having received the highest number of votes in the first round shall participate. The candidate who receives the highest number of votes during this second round shall be considered to have been elected.

In the event only one candidate is presented, the candidate shall be considered as having been elected if he or she has received more than half of the *valid* votes cast.

If the Constitutional Court accepts for hearing a case on the results of the elections of the President of the Republic, it must make a decision within ten days following the recording of the receipt of the application, and the time-frames defined by this Article shall be calculated from the moment the decision of the court enters into effect.

If a President of the Republic is not elected, there shall be new elections on the fortieth day after the first round of elections.

The President of the Republic shall assume office on the day when the term of the previous President of the Republic expires.

A President of the Republic who shall be elected by new or extraordinary elections shall assume office within ten days of such elections.

Article 52. In the event that one of the presidential candidates faces insurmountable obstacles, the presidential elections shall be postponed by two weeks. If during this period the obstacles recognized as insurmountable are not removed, then *on the fortieth day after the expiry of the mentioned two-week period* or in the event of the passing of one of the candidates prior to election day, new elections shall be held.

These new elections shall be held on the fortieth day following the determination of these obstacles to be insurmountable.

In the event of the passing of one of the candidates prior to the election day new elections shall be held on the fortieth day.

Article 53. In the event of the resignation of the President of the Republic, his or her passing, incapacity to perform his or her functions, or removal from office in accordance with Article 57 of the Constitution, extraordinary presidential elections shall be held on the fortieth day following the vacancy of the office.

Article 54. The President of the Republic shall assume office *in a procedure defined by law* by pledging *the following* oath to the people during a special sitting of the National Assembly, *with the participation of the members of the Constitutional Court*: "*Assuming the office of the President of the Republic of Armenia I swear: to fulfill the requirements of the Constitution in an unreserved manner; to respect human and civil rights and fundamental freedoms; to ensure the independence, territorial integrity and security of the Republic to the glory of our fatherland and to the prosperity of our people."*

Article 55. The President of the Republic:

1) shall address the people and the National Assembly;

2) shall sign and promulgate, within twenty one days of receipt, laws passed by the National Assembly;

During this period, the President may remand a law to the National Assembly with objections and recommendations requesting new deliberations. The President shall sign and publish the law within five days of the second passing of such law by the National Assembly:

The President of the Republic shall sign and promulgate within a period of five days a law that has again been adopted by the National Assembly or shall apply to the Constitutional Court with a request to obtain a conclusion as to its compliance with the Constitution. If the Constitutional Court issues a conclusion on the provisions of the law being in contradiction with the Constitution, the President of the Republic shall not sign the law.

3) may dissolve the National Assembly *reduce the term of the authorities of the National Assembly* and designate extraordinary elections *in the cases and by the procedure stipulated by the Constitution* after consulting with the President of the National Assembly and the Prime Minister. Extraordinary elections shall be held no sooner than thirty and no later than forty days after the dissolution *reduction of the term of the authorities* of the National Assembly[8].

The President may not dissolve the National Assembly during the last six months of his or her term of office.

4) *In the manner prescribed by the Constitution shall appoint and dismiss the Prime Minister. Upon the recommendation of the Prime Minister shall appoint and dismiss the members of the Government.*

In the event of a vote of no confidence in the Government by the National Assembly, the resignation of the Prime Minister or the office of the Prime Minister remaining vacant, shall accept the resignation of the Government, shall appoint a Prime Minister and form the Government.

Shall appoint and remove the Prime Minister. The President shall appoint and remove the members of the Government upon the recommendation of the Prime Minister.

In the event that the National Assembly adopts a vote of no confidence against the Government, the President shall, within twenty days, accept the resignation of the Government, appoint a Prime Minister and form a Government.

5) shall make appointments to civilian *state office* positions in cases prescribed by law;

6) *shall establish and preside over a National Security Council,* may establish *other* advisory bodies;

7) shall represent the Republic of Armenia in international relations, conduct and oversee foreign policy, make international treaties, *submit international treaties to the ratification of the National Assembly and* sign international treaties that are ratified by the

[8] In the opinion of the Venice Commission experts the specific issues relating to the dissolution reduction of the authorities of the National Assembly shall be regulated in the chapter on the National Assembly.

National Assembly, ratify intergovernmental agreements *their ratification instruments, approve or annul the international treaties that do not require ratification*;

8) shall appoint and recall the diplomatic representatives of the Republic of Armenia to foreign countries and international organizations, and receive the credentials and letters of recall of diplomatic representatives of foreign countries *and international organisations*;

9) shall appoint and remove the Prosecutor General, *shall appoint and remove the deputy Prosecutors General upon the recommendation of the Prosecutor General* upon the recommendation of the Prime Minister.

10) shall appoint members and the President of the Constitutional Court.

He may, on the basis of a determination by the Constitutional Court, remove from office any of his or her appointees to the Constitutional Court or agree *to involve him as an accused or initiate an administrative responsibility case against him through the judicial procedure* the arrest of such a member of the Court, and through the judicial process authorize the initiation of administrative or criminal proceedings against that member;

11) shall appoint, in accordance with the procedure provided in Article 95 of the Constitution, the president and judges of the Court of Cassation and its chambers, the courts of appeals, the courts of first instance, economic, administrative and other courts, the deputy prosecutors general and prosecutors heading the organizational subdivisions of the office of the Prosecutor General; may remove from office any judge, *agree to involve the judge as an accused in court, initiate an administrative responsibility case against him through the judicial procedure* sanction the arrest of a judge and through the judicial process, authorize the initiation of administrative or criminal proceedings against a judge and remove the prosecutors that he or she has appointed.

12) is the *supreme* Commander in Chief of the armed forces, *shall coordinate the activities of the state bodies in the field of defense,* shall appoint *and remove* the staff of the highest command of the armed forces *and other troops;*

l3) shall decide on the use of the armed forces. In the event of an armed attack against or of an immediate danger to the Republic, or a declaration of war by the National Assembly, the President shall declare a state of martial law and may call for a general or partial mobilization. *In such a situation the armed forces and other troops of the Republic of Armenia are placed under the subordination of the operative management of the chief headquarters of the Ministry of Defense. In time of war the President of the Republic may appoint and dismiss the Commander in Chief of the armed forces.*

14) In the cases of *using the armed forces or* declaring martial law, *the President of the Republic a special sitting of the National Assembly shall be immediately convened by the force of law, which shall examine the legal rationale for declaring martial law. the issue of the correspondence of the measures undertaken with the situation. The legal regime of martial law shall be defined by law.*

15) in the event of an imminent danger to the constitutional order, and consulting with the President of the National Assembly and the Prime Minister, shall *declare an extraordinary situation,* take measures appropriate to the situation, and address the people on the subject making an address to the people *in advance. In this case, the President of the Republic a special sitting of the National Assembly shall be immediately convened by the force of law, which shall hear the issue of the legal rationale and proportionality the correspondence of the measures undertaken with the situation. The regime of the extraordinary situation shall be defined by law.*

16) shall grant citizenship of the Republic of Armenia and resolve the issue of granting political asylum *shall, by the procedure defined by law, resolve issues pertaining to granting citizenship of the Republic of Armenia and political asylum*;

17) shall award the orders and medals of the Republic of Armenia and grant the highest military and honorary titles and diplomatic and other titles;

18) may grant pardons to convicted individuals.

Article 56. The President of the Republic may issue orders and decrees which shall be subject to execution throughout the Republic.

The orders and decrees of the President of the Republic may not contravene *shall correspond to the* Constitution and the laws *of the Republic of Armenia.*

56.1 The President of the Republic is immune.

Article 57. The President of the Republic may be removed from office for state treason or other high crimes.

In order to request a conclusion on questions pertaining to the removal of the President of the Republic from office, the National Assembly shall appeal to the Constitutional Court by a resolution adopted by the majority of the total number of deputies.

A decision to remove the President of the Republic from office must be rendered by the National Assembly by a minimum two thirds majority vote of the total number of Deputies, based on the conclusion of the Constitutional Court.

If, by the conclusion of the Constitutional Court, the bases for removal of the President of the Republic from office are absent, the issue shall be removed from the National Assembly's discussion.

Article 58. The resignation of the President of the Republic shall be accepted by the National Assembly *The President of the Republic shall submit his or her resignation to the at the sitting of the National Assembly. The National Assembly shall accept the resignation of the President of the Republic* by a majority vote of the total number of Deputies. *In the event the resignation has been presented again, immediately after ten days, the resignation of the President of the Republic of Armenia shall be considered as accepted, and special elections shall be held within the periods and procedures prescribed by Constitution.*

Article 59. In the event of the serious illness of the President of the Republic or of insurmountable obstacles affecting the performance of his or her duties, *which make the continuous performance of his/her authorities impossible*, upon the recommendation of the Government and on the basis of a conclusion by the Constitutional Court, the National Assembly shall adopt a resolution on the incapacity of the President of the Republic to exercise his or her duties with a minimum two thirds majority vote of the total number of Deputies. *If by the conclusion of the Constitutional Court the bases for the incapacity of the President of the Republic to exercise his or her duties are absent, the Government may not apply to the National Assembly with such a proposal.*

Article 60. In the event that the office of the President of the Republic remains vacant and until a newly elected President assumes office the duties of the President of the Republic shall be performed by the President of the National Assembly, and if that is not possible, by the Prime Minister. *In the event the duties of the President of the Republic are not possible to be performed by the President of the National Assembly or the Prime Minister these shall be performed by the President of the Constitutional Court.* During this period it is prohibited to dissolve the National Assembly, call a referendum, and appoint or remove the Prime Minister and the Prosecutor General.

If the RA President cannot perform his/her duties temporarily, he/she shall officially inform the President of the National Assembly about that, who takes upon himself/herself the performance of the duties of the President of the Republic during that period except for the cases prescribed by clauses 2-6 and 8-12 of Article 55 of the Constitution.

Article 60.1 Elections of the President of the Republic shall not be held in conditions of martial law, and the President of the Republic shall continue the performance of his or her

authorities until. In this case, on the fortieth day after the termination of martial law, after which elections of the President of the Republic shall be held.

Article 61. *The President of the Republic shall set up his staff.* The compensation, servicing and security of the President of the Republic shall be prescribed by law.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER THREE OF THE CONSTITUTION

1. ARTICLE 49. One of the key issues of the Constitution is the clear separation of powers and the ensuring of functional balance. It is not a secret that this problem is more difficult to resolve in the so-called semi-presidential systems of governance. At the same time, the experience of the international constitutional developments evidences that even under such systems there have been found effective solutions practically acceptable to the public. The basic issue is to first solve the problem of harmony in the system of "function-institution- jurisdiction." The second issue is to ascertain and harmonize the scopes of functional, checking and balancing authorities for each branch of power, to ensure the relatively independent and complete activity of each branch of power without disturbing the balance of the system of "function-institution-jurisdiction", on the one hand, and to retain that harmony in the dynamics through necessary and sufficient checking and balancing, on the other hand. We should note that in the theory of constitutional law the following main criteria of the separation of powers are more acceptable at present: a) the relative independence of the branches of power, b) the completeness of their authorities and their equivalence to their functions, c) the guarantee for the uninterruptedness of the balanced activities of the state power, which in its turn assumes the fixing of such intra-constitutional guarantees, with the help of which it will be possible to reveal, evaluate and recover the violated functional balance. Only under this circumstance will it be possible to ensure the dynamic and harmonized development, avoid "explosive" political and social resolutions.

The currently acting RA Constitution has three main "weak links" in this respect. First, the place of the institution of the President in the system of state power is not specified; second, the legislative and judicial powers, in terms of all the mentioned criteria, do not have the necessary functional independence and dynamically balanced status; and third, the mechanisms for the revelation, evaluation and recovery of the violated balance are incomplete.

Often a contradiction emerges in the semi-presidential governance systems between the President and the Government, when they do not represent the same political forces (typical is the example not only of Armenia, but also of France). In such systems it is very difficult to give an accurate answer to the question of which level of the activities of the executive power the President of the Republic carries responsibility, and for which the Government and the Prime Minister.

In the event when the President has a clear parliamentary majority, naturally no such problem occurs, since the political responsibility is in one place. At the same time, the system assumes that the President may be forced to appoint a Prime Minister that is acceptable to the National Assembly or, in reality, yield the initiative to the Parliament, by adapting to the latter. Such a situation assumes the existence of a strong and sustainable parliament, which is able to assume political responsibility for the activities of the Government, as well as the existence of such checks which, in the event of the National Assembly and the Government not displaying sufficient and necessary capacity, will help to restore the disturbed balance. These questions will be addressed during the rationale of the amendments made in paragraph three of Article 55. Under this circumstance the essential emphasis is that in a semi-presidential governance system, the President of the country, first of all, has the function of ensuring the regular and balanced activities of the branches of the power, which characterizes his place and role as **head of state**.

The President of the country as head of state is constitutionally clearly presented in the constitutions of a number of countries. For example, Article 87 in Italy, Russia-80, Estonia-77, Croatia-94, Georgia-69, Azerbaijan-7, Bulgaria-92, Kirgizstan-42, Belarus-79, Ukraine-102, Nikaragua-184, Czech Republic-54, Slovakia-101, etc. Incidentally, in the last two countries the President is elected by the Parliament.

As head of state the President simultaneously becomes the guarantor for the successiveness or uninterruptedness of state power, which is an exceptionally important principle in terms of preserving the guaranteed dynamic balance of the branches of power. Consequently the recommended constitutional supplement is an unavoidable necessity.

2. ARTICLE 51. The addition of such a norm on the election of the President is necessary, since otherwise impasses emerge. If two candidates have passed to the second stage and the second stage of the voting is held on the 14th day, but one of the candidates has applied to the Constitutional Court with regard to the results of the first stage, then it is possible to have a situation when, prior to the decision of the court in the second stage the candidate is elected who, according to the decision of the court, should not have passed to the second stage. To avoid the emergence of such explosively risky situations the solution is the supplement presented, which is an accepted norm in the practice of international constitutional justice.

3. ARTICLE 52. The concept "insurmountable obstacle" is one of the uniquely occurring concepts in international constitutional practice, which is borrowed from the experience of the French Constitution. The meaning of the term is interpreted by the constitutional council of France as such a situation that is created for a specific candidate despite his will when, although he has not died, he has such an illness or has been found in such a situation, when as a candidate he becomes permanently incapable as a candidate.

Such a clarification in the RA Constitution is necessary, since there are serious disagreements emerging in practice. What is important is that such a situation constitutionally has a time limitation, i.e., two weeks. Within that period, in the event the obstacles recognized as insurmountable are not eliminated, new elections are held, on the fortieth day after the obstacle has been recognized as insurmountable. Article 52 of the Constitution, in fact, considers the insurmountable obstacle, from the point of view of the given process, as in the event equivalent to the death of one of the candidates. That is, the candidate, irrespective of his will, is not able to conduct an election campaign anymore and, in order that the completeness and the democratic nature of the pre-election campaign not be disturbed (since such a situation may emerge also in the event of the presence of two candidates), the Constitution has fixed the provision for organizing new elections.

4. ARTICLE 54. It is essential that the procedure of assuming the office of the President be clearly regulated by law, especially taking into account the fact that Armenia has no preserved historical tradition, and the results of the last two presidential elections have evidenced that the given question in many cases is explained by the taste and subjective considerations of separate officials. This ceremony is an important event representing and symbolizing statehood and it must be clearly regulated to become a serious tradition. In addition to that, the President of the Republic is elected with authorities clearly fixed by the Constitution and assumes concrete obligations. His oath must be not discretionary, but summarize the fundamental contents and essence of the constitutional functions of the head of state. The fixing of the text of the oath in the Constitution will enhance, on the one hand, the strengthening of the traditions of statehood, and will increase the responsibility of the President towards the fulfillment of his obligations, on the other hand.

The text of the oath has been fixed in the constitutions of a number of countries. In particular, see USA-Article II, Russia –82, Ukraine-104, Latvia- 40, Kirgizstan- 42, Poland-104, Austria-62, Estonia-81, etc.

5. ARTICLE 55.

Point 2. The practice of the preliminary or interim constitutional oversight of normative acts during the recent several decades has taken root in many countries of the world. In particular, preliminary or interim oversight over the laws (when the law adopted by the parliament has not been signed, promulgated and entered into force by the President) is carried out by 46 constitutional courts, including Austria, Chile, France, Cyprus, Italy, Romania, Spain, etc.

The supplement recommended for the initial interim oversight has the important advantage that it prevents the regulation of practical legal relationships through the possibly anti-constitutional norms of a law and the creation of an anti-constitutional situation in the public practice.

The international practice of evaluating the constitutionality of a law prior to its adoption by the Parliament (in draft state) is often criticized for the reason that there takes place indirect interference in the activity of the legislative body. The proposed version is void of any such shortcoming and, especially in transitional societies, where the whole system of social relationships is subject to new legislative regulation, materially increases the sustainability of ensuring the supremacy of the Constitution.

Point 3. One of the most vulnerable provisions of the RA Constitution is the existence of the abstract jurisdiction of the President to dissolve the National Assembly. Such a norm seriously violates the balance of the separation of powers, is not equivalently checked, and weakens the functional independence and autonomy of the legislative body. International constitutional practice gives the preference to the replacement of such an abstract authority with a concrete authority, when the President may dissolve the parliament only in the event of concrete situations fixed by the Constitution (particularly, see Article 89 of the Constitution of Romania, Czech Republic-35, Germany-63, Poland-98, 155, etc). Such an alternative is considered more grounded and acceptable by the experts of the Venice Commission of the Council of Europe also.

The questions pertaining to more concrete situations and the rationale for them will be a subject for examination in connection with Article 74.1.

Point 4. This point has been partially reworded to clarify that after the elections of the National Assembly a new Government is formed, the organic linkage in the reorganization of the two branches of power is emphasized. In addition to that, based on the logic of point 3 of this Article and Article 74.1, it is fixed that the President may dismiss only a Prime Minister that has been appointed by him. If the provision of the first part of Article 74.1 has operated, then the Government proceeds to work as long as no grounds for the dissolution of the National Assembly have arisen.

Point 5. The authorities of the President reserved by the Basic law to make appointments to offices refer not only to civil but also to state offices. That system in organizational-structural aspects may be changed, the law may create new institutional structures, which do not generate constitutional changes but generate a necessity for flexible legislative regulation. Under these circumstances the legislature may foresee such cases when the President of the Republic makes the appointments to state offices.

Point 6. The separation of the National Security Council from the other advisory bodies and the special emphasis has the objective to emphasize the importance of that body, by presenting it as a constitutionally recognized advisory institution. It is well known that the institution of the President is able to work only in the event of the availability of strong advisory and analytical bases. This problem becomes more urgent in crisis management cases, in which our country has appeared very often, as well as under the conditions of the uncertainties and incompleteness of the state power institutions during the transitional period. Naturally, that body has no jurisdiction other than the holding of advisory discussions,

exchange of ideas, comparison of approaches and clarification of viewpoints about issues that are of importance in principle for the state (in particular see, also Article 135 of the Constitution of Poland). The existence of this body with constitutional status derives also from the logic of Article 49 of the Constitution, as an important advisory institution for ensuring the regular activities of the three branches of power.

Point 7. First, one important clarification has been made, that the President of RA shall sign not the international treaties that are ratified by the National Assembly, but rather their ratification instruments. Second, the President shall not ratify intergovernmental agreements, which are likewise international treaties and in the procedure and cases defined by law the jurisdiction for their ratification likewise belongs to the National Assembly. The President may only approve or annul those agreements that are not subject to ratification by the legislature and do not contain norms that are in conflict with the acting laws.

Point 8. The addition derives from the general logic of the norm and, in fact, that institution has newly started to develop in Armenia.

Point 9. The amendment is explained by two circumstances. First, the constitutional amendments significantly weaken the supervisory role of the President over the executive power. The President is no longer presiding over all the sittings of the Government, does not ratify all the decisions, does not define the structure and procedure of its activities, etc. The Procuracy in its turn, when protecting state interests, is relating to the executive power to a larger extent and should be relatively independent from the Government. Second, on the basis of the requirements of the European Charter on the Statute for Judges adopted in June 1998, it is envisaged to essentially review the procedure of the formation and activities of the Council of Justice, consequently also taking into account the fact that the RA Procuracy is an integrated centralized system, this appointment procedure of the Deputy Prosecutors General is recommended.

Point 11. The wording has been modified in accordance with the rationale stated in the previous point.

Point 12. The addition is necessary from the point of view of the completeness of the responsibilities and obligations of the Supreme Commander-in-Chief. On the other hand, the uncertain situation, where the appointments are not made on the principle of unchangeability and the problem of dismissal is not constitutionally resolved, is overcome. One of the important objectives of the constitutional reforms is to overcome such uncertainties and ambiguous formulations.

Points 13 and 14. There are essential risks concealed in these points. They concern the scopes of the possible limitations of human rights and relate also to a number of other Articles of the Constitution, in particular Article 45. The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols attached to it, Article 4 of the International Covenant on Civil and Political Rights, as well as the norms of a number of other international documents on human rights evidence that those limitations may only occur within internationally accepted scopes, defined by law, proportional to the situation. If the President of the Republic undertakes actions that relate to human rights, then they must be clearly checked and balanced. For that purpose it is provided that a special sitting of the National Assembly shall be convened, on the basis of the same legal act of the President, to give an evaluation on the consistency by applying and also receiving the conclusion of the Constitutional Court within 24 hours, and terminate the actions envisaged under the mentioned points. Based on the requirements of the norms of international law, a new guarantee is added as well, it is provided that the legal regime for martial law shall be defined by law. In addition, the supplement to Article 6 of the Constitution implies that first, laws and other normative acts enter into force only after their official promulgation, and that all types of unpromulgated legal acts relating to human rights, freedoms and obligations shall

have no juridical force. Consequently, all the real prerequisites are created for the effective checking of the given authorities of the President.

The new wording of Articles 44 and 45 of the acting Constitution and the presented supplements made to those points are based on the same logic, they represent a single wholeness and strengthen the guarantees for the protection of human rights.

6. ARTICLE 56.1. Taking into account the fact that the problem of immunity for all the institutions of state power is regulated by the Constitution (deputies, judges, Constitutional Court members), naturally the provisions on the immunity of the President must also be clearly defined by the Constitution. Such a norm is provided in the constitutions of many countries. In particular, the following Articles of the Constitutions of Italy-90, Russia-91, Lithuania-86, Kirgizstan-49, Azerbaijan-119, Georgia-75, Ukraine-105, etc.

7. ARTICLE 57. The grounds for removal of the President from office vary in international practice; however, the conclusion of a judicial body is always necessary. The approaches existing with respect to such conclusions are three:

1. It is totally left to the highest judicial instance of the courts of general jurisdiction;
2. The jurisdiction is redistributed among the organs of general jurisdiction and constitutional justice;
3. The jurisdiction is reserved to the Constitutional Courts.

The first group includes not only about 48 countries with the constitutional justice administered by the courts of general jurisdiction (that is called the American court system), but also such countries that belong to the European court system as Poland (the hearing takes place by the State Tribunal, Article 131 of the Constitution), Portugal (Article 133), etc.

A particularly large number are those countries where the question of grounds for the accusation is reserved to the courts of general jurisdiction, and the preservation of the constitutional procedure is reserved to the Constitutional Courts (Russia Article-93, Kirgizstan-47, Georgia-63, Azerbaijan-120, Ukraine-111, etc.).

No fewer are also those countries where the question of legal evaluation is mostly left with the Constitutional Courts (Slovakia-107, Romania-94, Bulgaria-103, Czech Republic-65, Kirgizstan-51, Croatia-105, etc.); however, in many places, there is also a special hearing held either by the senate or parliamentary commission. And, for example, in Kirgizstan, the parliament is dissolved in the event there is a negative conclusion provided by the Constitutional Court on the issue of the removal from office raised by the Parliament.

The international practice provides a rich experience on all the possible options of judicial supervision over the procedure of the removal from office. The generalization of the latter evidences that to give a guaranteed objective just assessment it is necessary that the facts be examined also by a court of general jurisdiction having long experience in criminal procedure. For that purpose, the supplements brought are necessary and may restrain the risk of speculation of the question of the removal from office for political reasons and the emergence of artificial instability, which is significantly prioritized in all countries.

8. ARTICLE 58. The international experience and the recommendations made by the Venice Commission experts have been taken into consideration.

9. ARTICLE 59. The rationale for this supplement is consistent with the rationale presented for the supplements to Article 52.

10. ARTICLE 60. The tragedy that happened in Armenia on October 27, 1999, has evidenced that greater attention should be paid to the danger of the emergence of a possible vacuum in power.

11. ARTICLE 60.1. For all the representative institutions of power this norm is envisaged for the non-devaluation of representative democracy, on the one hand, and for avoiding the emergence of a vacuum in power, on the other hand.

CHAPTER 4. The National Assembly *Legislative power*

Article 62. Legislative power in the Republic of Armenia shall be vested in the National Assembly. In cases provided by Articles *57, 58,* 59, 66, *67,* 73, 74, *74.1*, *77,* 78, *80,* 81, 83, 84, *85.1,* 111, 112 of the Constitution, as well as for purposes of organizing its own activities, the National Assembly shall adopt resolutions, which shall be signed and published by the President of the National Assembly.

The National Assembly may adopt addresses according to the procedure prescribed by its rules of procedure.

The powers of the National Assembly are defined by the Constitution.

The National Assembly shall operate in accordance with its rules of procedure.

The procedure for the activity of the National Assembly, the formation and activity of its bodies shall be defined by the Constitution and the rules of procedure of the National Assembly.

Article 63. The National Assembly shall have one hundred and thirty one *one hundred and one* Deputies.

The authority of the National Assembly shall expire in June of the fourth year following its election, on the opening day of the first session of the newly elected National Assembly, on which day the authority of the newly elected National Assembly shall begin.

The National Assembly may be dissolved in accordance with the Constitution.

A newly elected National Assembly may not be dissolved during a one year period following its election.

The National Assembly may not be dissolved during a state of martial law, or in the cases foreseen under paragraph 14 of Article 55 of the Constitution, or when the removal of the President of the Republic from office is being deliberated.

The authorities of the National Assembly shall be prolonged in time of martial law until the opening day of the first session of the newly elected National Assembly after the termination of martial law.

Article 64. Any person having attained the age of twenty five years, having been a citizen of the Republic of Armenia for the preceding five years, having permanently resided in the Republic for the preceding five years, and who has the right to vote, may be elected as a Deputy.

Article 65. A Deputy may not hold any other state office, *be in the bodies of local self-government, be engaged in entrepreneurial activities, as well as* engage in any other paid work, except for scientific, pedagogical and creative work.

A Deputy shall perform his or her authorities on a permanent basis.

The compensation *status and* guarantees for the activity of a Deputy shall be prescribed by *the Constitution and the* law.

Article 66. A Deputy shall not be bound by any compulsory mandate and shall be guided by his or her conscience and convictions.

A Deputy*, during and after the term of his or her parliamentary authorities,* may not be prosecuted or held liable for actions arising from his or her status, or for his or her opinions expressed in the National Assembly, provided these are not slanderous or defamatory.

A Deputy may not be arrested and subjected through the judicial process to administrative or criminal *involved as an accused or subjected to a suit for administrative* responsibility *through the judicial process* without the consent of the National Assembly.

A Deputy may not be arrested without the consent of the National Assembly except for cases when he or she was caught while committing a crime or immediately thereafter. In such a case the President of the National Assembly shall be immediately notified.

Article 67. The powers of a Deputy shall terminate upon the expiration of the term of the National Assembly, upon the dissolution of the National Assembly, upon violation of the provisions of the first part of Article 65 of the Constitution, upon loss of citizenship of the Republic of Armenia, for unfounded absences from half of the floor votes during a single session upon being sentenced to imprisonment, when deemed incapacitated and upon his or her resignation.

The procedure for the termination of Deputy's powers shall be prescribed by the rules of procedure of the National Assembly.

Article 68. Regular elections to the National Assembly shall be held within sixty days prior to the expiration of the term of the current Assembly.

Procedures for elections to the National Assembly shall be prescribed by law.

The date of elections shall be fixed by decree of the President of the Republic.

The first session of a newly elected National Assembly shall convene on the second *third* Thursday following the election of at least two thirds of the total number of Deputies.

Until the election of the President of the National Assembly, its meetings shall be chaired by the Deputy who is most senior in age.

Article 69. The regular sessions of the National Assembly shall convene twice per year from the second *first* Monday of September to the second *third* Wednesday of December and from the first *third* Monday of February *January* to the second *first* Wednesday of June *July*.

The sittings of the National Assembly shall be open to the public. Closed door sittings may be convened by a resolution of the National Assembly.

Article 70. An extraordinary *sitting or* session of the National Assembly may be convened by the President of the Republic *President of the National Assembly*, at initiative of the Government or of at least one third of the total number of Deputies.

Extraordinary sittings shall be conducted with the agenda and timetable specified by the initiating party.

An extraordinary sitting or session of the National Assembly may be convened by the President of the Republic, defining the agenda.

Article 71. Laws and resolutions of the National Assembly shall be passed by the majority vote of the Deputies present at a given sitting *participating in the voting*, if more than half of the total number of Deputies participate in the voting, except for cases covered under *part three of Article 57*, Articles 58, 59, 72, 74, 84, 111 of the Constitution, and the fourth paragraph of Article 75, the first paragraph of Article 79, and Section 3 of Article 83 of the Constitution.

Article 72. The National Assembly shall deliberate on a priority basis any law which has been remanded by the President of the Republic.

Should the National Assembly decline to accept the recommendations and objections presented by the President of the Republic, it shall pass the remanded law, again with a majority vote of the total number of Deputies.

Article 73. There *may* shall be *not more than nine* six standing committees established in the National Assembly. Ad hoc committees may be established as necessary.

The standing committees are established for the preliminary consideration of draft *legislative acts* draft legislation and other proposals and for the submission of findings on such legislation and proposals to the National Assembly.

If needed ad hoc committees are established *may be established by a procedure defined under the procedural rules of the National Assembly,* for the preliminary consideration of particular draft laws or for the submission of findings and reports on specific events and facts to the National Assembly.

Article 74. Within twenty days of the formation of a newly elected National Assembly or of its own formation, the Government shall present its program *concept paper of the program* of its activity to the National Assembly for its approval, thus raising the question of a vote of confidence before the National Assembly.

A draft resolution expressing a vote of no confidence toward the Government may be proposed within twenty four hours of *the Government's* raising of the question of the vote of confidence by not less than one third of the total number of Deputies.

The proposal for a vote of no confidence shall be voted on no sooner than forty eight hours and no later than seventy two hours from its initial submission. The proposal must be passed by a majority vote of the total number of Deputies.

If a vote of no confidence toward the Government is not proposed, or such proposal is not passed, the Government's program shall be considered to have been approved by the National Assembly.

If a vote of no confidence is passed, the Prime Minister shall submit the resignation of the Government to the President of the Republic.

Article 74.1. If the National Assembly does not give a vote of confidence to the Government headed by the Prime Minister appointed upon the proposal of the President of the National Assembly or, in the event the President of the National Assembly does not present any candidacy, to the Government headed by the Prime Minister appointed by the President of the Republic, as well as if does not give a vote of confidence twice to the Government headed by the Prime Minister appointed with its approval, then the President of the Republic shall, by the procedure prescribed by Article 55, point3 of the Constitution, dissolve reduce the term of the authorities of the National Assembly, by assigning special elections, which shall be held in the manner defined by point3 of Article 55 of the Constitution. The term of authorities of the National Assembly may may be dissolved be reduced by the President of the Republic also:

a) *if the National Assembly fails, within two months, to make decisions with respect to draft laws that are deemed urgent by decision of the Government;*

b) *if, during the regular session of the National Assembly, its sittings are interrupted for over two months;*

c) *if, during the regular session of the National Assembly it is unable, for over two months, to adopt any decision in relation to issues under its discussion.*

Article 75. The right to initiate legislation in the National Assembly shall belong to the Deputies, *the President of the Republic* and the Government.

The Government shall *may* stipulate the sequence for debate of its proposed draft legislation and may demand that they be voted on only with amendments acceptable to it. Any draft legislation considered urgent by a Government decision shall be debated and voted on by the National Assembly within a one month period.

The National Assembly shall consider all draft legislation reducing state revenues or increasing state expenditures only upon the agreement *in case of the existence of the conclusion* of the Government *and at its demand* and shall pass such legislation by a majority vote of the total number of Deputies.

The Government may raise the question of a vote of confidence in conjunction with the adoption of a draft law proposed by it *or by a Deputy*. If the National Assembly does not adopt a vote of no confidence against the Government in the manner provided by Article 74 of the Constitution, then the latter's *Government's* proposed draft law is considered to have been adopted *or the draft law presented by the Deputy to have not been adopted.*

The Government may not raise the issue of a vote of confidence in conjunction with a draft law proposed by it more than twice during any single session.

Article 76. The National Assembly, upon submission by the Government, shall adopt the state budget *and together with that the four-year plan of activity of that Government, by years*. If the budget is not adopted by the start of the fiscal year, all expenditures shall be incurred in the same proportions as in the previous year's budget.

The procedure for debate on and adoption of the state budget shall be prescribed by law.

Article 77. The National Assembly shall supervise the implementation of the state budget, as well as of the use of loans and credits received from foreign states and international organizations.

The National Assembly shall examine and adopt the annual report on the implementation of the state budget if on the conclusions of the National Assembly's Oversight Office are available.

Article 78. In order to ensure the legislative basis of the Government's program, the National Assembly may authorize the Government to adopt decisions that have the effect of law that do not contravene any laws in force during a period specified by the National Assembly. Such decisions must be signed by the President of the Republic.

Article 79. The National Assembly shall elect *and recall* the President of the National Assembly *and two deputies to the President* for the duration of its full term by a majority vote of the total number of Deputies.

The President of the National Assembly shall chair the sittings *of the National Assembly* manage its material and financial resources, and shall ensure its normal functioning. The National Assembly shall elect two Vice Presidents of the National Assembly.

The President of the National Assembly shall represent the National Assembly.

Article 80. Deputies have the right to ask questions to the Government. For one sitting each week during the regular sessions of the Assembly, the Prime Minister and the members of the Government shall answer questions raised by the Deputies. The National Assembly shall not pass any resolutions in conjunction with the questions raised by the Deputies. *The Deputies shall also have the right to address written questions to the Government, the heads of the bodies of territorial administration and local self-government, state institutions and to receive answers therefrom*.

The answers in connection with to the *written* questions raised by the Deputies *are not presented at the sitting of the* National Assembly.

At least ten Deputies or a faction of Deputies may apply with a written query to the Government, to the Chairman of the Central Bank. The Prime Minister, the members of the Government, the Chairman of the Central Bank shall answer the queries of the Deputies. A query shall be answered during a regular session not later than within 30 days following the receipt of the query and during the first sitting of the next session, if the session is over. The answer to the queries of the Deputies is presented at the sitting of the National Assembly and, by the decision of the National Assembly, may be discussed at the sitting prescribed by paragraph 1 of this Article.

Article 80.1 To develop the legislative policy and to organise its implementation a Council of the National Assembly composed of the President of the National Assembly, his/her Deputies, the Chairmen of the standing committees shall be established. The Council also approves the cost estimate of the National Assembly. The procedure of the activities of the Council is defined by the regulations rules of procedure of the National Assembly.

Article 81. Upon the recommendation of the President of the Republic, the National Assembly:

1) declares an amnesty;

2) shall ratify or revoke the international treaties signed by the Republic of Armenia. The range of international agreements Subject to ratification by the National Assembly *are those international treaties* shall be prescribed by law;

a) *a) which are of a political or military nature, relate to the autonomy and territorial integrity of the country,*

b) *b) which relate to human rights, freedoms and obligations,*

c) *c) which foresee essential financial obligations for the Republic of Armenia,*

d) *d) the application of which provides for a change in laws, or an adoption of a new law, or define norms other than prescribed by the laws,*

e) *e) which so provide.*

3) may declare war *shall make a decision on the declaration of war and establishment of peace. In the event of impossibility of convening a sitting of the National Assembly being convened the issue of declaring war shall be resolved by the President of the Republic.*

The National Assembly, on the basis the conclusion of the Constitutional Court, may terminate the implementation of the measures prescribed by Sections 13 and 14 of Article 55 of the Constitution.

Article 82. The National Assembly, upon the recommendation of the Government, shall determine the administrative-territorial divisions of the Republic.

Article 83. The National Assembly:

1) shall appoint *and remove* the Chairman of the Central Bank and his deputy upon the recommendation of the President of the Republic;

2) shall appoint *and remove* the Chairman of the National Assembly's Oversight Office upon the recommendation of the President of the National Assembly, shall appoint members of the Constitutional Court and the President of the Constitutional Court from among the members of the Court.

If within thirty days of the formation of the Constitutional Court the National Assembly fails to appoint the President of the Constitutional Court, the President of the Constitutional Court shall then be appointed by the President of the Republic;

3) may, on the basis of the conclusion of the Constitutional Court, terminate the powers of a member of the Constitutional Court appointed by it, approve such member's arrest *involvement as an accused or the initiation of proceedings to subject him/her to administrative responsibility*, and authorize the initiation of administrative or criminal proceedings against such member through the judicial process.

4) appoints the Defender of Human Rights for a five-year term. The grounds for the termination of the authorities of the Defender of Human Rights are defined by law.

Article 83.1. The following are defined exclusively by the RA laws:

1. *1. human and civil rights, freedoms and obligations, the guarantees for those rights and freedoms,*
2. *2. citizenship, citizens' status as subjects of law, the status of foreigners and persons without citizenship,*
3. *3. the bases for the utilization of natural resources and environmental safety,*
4. *4. the bases of social protection, the forms and types of pension provision, the bases of labor and employment, marriage, family, childhood and maternity, upbringing of children, education, culture and health,*
5. *5. labor relationships and social security,*
6. *6. the legal status of ownership,*
7. *7. the legal grounds and guarantees for entrepreneurship, the rules of competition and norms of antimonopoly regulation,*
8. *8. the status of physical and legal persons, the subjects and objects of civil law, transactions, representation, the law of obligations,*
9. *9. principles of foreign relations and external economic activity,*
10. *10. legal regime for the formation of a free economic zone,*

11. 11. *the bases for the regulation of demographic and population movement processes,*
12. 12. *the grounds for the creation and activity of parties and other unions of citizens,*
13. 13. *the legal status of the mass media,*
14. 14. *the bases of state service and the activity of the organs of executive power,*
15. 15. *the bases of state statistics and information,*
16. 16. *the administrative territorial structure of the Republic of Armenia,*
17. 17. *the bases of local self-government,*
18. 18. *court formation, judicial procedure, the status of judges, the bases of court expert examination, the organization and activity of the procuracy, investigative and pre-investigative bodies, the notariat, organs and institutions executing punishments, and the bases of the organization and activities of advocates,*
19. 19. *the status of the capital of the Republic of Armenia, the special statuses of other settlements,*
20. 20. *the bases of national security, the organization of the armed forces of the Republic of Armenia and the bases for ensuring social order,*
21. 21. *the legal regime of the state border,*
22. 22. *the legal regime of the military and emergency situation,*
23. 23. *the procedure for the organization and holding of elections and referenda,*
24. 24. *the procedure for the formation and activities of the RA National Assembly, the status of the Deputies of the National Assembly,*
25. 25. *the definition of crimes, administrative and disciplinary violations and the liability for them,*
26. 26. *the state budget and budgetary system of the Republic of Armenia,*
27. 27. *the tax system, taxes, duties and mandatory payments,*
28. 28. *the principles for the organization and activities of the financial, credit and investment markets,*
29. 29. *the status of the national currency, the legal regime of applying foreign currency in the Republic of Armenia,*
30. 30. *the procedure for issuing and circulating state securities,*
31. 31. *the procedure for sending subdivisions of the armed forces of the Republic of Armenia to other states, the procedure for permitting the subdivisions of the armed forces of other states on the territory of the Republic of Armenia and the conditions of their stationing,*
32. 32. *the state anthem, state flag and coat of arms,*
33. 33. *the procedure for the use and protection of state symbols,*
34. 34. *state awards,*
35. 35. *military ranks, diplomatic classifications and other special degrees,*
36. 36. *state holidays,*
37. 37. *the units of weight, size and time, the procedure for defining state standards.*

Article 84. The National Assembly may adopt a vote of no confidence toward the Government by a majority vote of the total number of Deputies. The National Assembly may not exercise this right *in the case of reducing the term of authorities of the National Assembly, as well as* in time of martial law or in the cases provided by Section 14 of Article 55 of the Constitution.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER FOUR OF THE CONSTITUTION

1. ARTICLE 62. The efficiency of the activities of the legislative body is greatly conditioned also by how clearly its oversight functions are carried out. The acting Constitution has "weak points" in that issue. In particular, this relates to the jurisdiction prescribed by Article 77 of the Constitution. The latter fixes that the National Assembly exercises oversight over the implementation of the state budget, as well as the use of the loans and credits received from foreign states and international organizations. It is also provided that the National Assembly shall consider and approve the annual report on the execution of the state budget if the conclusions of the Oversight Office of the National Assembly are available. The mechanism for the exercise of that constitutional jurisdiction is prescribed by Article 145 of the rules of procedure of the RA National Assembly, according to which the Deputies may, at their legislative initiative, propose to include the report of the Government in that regard into the agenda. In addition, by point "c)" of Article 2 of the RA Law on the National Assembly's Oversight Office, it is provided that the Oversight Office shall present a report at the beginning of each half-year to the National Assembly of the Republic of Armenia about the execution of the state budget and the utilization of the loans and credits received from other states and international organizations in the previous half-year. By point "d)" of Article 5 of the same Law the Oversight Office is reserved the right to carry out an audit of the utilization and repayment of the loans and credits received from other states and international organizations. As a result of all this the National Assembly may simply introduce the question into the agenda through the legislative initiative, discuss the matter and/or be satisfied by the discussion of that or announce its no confidence in the Government.

In practice, the National Assembly has been deprived of the jurisdiction of making other decisions as a result of such discussions, which makes such an authority formal, weakly effective, only pushing to extreme solutions. Hence, the revision of Article 62 of the Constitution as well as the reservation of the jurisdiction to make a decision in connection with Article 77 together with other Articles is a strong guarantee for the strengthening of the legislative body.

The addition of Articles 57, 58 and 67 in Article 62 of the Constitution intends to correct the shortcoming, overcome the internal contradiction and to make the article complete, taking into account the fact that the jurisdiction to render decisions is envisaged in the enumerated articles.

The reservation of the constitutional jurisdiction to adopt addresses and announcements is targeted also towards increasing the role of the National Assembly, as an important political body of representative democracy.

The amendment of the last part of the Article is of an editorial and more clarifying nature.

2. ARTICLE 63. The second part of the Article has been reworded with the purpose of making the wording simple and clear.

The third part and the last provision of the fourth part are superfluous, because of the change in point 3 of Article 55.

The addition of the last part is extremely important in terms of ensuring the protection of democracy and uninterruptedness of state power.

3. ARTICLE 65. The amendments are of an editorial nature; they make the fixing of the constitutional principle on the formation of a professional parliament clearer, taking into

account the requirement for the strengthening of the guarantees for the effective operation of the legislative body in a transitional society.

4. ARTICLE 66. The problem of parliamentary immunity has become a subject of broad political discussions. The extreme approach, according to which the Deputy shall be deprived of any immunity, is unacceptable. That is necessary not for the protection of the person, but for the free and complete carrying out of functions and Deputy authorities. On the other hand, Deputy immunity is not an exclusive privilege and may not be viewed as a derogation from the principle of equal responsibility for all before the law. Based on this position of principle, it is emphasized that the immunity extends only to actions arising from the status of the Deputy. The reworded formulations have been made taking into account international constitutional practice.

5. ARTICLE 68. The amendment is necessary from the point of view of creating necessary and sufficient conditions for the resolution of electoral disputes.

6. ARTICLE 69. The need for the amendment is dictated by the decade of experience in the organization of the activities of the legislative body, when under the conditions of the acting procedure for the convening of sessions the budgetary and other type of discussions are mostly organized at special sessions. The amendment shall make the activity of the legislative body clearer in organizational respects.

7. ARTICLE 70. This Article has many times allowed for varying interpretations and political speculations. An attempt has been made to introduce a unified procedure for convening a special sitting or session. The general logic is such that if 1/3 and more of the legislators find that a problem has arisen within their jurisdiction to be resolved urgently, they should be able to convene a parliamentary sitting. During regular sessions it will be called an extraordinary sitting, and during the period between sessions, an extraordinary session. In the event the President of the National Assembly is absent and may not convene an extroardinary sitting (session), then this jurisdiction passes to the RA President also. That jurisdiction of the President may also act as an independent initiative especially with regard to the jurisdiction exercised under points 13 and 14 of Article 55 of the Constitution.

8. ARTICLE 71. The amendment weakens the possibility to boycott the sessions. Perhaps the problem here is to have the Deputies in a parliament that acts on a permanent basis strive to take stances.

9. ARTICLE 73. It is not expedient to resolve the internal structural issues of the legislative body in an actively changing social system. Perhaps it is necessary to put some restriction on the number of Committees, but never make them constitutional institutions with clear areas.

10. ARTICLE 74. The amendment is based not only on the experience of the past years, when the Governments always presented to the National Assembly not specific programs, but program provisions or the general concept paper of their work plan, but also a new approach of principle has been adopted connected with the formation of the Government and the interrelationships between the President-Government, President-National Assembly. The meaning of the proposal is also to ensure a clear organic linkage between the pre-electoral political programs, the concept paper of the action plan of the Government formed by the parliamentary majority, and the annual budget and the four-year program presented together with it. In terms of time as well the newly formed Government may within a twenty day period present only general conceptual approaches to the National Assembly, to receive a vote of confidence. By receiving the vote of confidence and having enough time the Government, on the basis of the approved concept paper, develops and presents to the approval of the National Assembly an annual budget and the four-year action plan, broken down by year. Such a system will not only make the actions of the Government clear, transparent and easy to monitor, but will also make the vote of the voter meaningful, by the

fact that his preference on a specific pre-electoral program shall be actualized, the collective will of the voters shall be taken into account when resolving the problems of the future development of the country.

11. ARTICLE 74.1. As was noted, in the semi-presidential state governance system it is incomparably difficult to harmonize the functional, checking and balancing authorities and the maintenance of the effective, stable and dynamic balance of the interaction of the separate branches of power. In practice there might appear not only impasses but also such political disagreements, which, when not having constitutional legal resolutions, will lead to the acceleration of political conflicts and explosive solutions. In international constitutional practice such situations are regulated by some authorities reserved to the President of the country, as well as by the power of the collective will of the people, that is, the main carrier of the power. As a rule, such situations in the semi-presidential system of state governance emerge in the event there are disagreements in the formation of the Government between the President and the Parliament, i.e., the two institutions of representative democracy having the primary mandate, as well as due to the possible passive status having emerged as a result of the possible internal disagreement in a politically multi-layered legislative body. As a guiding principle is viewed also the fact that each disagreement first should have a possibility to be resolved in the area of co-operation and the so-called divorce must be considered the last means for the resolution of the problem.

Poland was the last country among the East European countries, which in 1997 adopted a totally updated Constitution, which in the view of international experts is classified among the best, which has considered not only the new tendencies in the constitutional developments, but also the characteristic features that are typical for the transitional societies. Thus that country's system of resolving the problem concerned is worthy of attention, according to which:

> 1. In Article 98 it is provided that: "…3. The Sejm may shorten its term of office by a resolution passed by a majority of at least two-thirds of the votes of the statutory number of Deputies. Any shortening of the term of office of the Sejm shall simultaneously mean a shortening of the term of office of the Senate. The provisions of para. 5 above shall apply as appropriate.
>
> 4. The President of the Republic, after seeking the opinion of the Marshal of the Sejm and the Marshal of the Senate, may, in those instances specified in the Constitution, order shortening of the Sejm's term of office. Whenever the term of office of the Sejm has been so shortened, then the term of office of the Senate shall also be shortened.
>
> 5. The President of the Republic, when ordering the shortening of the Sejm's term of office, shall simultaneously order elections to the Sejm and the Senate, and shall order them to be held on a day falling no later than within the 45 day period from the day of the official announcement of Presidential order on the shortening of the Sejm's term of office. The President of the Republic shall summon the first sitting of the newly elected Sejm no later than the 15th day after the day on which the elections were held."

> 2. In Article 154 of the Constitution it is provided: "…(1) The President of the Republic shall nominate a Prime Minister who shall propose the composition of a Council of Ministers. The President of the Republic shall, within 14 days of the first sitting of the House of Representatives (*Sejm*) or acceptance of the resignation of the previous Council of Ministers, appoint a Prime Minister together with other members of a Council of Ministers and accept the oaths of office of members of such newly appointed Council of Ministers.

(2) The Prime Minister shall, within 14 days following the day of his appointment by the President of the Republic, submit a programme of activity of the Council of Ministers to the House of Representatives (*Sejm*), together with a motion requiring a vote of confidence. The House of Representatives (*Sejm*) shall pass such vote of confidence by an absolute majority of votes in the presence of at least half of the statutory number of Deputies.

(3) In the event that a Council of Ministers has not been appointed pursuant to Paragraph (1) above or has failed to obtain a vote of confidence in accordance with Paragraph (2) above, the House of Representatives (*Sejm*), within 14 days of the end of the time periods specified in Paragraphs (1) and (2), shall choose a Prime Minister as well as members of the Council of Ministers as proposed by him, by an absolute majority of votes in the presence of at least half of the statutory number of Deputies. The President of the Republic shall appoint the Council of Ministers so chosen and accept the oaths of office of its members."

3. In Article 155 of the Constitution it is provided that: "…(1) In the event that a Council of Ministers has not been appointed pursuant to the provisions of Article 154 (3), the President of the Republic shall, within a period of 14 days, appoint a Prime Minister and, on his application, other members of the Council of Ministers. The House of Representatives (*Sejm*), within 14 days following the appointment of the Council of Ministers by the President of the Republic, shall hold, in the presence of at least half of the statutory number of Deputies, a vote of confidence thereto.

(2) In the event that a vote of confidence has not been granted to the Council of Ministers pursuant to Paragraph (1), the President of the Republic shall shorten the term of office of the House of Representatives (*Sejm*) and order elections to be held."

As we see, there are certain ways found for both co-operation and for overcoming the impasse. In addition, both the situation when the President of the country may have a parliamentary majority, and also the situation when that majority is lacking and the political responsibility for the formation of the Government is assumed by the legislative body, has been taken into account.

The same ideology is also fixed in Article 63 of the Constitution of Germany:

"(1) The Federal Chancellor is elected, without debate, by the Bundestag on the proposal of the Federal President.

(2) The person obtaining the votes of the majority of the members of the Bundestag is elected. The persons elected must be appointed by the Federal President.

(3) If the person proposed is not elected, the Bundestag may elect within fourteen days of the ballot a Federal Chancellor by more than one-half of its members.

(4) If there is no election within this period, a new ballot shall take place without delay in which the person obtaining the largest number of votes is elected. If the person elected obtained the votes of the majority of the members of the Bundestag the Federal President must appoint him within Seven days of the election. If the person elected did not receive this majority, the Federal President must within even days either appoint him or dissolve the Bundestag."

Of special attention is also worthy the procedure defined by Articles 35 and 68 of the Constitution of the Czech Republic.

"Article 35**[Dissolution]**
(1) The President of the Republic can dissolve the Chamber of Deputies if:
a) the Chamber of Deputies passes a vote of non-confidence in a newly appointed Government whose Premier was appointed by the President of the Republic on the suggestion of the chairman of the Chamber of Deputies,
b) the Chamber of Deputies fails to decide within three months on a Government bill with the discussion of which the Government links the question of confidence,
c) a session of the Chamber of Deputies is adjourned for a longer period than admissible,
d) the Chamber of Deputies has not reached a quorum for a period longer than three months, although its session was not adjourned and although it was repeatedly called to session during this period.
(2) The Chamber of Deputies cannot be dissolved three months before the expiration of its election term.

Article 68 [Appointment]
(1) The Government is accountable to the Chamber of Deputies.
(2) The President of the Republic appoints the Premier and, on his suggestion, appoints other members of the Government and entrusts them with managing the ministries or other bodies.
(3) The Government shall appear before the Chamber of Deputies within thirty days of its appointment and request of it a vote of confidence.
(4) If the newly appointed Government fails to obtain the confidence of the Chamber of Deputies, the procedure advances in accordance with Paragraphs (2) and (3). If even the Government, appointed in this way, fails to obtain the confidence of the Chamber of Deputies, the President of the Republic shall appoint the Premier upon the suggestion of the Chairman of the Chamber of Deputies.
(5) In other cases, the President of the Republic appoints and dismisses, upon the suggestion of the Premier, other members of the cabinet and entrusts them with managing the ministries or other bodies."

The presented alternatives, in our opinion, have also the shortcoming that, for example, on the basis of Article 158 of the Constitution of Poland the Sejm is eligible at any time to declare its no confidence in the Government that has been formed by the President, however, with regard to the activities of the Government formed by it the President does not have any checking influence. Nor is the problem resolved of the possible impasses that are typical for societies that do not have a clear political regime, and about which concrete solutions are offered, in particular, by the Constitution of the Czech Republic. Under Article 35 of the latter it is provided that:

"(1) The President of the Republic can dissolve the Chamber of Deputies if:
a) the Chamber of Deputies passes a vote of non-confidence in a newly appointed Government whose Premier was appointed by the President of the Republic on the suggestion of the chairman of the Chamber of Deputies,
b) the Chamber of Deputies fails to decide within three months on a Government bill with the discussion of which the Government links the question of confidence,

c) a session of the Chamber of Deputies is adjourned for a longer period than admissible,

d) the Chamber of Deputies has not reached a quorum for a period longer than three months, although its session was not adjourned and although it was repeatedly called to session during this period.

(2) The Chamber of Deputies cannot be dissolved three months before the expiration of its election term."

The proposed Article 74.1 takes into account the mentioned circumstances and stipulates one case of compulsory dissolution of the National Assembly, as well as four other possible situations, when the President may dissolve the Parliament or within the jurisdictions reserved to him under Article 49 may find other mutually agreed solutions. In fact, the principle of co-operation, instead of counteraction, is placed at the foundation. At the same time, the continuous crisis and the emergence of a vacuum of power is precluded, in such a way the checked authorities also gain important preventive importance, do not push the branches of power to violate the balance established.

12. ARTICLE 75. The reservation of the right of legislative initiative to the President of the Republic derives from the previous amendments and allows the co-operation between the branches of power to be made more active and creates prerequisites for the exercise of the functional authorities of the President, in particular, for the complete exercise of the jurisdictions prescribed by Article 49 of the Constitution.

13. ARTICLE 76. The rationale for the supplement has been given in connection with Article 74.1.

14. ARTICLE 79. The amendment is based on the considerations that the formation of the organs of the National Assembly is chiefly the task of the parliament, and at a constitutional level it is necessary to fix the system of institutions. Such an approach is widespread in international practice. In particular, Articles 110 and 111 of the Constitution of Poland, 178 of the Constitution of Portugal, 101 of the Constitution of the Russian Federation may serve as examples.

15. ARTICLE 80. The amendments have the objective to overcome the formal approaches, to make the work of the parliament more effective, to connect the institution of applying with questions or queries with the function of the exercise of parliamentary jurisdictions on a permanent basis. In the event the proposed option is applied the answers to the questions and queries raised will be more complete and grounded, on the basis of which the Deputies will be able to also clarify the nature of their legislative initiative. The collective press conference existing in practice will be replaced by serious parliamentary activity. The publicity of the questions raised will be settled through communications regularly presented to the National Assembly on questions and queries.

16.ARTICLE 80.1 The efficiency of the activity of the National Assembly is largely determined by the clear organization of its work, by the necessary and sufficient prerequisites required for the law-creating work, and first of all, by the availability of a comprehensive program on legislative policy. During the recent years the shortcomings in the resolution of these problems and the experience of the parliament evidence the necessity to regulate the given problems on the constitutional level. The issue is that the National Assembly Council

shall be endowed with certain authorities, which regulate the interrelationships between the National Assembly and other constitutional bodies.

17. ARTICLE 81. To clarify the framework of the jurisdictions of the National Assembly the scope of the international treaties that are subject to ratification are made concrete. Such an approach exists in international constitutional practice and especially is strongly necessary for the semi-presidential state governance system to minimize the possible disagreements about the authorities. As a typical example may serve Article 89 of the Constitution of Poland, in which it is provided:

> "(1) Ratification of an international agreement by the Republic of Poland, as well as denunciation thereof, shall require prior consent granted by statute - if such agreement concerns:
>
> 1) peace, alliances, political or military treaties;
>
> 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
>
> 3) the Republic of Poland's membership in an international organization;
>
> 4) considerable financial responsibilities imposed on the State;
>
> 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.
>
> (2) The President of the Council of Ministers (the Prime Minister) shall inform the House of Representatives (*Sejm*) of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.
>
> (3) The principles of and procedures for the conclusion and renunciation of international agreements shall be specified by statute."

The amendment that is made in point three is determined by finding a way out of a possible impasse. The October 27, 1999 events in the Parliament evidenced that in real life there are such situations possible, about which it is even impossible to think. Nor is the impossibility of convening a sitting of the National Assembly precluded, when a war situation is unavoidable. In such cases the President of the Republic, as guarantor of the sovereignty, territorial integrity and security of the state and supreme commander-in chief, should have constitutional authority to bring the situation out of that impasse. Such solutions exist in international constitutional practice and as a concrete example may serve Article 116 of the Constitution of Poland, in which it is stated:

> "(1) The House of Representatives (*Sejm*) shall declare, in the name of the Republic of Poland, a state of war and the conclusion of peace.
>
> (2) The House of Representatives (*Sejm*) may adopt a resolution on a state of war only in the event of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreements. If the House of Representatives (*Sejm*) cannot assemble for a sitting, the President of the Republic may declare a state of war."

The supplement to point 4 is necessary, since the institution of the Defender of Human Rights is being established and with its help the role of the National Assembly in the protection of human rights also grows, not only in terns of creating legislative guarantees, but also for the resolution of practical problems.

18. ARTICLE 83. The amendments make the constitutional provisions clearer and are also determined by the proposals made in relation to the previous Articles.

CHAPTER 5 The Government *Executive power*

Article 85. The executive power of the Republic of Armenia shall be vested in the Government of the Republic of Armenia and *other bodies performing the functions of executive power defined by law.*

The Government shall be composed of the Prime Minister and the Ministers. The powers of the Government shall be determined by the Constitution and by laws. The organization and rules of operation of the Government shall be determined by a decree of the President of the Republic, upon the recommendation of the Prime Minister.

The Government shall conduct the domestic and foreign policy of the Republic of Armenia. All issues of state governance which are not reserved by law to other state or local self-government bodies are subject to the jurisdiction of the Government.

The Government shall adopt decisions on the basis of the Constitution, international treaties, laws of the Republic of Armenia, the normative acts of the National Assembly and the President the Republic and to ensure their execution, which shall be subject to execution within the overall territory of the Republic.

The Government shall consist of the Prime Minister and the ministers.

The Government is considered formed, if the Prime Minister and all the ministers prescribed by law have been appointed.

The Prime Minister and the ministers must be RA citizens.

The Prime Minister shall appoint one of the ministers as deputy Prime Minister, who will to perform the authorities of the Prime Minister in the absence of the Prime Minister.

The authorities of the Government shall be defined by the Constitution and laws.

The structure and the procedure for the operation of the Government shall be defined by law.

Article 85.1. After the first sitting of the newly elected National Assembly or accepting the resignation of the Government, the President of the Republic shall present to the approval of the National Assembly the candidacy of the Prime Minister. After receiving the approval of the National Assembly the President of the Republic shall appoint a Prime Minister and, upon the presentation of the latter shall form the Government within a two-week period. If the National Assembly does not give approval to the candidacy of the Prime Minister, then the President of the Republic shall present a new candidacy. In the event the new candidacy does not receive approval the President of the Republic shall appoint a Prime Minister upon the proposal of the President of the National Assembly. During the activities of the Government formed in this manner, the President of the Republic may dismiss the Ministers of Defense and Foreign Affairs from office without the proposal of the Prime Minister. In the event there is no candidacy for Prime Minister presented by the President of the National Assembly within the period of seven days, the President of the Republic shall appoint a Prime Minister and shall form the Government.

Article 86. The sessions of the Government shall be convened and chaired by the President of the Republic, or upon his or her recommendation, by the Prime Minister.

Government decisions shall be signed by the Prime Minister and approved by the President.

The Prime Minister shall convene and chair a Government sitting when requested by the majority of Government members under the circumstances foreseen in Article 59 of the Constitution.

The President of the Republic may convene and chair a Government sitting.

The President of the Republic may suspend the effect of the decisions of the Government for a duration of one month and apply to the Constitutional Court to ascertain their compliance with the Constitution and and the laws.

In cases provided for by Article 59 of the Constitution the Prime Minister may, upon the request of the majority of the members of the Government, convene an extraordinary Government sitting.

Article 87. The Prime Minister shall oversee the Government's regular activities and shall coordinate the work of the Ministers.

The Prime Minister shall adopt decisions *on issues connected to the organization of activity of the Government*. In cases prescribed by the rules of operations of the Government, decisions of the Prime Minister shall also be signed by the Ministers responsible for their implementation.

Article 87.1 A minister shall govern a specific area of management provided for by the law, shall ensure the implementation of the Government program in that area on the basis of the law shall issue orders and decrees.

Article 88. A member of the Government may not be a member of any representative body, *carry out entrepreneurial activities,* hold any other public office, or engage in any other paid occupation, *except for scientific, pedagogic and creative work.*

Article 88.1 State governance in the marzes shall be performed by the marzpets (governors), who shall be appointed and removed by the President upon the recommendation of the Prime Minister.

State governance in the city of Yerevan shall be performed by the mayor of Yerevan, who shall be appointed and removed by the President of the Republic, upon the nomination of the Government. The mayor of Yerevan, in cases provided by law, may also be removed from office by the council of elders of Yerevan.

The marzpets and the mayor of Yerevan shall conduct the territorial policy of the Government, manage the operation of the territorial services of the executive bodies, except for cases provided by law.

Article 89. The Government:

1) shall submit the program *concept paper of the program* of its activity to the National Assembly for approval in accordance with Article 74 of the Constitution;

2) shall submit the draft state budget *and the four-year social-economic program of the country, broken down by years***,** to the National Assembly for approval, guarantee the implementation of the budget *and the program***,** and submit a report on that to the National Assembly;

3) shall manage state property;

4) shall ensure the implementation of unified state policies in the areas of finances, economy, taxation and loans and credits;

4.1 shall ensure the implementation of the state policy of territorial development;

5) shall ensure the implementation of state policies in the areas of science, education, culture, health, social security and environmental protection;

6) shall ensure the implementation of the defense, national security and foreign policies of the Republic;

7) shall *ensure the maintenance of public order,* take measures toward the strengthening of legality, the protection of the rights and freedoms of citizens, and the protection of property and public order.

Article 90. The Government shall submit the proposed state budget and *the program of the social-economic development of the country* to the National Assembly at least sixty days prior to the beginning of the fiscal year and may request that this proposal, with any amendments it may adopt, be *jointly* voted on prior to the expiration of the budget deadline. The Government may raise the question of a vote of confidence in conjunction with the adoption of the state budget *and the program*. If a vote of no confidence is not adopted by the National Assembly, as provided under Article 74 of the Constitution, then the state budget

and the program with related amendments approved by the Government shall be considered adopted.

In case of a vote of no confidence in the Government related to approval of the proposed state budget *and the program*, the new Government *after the presentation of its concept paper to the National Assembly and receiving the vote of confidence* shall present the National Assembly the draft state budget *and program* within a period of twenty *thirty* days, which shall be debated and approved within a period of thirty days in accordance with the procedure determined by this Article.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER FIVE OF THE CONSTITUTION

1. ARTICLE 85. Under the acting Constitution the executive power is vested in the RA Government, which is composed of the Prime Minister and Ministers. From such a formulation it follows that the highest body of the system is endowed with the functional role of the system. It is almost the same as if it were stated that the leadership of the RA National Assembly exercises the legislative power.

The proposed constitutional characterization of the Government is widely spread in international constitutional practice. In particular, see Article 67 of the Constitution of the Czech Republic, 185-Portugal, 106-Belarus, 108-Slovakia, etc.

Nor will the proposed wording create constitutional obstacles in terms of the formation of the constituents and structure of the executive power either. In particular, at present in the whole world an active role is played by the diverse state commissions (energy, securities market regulation, etc.), which, performing an executive function, are relatively independent at the same time. The latter cannot be viewed as institutions exercising executive power in the event the formulations of the acting Constitution are preserved.

Besides the editorial corrections of the Article, a change of core importance has also been introduced, i.e., it is proposed to define the structure and the procedure of activities of the Government not by the President but by law. Such an approach strengthens the role of the National Assembly, creates more stable guarantees for the activities of the Government, and balances the interrelationships between President-National Assembly-Government.

2. ARTICLE 86. The amendments derive from the general logic of the constitutional reforms, weaken the possibilities for the direct influence of the President on the activities of the Government, and strengthen the prerequisites for the steady functioning of the Government. Such a solution is necessary also in terms of establishment of balance in the functional balance of the branches of power.

Based on the general logic of the constitutional authorities of the President, it is necessary that the oversight of the President over the legal operation of the Government be undertaken as a balancing authority, by suspending the effectiveness of a decision to assure through judicial oversight the compliance of the normative act with the Constitution or law. Such a solution particularly derives from the necessity of realizing in practice the jurisdiction reserved to the President by Article 49 to oversee the compliance with the Constitution and ensure the regular functioning of the branches of power.

3. ARTICLE 87. The acting constitutional norms have placed the institution of the Prime Minister in such a situation, when the factual head of the Government acquires the status almost of a senior assistant to the President, with a huge responsibility nonetheless. It is not entirely accidental that during the last 10 years Armenia has changed the same number of Prime Ministers and there has always arisen an internal serious disagreement between the President and the Prime Minister. For the resolution of this problem the amendments recommended in the previous articles were extremely important. The approach becomes complete by the addition made to Article 87, when the Prime Minister, within the frames of the executive power, has a direct role in the formation of intrasystem institutions.

4. ARTICLE 88. The engagement of a member of the Government in entrepreneurial activity is an incompatible occupation and that has been proven also in our reality a number of times. In particular, when the privatization process is proceeding actively, the competitive framework is not stable, the antimonopoly guarantees are not complete and final, the absence of such a limitation becomes a cause for the promotion of the clan economic system, which is a serious social evil.

5. ARTICLE 88.1 One of the weak links of the RA Constitution, as mentioned, is the confusion relating to the provisions on territorial administration and local self-government. The essence of the proposal is to make the system of state governance complete; the branch and territorial administration become harmonized; the institution of marzpets is fixed as a constitutional institution with a clear function; real prerequisites are created for the formation of an independent and efficient local self-government system.

6. ARTICLES 89, 90 The amendments are determined by the recommendations made with respect to Articles 74, 74.1, as well as 88.1.

CHAPTER 6. The Judicial Power

Article 91. In the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitution and the laws. *through constitutional, civil, criminal and administrative proceedings.*

In cases prescribed by law, trials are held with the participation of a jury.

Judicial acts shall be rendered in the name of the Republic of Armenia.

Article 92. The Constitutional Court, courts of general jurisdiction of first instance, appeal and cassation, as well as the economic court, and administrative courts, and in the cases provided by law also other specialized courts, operate in the Republic of Armenia.

The sentences, verdicts and decisions of the courts mentioned in this Article having entered into legal force shall be reviewed by the Court of Cassation of the Republic of Armenia in the manner and periods defined by law.

The courts of general jurisdiction in the Republic of Armenia shall be the courts of first instance, the courts of appeals and the Court of Cassation.

In the Republic of Armenia, there shall also be economic, military and other courts as may be provided by law.

The establishment of extraordinary courts is prohibited.

Article 93. Sentences, verdicts and decisions *of the courts of general jurisdiction, economic and other specialized courts* entered into legal force *shall be reviewed by the Court of Cassation in the manner and within periods defined by law.* may be reviewed by the Court of Cassation based on appeals filed by the Prosecutor General, his or her deputies, or specially licensed lawyers registered with the Court of Cassation.

Article 94. The President of the Republic shall be the guarantor of judicial bodies *The independence of the courts shall be guaranteed by the Constitution and laws.* He or she shall preside over the Council of Justice. The Minister of Justice and the Prosecutor General shall be the vice presidents of the Council. The Council shall include fourteen members appointed by the President of the Republic for a period of five years, including two legal scholars, nine judges and three prosecutors. Three Council members shall be appointed each from among the judges of the courts of first instance, the courts of appeals and the Court of Cassation. The general assembly of judges shall submit three candidates by secret ballot for each seat allocated to judges. The Prosecutor General shall submit the names of candidates for the prosecutors' seats in the Council.

The authorities of the courts, the procedure for their formation and activities shall be defined by law.

The authorities and the procedure for the formation of the Constitutional Court shall be defined by the Constitution, and the procedure for its activities shall be defined by the Constitution and the law on the Constitutional Court.

Article 94.1 The Council of Justice shall be formed and act according to the procedure defined by the Constitution and law.

The Council of Justice shall consist of seven judges elected by the general meeting of the judges of the Republic of Armenia for three years through secret ballot and three legal scholars appointed by the President of the Republic.

The Council of Justice shall elect a chairman of the Council from its membership.

Article 95. The Council of Justice, *upon the proposal of the Minister of Justice, shall* in the manner defined by law*:*

1) *1) make and present to the approval of the President of the Republic the lists of the official fitness of the candidates for judges and of the professional advancement of the judges, on the basis of which the appointments are made,*
2) 2) *issue a conclusion on the candidacies of the nominated judges,*
3) 3) *present a proposal on the award of qualification classifications for the judges,*

4) 4) *subject the judges to disciplinary responsibility.*

The Council of Justice, upon the proposal of the Prosecutor-General, shall issue a conclusion to the President of the Republic on agreeing to involve the judge as an accused or to institute a proceeding to subject the judge to administrative responsibility through the judicial process.

5) Shall, upon the recommendation of the Minister of Justice, draft and submit for the approval of the President of the Republic the annual lists of judges, in view of their competence and professional advancement, which shall be used as the basis for appointments;

6) shall, upon the recommendation of the Prosecutor General, draft and submit for the approval of the President of the Republic the annual lists of prosecutors, in view of their competence and professional advancement, which shall be used as the basis for appointments;

7) shall propose candidates for the presidency of the Court of Cassation, the presidency and judgeship positions of its chambers, the presidency of the courts of appeals, courts of first instance and other courts. It shall make recommendations about the other judicial candidates proposed by the Minister of Justice;

8) shall make recommendations regarding the candidates for Deputy Prosecutor proposed by the Prosecutor General, and the candidates for prosecutors heading operational divisions in the Office of the Prosecutor;

9) shall make recommendations regarding training programs for judges and prosecutors;

10) shall make recommendations regarding the removal from office of a judge, the arrest of a judge, and the initiation of administrative or criminal proceedings through the judicial process against a judge;

11) shall take disciplinary action against judges. The president of the Court of Cassation shall chair the meetings of the Council of Justice when the Council is considering disciplinary action against a judge. The President of the Republic, the Minister of Justice and the Prosecutor General shall not take part in these meetings;

12) shall express its opinion on issues of pardons when requested by the President of the Republic. The operational procedures of the Council of Justice shall be prescribed by law.

Article 96. Judges and members of the Constitutional Court are unchangeable. A judge may hold office until the age of 65, while a member of the Constitutional Court may do so until the age of 70. They may be removed from office only in accordance with the Constitution and the laws.

Article 97. When administering justice, judges and members of the Constitutional Court shall be independent and subject only to the law.

The guarantees for the exercise of their duties and the grounds and procedures of the legal responsibility applicable to judges and members of the Constitutional Court shall be prescribed by law.

The judge and the member of the Constitutional Court may not be involved as an accused or subjected to administrative responsibility through the judicial process without the agreement of the body stipulated by the Constitution. The judge and the member of the Constitutional Court may not be arrested, with the exception of cases when the arrest is made at the scene of the crime and arises from the interests of the investigation of the case. In such a case the President of the Republic, the Chairman of the Constitutional Court and the chairman of the respective court shall be immediately notified.

Article 98. Judges and members of the Constitutional Court may not hold any other state office, *be in the composition of the local self-government bodies, carry out entrepreneurial activities, as well as* nor engage in any other paid occupation, except for scientific, pedagogical and creative work.

Judges and members of the Constitutional Court may not be members of any political party nor engage in any political activity.

Article 99. The Constitutional Court shall be composed of nine members, five of whom shall be appointed by the National Assembly and four by the President of the Republic.

Article 100. *The Constitutional Court administers constitutional justice in the Republic of Armenia.*

The Constitutional Court, in the procedure defined by law:

1) shall decide on whether the laws, the resolutions of the National Assembly, the orders and decrees of the President of the Republic, and the decisions of the Government**,** *the Prime Minister, and the representative bodies of local self-government* are in conformity with the Constitution**;**

1.1) shall resolve disputes having arisen between bodies of state power, as well as between state and local self-government bodies, on issues of the constitutionality of authorities, shall interpret the Constitution of Republic of Armenia in the event of resolving such disputes;

1.2) shall decide the issue of compliance of the decisions of the National Assembly, the decrees and orders of the President of the Republic, and the decisions of the Prime Minister with the RA laws;

2) shall decide, prior to the ratification *or approval* of an international treaty, whether the obligations assumed therein are in conformity with the Constitution;

3) shall resolve disputes concerning *the results of* referenda,

3.1) shall resolve disputes concerning *the decisions adopted on the* results of presidential and parliamentary elections;

4) shall recognize as insurmountable or eliminated the obstacles facing a candidate for President of the Republic;

5) shall issue a conclusion on the existence of grounds for the removal of the President of the Republic;

6) shall issue a conclusion on the measures prescribed by Sections 13 and 14 of Article 55 of the Constitution;

7) shall issue a conclusion on the incapacity of President of the Republic to perform his or her functions;

8) shall issue a conclusion on the termination of the authorities of a member of the Constitutional Court, his or her *engagement as an accused or instituting an administrative responsibility proceeding against him through the judicial process;* arrest or initiation of administrative or criminal proceedings through the judicial process;

8.1.) *shall render a decision on the termination of the authorities of a judge.*

8.2.) shall issue a conclusion on the availability of grounds prescribed by law on the termination of the authorities of the leader of the community and the dissolution of the community council of elders.

9) shall render a decision on the suspension or prohibition of the activity of a political party in cases prescribed by law.

Article 101. *In accordance with the procedure defined by the Constitution and the law on the Constitutional Court,* to the Constitutional Court may apply:

1) the President of the Republic, *in the cases prescribed by points 1, 1.1., 1.2, 2, 3, 8, 9 of Article 100 of the Constitution;*

2) the National Assembly, in the cases prescribed by points 1.1, *1.2,* 3, 5, 6, 8, 9 of Article 100 of the Constitution;

3) at least one third of the Deputies at least one fifth of the Deputies in the cases prescribed by points 1 and *1.2* of Article 100 of the Constitution;

4) *the Government, in the cases prescribed by points 1, 1.1, 1.2, 7 and 8.2 and 9 of Article 100 of the Constitution;*

5) the representative bodies of local self-government, on the question of the constitutionality of the normative acts enumerated in point 1 of Article 100 of the Constitution relating to their constitutional rights or to dispute the state bodies' exceeding their constitutional authorities;

6) every person, in specific cases, when there exists a final court act and or the constitutionality or compliance with law of this or that provision of another normative legal act listed in point1.2. of Article 100 of the Constitution applied towards him/her is being disputed;

7*) the courts and the Prosecutor General, with questions on the constitutionality of the provisions of normative acts relating to the specific case under their examination;*

8) the Defender of Human Rights, on issues of the consistency of the normative acts listed in point 1 of Article 100 of the Constitution with the provisions of chapter 2 of the Constitution;

9) the candidates for the President of the Republic and Deputies, on issues relating to them in the scopes of points 3.1 and 4 of Article 100 of the Constitution;

10) the Central Electoral Commission, in the cases prescribed by point 4 of Article 100 of the Constitution.

11) the Minister of Justice, in the cases prescribed by point 8.1 of Article 100 of the Constitution.

4) Presidential and parliamentary candidates on disputes concerning election results;

5) the Government in cases prescribed by Article 59 of the Constitution.

The Constitutional Court shall only hear cases that have been properly submitted.

Article 102. The Constitutional Court shall adopt its decisions and conclusions no later than thirty days after a case has been filed.

The decisions of the Constitutional Court shall be final, may not be subject to review and shall enter into legal force upon their publication.

The Constitutional Court shall decide with a majority vote of its total number of members on matters pertaining to Sections 1 through 4 of Article 100 of the Constitution, and with a vote of two thirds of its members on matters pertaining to Sections 5 through 9 of Article 100.

Article 102 The Constitutional Court shall adopt decisions and conclusions, in a procedure and within the time-frames defined by the Constitution and the law on the Constitutional Court.

The decisions of the Constitutional Court are final, are not subject to review, enter into force upon promulgation.

The Constitutional Court may also set another date for the entry into force of its decision when the normative act or an individual provision of it loses its legal effect.

The Constitutional Court shall adopt decisions on issues provided for in Article 100, points 1-4 (including point 1.1) and 9, whereas on issues provided for in points 5-8 it shall adopt conclusions. The conclusions, and the decisions on issues provided for in points 1.1 and 9, shall be adopted by at least two thirds of the votes of the total number of members, the remaining decisions shall be adopted by the majority of votes of the total number of members.

On issues of parliamentary elections, as well as on the basis of individual applications of citizens the Constitutional Court, in a procedure defined by law, may hear the case and render a decision by a panel of three members of the Constitutional Court.

Other bodies of state power may not adopt decisions contrary to the conclusions of the Constitutional Court.

All When resolving the issues relating to the activities and financing of the Constitutional Court and the material and social security of its members, shall be examined agreed with the Constitutional Court in advance by the state bodies that have the jurisdiction of making corresponding decisions.

Article 103. The Procuracy of the Republic of Armenia represents a unified, centralized system, headed by the Prosecutor General. The Procuracy, *in the cases and by the procedure provided for by law*:

1) shall *institute a criminal case and* initiate criminal prosecutions in cases prescribed by law and in accordance with procedures provided by law;

2) shall oversee the legality of preliminary inquiries and investigations;

3) shall present the case for the prosecution in court;

4) shall bring actions in court to defend the *property* interests of the state;

5) shall appeal the sentences, verdicts and decisions of the courts;

6) shall oversee the execution of punishments and *other means of criminal-legal influence and administrative compulsion* other sanctions.

The Procuracy shall operate within the powers granted to it by the Constitution and on the basis of the law on the Office of the Prosecution.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER SIX OF THE CONSTITUTION

1. ARTICLES 91-92 The Constitution must clearly present the judicial power as a complete system. As opposed to other branches of power, the judicial power is not a pyramidal subordination structure, but a complete functional, each link of which is endowed with the necessary and sufficient guarantees for independence, without which it cannot carry out its functions effectively. Taking this circumstance into account, the system of the judicial power in the constitutions of many countries is presented according to the functional role of the courts included in it. For example, Article 118 of the Constitution of Russia states that:

> "…1. Justice in the Russian Federation shall be administered by the courts of law only.
>
> 2. Judicial power shall be effected by means of constitutional, civil, administrative and criminal judicial proceedings.
>
> 3. The judicial system of the Russian Federation shall be established by the Constitution of the Russian Federation and federal constitutional law. The creation of emergency courts shall be prohibited."

As we see, the functional principle rather than the administrative-organizational principle is laid at the basis of the system. Such an approach is present in the constitutions of a number of other countries. In particular, Germany-92, Moldova-114-115, Poland-173-175, Spain-117, Belgium-30, 92-107, Czech Republic-81-82, Georgia-82, Croatia-115, Azerbaijan-141, Bulgaria-117, etc.

The proposed amendments and supplements intend to present the judicial power in its clear and complete form on the basis of international constitutional experience, to fix its functional role, to define the system of judicial institutions.

2. ARTICLE 94. The European Charter on the Statute for Judges views as an important general principle (point 1.2) the one, where "In each European State, the fundamental principles of the statute for judges are set out in internal norms at the highest level, and its rules in norms at least at the legislative level." The fundamental principles of independence of judicial bodies adopted in Milan in 1985 by the UN seventh Congress also stipulate that the guarantees for independence of the judicial power must be ensured by the Constitution and laws.

Naturally, the Constitution may solve that problem by clearly fixing the main principles that serve as a guarantee for the independence of the judicial system. That problem is not totally resolved by the present RA Constitution. By failing to deeply consider a number of essential particularities of the Armenian and French Constitutions, the RA Constitution has borrowed the provision of Article 64 of the French Constitution, according to which the President of the country is the guarantor of independence of the judicial power. In international legal practice such a provision that is considered unique contains within it serous risks. The problem here is not only that the constitutional statuses of the Armenian and French Presidents, while having some similarity, also have serious differences. The essential point here is that the guarantees of independence of the judicial power weaken, if that role is not reserved just to the Constitution and laws, as the overwhelming majority of the countries in the world have done.

In international practice it is often emphasized that in the French Constitution not only is the separation of powers not clear, but also absent is the institution of the judicial review of adopted laws (the latter exists in the Constitution of Armenia). Besides, the President of France is not endowed with such a power to dismiss the Prime Minister and oversee the activities of the Government, as prescribed by the Constitution of Armenia. According to the Constitution of Armenia the President has serious executive functions and plays an active role in the work of forming this branch of power. In such circumstances guaranteeing the independence of the judicial power must not carry an institutional nature, but must be guaranteed by the Constitution, by enforcing the functional balance between all the branches of power. Otherwise the principle of the separation of powers is also undermined.

The ideology of the RA Constitution in this respect must be that the Constitution shall guarantee the independence of the judicial power, while the President of the Republic, in exercising his jurisdiction of observing the preservation of the Constitution on the basis of Article 49, as well as taking into account his/her specific functional authorities, must be able to ensure the execution of those guarantees.

3. ARTICLES 94.1, 95. The European Charter on the Statute for Judges adopted in 1998, taking into consideration the main principles on ensuring the independence of magistrates adopted in November 1985 by the UN General Assembly, as well as taking into account that the statute for judges first of all assumes the ensuring of competence, independence and impartiality, i.e., that which every individual legitimately expects from the courts of law and from every judge to whom the protection of his or her rights is entrusted, defines the basic requirements for the formation and operation of the judicial system. Among these an exceptionally important role is reserved to the procedure for election, appointment and termination of activities of the judges. In point 1.3. of the Charter it is provided that in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers, within which at least half of the participants in the sittings are elected judges. Aside from that, point 1.4. of the same Charter provides that "every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any whatsoever" must have "the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy."

The mentioned independent authority is given an exceptionally important role both in the selection of judges (Article 2), as well as their appointment (Article 3), service performance and service promotion (Article 4), and issues relating to liability (Article 5). In particular, in the last case it is provided that "The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality." The possibility to appeal in court the decision relating to the penalty is also provided.

It must also be added that the mentioned charter puts the independence of the judicial system and the judge in direct relation with the consistent application of the principles of the Charter.

The presented amendments intend to create constitutional guarantees for the complete realization of these requirements.

4. ARTICLE 97. The Constitution cannot avoid containing a provision on the immunity of the judge, as one of the most important guarantees for the independence of the judicial power. This circumstance is so obvious, that it is useless even to bring any example in this respect, since that provision is fixed in the constitutions of almost all countries. The fixing of this norm in the RA Constitution must be equivalent to the guarantees on the immunity of the Deputy. Aside from that, that norm is indirectly reflected in paragraph 11 of Article 55 of the Constitution, paragraph 10 of Article 95 and paragraph 8 of Article 100. It is simply necessary to give that norm a clear nature and present it in the chapter on the Judicial Power as a position of principle of utmost importance as is done in international practice (in particular see Constitution of Poland, Article 181, Russian Federation-122, Lithuania-104, Kirgizstan–79, Ukraine-126, Azerbaijan –146, Georgia-87, etc.).

5. ARTICLE 100. A number of rationales have been published on the amendments of the Article. Issues pertaining to the jurisdictions of Constitutional Courts and the procedure of their realization have lately been actively considered as a subject for examination in the Venice Commission, relating particularly to the discussion of the constitutional laws on the Constitutional Courts of Latvia and Croatia[9]. Taking into account the major tendencies of international developments in this field, we may generalize that effective constitutional justice may be administered when all the constitutional subjects are authorized to apply to the Constitutional Court and the normative legal acts adopted by all the constitutional subjects may become objects of constitutional justice. Besides, since the main content of constitutional justice is to ensure the supremacy of the Constitution, that problem will remain unresolvable, if the Constitutional Court does not guarantee the guaranteed protection a person's constitutional rights through the effective realization of the human right of constitutional justice, as well as resolve the disputes about constitutional authorities arising between the bodies of power.

The Constitutional Courts of more than fifty countries with the European system of constitutional oversight have the jurisdiction to resolve disputes relating to the constitutional authorities of the bodies of state power. (In particular, see Article 153 of the Constitution of Azerbaijan, 149-Bulgaria, 89-Georgia, 93-Germany, 134-Italy, 82-Kirgizstan, 189-Poland, 125-Russia, 126-Slovakia, 160-Slovenia, 161-Spain, 89-Tajikistan, etc. Aside from that, the Constitutional Courts of 29 countries have the jurisdiction of abstract or so-called absolute interpretation of the Constitution, including Azerbaijan, Bulgaria, Gabon, Germany, Hungary, Kazakhstan, Kirgizstan, Moldova, Russia , Namibia, Slovakia, Uzbekistan, etc.) In a number of countries (Poland, Slovakia, Bulgaria, Croatia, Czech Republic, Lithuania, Slovenia, Azerbaijan, etc.) the question of the compliance of other normative acts to not only the Constitution but also to laws (often also to international treaties) is also resolved by the Constitutional Court and it is not considered efficient to create new bodies for that purpose (such a view is supported also by the Venice Commission experts, see the annex attached).

On the basis of individual applications from citizens constitutional oversight of a normative act is carried out in 52 countries, including all the countries of Western and Eastern Europe that have Constitutional Courts. Among the former Soviet countries it is only in Armenia and Azerbaijan that the question still lingers unresolved, and the resolution of

[9] See "The Constitutional Court in the system of state power (comparative analysis)," Harutyunyan, G. G., "Njar", Yerevan, 1999, 238 pp., and "The Constitutional Review and Its Development in the Modern World, (A Comparative Constitutional Analysis)" G. Harutyunyan, A.Mavcic, Yerevan-Ljubljana, 1999, 445 pp., on the jurisdiction of the Constitutional Court of Armenia and applying subjects, as well as other issues requiring constitutional resolution.

those problems is viewed within the scopes of obligations that will result from the accession to the Council of Europe.

The recommendations that have been presented create a system of necessary and sufficient authorities to administer effective constitutional justice.

6. ARTICLE 101. Regarding the subjects that apply to the Constitutional Court there is accepted in international practice the principled approach that they must ensure the complete and efficient implementation of the supervisory authorities of the Court. Armenia is a unique exception which, as opposed to the Constitutional Courts that operate in 108 countries of the world, has the fewest number of subjects that apply to the Constitutional Court and, by their number and scope of involvement Armenia is in the last place. This painful reality seriously affects the efficiency of constitutional justice.

Given that the system of subjects applying to the Court must be in harmony with the system of authorities, as well as taking into account the experience of Germany, Austria, Poland, Russia, Portugal, Spain, Hungary and a number of other countries in this, as well as the results of the seminar held in Armenia in 1998 with the participation of the experts of the Venice Commission and a number of other discussions held later, Article 101 proposes a complete system of subjects that apply to the Constitutional Court.

7. ARTICLE 102. The RA acting Constitution defines such norms of constitutional procedure, which are lacking in all the remaining 107 constitutional courts of the world. In particular, it is provided that the Constitutional Court shall adopt decisions and conclusions not later than thirty days after the application has been received. Such a norm exists only in the case of the activities of the French constitutional council that performs initial normative oversight. No Constitutional Court that performs subsequent abstract oversight over normative legal acts is restricted by such a constitutional limitation.

At present in various international for a issues for serious discussions are those relating to the nature of the decisions of Constitutional Courts, their implementation problems, the constitutional consequences of those decisions. Bearing in mind that Poland had a long experience in judicial constitutional oversight, where debates in making reforms in this system started to occur from 1972, as well as given the fact that Poland was relatively late among the East European countries to adopt a new constitution, also given its rich experience in constitutional developments, the solutions found for this problem in this particular country are worthy of attention. Article 190 of the constitution of this country provides that:

> "…(1) Judgments of the Constitutional Tribunal shall be of universally binding application and shall be final.
>
> (2) Judgments of the Constitutional Tribunal regarding matters specified in Article 188, shall be required to be immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland, *Monitor Polski*.
>
> (3) A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the

Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

(4) A judgment of the Constitutional Tribunal on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for re-opening proceedings, or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

(5) Judgments of the Constitutional Tribunal shall be made by a majority of votes."

The Russian Constitutional Court also took the step of having the Constitutional Court establish a deadline for the entry into force of its decisions, since in many cases the immediate entry into force of the decisions could have caused derivative non-constitutional serious consequences. That refers particularly to the decision adopted by the Constitutional Court of the Russian Federation on 18.02.1997 in reference to Government decision N197.

The constitutional court of Germany also has such jurisdiction, which is specified in paragraphs 31 and 79 of the Constitutional law on the Court.

The experts of the Venice Commission also positively evaluate the fixing of such a constitutional norm.

An exceptionally important issue is also the one relating to the legal character of the conclusions of the Constitutional Court. This is a problem to be resolved not at the level of law, either constitutional or organic, but rather an issue to be addressed at the constitutional level. If the decisions adopted by one half of the members of the Constitutional Court are final and are not subject to review, then the conclusions adopted by two-thirds of the votes cannot not have binding legal consequences. Otherwise, the legal process serves not the settlement of political disputes within the legal framework, but the exact opposite, the legal issue is moved to the political arena, which is inconsistent with the principles of a legal state and the supremacy of right. In the legal practice of the Republic of Armenia a correct approach has formed, in particular on the basis of Article 81 of the regulations of the National Assembly, according to which if the grounds to dismiss the President of the Republic from office are absent according to the conclusion of the Constitutional Court, the question is removed from discussion. Article 83 also fixes the same approach. However, the resolution of such a question of principle by ordinary laws may not only weaken the consistent application of the principles of legally overcoming political disputes, but may also become a reason for political speculations, thereby pulling the judicial system into that process also.

International experience unequivocally evidences that the legal character of the acts of the constitutional court must be clearly defined in the Constitution.

Taking into consideration that the authorities of the constitutional court are exhaustively defined by the Constitution, the latter must also define the four major groups of guarantees for the independence of the Court. They are: functional, institutional, material and social guarantees.

Taking all the stated circumstances into consideration, a new wording of Article 102 is proposed.

8. ARTICLE 103. The rationale will be presented after further discussions.

CHAPTER 7. Territorial Administration and Local Self-Government

Article 104. The administrative territorial units of the Republic of Armenia shall be the marzes (provinces) and communities. Marzes shall include urban and rural communities.

Article 104. The local self-governance is conducted in the communities. The local self-governance is the right of community, provided and guaranteed by the state, to resolve the local matters with self- responsibility, in consistence with Constitution and laws, for the well being of the inhabitants.

Article 104.1. The community shall be the aggregation of the inhabitants of one or several settlements. The community is endowed with the right of self-governance.

The community is a legal person and has the right to ownership and other property rights.

Article 105. In implementing local self-government the community shall participate in exercising power on the local level insofar as not reserved to other state bodies by the Constitution and laws.

Authorities of the community pertaining to managing and disposing of the community's property, resolving issues of community significance and other authorities aimed at fulfilling the requirements of the community shall be exercised by the community as its own authorities, in its own name and under its responsibility. A part of the community's own authorities may by law be deemed obligatory.

For the purpose of the more efficient implementation of the powers of the state they may be delegated to the communities community bodies by law.

Article 105.1. The land within the territory of the community, except for the land required for the state needs and belonging to the physical and legal persons, is the property of the community.

Article 106. The communities shall be autonomous in the formation of their budgets.

The sources for community revenues shall be defined by law.

The law shall define such sources of funding for the communities which shall ensure the carrying out of their authorities.

The authorities delegated to the communities shall be subject to mandatory funding from the state budget.

The communities shall define local taxes and duties within the limits provided by law. The communities may define fees for the services they render.

The State shall be authorized to exercise control in the manner defined by law over the use of the local financial resources, which shall not limit the authorities of the community powers.

Article 107. The community shall implement its right to self-government through the bodies of local self-government, i.e., the council of elders and the leader of the community, which in the manner defined by law shall be elected for the term of four years.

The council of elders of the community, in the procedure defined by law, shall dispose of the community's property, shall approve the budget of the community upon the presentation of the leader of the community, shall oversee the implementation of the budget, shall define local taxes, duties and fees in the manner defined by law, shall adopt legal acts mandatory for implementation on the territory of the community. The acts adopted by the council of elders of the community may not contradict legislation, the procedure for their promulgation and entry into force shall be defined by law.

The authorities of the leader of the community and the procedure for their exercise shall be defined by law.

The members of the community may directly participate in the administration of the community's affairs, by resolving matters of community significance through local referenda. The procedure and conditions for holding local referenda shall be defined by law.

Article 108. Yerevan is a community. The authorities of the leader of the community in Yerevan shall be exercised by the mayor of Yerevan. The characteristics, as well as authorities of the bodies of local self-government in Yerevan shall be defined by the Law on Yerevan.

The law may also provide for local self-government in Yerevan on the level of city neighborhoods.

Yerevan has an independent budget.

Article 108.1 The procedure for state monitoring of the exercise of the authorities delegated to the community shall be defined by law. In order to ensure the legality of the general activities of the community it shall be subject to legal oversight in the manner prescribed by law.

Article 109. In the cases stipulated by law, the Government, on the basis of a conclusion by the Constitutional Court, may dismiss the leader of the community or dissolve the council of elders of the community.

Prior to the newly elected leader of the community's assuming his/her obligations, the marzpet shall appoint an acting leader of the community for a term of not more than six months.

Article 110. If necessary, enlargement of communities may take place by the will of communities themselves, as well as, irrespective of their will, by the National Assembly, upon the recommendation of the Government. Prior to the discussion of the issue in the National Assembly the Government shall promulgate the results of the local referenda held in those communities. The communities may be consolidated or split irrespective of the results of the local referenda.

Article 105. Local self-government shall be realized in the communities.

To manage the property of the community and to solve problems of local significance, self-governing local bodies shall be elected for a period of three years: a council of elders, composed of five to fifteen members, and a leader of the community: a City Mayor or Village Mayor.

The leader of the community shall organize his or her staff.

Article 106. The council of elders of the community, upon the recommendation of the leader of the community, shall approve the community budget, oversee the implementation of the budget, and determine local taxes and fees as prescribed by law.

Article 107. State government shall be implemented through the marzes (provinces).

The Government shall appoint and remove the marzpets (governors of the provinces), who shall implement the Government's regional policy and coordinate the regional activities of republican executive bodies.

Article 108. The City of Yerevan shall have the status of a marz (province).

The President of the Republic, upon the recommendation of the Prime Minster, shall appoint and remove the Mayor of Yerevan.

Local self-government shall be instituted in Yerevan through neighborhood communities.

Article 109. In cases prescribed by law, the Government may remove the leader of a community upon the recommendation of the marzpet.

When the leader of a community is removed by the decision of the Government, special elections shall be held within a period of thirty days. Until such time as the newly elected leader of community may take office, an acting leader of community shall be

appointed by the Prime Minister for urban communities and by the marzpet for rural communities.

Article 110. The election procedure of local self-goverment bodies and their powers shall be determined by the Constitution and the laws.

RATIONALE FOR SUPPLEMENTS AND AMENDMENTS TO CHAPTER SEVEN OF THE CONSTITUTION

1. ARTICLE 104, 104.1. The amendment was made based on the approaches of the new conceptual point on this chapter (see page 6). The objective is to define the concept and legal status of the community as the main link of local self-government and underline the new emphasis of the Constitution in this chapter.

2. ARTICLE 105, 105.1. The Constitution must clearly present the circumstances, according to which:

a) a) the community, in performing local self-government, represents a separate branch of public power (paragraph 1 of the Article);

b) b) the community, as a link of local self-government, takes its sources from civil rather than political society (paragraph 2 of the Article);

c) c) the interactions of the community with the state power are built on the basis of the principle of co-operation (paragraph 3 of the Article).

This amendment is also based on the requirements of the European Charter of Local Self-Government (Article 3).

3. ARTICLE 106. Article 9 of the European Charter of Local Self-Government provides that:

> "1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers (paragraph 1, Article 106 of the Constitution);
>
> 2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law (part 2, Article 106 of the Constitution);
>
> 3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate (part 4, Article 106 of the Constitution);
>
> 4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks (part 4, Article 106 of the Constitution);
>
> 7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction (part 3, Article 106 of the Constitution)."

These conditions are binding and universal, since without them local self-government cannot exist.

Article 106 of the Constitution wholly derives from these conditions and outlines the tendencies for the legislature's policy on the given matter.

4. ARTICLE 107. In this Article the system of bodies implementing the right to local self-government of the community, the main direction of the activities of the representative body of local self-government and the legal status of the acts have been defined. With all this the Constitution has outlined the main institutional system through which local self-government shall be carried out via indirect, representative democracy. In addition to that also the direct forms of local democracy have been defined. This Article from the beginning

has "recommended" also the adoption or amendment of laws important for this area, such as the Laws on the Local Referendum, Local Self-Government, etc.

Besides which, all these amendments are consistent with the requirements of Articles 3, 4, and 7 of the European Charter of Local Self-Government.

5. ARTICLE 108. In the Republic of Armenia local self-government is recognized only at the level of settlements, rejecting that on the territorial level. However, according to the former conceptual point, there has been an exception made for the city of Yerevan, by which the creation of an integrated local self-government framework at the level of residential areas had been hindered. The new conceptual point eliminates that gap and, by recognizing therewith the particular nature of the city of Yerevan, provides a possibility to envisage in the latter a unique local self-government system (2nd paragraph of the Article).

6. ARTICLE 108.1. Article 8 of the European Charter of Local Self-Government considers the administrative supervision of the activities of local self-government bodies possible. Such supervision is mandatory for the local self-government bodies not to exceed the scopes of their outlined authority and to operate within the state in a harmonized manner. Here the fundamental issue is that local self-government is independent from state power but not from the state. However, the above-mentioned Article of the European Charter prescribes such limits on supervision, so that the latter shall not be abused and affect the independence of local self-government.

This article of the Constitution simply outlines the state supervision, allowing the possibility for the development by law of mechanisms for the latter.

7. ARTICLE 109. This article is the continuation of Article 108.1 and is also based on Article 8 of the European Charter of Local Self-Government. However, given the importance of the institution of the removal from office, it has been considered appropriate to provide it in a separate Article, at the level of the Constitution, in order to preclude the politicization of the development of mechanisms for that process.

The right to remove from office is given to the Government, since the latter's activities are organically connected with the activities of the communities. However, the Government may do that only on the basis of the conclusion of the Constitutional Court. Here, the participation of the CC with independent status is a guarantee of the objectivity of the process of removal from office.

8. ARTICLE 110. Article 10 of the European Charter of Local Self-Government provides the right to consolidate LSG bodies:

> "1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
>
> 2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.»

All this ensures the possibility of consolidation for the protection of common interests and development, the creation of larger communities. However, in some cases such an enlargement is also required by the general interest of the state, which must not pressure, but with which the interests of the communities must be harmonized. For such cases, an enlargement of communities is envisaged irrespective of their will, by the National Assembly upon the recommendation of the Government. The participation of the highest body of the legislative and executive power will ensure the objectivity of the justification for the enlargement.

CHAPTER 8. Adoption of The Constitution, Amendments And Referendum[10]

Article 111. The Constitution shall be adopted or amended by referendum which may be initiated by the President of the Republic or the National Assembly.

The President of the Republic shall call a referendum upon the request or agreement of the majority of the Deputies of the National Assembly.

The President of the Republic, within twenty one days after receiving the draft Constitution or the draft of constitutional amendments, may remand it to the National Assembly, with his or her objections and suggestions, requesting a reexamination.

The President of the Republic will submit to a referendum within the period prescribed by the National Assembly a draft Constitution or draft constitutional amendments, when they are reintroduced by at least two thirds of the total number of Deputies of the National Assembly.

Article 112. Laws may be submitted to a referendum upon the request of the National Assembly or the Government, in the manner provided in Article 111 of the Constitution. Laws passed by referendum may be amended only by referendum.

Article 113. A draft submitted to a referendum shall be considered adopted, if more than half of the participants in the voting, but not less than one third of the citizens included in the voters' lists, have voted in favor.

Article 114. Articles 1, 2 and 114 of the Constitution may not be amended.

CHAPTER 9. Transitional Provisions

(will be supplemented after the consideration of the package of reforms).

[10] The proposals on this chapter will be considered after the final clarification of the general approaches.

ANNEXES