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**INDIVIDUAL COMPLAINT TO THE CONSTITUTIONAL COURT:
A MODEL FOR ARMENIA**

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Accepted in the system of constitutional justice are three forms of control which are directly associated with the function of the protection of human rights: abstract control, specific (incidental) control and individual complaint.

With regard to the Republic of Armenia (RA), the abstract subsequent control is done within the RA Constitutional Court implementing its authority determined in Article 100 of the Constitution and Article 5 of the Law on the RA Constitutional Court.

Specific (incidental) control, unfortunately, is not provided by the RA Constitution in any form.

With regard to the individual complaint, we can say that the individual right of everyone indicated in Part II Article 38, RA Constitution for the defence of substantive human rights and freedoms enables us to state the possibility of a practical application of the institution of individual constitutional complaint.

Whilst having no intention to give a more detailed substantiation of this statement (which is outside the subject of this presentation), it is to be noted that given the proper legislative amendments, it is true that the RA Constitutional Court should implement the protection of substantive human rights and freedoms in the form of individual complaint.

Therefore, there is, at present, a problem of creating an appropriate model of individual complaint in the Republic of Armenia.

It is widely known that there are three currently existing procedures in the constitutional right to be applied by the constitutional justice when exercising their authority on protecting the rights and freedoms.

A. In the countries of general right, that is done by issuing the court injunctions on mandatory administration of the substantive rights («*habeas corpus*»), interdictory ruling, *mandamus*, etc.). This procedure is currently considered not applicable in the Republic of Armenia, with the continental legal system and no specific control.

B. The principal instrument of protecting the substantive rights in a number of Latin American countries (Mexico, Peru, Ecuador, as well as in Spain) is the procedure of «*amparo*» which is very similar to the constitutional complaint. The main distinction is that the decision passed by the body of constitutional justice on the basis of an applicant's individual complaint, has an expressly individual character, i.e. is relevant to the plaintiff only.

It seems that the restricted field of exposure covered by the decisions of the entities of constitutional justice within the «*AMPARO*» procedure makes it inexpedient to introduce it to RA.

C. More and more countries revert to the procedure of constitutional complaint.

It seems that this procedure of individual complaint is very expedient for use in the Republic of Armenia. It will open to any person an access to the bodies of constitutional justice, will become

a special instrument for an individual enabling him to efficiently protect the substantive rights and freedoms declared in Chapter II of the Constitution.

The authority of the individual constitutional complaint is on the increase all over the world, since it gives a considerable expansion to the legal capabilities in the defence of substantive rights. This is first of all the defence from a most common threat coming from the executive authority with its enormous staff officials, from the court that can produce a decision based upon an inadequate law.

The individual complaint also puts up a hurdle to the legislative law by facilitating the cancellation of illegal laws.

We think that the individual constitutional complaint is posing not only as a guarantee for the protection of substantive human social rights from arbitrary actions of the authorities, but also as an important instrument of developing constitutional democracy based upon human rights. The constitutional complaint, by protecting the individual and his subjective basic rights, facilitates the implementation of one of the main principles of a legal state - the principle of integrity of all branches of power with the Constitution and the Law that guarantee the human rights. Moreover, a constitutional complaint, being a specific instrument for protecting the constitutional rights of a person, provides a citizen with a right to enter a legal conflict with the state and its entities, even with the person of the legislator, thus facilitating the integration of citizens in the process of governing the state and the society.

It is common knowledge that the individual constitutional complaint is applied on a wide scale comprising the majority of cases examined by the bodies of constitutional justice in many countries.

This form of control has very specific characteristics with regard to the set of subjects of this right, the objects of complaint, the rules of filing and accepting the complaints for examination by the body of constitutional justice, juristic consequences of the adopted decisions. In the most extended form, the right for individual complaint has been elaborated and is applied among the western countries - in Germany and Austria, among the CIS-member countries - in Russia and Georgia. It seems to me that, at first, the experience of these countries can be applied when creating a model of individual constitutional complaint in the Republic of Armenia, certainly, with regard to particular national features of the legal culture of the citizens, of the dynamics of the activities of the public bodies, of the qualitative status of legislation, etc.

The basic problem associated with the implementation of the individual complaint is also in that the court may be simply unable to cope with the great number of cases of this kind. In the society oriented by the values of legal statehood, the stream of individual complaints to the Constitutional Court will augment with the growth of legal awareness of the population. This is corroborated by the situation in Germany and Hungary.

In order to possibly stage an efficient counteraction to this risk of overloading, the right of filing a complaint is accompanied by a number of conditions and requirements. Those tough formal and substantial requirements constitute a kind of filter resulting in screening off the bulk of original applications.

One can establish the following requirements for filing and accepting the individual complaints for examination in RA.

Firstly, all instruments of legal defence accessible to the individual should have been exhausted. The complaint should not be accepted if the appeal can be implemented in another way.

This rather substantiated requirement reflects a common idea that the bodies of constitutional justice should interfere into a conflict in exceptional cases only. Moreover, the courts of general jurisdiction, having special knowledge in industry legislation, will have to develop rational approaches in disputed issues by stating their interpretation of the substance and meaning of human rights. With regard to these positions, the constitutional court, having formed an idea about the legal practice, will generalize and guide it with its final decisions.

Secondly, the issue dealt with in the complaint should have a crucial constitutional and legal significance. Curiously enough, this additional condition of accepting the complaint for examination was introduced into the Austrian constitution in 1984. (See Vizer, *The protection of Human Rights in Austria*, "The protection of Human Rights in the contemporary world, Moscow 1993, pp. 36-52).

Thirdly, the complaint should be convincingly structured. To specify whatever special requirements to a complaint as to its formulation and filing is not expedient. To simplify the filing procedure to the maximum, it is desirable to extend the established general requirements to all types of applications channelled to the RA Constitutional Court, though with certain reservations. What is meant here is establishing a sphere of regulative legal acts so that their constitutionality could be appealed using a procedure of individual complaint. This is a fundamental question largely affecting directly the number of applications and determining the real «overcharge» of the constitutional courts. Anyway, to be counteracted in the constitutional courts are the regulative legal acts concerned with the constitutionally guaranteed substantive human and social rights. Meanwhile, we deal here only with the regulative legal acts that have been applied in a specific case and terminated in general courts. In other words, an individual will not be able to file a complaint «in the name of the people», i.e. outside a specific and real threat to his own basic rights. The basis of admissibility for an individual constitutional complaint should be the principle of an obvious and real threat for a given individual which threat is specifically existing at the present moment and which is coming from the regulative legal act under complaint.

Fourthly, although, as a rule, the constitutional processing on individual complaints is free of charge, some countries rightly introduced a duty which is also advisable in RA. In case the complaint is recognized and satisfied by the Constitutional Court, the applicant will be fully or partially compensated.

3. The number of examined constitutional complaints and the degree of efficiency of this institution in many ways depends upon their subject as determined by the legislation. Considering that the transitional period in RA is legislatively rather controversial, many legal statements are mutually negating, while the law-enforcement agencies are mainly orientated to the subjudicial acts by higher executive positions, it will be expedient to establish in RA as object of constitutional individual complaint the 5 types of regulative acts adopted in connection with the issues of substantive human and social rights and freedoms, the constitutionality of

which rights is to be rightfully controlled by the RA Constitutional Court within the abstract procedure pursuant to the statements of Article 100 of RA Constitution, i.e., laws, rulings of the parliament, decrees and directives of the President, directives of the Government.

What we deal with here is the regulative legal acts adopted after the RA Constitution coming into force in 1995 without establishing any period of antiquated term of filing a complaint.

Moreover, given the priority and the highest value of the substantive human rights, it should be specially stipulated in RA legislation that in case a disputed regulative legal act had been cancelled or invalidated prior or during the hearing, the case taken on by the RA Constitutional Court can be terminated except the cases when the discharge of this act has violated the violation of constitutional human and social rights.

4. An important issue is the establishment of the set of persons having the right of constitutional complaint. With reference to the substance of Part 2 Article 38 of RA Constitution, one can register the right of constitutional complaint, as the right that any individual has to implement either in person or through his legal representatives.

5. To be noted is the problem of legal consequences of the Constitutional Court's decisions when examining an individual complaint. We think that classifying the regulation under complaint as unconstitutional cannot cancel even the verdicts and decisions carried out in pursuance of this very regulation, but it will rather suspend their execution following the procedural legislation.

Gratifying an individual complaint will entail a complete or partial invalidation of the regulation recognized as unconstitutional since the publication of the relevant decision by the RA Constitutional Court. Exceptions may only be comprised by the laws regulating the criminal right which laws can be classified by the Constitutional Court as unconstitutional and legally void since these laws enter into force. The relevant law suits should anyway be examined in pursuance to the processing legislation.

If the Constitutional Court finds that the application of a regulatory act can entail irrevocable consequences for one of the sides, it should have the right to suspend the validity of a disputable act until the final decision is taken.

Meanwhile, the Constitutional Court does not have to decide on the constitutionality of a regulation as a whole, if the applicant demands to recognize as unconstitutional only a certain item of the regulation.

It is to be underscored that practical application of an individual complaint will require serious modifications of both the organizational structure and the methods of processing activities of the RA Constitutional Court.