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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

Description of the Constitutional Court of **Armenia**
and précis published in the Bulletin on Constitutional Case-Law
as well as additional summaries

Armenia Constitutional Court

Introduction

1. Date and context of foundation

In December 1988 the Constitutional Review Committee was set up under the amendment to the Constitution of the Soviet Union. The relevant law of the Union also provided for the creation of a Constitutional Review Committee in each Republic of the Union, but this never eventuated.

The Armenian legislator in 1991 also contemplated, but did not proceed with, the creation of a Constitutional Court (mentioned in two laws, the first relating to the President of the Republic, dated 1 October 1991 and the second relating to the Supreme Soviet of the Republic of Armenia, dated 19 November 1991). However, no law or amendment to the Constitution of the Armenian SSR followed this statement of intention.

It was the new Constitution, promulgated by referendum on 5 July 1995, which established a Constitutional Court in Armenia. The law on the Constitutional Court was passed by the National Assembly on 20 November 1995. On 5 and 6 February 1996, the members of the Constitutional Court were appointed and the Court began to function on 6 February 1996 when the judges were sworn in before the National Assembly. An amended version of the law on the Constitutional Court was adopted on 9 December 1997.

2. Position in the judicial order

The Armenian Constitutional Court is a judicial body, separate and independent from the executive, the legislature and the judiciary. It is responsible for verifying the constitutionality of laws and other enactments.

Under the Constitution, the judicial system of the Republic of Armenia comprises three levels of jurisdiction: the courts of first instance, the courts of appeal and the Court of Cassation (reform of the judicial system is in hand). The Constitutional Court does not stand at the apex of any hierarchy of courts and is not part of the ordinary judicial system, in which the court of cassation represents the supreme authority. The Constitutional Court's case law is not subject to censure by the other courts. The relationship between the ordinary courts and the Constitutional Court is not defined by the Constitution or by the laws of the Republic.

I. Basic texts

- Articles 55.10, 57, 59, 83, 116.5 and Articles 96-102 of Chapter 6 of the Constitution.
- Law of 9 December 1997 on the Constitutional Court.

II. Composition and organisation

1. Composition

The Constitutional Court is made up of nine members. Any citizen of the Republic aged 35 or over may become a member. Members (including the President and Vice-President) hold office until the age of 70.

Power to appoint members of the Constitutional Court is shared between the National Assembly and the President of the Republic.

The National Assembly appoints five members, chosen by the majority of representatives present at the National Assembly sitting, while the four remaining members are appointed at the discretion of the President of the Republic.

The President of the Constitutional Court is not elected by its members but chosen from among them by the National Assembly, whose President nominates the candidates. The President of the Republic designates a President of the Constitutional Court if the National Assembly has not done so within 30 days of the Court's formation.

Appointment as a member of the Constitutional Court is possible for any person who meets the following requirements:

- citizenship of the Republic, age 35 or over, full electoral rights;
- higher education;
- 10 years' professional experience; experience in the legal sphere with public or scientific institutions;
- irreproachable moral character;
- command of the Armenian language.

Although there are no rules requiring members of the Constitutional Court to be lawyers, seven of the nine members appointed in February 1996 actually have a legal background.

Membership of the Constitutional Court is incompatible with other public office or remunerated activity, except of a scientific, educational or creative nature. Political party membership or political activity are forbidden.

Members of the Court enjoy immunity. Only on a finding of the Court itself may a member's immunity be revoked by the appointing authority.

According to a constitutional principle, a member of the Constitutional Court is irremovable. A member's dismissal must be moved by the appointing authority (ie the President of the Republic or the National Assembly; in the latter case, the motion must be supported by at least a third of the representatives). If the question of dismissal is raised, the Constitutional Court considers the case in the absence of the member concerned and, by vote of at least two-thirds of its members (ie 6 out of 9) makes a finding as to termination of the member's functions, arrest, official liability or criminal responsibility. Upon delivery of this finding, the actual decision on the member's removal rests with the appointing authority (no dismissal of a member of the Constitutional Court has occurred since it was formed).

The fact that members of the Constitutional Court are subject only to the Constitution and the relevant law secures their independence. It is prohibited and punishable by law to bring any influence to bear on a member of the Constitutional Court.

A member ceases to perform his/her functions if:

1. he/she attains the age limit for holding office;
2. he/she dies;
3. he/she loses his/her Armenian citizenship;

4. he/she has reintroduced his/her application to cease his/her functions 15 days, but not later than a month, after informing the Constitutional Court and after presenting a written application to the State organ which appointed him/her.
5. he/she is declared unfit for office, missing or dead by valid decision of the courts;.
6. he/she is serving a sentence passed by the courts which has become enforceable.

A member is dismissed, pursuant to the Constitutional Court's finding, if he/she has:

1. failed to attend three consecutive sessions of the Court without an excuse;
2. been unavailable for duty for four consecutive months because of ill-health or other duly notified reasons
3. a behaviour not befitting the reputation or dignity of a member of the Constitutional Court.

2. Procedure

Procedure before the Constitutional Court is governed by the law relating to the Court as such.

Under the Constitution, the followings may apply to the Constitutional Court:

1. the President of the Republic;
2. at least one-third of the representatives in the National Assembly;
3. presidential and parliamentary candidates in disputes over election results;
4. the government in the case prescribed by Article 59 of the Constitution (inability of the President of the Republic to perform his/her duties);
5. the National Assembly in the case prescribed by Article 57 of the Constitution (removal of the President of the Republic from office).

The Constitutional Court delivers decisions and findings only in respect of the referrals made and has no right to entertain a case of its own motion. Referrals are made to the Court in writing signed by the competent person(s) or organ and submitted to its President, with no charge for the procedure.

If the subject-matter referred to the Constitutional Court is not within its jurisdiction, or the referral is formally inconsistent with the procedures prescribed by the law relating to the Constitutional Court, or it is made by someone not entitled to do so, the applicant is notified accordingly by administrative reply within five days after the referral.

Each application to the Constitutional Court is considered when its members are convened; if it is within the Court's jurisdiction and formally consistent with the procedures prescribed by the law relating to the Constitutional Court, and the applicant is entitled to present the petition the Court, the President designates one or more members to make a preliminary examination of the case. This must be completed not later than 8 days after registration of the application, unless other time-limits are prescribed by the law relating to the Constitutional Court.

On completion of the preliminary examination, the conclusions are reported to the President of the Constitutional Court by the responsible member(s).

Within three days following the report, the members of the Constitutional Court are called together by the President to decide the case as to admissibility. If a decision is made to adopt the case for review, the Constitutional Court shall undertake the review of the case not later than 20 days after registration of the application, unless other time limits are prescribed by the law relating to the Constitutional Court. The individuals and bodies concerned are informed of the Court's decision to admit the case before it.

The Constitutional Court appoints one or more rapporteurs. The rapporteur(s) and the President designate the persons to be summoned to appear at the session. The file made up by the rapporteur(s) is forwarded to each member of the Constitutional Court, to the parties as a matter of course and, if the President so decides, to the persons summoned (experts and witnesses), not later than three days before the session. The Secretary of the Court is required to inform the parties and the persons summoned of the session date.

The parties may appear before the Constitutional Court either in person or through their representatives, not more than three per party being allowed. The parties are entitled to consult all documents in the case file.

The Court can request and obtain additional information and documents. The Constitutional Court's requests and summonses are binding on State authorities, public office holders, institutions, enterprises, organisations and citizens.

Sessions are normally held in public and *inter partes*, and each application is dealt with at a single hearing. The Court is entirely free to decide to sit in camera.

At the hearing, the President of the Constitutional Court verifies that the majority of its members, the parties and the persons summoned are present, declares the hearing open, and informs the parties of their rights and duties. Following the submissions of the rapporteur(s), they may be questioned by the members of the Court and the parties. Each party states its position and contentions in the case with no restriction on speaking time.

The Constitutional Court may defer the proceedings if it sees fit to clarify circumstances which have decisive bearing on the outcome of the case.

The Court deliberates in private. A member of the Constitutional Court is not entitled to abstain or refuse to vote. A ruling is made only with the majority of all the members present at the hearing (the Constitutional Court has no separate chambers). The President votes last. Concurring or dissenting opinions on the Court's decision or finding are not allowed.

Proceedings before the Court are conducted orally or by written procedure and must at all times be recorded in writing. Decisions and findings adopted by the Court are announced in public session.

The Constitutional Court's decisions and findings must be delivered within 30 days after the filing of the application, this being the time limit stipulated by the Constitution. Certain types of application must be brought before the Court within a specified time:

1. the President of the Republic must refer an international treaty to the Constitutional Court for verification of its compliance with the Constitution before its ratification by the National Assembly;
2. petitions concerning disputes in connection with the results of referenda and presidential and parliamentary elections may be made in 7 days following official publication of the results;

3. a petition relating to certification of insuperable obstacles for a presidential candidate must be made not later than 10 days before the presidential elections. The Constitutional Court must reach a decision in the matter within 4 days after receiving the appeal.

Any decision or finding by the Court is transmitted within three days of adoption to the parties in the case, the President of the Republic, the National Assembly, the government, the Court of Appeals and the Prosecutor General.

On August 1, 2000 the Constitutional Court has made 254 decisions on the results of concrete cases, and 336 resolutions concerning the examinations of the cases, 4 international treaties have been declared unconstitutional, the examination of 16 international treaties has been refused, 5 decisions of the Electoral Commission have been rejected, 14 electoral disputes have been settled, more than 20 Articles of different laws have been declared unconstitutional.

3. Organisation

The rules governing the operation of the Constitutional Court and the organisation of its business are laid down in the rules of procedure adopted by the Court itself.

The Court's director of personnel is responsible for all its administrative work, which involves appointment of staff and management of human resources, running of the library, and publication of the Constitutional Court Bulletin.

The staff (technical services excepted) is 41 strong, 9 being assistants to the members of the Court.

Legal aid is provided by the Legal Department consisting of 7 lawyers apportioned between the International Law Section (3 persons) and the Legislative Section (3 persons).

The Secretariat has 18 clerks (including staff of the library, the press service and the registry). Another six work for the finance department (5 persons) and the data processing department (one person). The Adviser to the Constitutional Court is responsible for external relations.

The Constitutional Court's financial resources and staff are controlled by its President.

The President submits annual estimates to the government for the operation of the Constitutional Court. Its budget is established each year by the National Assembly within the State budget. The Constitutional Court has complete independence in the management of its financial resources.

III. Powers

In pursuance of Article 100 of the Constitution and according to the procedures established by law, the Constitutional Court:

1. decides whether the laws, the resolutions of the National Assembly, the orders and decrees of the President of the Republic and the resolutions of the government are in compliance with the Constitution;
2. before the ratification of international treaties, determines their conformity with the Constitution;

3. settles disputes concerning referenda and the results of presidential and parliamentary elections;
4. ascertains whether an obstacle to a presidential candidature is insuperable;
5. makes findings on the grounds for the removal of the President of the Republic;
6. makes findings concerning measures prescribed by Article 55.13 and 55.14 of the Constitution (extraordinary powers of the President of the Republic);
7. makes findings as to whether the President of the Republic is incapable of performing his/her functions;
8. makes findings with regard to the termination of the functions of members of the Constitutional Court, their detention, and criminal proceedings against them for criminal or administrative offences;
9. in the cases prescribed by law, decides on the suspension or prohibition of a political party's activities.

IV. Nature and effects of decisions

According to Article 102 of the Constitution, the Constitutional Court shall make decisions and findings.

1. The Court's decisions concern Article 100.1, 100.2, 100.3, 100.4 and 100.9 of the Constitution. They are taken by majority vote of the total number of members, except for the purpose of suspending or prohibiting a political party's activity, which requires a two-thirds majority.

The Constitutional Court's decisions are final, not subject to review, and acquire legal force upon publication. They are binding throughout the territory of the Republic. Any law or enactment which the Court declares inconsistent with the Constitution ceases to be effective upon publication of the decision. Liability is incurred, under conditions defined by the legislation, for failure to execute a decision of the Constitutional Court, improper execution or hindrance to execution.

2. The findings of the Constitutional Court concern Article 100.5, 100.6, 100.7 and 100.8 of the Constitution, and are reached by a two-thirds majority of the total number of members.

The Court's decisions and findings are published in the official press and the Constitutional Court Bulletin (*Téghékaquir*).

Conclusion

Review of constitutionality is a recent practice in the Armenian institutional order. Reform is needed principally as regards the conditions of referral:

- granting citizens access to the Constitutional Court for the protection of their constitutional rights;
- enabling the Court of Cassation, courts of first instance to refer cases;
- reducing the number of parliamentarians stipulated for petitions to the Constitutional Court.
- applying of the Government to the Constitutional Court.

Identification: ARM-2000-X-001

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 20/06/2000 / **e)** DDC-236 / **f)** On the dispute on the results of the National Assembly Supplementary Elections by majoritarian system in Constituency # 05 held on 21 May 2000 / **g)** to be published in *Tegekagir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.8.8 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Counting of votes.
- 5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary:

Two candidates for deputy found the resolution of the Regional Electoral Commission unacceptable and asked the Constitutional Court to declare the elections in Constituency # 05 null and void. They maintained that serious violations of the law had taken place during the elections and considered that a case should be brought by the Prosecutor's Office.

According to Paragraph 5 of Article 116 of the Electoral Code an election is declared null and void if the number of inaccuracies influencing the quantity of votes makes it impossible to conclude that the elected candidate won.

One of the claimed violations was the fact that 30,050 ballots had been allocated to Constituency # 11, whereas the number should have been 28,681.

Pursuant to the Constitutional Court's request the Electoral Commission checked the number of ballots cast in the precincts and discovered that there were 26 fewer ballots cast than mentioned in the protocol. While examining the case it became clear that there had been other violations of the Electoral Code in Electoral Precinct 0055/05, 0056/05 and 0062/05 which meant that the necessary conditions for democratic elections had not been fulfilled.

With the help of evidence given by witnesses, it became clear that 50 signed ballots disappeared in the Electoral Precinct 0062/05 in unknown circumstances.

Proceeding from the results of the case examination, the Constitutional Court declared the National Assembly Supplementary elections by majoritarian system in Constituency # 05 held on 21 May 2000 null and void, and ordered that there be another vote in the same Constituency according to the requirements of Paragraph 9 of Article 116 of the Electoral Code.

Languages:

Armenian, English.

Identification: ARM-1999-X-009

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 28/06/1999 / **e)** DDC-166 / **f)** On the disputes on the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.8.8 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Counting of votes.
- 5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary:

The case was initiated by a candidate for deputy of the National Assembly.

After the elections, the Regional Electoral Commission checked the precinct Electoral Commission protocols' correspondence with the factual results of the elections. After checking the voters' lists the following was revealed: inaccuracy of 19 ballots, violation of 120 ballots, absence of 714 ballots, and the absence of the package of cast ballots in the documents, which had not been taken into account when calculating the number of inaccuracies.

The Regional Electoral Commission, summarising the results of the National Assembly elections according to its decision 21/15 on Paragraph 5 of Article 116 of the Electoral Code, declared the National Assembly elections to be null and void.

A candidate for deputy of the National Assembly, in his petition and written explanations filed with the Constitutional Court, claimed that the Yerevan Electoral Commission had violated the provisions of Paragraphs 3 and 10 of Article 62 and Paragraph 5 of Article 116 of the Electoral Code.

According to the Law on the Constitutional Court, the Constitutional Court decided to satisfy the request of the candidate for deputy of the National Assembly, and not to declare the National Assembly elections by majoritarian system in Constituency #15 null and void.

Languages:

Armenian, English.

Identification: ARM-1999-X-008

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 23/06/1999 / **e)** DDC-165 / **f)** On the dispute of the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system in Constituency # 18 held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.8.8 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Counting of votes.

5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary:

The case was initiated by a candidate for deputy of the National Assembly.

In his petition, the candidate requested that the Constitutional Court annul the results of the elections under Paragraph 5 of Article 116 of the Electoral Code.

According to the petitioner, when summarizing the election results, the Electoral Commission violated the provisions of Articles 116 and 62 of the Electoral Code and disregarded a number of violations that were committed during the pre-election period, on the election day and during the summary of the elections results.

According to Paragraph 5 of Article 116 of the Electoral Code, the parliamentary election is declared null and void if the number of inaccuracies affecting the number of cast ballots makes it impossible to identify the winning candidate or else if violations of the same Code occurred during the pre-election and election day phases that could affect on the outcome of the elections.

The examination of the protocols on the number of inaccuracies drawn up in all electoral precincts revealed that the number of inaccuracies affecting the number of cast ballots was 35, whereas the final protocol reported 20.

The number of inaccuracies did not make it impossible to identify the winning candidate since the difference of votes for the two candidates who won the first two places was 5,491, which is more than the number of inaccuracies.

It should be noted that not a single complaint was lodged with the Electoral Commission on the election results prior to 2:00 p.m. on 31 May 1999. This statement is supported by the report signed by the secretary of the Electoral Commission and properly certified.

Proceeding from the results of the case, and adhering to Paragraph 3 of Article 100 and to Article 102 of the Constitution, to Paragraph 3 of Article 5 and to Articles 57, 67 and 68 of the Law on the Constitutional Court, the Constitutional Court decided to reject the request of the candidate for deputy of the National Assembly to declare the elections of the National Assembly null and void.

Languages:

Armenian, English.

Identification: ARM-1999-X-007

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 23/06/1999 / **e)** DDC-164 / **f)** On the disputes on the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system in Constituency # 13 held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.6.1 **Institutions** – Elections and instruments of direct democracy – Preliminary procedures – Electoral rolls.
- 4.9.8.3 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Voting.

5.3.39 Fundamental Rights – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary:

The case was initiated by a candidate for deputy of the National Assembly.

The petitioner asked the Constitutional Court to annul the results of the National Assembly elections in conformity with Paragraph 3 of Article 100 of the Constitution.

The petitioner contended that the Electoral Commission had violated the provisions of Articles 116 and 62 of the Electoral Code and had, while summarising the election results, ignored such facts as voters' names missed from the voters lists, the casting of ballots for citizens absent from the city by forging their signatures, inclusion of a person's name twice in the voters list, failure to include in the voters lists the names of persons officially registered at their residences and other violations.

The examination of the case in the Constitutional Court showed that the arguments listed in the petition could not affect the election results and were related to circumstances, which, in the petitioner's opinion, could also be accounted for as violations of the Electoral Code, or as individual violations.

Proceeding from the results of the case, and adhering to Paragraph 3 of Article 100 and to Article 102 of the Constitution, as well as to Paragraph 3 of Article 5 and to Articles 57, 67 and 68 of the Law on the Constitutional Court, the Constitutional Court decided to reject the request of the candidate for deputy of the National Assembly to declare the National Assembly elections null and void.

Languages:

Armenian, English.

Identification: ARM-1999-X-006

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 22/06/1999 / **e)** DDC-161 / **f)** On the disputes on the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system in Constituency # 56 held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.

4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.

4.9.6.1 **Institutions** – Elections and instruments of direct democracy – Preliminary procedures – Electoral rolls.

4.9.8.1 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Polling stations.

4.9.8.3 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Voting.

5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities

Summary:

The case was initiated by a candidate for deputy of the National Assembly.

The petitioner contended that summarizing the election results of the Regional Electoral Commission violated the provisions of Articles 116 and 62 of the Electoral Code and disregarded a number of circumstances, in particular, the fact that the precinct Electoral Commissions had not drawn up protocols about the number of inaccuracies (Paragraph 4 of Article 60 of the Electoral Code), even though the inaccuracies, calculated on the basis of the final protocols from 4 electoral precincts only, amounted to 137, while the Regional Electoral Commission, in its final protocol, reported that there were no inaccuracies.

According to the petitioner, the number of inaccuracies calculated on the basis of the final protocol of the Regional Electoral Commission was 2051. Thus, in his estimation, since the difference between the two candidates who received the most votes was 36, according to Paragraph 5 of Article 116 of the Electoral Code, the elections have to be declared null and void.

The Ordinary Court of the region stated on 3 June 1999 that the Commission had failed to stamp all the ballots because of violations during the elections and their preparation in the electoral precinct 1054. The elections had started with a 20-30 minute delay at that polling station, 59 ballots for proportional system elections had been taken out of the polling station, for about 30-40 minutes the activities of the polling station had been suspended and numerous citizens had been deprived of their right to vote because of the inaccuracies in voters lists. At the same time, the Court decided not to make changes in the final protocol of the precinct electoral commission.

At the preliminary stage of the case the Constitutional Court requested additional documentation from the Central Electoral Commission, the Regional Electoral Commission, the Ministry of Justice and the General Prosecutor's Office.

Proceeding from the results of the case, and adhering to Paragraph 3 of Article 100 and to Article 102 of the Constitution, as well as to Paragraph 3 of Article 5 and to Articles 67 and 68 of the Law on the Constitutional Court, the Constitutional Court decided to declare the National Assembly elections held on 30 May 1999 null and void.

Languages:

Armenian, English.

Identification: ARM-1999-X-005

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 21/06/1999 / **e)** DDC-160 / **f)** On the disputes on the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system in Constituency # 67 held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.6.1 **Institutions** – Elections and instruments of direct democracy – Preliminary procedures – Electoral rolls.
- 4.9.8.4 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Identity checks on voters.
- 5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary

The case was initiated by a candidate for deputy of the National Assembly.

The petitioner maintained that during the pre-election period and on the election day, serious violations of the Electoral Code had been committed, which affected the election results in the constituency. In particular, he mentioned that in several electoral precincts the voters' passport data were missing, that several individuals voted using the same passport and that in some electoral precincts individuals who had not been on voters lists participated and voted without a decision of the court.

In support of his claims, the petitioner submitted the copies of voters lists from the electoral precincts in question, copies of the protocols verified by three members of the Regional Electoral Commission and by two proxies of the candidates and copies of final protocols of regional and precinct electoral commissions.

According to Paragraph 5 of Article 116 of the Electoral Code, the election of a National Assembly deputy is declared null and void if the number of inaccuracies affecting the number of cast ballots makes it impossible to determine the winning candidate or if such violations occurred leading up to the election or on the election day as to affect the outcome of the elections.

An examination of the protocols on the number of inaccuracies drawn up by all 26 electoral precincts of the constituency in question revealed that the number of inaccuracies was 487, whereas the number reported by the final protocols was 134. This number of inaccuracies did not make it impossible to identify the winning candidate, since the difference in the number of ballots polled for the two candidates who got the best results was 675, which is more than the number of inaccuracies.

Proceeding from the results of the case, and adhering to Paragraph 3 of Article 100 and to Article 102 of the Constitution, as well as to Paragraph 3 of Article 5 and to Articles 57, 67 and 68 of the Law on the Constitutional Court, the Constitutional Court decided to reject the request of the candidate for deputy of the National Assembly to declare the elections null and void.

Languages:

Armenian, English.

Identification: ARM-1999-X-004

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 21/06/1999 / **e)** DDC-159 / **f)** On the case on the disputes of the results of the elections of the National Assembly of the Republic of Armenia by majoritarian system in Constituency # 63 held on 30 May 1999 / **g)** to be published in Tegekagir (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.3.4.5.2 **Constitutional Justice** – Jurisdiction – Types of litigation – Electoral disputes – Parliamentary elections.
- 4.5.3.1 **Institutions** – Legislative bodies – Composition – Election of members.
- 4.9.6.1 **Institutions** – Elections and instruments of direct democracy – Preliminary procedures – Electoral rolls.
- 4.9.8.3 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Voting.
- 4.9.8.8 **Institutions** – Elections and instruments of direct democracy – Voting procedures – Counting of votes.
- 5.3.39 **Fundamental Rights** – Civil and political rights – Electoral rights.

Keywords of the alphabetical index:

Voting, irregularities.

Summary:

The case was initiated by a candidate for deputy of the National Assembly.

Having examined the petition, the Constitutional Court made a procedural resolution to accept the case and to designate the Regional Electoral Commission, whose decision on summarizing the National Assembly election results by majoritarian system in constituency # 63 was contested, as respondent.

The petitioner contended that violations committed during the pre-election period, on the election day and while summing up the election results gave grounds to declare the elections null and void. To support his claims, the petitioner submitted to the Constitutional Court voters lists from several electoral precincts in constituency # 63, appeals and statements addressed to the Regional Electoral Commission and other documents.

According to the final protocol drawn up on 1 June 1999 by the Regional Electoral Commission on the election results in constituency # 63, the total number of voters according to voters lists was 29,082 and the total number of registered voters who received ballots was 14,446. The total number of cast ballots for all candidates was 13,195.

In his explanation submitted to the Constitutional Court, the respondent noted that in constituency # 63 the candidate for deputy of the National Assembly was elected to the National Assembly since he received more votes than other contenders did. At the same time, the respondent also stated that the commission was unable to reach a final decision on the number of inaccuracies.

Having examined the documentation and the explanations of the representatives of the litigants, the Constitutional Court ascertained the following:

The documents submitted by the petitioner confirmed and the report submitted by the Regional Electoral Commission admitted the inaccuracies in the voters lists in some electoral precincts of constituency # 63, in particular, hand-made corrections, notes, deletions, the name of citizens left out of the voters lists and other violations of the requirements of Articles 9-13 of the Electoral Code. On 1 and 3 June the petitioner himself and through his proxies presented petitions to the Regional Electoral Commission demanding on the one hand to examine the facts cited in the petitions, and, on the other, to declare the election results in some electoral precincts partially null and void. According to Article 14 of the Electoral Code, petitions about the inaccuracy of voters lists received not later than 5 days prior to elections have to be examined by the head of the community in question and up to the day of elections the decisions may be appealed in the court.

Proceeding from the results of the case and adhering to Article 68 and to Paragraph 3 of Article 100 of the Constitution, as well as to Paragraph 3 of Article 5 and to Articles 57, 67 and 68 of the Law on the Constitutional Court, the Constitutional Court decided to declare the National Assembly elections held on 30 May 1999 in constituency # 63 null and void.

Languages:

Armenian, English.

Identification: ARM-1999-3-003

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 16/10/1999 / **e)** DCC-179 / **f)** On the conformity with the Constitution of Article 3.2 of the Law on Local Self-Government, Articles 2.1 of the Electoral Code of the Republic of Armenia and Article 18.8 of the Law on Refugees / **g)** to be published in *Tegekagir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 2.1.1.14 **Sources of Constitutional Law** - Categories - Written rules - Other international sources.
- 4.6.9.1.1 **Institutions** - Executive bodies - Territorial administrative decentralisation - Principles - Local self-government.
- 5.1.2.2.1 **Fundamental Rights** - General questions - Entitlement to rights - Foreigners - Refugees and applicants for refugee status.
- 5.2.24 **Fundamental Rights** - Civil and political rights - Right to participate in political activity.
- 5.2.34.1 **Fundamental Rights** - Civil and political rights - Electoral rights - Right to vote.
- 5.2.34.2 **Fundamental Rights** - Civil and political rights - Electoral rights - Right to be elected.

Keywords of the alphabetical index:

Municipality, legal personality.

Headnotes:

Refugees who are permanent residents in the Republic of Armenia cannot be deprived of the right to participate in local government elections.

Summary:

The petitioner considered that several provisions of the Electoral Code, the Law on Local Self-Government and the Law on Refugees contradicted the Constitution, as they deprived refugees of the right to participate in local government elections.

According to the challenged Article of the Law on Local Self-Government, "the bodies of local self-government are elected by the members of community. A member of a community is a citizen of the Republic who is a permanent resident of that community or has been included in the list of tax-payers for the last 3 years".

The challenged provision of Article 2 of the Electoral Code determines that "citizens of the Republic of Armenia who have attained the age of 18 years have the right to vote", and according to Article 122.1 "every citizen of the Republic of Armenia who has attained the age of 25 years, has been a resident of the given community for at least the last one year, and has the right to vote, can be elected as community head".

Article 18 of the Law on Refugees determines that "a refugee does not have electoral rights in the Republic of Armenia, cannot be a member of a political party, cannot be elected or assigned to positions restricted by the legislation of the Republic of Armenia".

The Constitutional Court held that the challenged provisions, which deprived refugees of the right to participate in local government elections, contradicted the Constitution.

The Constitution strictly demarcates the notions "local self-government" and "state government". According to Article 105 of the Constitution, "Communities shall have local self-government", and according to Article 107, "The provinces shall be governed by the state government". Furthermore, Article 2 of the Constitution provides that "the people exercise their power through free elections and referenda, as well as through state and local self-government bodies and public officials as provided by the Constitution". This formulation strictly demarcates the different functional and institutional systems of exercising power.

This approach has been developed in the new Civil Code. According to the Civil Code, the Republic of Armenia and communities have been recognised as separate, independent and equal subjects of civil law, as well as separate and independent subjects of property rights. Article 105 of the Constitution provides that "to manage the property of the community and to solve problems of local significance, local self-government bodies shall be elected for a period of three years". Furthermore, an analysis of the notion of "local self-government", as it is determined in Armenian legislation, reveals that local self-government consists of the right and ability to manage community property and solve problems of local significance. Thus if refugees, who live in Armenia for 10 years and comprise more than half of the electorate in 71 communities, do not participate in the formation of local self-government bodies based on democratic principles, it means that they are deprived of their right to dispose of, use and manage property, as well as of the right guaranteed by law to determine the future of community property.

The provisions concerning electoral rights are laid down in Articles 2, 3, 27, 44, 50, 51, 52, 53, 64 and 110 of the Constitution. The general approach of the Constitution with regard to this issue is: Article 2 provides for the people's right to exercise their power, including through local government elections. The Constitution, demarcating the notions of "local self-government" and "state government" (Articles 105, 107), grants citizens of the Republic of Armenia who have attained the age of eighteen years the right to participate in state government (Article 27). The Constitution does not make any restriction on the right of the permanent resident non-citizens of a given community to participate in the formation of local self-government bodies and the implementation of the self-government function. This article does not exclude

the possibility of according an electoral right at local self-government level to persons with a particular status, who are legal permanent residents in Armenia.

Meanwhile Article 110 of the Constitution provides that "the election procedure of local self-government bodies and their power shall be determined by the Constitution and laws". In giving the legislator the competence to determine the election procedure, the Constitution's general requirement is also that such competence must be exercised pursuant to the foundations of the constitutional order and the principles and norms of international law.

International practice also indicates that in many countries non-citizens have a right to vote and to be elected at local self-government level. Such an approach is also taken by the Treaty on European Union and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144) of the Council of Europe of 5 February 1992.

Languages:

Armenian, English.

Identification: ARM-1999-2-002

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 28/06/1999 / **e)** DCC-167 / **f)** On the dispute on the outcome of the elections of the National Assembly of the Republic of Armenia by proportional system held on 30 May 1999 / **g)** *Tegekagir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

1.3.5.2 **Constitutional Justice** - Types of litigation - Electoral disputes - Parliamentary elections.
4.5.3.1.4 **Institutions** - Legislative bodies - Composition - Elections - Review of validity.
5.2.34 **Fundamental Rights** - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Election, entire, invalidity / Proportional system / Voting, irregularities.

Headnotes:

The necessity of protecting the constitutional purpose of elections means that elections must be declared invalid only if a concrete and precise dispute exists. Arguments in such disputes should not be expressed in general terms but must be directly related to concrete and legal issues forming the basis of the dispute.

Summary:

A candidate in the National Assembly elections, who had participated in the elections of the National Assembly by proportional system in the electoral list of the "Motherland" alliance, appealed to the Constitutional Court for it to declare invalid the National Assembly elections conducted using the proportional system. He argued that violations of the Electoral Code had taken place during the preparation and conduct of elections and summarisation of its results to such an extent that they had influenced the election results.

As an example of such violations he mentioned that voters lists were not displayed at electoral offices during the period specified in the Electoral Code. Furthermore, approximately 200 000 voters were not included in the voters lists, which deprived them of the right to vote. Final statements giving summarised results of voting and final statements on the number of irregularities by many electoral commissions within individual constituencies were also among the violations of the Code. The main emphasis was placed on the fact that the statement as to the number of irregularities was incorrect.

As evidence for the claim that 200 000 voters were not included in the voters lists and were deprived of the opportunity to restore their electoral rights through judicial avenues, the appellant provided only the

observations of scrutineers of the "Motherland" alliance. However, the Electoral Code provides the opportunity to restore a citizen's right to vote through judicial avenues even on the day of elections.

The appellant argued that the number of voters in the constituencies where the final statements summarising the results of particular constituencies were among the violations of the Code should be taken into account as irregularities. But the determination of the number of irregularities is precisely regulated by the Code: any other form of calculation is illegal.

Moreover, according to the Electoral Code, the number of irregularities cannot be a ground for invalidating elections conducted under the proportional system. The number of irregularities has a consequence only in terms of the distribution of seats. The mistakes concerning the calculation of the number of irregularities in the statements of constituency and regional commissions had no influence on the results of the elections and on the fact that the "Motherland" alliance did not participate in the distribution of seats.

Languages:

Armenian, English.

Identification: ARM-1999-1-001

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 27/01/1999 / **e)** DCC-152 / **f)** On the conformity of Article 24 of the Law on telecommunications of the Republic of Armenia with the Constitution of the Republic of Armenia / **g)** *Téghékaquir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 2.1.1.7 **Sources of Constitutional Law** - Categories - Written rules - International Covenant on Civil and Political Rights of 1966.
- 3.3 **General Principles** - Democracy.
- 3.12 **General Principles** - Legality.
- 4.5.2 **Institutions** - Legislative bodies - Powers.
- 4.6.3 **Institutions** - Executive bodies - Application of laws.
- 4.6.7 **Institutions** - Executive bodies - Relations with the legislative bodies.
- 5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
- 5.3.6 **Fundamental Rights** - Economic, social and cultural rights - Commercial and industrial freedom.

Keywords of the alphabetical index:

Competition, protection / Monopoly, state / Anti-trust legislation.

Headnotes:

Free economic competition does not exclude activities which are prohibited by the State, activities which are subject to State licensing or activities which are natural or state monopolies and have as their purpose to provide security or lawful interests of the State and society, public order, health and morality, or rights and freedoms of other persons.

However, clarification of these spheres and possible restrictions of the degree of free economic competition are regulated by the Constitution and by law.

The legislative authority alone is competent to determine the limits and nature of these restrictions.

Summary:

The applicants, a group of 72 deputies of the National Assembly of the Republic of Armenia, claimed that Article 24 of the Law on telecommunications of the Republic of Armenia was not in conformity with the

Constitution of the Republic of Armenia, in particular, with the provisions on the State-guaranteed freedom of economic activity and free economic competition contained in Article 8 of the Constitution.

The respondent party argued that the disputed provision of the law did not contradict the Constitution, since it concerned a natural monopoly and the restrictions on free economic activity in the sphere of telecommunications are intended to improve the communication situation on the territory of the Republic and to ensure technical advancement in this field.

Legal analysis of the provision of Article 24 of the law shows that the legislator has not established a compulsory regulation adjusting legal relations, but that in fact, by ratifying the license terms established by the executive authority for a particular legal entity, lent those regulations the force of law.

Article 24 of the Law on telecommunications of the Republic of Armenia states that "The effect of rights established by the said license must be ensured by the legislation of the Republic of Armenia (including the antitrust legislation)". Anti-trust legislation was totally absent at the moment of adopting this Law. By adopting such legislation the legislator, while lending the legal regulation the features proper to a constitutional norm, had actually anticipated the concept of laws to be adopted for regulating this sphere.

According to Article 62.3 of the Constitution, the powers of the legislative body are established by the Constitution, which has not granted the National Assembly of the Republic of Armenia the competence to adopt organic (constitutional) laws containing regulations of a constitutional nature.

Moreover, according to Article 5.2 of the Constitution, State bodies and officials are only competent to perform actions which the legislature entitles them to carry out. The National Assembly of the Republic of Armenia has given the force of law to regulations which the Government or the body empowered by the latter were not authorised to enact.

It was also underlined that according to Article 8.3 of the Constitution, the State guarantees free development and equal legal protection to all forms of property, freedom of economic activity and free economic competition. Moreover, according to Article 4 of the Constitution, the State ensures the protection of human rights and freedoms on the basis of the Constitution and laws, pursuant to the principles and norms of international law. Freedom of economic activity is not an absolute freedom; it can be restricted according to the norms and principles of international law. The type of restriction must however, be substantiated by the legislator, with due consideration given to the fact that it is possible only for ensuring the relevant recognition and respect of rights and freedoms of other persons and for satisfying the rightful requirements of morality, public order and common welfare in a democratic society (Article 29.2 of the Universal Declaration of Human Rights; Article 12.3 of the International Covenant on Civil and Political Rights).

Meanwhile, an analysis of the provisions of the Constitution shows that free economic competition does not exclude activities which are prohibited by the State, subject to State licensing, or activities which are natural or State monopolies or are regulated by exclusive rights and intended to provide for the security or lawful interests of the State and society, public order, health and morality, or rights and freedoms of other persons.

However, clarification of what these spheres are and what are the possible restrictions of the degrees of freedom of economic activities or of free economic competition are regulated by the Constitution and by the laws for implementing the antitrust policies ensuring even-handed competition and economic and social advancement.

The legislative authority alone is competent to determine the limits and nature of these restrictions in the form of regulations. Where individual legal relations are not yet regulated by Law, the Government can provide amendments not only on the basis of legislative initiative, but also based upon Article 78 of the Constitution, whereby for the purpose of legislative support of the Government activity program, the National Assembly can authorise the Government to adopt resolutions that have the effect of law which are in force within the period established by the National Assembly. These resolutions cannot be contrary to laws.

Thus, the Constitutional Court of the Republic of Armenia ruled that Article 24 of the Law on telecommunications is not in conformity with the requirements of Articles 5 and 8 of the Constitution. Clarification of the types of activities subject to State licensing, whether an activity is a State or natural monopoly, implementation in these spheres of the antitrust policies, security and the lawful interests of

the State and society, the purposes of protecting the rights and freedoms of other persons, the possible limitations of the degrees of freedom of economic activities and free economic competition as the norm of compulsory behaviour had been previously established by the executive authority rather than by the law. The legislator, in the form of transitional provisions, gave the force of law to provisions targeted at a particular legal entity, and these provisions contained formulations which were not in conformity with the Constitution.

Languages:

Armenian, Russian, English.

Identification: ARM-1998-3-004

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 13/11/1998 / **e)** DCC-138 / **f)** On the conformity with the Constitution of Articles 71 and 93 of the Law on Joint-Stock Companies / **g)** to be published in *Tegekagir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

5.1.4 **Fundamental Rights** - General questions - Limits and restrictions.
5.2.9.2 **Fundamental Rights** - Civil and political rights - Procedural safeguards and fair trial - Access to courts.

Keywords of the alphabetical index:

Joint-stock companies, shareholders / Damage, claim, access to courts / Shareholder, general meeting, decision, appeal.

Headnotes:

Article 38 of the Constitution establishes everyone's right to defend in court their rights as provided by the Constitution and laws, without any restriction. The Constitution allows for the temporary restriction of this right, but only on the basis of Article 45 of the Constitution. The legislative body may not restrict this right on other bases.

Summary:

The petitioner's opinion is that Articles 71 and 93 of the Law on Joint-Stock Companies restrict the individual's right to defend his or her rights in court.

According to the challenged Article 71, a shareholder has the right to appeal in a court the decision adopted by a general meeting of company shareholders, if he has not participated in the meeting or has voted against that decision and that decision has violated his legal interests and rights.

According to the challenged Article 93, the company or company shareholders who own at least one percent of the company's shares have the right to pursue a claim in a court against members of the company's board or the executive director of the company for damages caused to the company.

The petitioner considered that the challenged provisions contradicted not only Article 38 of the Constitution, but also Article 39 of the Constitution, according to which "everyone is entitled to the restoration of any rights which may have been violated, as well as to a public hearing by an independent and impartial court, under the equal protection of the law and fulfilling all the demands of justice, to clear himself or herself of any accusation".

The Constitutional Court held that Article 71 contradicted Articles 38 and 39 of the Constitution as the Constitution prohibits any restriction of Article 39 and permits the temporary restriction of Article 38 only on the bases prescribed by Article 45 of the Constitution.

The Constitutional Court held that Article 93 of the Law was in compliance with the above-mentioned, as the challenged provision deprived shareholders who have at least one percent shares of the right to pursue a claim in a court for damages caused not to them, but to the company.

Languages:

Armenian, English

Identification: ARM-1998-2-003

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 16/06/1998 / **e)** DCC-114 / **f)** On the conformity with the Constitution of the obligations fixed in the Agreement between the Government of the Republic of Armenia and the World Health Organisation "On the Establishment of Relations in the Area of Technical Assistance" / **g)** / **h)**.

Keywords of the Systematic Thesaurus:

- 1.4.1 **Constitutional Justice** - The subject of review - International treaties.
- 1.4.15 **Constitutional Justice** - The subject of review - Failure to pass legislation.
- 4.6.2 **Institutions** - Executive bodies - Powers.
- 5.3.15 **Fundamental Rights** - Economic, social and cultural rights - Right to health.

Keywords of the alphabetical index:

Government action, review of constitutionality / Government, failure to act / Health protection, State targeted programs.

Headnotes:

The Government has to undertake necessary and sufficient measures pursuant to Article 34 of the Constitution and the Law "On Medical Support and Medical Service of the Population".

Summary:

The Constitutional Court heard a case concerning the conformity with the Constitution of the obligations fixed in the Agreement between the Government and the World Health Organisation on the establishment of relations in the area of technical assistance. The Constitutional Court recognised that the obligations fixed in the Agreement signed on 17 September 1997 in Istanbul between the Government and the World Health Organisation were in conformity with the Constitution. The Court stipulated, however, that the Government had to undertake necessary and sufficient measures pursuant to Article 34 of the Constitution and the Law "On Medical Support and Medical Service of the Population", in particular, to ensure the approval and implementation of annual State programmes on health protection of the population which are prescribed by the law.

The Constitutional Court found that the Government had failed to undertake measures pursuant to the implementation of the requirements of Article 34 of the Constitution and the above-mentioned Law as well as the requirements of the decision of Constitutional Court as of 18 February 1998, No. 90, because in practice the State health care programs had not been approved and published.

Languages:

Armenian, English.

Identification: ARM-1998-2-002

a) Armenia / **b)** Constitutional court / **c)** / **d)** 27/02/1998 / **e)** DCC-92 / **f)** On the conformity of several provisions of the Law of the Republic of Armenia "On Real Estate" with the Constitution of the Republic of Armenia / **g)** *Téghékaguir* (Official Gazette), 3/1998 / **h)**.

Keywords of the Systematic Thesaurus:

3.17 **General Principles** - General interest.

5.2.32.1 **Fundamental Rights** - Civil and political rights - Right to property - Expropriation.

Keywords of the alphabetical index:

Expropriation, consent by owner / Real estate / Market value / Expropriation, compensation.

Headnotes:

Real estate can only be expropriated by way of a specific law which stipulates the social need for this expropriation, fixes the compensation based on market value and on written consent by the owner. This consent can be replaced only by a court decision.

Summary:

The case was initiated by the President of the Republic, who disputed several provisions of the Law on Real Estate regarding the expropriation of real estate in the interests of society and the State, in particular issues of preliminary determination of the value of equivalent compensation by the Government for the expropriated property and the resolution of the disputes connected with it in a judicial manner. The Constitutional Court confirmed the conformity with the Constitution of the provision which fixes the powers of the Government in the preliminary determination of the value of equivalent compensation in the case of expropriation of real estate. However, the Court found the following provisions of the said Article contravening the Constitution:

- Paragraph 3, according to which, "If the owner of real estate disagrees with the value of compensation of the real estate, then the Government of the Republic of Armenia may conduct expropriation in a judicial manner only".
- Paragraph 4, according to which, "The owner of the real estate shall abstain from inflicting damage to real estate, subject to expropriation for society or State needs, until a court ruling comes into legal force".
- Paragraph 5, according to which, "The procedure of expropriation of real estate for society or State needs is established by the Government of the Republic of Armenia, pursuant to the provisions of this Article".

The Court held that, pursuant to Articles 8 and 28 of the Constitution, real estate may only be expropriated through the adoption of a Law on the expropriation of particular real estate, in which the extreme importance and significance of the expropriation of real estate shall be substantiated. Such a law has to state which needs of the society and the State will be satisfied through the expropriation of real estate. The law has to oblige the Government to fix the value of compensation for real estate based on a financial-economic assessment, taking market prices into account. It has to be based on the results of negotiations between the owner of the real estate and the Government, and it has to be based upon written consent of the owner, which is subject to court dispute by the later. Furthermore, the Constitutional Court emphasised that the Government may not establish a procedure for expropriation of real estate which would grant it the power of forced expropriation of real estate.

Languages:

Armenian, English.

Identification: ARM-1998-1-001

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 18/02/1998 / **e)** DCC-90 / **f)** On the conformity with the Constitution of the provisions specified in the Development Credit Agreement (Health financing and primary health care development project) between the Republic of Armenia and the International Development Association / **g)** *Tegekaguir* (Official Gazette) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.4.1 **Constitutional Justice** - The subject of review - International treaties.
2.2.1.1 **Sources of Constitutional Law** - Hierarchy - Hierarchy as between national and non-national sources - Treaties and constitutions.
4.6.2 **Institutions** - Executive bodies - Powers.
5.3.15 **Fundamental Rights** - Economic, social and cultural rights - Right to health.

Keywords of the alphabetical index:

Health protection, governmental programme / Treaty, international Development Association.

Headnotes:

The ratification and implementation of the Development Credit Agreement between the Republic of Armenia and the International Development Association is advisable in the view of the targeted State programmes developed based on the requirements of Article 34 of the Constitution and the Law on Medical Aid and Service to the Population of the Republic of Armenia. The Agreement has been published in accordance with the established procedure.

Summary:

The hearing of the case was prompted by an application by the President to the Constitutional Court concerning the conformity with the Constitution of the provisions specified in the above-mentioned Agreement. According to the Credit Agreement, the International Development Association is committed to providing the Republic of Armenia the amount of seven million two hundred thousand Special Drawing Rights units in various currencies.

The Republic of Armenia, being the recipient of the credit, is committed to implementing the Project with maximum efficiency, the main purpose being to raise the quality of primary health care, to target expenses in this area and to secure the participation of communities in determining local health care priorities and the preservation of the basic health services.

In accordance with Article 34 of the Constitution, "...each person has the right of health protection. The procedure for medical assistance and service is defined by law. The State implements the programmes of health protection of the population".

However, during 1996-1997 the Government failed to take the necessary and proper steps to meet completely the requirements of Article 34 of the Constitution and the Law on Medical Aid and Service to the Population of the Republic of Armenia.

According to the Constitution, the Government is responsible for the implementation of programmes on health protection of the population. These are characterised by law as annual target programmes directed at providing the population with health protection; following their approval by the Government, the programmes are to be published by the mass media (Article 1.3 of the Law on Medical Aid and Service to the Population of the Republic of Armenia). Moreover, the Law secures to every person the right to medical aid and service free of charge within the framework of the special state programmes (Article 4.2); Article 10 of the Law secures this right specifically for children.

Despite the fact that the said Law officially entered into force in April 1996, the first attempt to adopt a State targeted programme took place in May 1997 and was not in complete conformity with current legislation.

Such a situation resulted in a significant distribution in 1997 of assets allocated for health care within the State budget (Government Edict no. 44, 19 January 1998), when the said projects did not exist and State health care institutions were not developed properly and could not ensure implementation of Article 1 of the Constitution, which declares the Republic of Armenia to be a social State paying the proper attention to the health protection of the population.

The task of the targeted use of credit and budgetary assets provided for the health care system is directly linked with conformity with constitutional requirements, and that system requires substantial improvement.

Although the Constitutional Court found that the provisions of the Agreement are in conformity with the Constitution, the Court proposed that the Government take urgent measures to create the necessary prerequisites for the targeted use of credit and budgetary funds in the field of health care, so as to secure the complete and continuing implementation of Article 34 of the Constitution as well as the Law on the Medical Assistance and Service.

Languages:

Armenian, English.

Identification: ARM-1997-2-002

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 19/05/1997 / **e)** DCC 56 / **f)** On the conformity of Article 17 of the Law of local elections with the Constitution of the Republic of Armenia / **g)** *Téghékaguir* (Bulletin on the Constitutional Court) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.4.12 **Constitutional Justice** - The subject of review - Court decisions.
- 4.7.1 **Institutions** - Jurisdictional bodies - Jurisdiction.
- 4.7.4.3 **Institutions** - Jurisdictional bodies - Organisation - Prosecutors / State counsel.
- 4.7.6 **Institutions** - Jurisdictional bodies - Supreme court.
- 5.2.34 **Fundamental Rights** - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Constitutionality, review / Electoral law, violation / Principal State Prosecutor, powers / Local self-government body, election.

Headnotes:

The Supreme Court must comply with the provisions of the Law on local elections and established precedents.

Summary:

Under Article 17 of the Law on elections for local self-governing bodies, judgments on local elections delivered by the Supreme Court of the Republic of Armenia sitting as a full Court are final and not subject to review. In other words, neither candidates in local elections nor state prosecutors may appeal against such judgments. In the case in question, on application by the Principal State Prosecutor, the presidency of the Supreme Court had suspended a judgment of the full Court finding that the elections in one of the districts of the capital had been illegal, and had given a decision contradicting that judgment.

In its decision of 19 May 1997, the Constitutional Court considered not only the conformity of the aforementioned law with the Constitution but also the relevant practice and case-law of the Supreme Court of the Republic of Armenia.

At the instigation of a communist deputy, 65 signatures were collected from members of the Armenian National Assembly (under the Constitution, a case may be brought before the Constitutional Court, provided that the signatures of at least a third of the deputies are collected; i.e. 64) and the Constitutional

Court was asked to consider whether the restriction placed on the Principal State Prosecutor under Article 17 of the aforementioned law was constitutional.

For his part, the Principal State Prosecutor founded his case on Article 103.5 of the Constitution which stipulates that the "Office of the Principal States Prosecutor shall appeal against the judgments, verdicts and decisions of the courts". He argued that this provision of the Constitution gave wide-ranging powers to the Principal State Prosecutor's Office which could not be restricted by any law.

Having found that the contested article was in conformity with the Constitution, the Constitutional Court held that the Principal State Prosecutor's action constituted a breach of the Law on local elections. The Constitutional Court dismissed the deputies' application.

Languages: Armenian, English.

Identification: ARM-1997-1-001

a) Armenia / **b)** Constitutional Court / **c)** / **d)** 22/11/1996 / **e)** RCC 26 / **f)** Decision on a dispute concerning the results of the election of the President of the Republic of Armenia of 22/09/1996 / **g)** *Téghékaguir* (Bulletin on the Constitutional Court) / **h)**.

Keywords of the Systematic Thesaurus:

- 1.1 **Constitutional Justice** - Constitutional jurisdiction.
- 1.3.5.1 **Constitutional Justice** - Types of litigation - Electoral disputes - Presidential elections.
- 1.4.13 **Constitutional Justice** - The subject of review - Administrative acts.
- 5.2.34 **Fundamental Rights** - Civil and political rights - Electoral rights.

Keywords of the alphabetical index:

Election, presidential.

Headnotes:

Under Article 100.3 of the Constitution and Articles 9, 10, 11, 13, 18, 21 and 30 of the law on the presidential elections of the Republic of Armenia, the Constitutional Court lacks jurisdiction to examine concrete evidence of infringements relating to the presidential elections at the stage of preparation, organisation or returns. The Constitutional Court nevertheless examined the presidential election results and, while it took the counting errors into consideration, found that they did not affect the final outcome of the elections.

Summary:

The referral to the Constitutional Court was made by two opposition candidates in the presidential election seeking annulment of the decision by the Central Electoral Commission declaring the President of the Republic elected on the presidential election results which it had published.

The Constitution provides that the Constitutional Court "shall rule on disputes concerning referenda and the results of presidential and parliamentary elections" (Article 100.3 of the Constitution).

The law on presidential elections requires the higher electoral commissions to review and invalidate any improper decision or act by a subordinate electoral commission. Such improper decisions or acts may also be appealed, either before the higher electoral commission or before the courts. Decisions of the Central Electoral Commission - apart from those relating to the outcome of the election - may be challenged before the Supreme Court; however, no appeal was made to these authorities.

The Constitutional Court found that the Central Electoral Commission had acted in accordance with the legislative provisions and that the results issued by the Commission tallied with the figures of the regional and local commissions; it therefore dismissed the application and upheld the election of the President of the Republic.

Languages: Armenian, English.