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**CHALLENGES OF THE CONSTITUTIONAL DEVELOPMENT AND THE ROLE OF THE  
CONSTITUTIONAL COURT IN ENSURING CONSTITUTIONALITY IN THE REPUBLIC  
OF ARMENIA**

(Report for the International Conference organized within the frames of the Conference of the  
European Constitutional Courts in Prague, on 13-14 June 2018)

Dear participants of the international conference,

Ladies and gentleman,

First of all, let me kindly congratulate the Constitutional Court of the Czech Republic on the occasion of its 25<sup>th</sup> anniversary, as well as please accept our congratulations for taking the chairmanship of the Conference of the European Constitutional Courts. Furthermore, I am delighted for this kindly extended invitation to join today's conference and for the given opportunity to present a report.

The long-lasting traditions of the Armenian law are a good testimony that the Constitution played a pivotal role in the historical faith of our nation: it was not detached from the reality, but it was aimed at ensuring our existence, preserving our identity, changing the social life, overcoming vanity and limiting the state power.

The modern era of the constitutional development in the independent Armenia can be split into 4 periods, in particular:

1. 23 August 1990 - when Armenia adopted the Declaration of Independence;
2. 5 July 1995 – when as a result of the nationwide referendum the Constitution of the Republic of Armenia was adopted;

3. 27 November 2005 – when as a result of the nationwide referendum the Amendments to the Constitution of the Republic of Armenia were adopted;

4. 6 December 2015 - when as a result of the nationwide referendum the Amendments to the Constitution of the Republic of Armenia were adopted.

It is worth to mention that the implementation of the principle of rule of law, the enhancement of the constitutional mechanism of guaranteeing basic rights and freedoms, social and economic rights of an individual, providing a full system of checks and balance between the branches of power, enhancement of the efficiency of the public governance, the overcoming of the hyper-centralization of the political power, development of effective judiciary and a sufficient enhancement of the role of the civil society were in the basis of the recent constitutional reform of 2015. For its proper realization, nevertheless, a respective constitutional environment shall be formed.

It is beyond the debate, that the improvement of textual solutions of the Constitution is a necessity; nevertheless, it is equally important to overcome barriers between the new solutions and the real life. It is exclusively important not only to make a distinctive separation line for the authorities on the constitutional level but more notably it is required to clarify the boundaries of the human's freedoms via excluding any abuse of rights.

For a long time, we have not been living in the reality when the society members are satisfied only with the provisions prescribed by the constitution. We shall note with a satisfaction that today the vast majority of the Armenian society consists of persons who stand for democracy, who know their constitutional rights and duties and who stand for their protection.

It should especially be noted that there is still a big room for improvement for the full implementation and bringing it to the life of goals, principles, and norms declared by the constitution.

In its decisions, the Constitutional Court of the Republic of Armenia has indicated several issues, which have been served as a barrier for development and progress of the legal state. Furthermore, these issues also require urgent solutions from the viewpoint of the constitutional legality, namely:

- the direct effect of basic rights of a human being prescribed by the Constitution is not guaranteed and is not respected;

- the principle of the rule of law has not become the basis of the social, public and political behavior;
- there is an essential gap between the constitutional axiology and public practice;
- the coalescence of political, economic and administrative potentials has become a threat to the national security of the state.

A set of presuppositions for overcoming the above-mentioned issues were prescribed by the Constitutional Amendments of 2015. The mentioned amendments were supposed to enter into a force via several stages, and they have entered fully into a force since 9 April 2018, accordingly it is too early to draw conclusions on their full implementation.

The challenges of time are the establishment of constitutional democracy, the formation of the constitutional culture, guaranteeing of the rule of law, which would be a serious precondition for achieving a real public consent and tolerance.

Since the first day of its establishment back in 1996, the Constitutional Court of the Republic of Armenia has made a significant contribution in ensuring the constitutionality in Armenia. As of today, the Constitutional Court of Armenia has held 1417 decisions, from which - 284 cases related to the matters of the constitutionality of the normative acts; 44 cases related to the electoral disputes; 1089 cases related to the matters of the constitutionality of obligations prescribed by the international treaties. It is worth to mention, that around 90% among of all the cases related to the constitutionality of the normative acts and considered by the Constitutional Court are the cases filed by the physical and legal entities, and a significant part of the disputed provisions have been declared as contradicting to the Constitution and accordingly, recognized as void. In the given decisions the Constitutional Court proposed doctrinal approaches, stated pivotal legal positions and afterward developed their concepts and contents. On the basis of the given legal position various systematic and institutional amendments have been made to legislative legal regulations.

This, of course, does not mean that while exercising the constitutional justice the Constitutional Court of Armenia does not face problems, which, sadly, are not few. In particular, in the context of the implementation of decisions of the Constitutional Court, the problems are usually connected with the following:

- Implementation of the legal positions of the Constitutional Court as a case law;

- Review of the judicial acts on the basis of decisions of the Constitutional Court as a new circumstance;
- Functional inter-relations between the bodies of state power in guaranteeing and ensuring the implementation of the decisions of the Constitutional Court.

From the viewpoint of protection and restoration of violated rights of citizen the problem of implementation of the legal positions of the Constitutional Court as a case law gets an extra urgency in the context of the review of the judicial act on the basis of the decision of the Constitutional Court as a new circumstance.

The doctrinal approaches of the Constitutional Court in regard to the institute of review of the judicial acts on the basis of new circumstances, in particular, are summed up as the following:

- the review of the judicial act on the basis of a new circumstance ipso facto inevitably should bring to the annulment of the judicial act, which has exercised non-constitutional norm and/or a judicial act, which has caused a violation of conventional law, thus excluding a possibility for it to remain in legal force;
- in the law enforcement practice, the legal provisions cannot be interpreted and enforced in a way, which will contradict the exploration of its constitutional-legal content by the Constitutional Court. In the cases when even the provision is recognized as constitutional, but its exercise by the courts is implemented in accordance of such an interpretation, which contradicts to the interpretation of the Constitutional Court, the person gets grounds for a review under a new circumstance and the consideration of the case shall be resumed;

When it comes to the problems related to the functional relations between the bodies of state power in guaranteeing and ensuring the implementation of the decisions of the Constitutional Court, then, in addition to the above-mentioned matters, they are also a result of:

- the absence of a holistic system of the constitutional monitoring;
- not usually full and consistent implementation of legal positions of the Constitutional Court by the legislative and executive branches of power.

It is worth to note, that the above-mentioned problems received separate solutions as a result of the Constitutional Amendments of 2015. Particularly, the main function of the Constitutional Court was stipulated on the constitutional level – that is, providing the supremacy of the Constitution. The powers of the Constitutional Court went through pivotal amendments, as a result of which the scope of objects of constitutional control was enlarged. Namely:

- For the first time the Constitutional Court was granted with the authority to settle disputes arising between constitutional bodies with respect to the constitutional powers;
- In respect of the individual complaints, as a result of the constitutional amendments the non-natural situation, when the Constitutional Court was limited to check the constitutionality of the law, was abolished. In accordance with the new constitutional regulation, the Constitutional Court is authorized to review the constitutionality of any regulatory legal act, which has led to the violation of a person's basic rights and freedoms. In addition to that, according to another provision, Constitutional Court, while defining the constitutionality of those regulatory legal acts, shall take into account also the interpretation of the respective provision in law enforcement practice.

The judicial constitutional control is a tool for ensuring stability, consistent and uninterrupted development dynamic development of the society and it shall have the holistic constitutional capacity while operating independently and impartially.

One of the main goals of the Republic of Armenia is to provide the existence of independent, impartial and effectively functioning judicial system. The Republic of Armenia has undertaken also international legal obligations for guaranteeing and ensuring the independence of the judicial power, which was prescribed also by the Comprehensive and Enhanced Partnership Agreement signed on 24 November 2017 between the Republic of Armenia and the European Union. The mentioned agreement has stipulated also obligations in respect to the Republic of Armenia to ensure the rule of law, including the strengthening of the independence of the judicial system, accessibility to justice, fight against the corruption and enhancing of the effectiveness of activities of the judiciary bodies.

It is obvious, that the independence of judicial power is one of the main preconditions for providing rule of law, the effective judiciary, democracy, public trust towards the state, to which any state, which has declared the main rights and freedoms of a human being as the supreme value, strives to.

Thank you for the attention.