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**RÉPUBLIQUE D'ARMÉNIE / REPUBLIC OF ARMENIA /  
REPUBLIK ARMENIEN / РЕСПУБЛИКА АРМЕНИЯ**

**The Constitutional Court of the Republic of Armenia  
Конституционный Суд Республики Армения  
Հայաստանի Հանրապետության սահմանադրական  
դատարան**

**Anglais / English / Englisch / английский**

**National Report**  
**to the XVI Congress of the Conference of European Constitutional Courts**

**Cooperation of Constitutional Courts in Europe –**

**Current Situation and Perspectives**

In an increasingly deepening integration of the states of the European continent the processes of convergence of constitutional and legal developments acquire relevance, which in their turn create favorable conditions for the formation of a common European constitutional and legal space, which is based on universal values, the principles of democracy, priorities of the human rights protection and the imperative of the rule of law at all levels of social and political life. The Republic of Armenia since its independence, has taken a course of rooting Pan-European legal values, strengthening the rule of law, building a democratic society and the protection of human rights and fundamental freedoms. As a member of the Council of Europe, Armenia has acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to all protocols thereto, becoming a full member of the European legal family. Participation of the Republic of Armenia in international treaties and agreements adopted within the frames of the Council of Europe has given an opportunity to synchronize the national legislation and constitutional-legal practice with the European legal standards in the field of rule of law, democracy and human rights. Realizing the importance and significance of cooperation between the constitutional courts, the Constitutional Court of the Republic of Armenia in October 1997 initiated the creation of the "Conference of Constitutional Control Organs of the Countries of Young Democracy"<sup>1</sup>, which has become a permanent platform for cooperation and exchange of experience amongst the constitutional courts and equivalent institutions in the Post-Soviet space. It is for the purposes of strengthening cooperation in the European continent, that the Constitutional Court of the Republic of Armenia with the support of the Venice Commission of the Council of Europe for more than 15 years holds annual international conferences on topical issues of contemporary constitutional justice. It should be mentioned that integral part of its subject is the cooperation between the various constitutional courts and cooperation of constitutional courts with the European institutions, including international courts. It is due to note also that the Pan-European Conference on "The European Legal Standards of Rule of Law and the Scope of Discretion of Powers in the Member-States of the Council of Europe" was convened, in Yerevan on 3-5 July, 2013, within the framework of the Chairmanship of the Republic of Armenia in the Committee of Ministers of the Council of Europe, which was attended by the delegations of thirty-two countries. The Conference with its important topic and the large involvement of international participants was called up to emphasize the importance of the issue of guaranteeing and protecting the human rights, which is organically connected with the scopes of discretion of powers, and to develop both the conceptual and law enforcement approaches. After the presentation of the reports,

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<sup>1</sup> According to the decision of the Conference of the Constitutional Control Organs of the Countries of Young Democracy on March 1, 2011 the Conference was renamed "Conference of the Constitutional Control Organs of the Countries of New Democracy".

the Conference memorandum was adopted, which reflected European standards of the rule of law and the scope of discretion of powers in the Member-states of the Council of Europe.

## **I. Constitutional courts between constitutional law and European law**

### ***1. Is the constitutional court obliged by law to consider European law in the performance of its tasks?***

As it has been mentioned above, the Republic of Armenia is a Member of the Council of Europe and a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. A specific constitutional-legal feature of the powers of the Constitutional Court of the Republic of Armenia is a mandatory preliminary constitutional control of obligations enshrined in international treaties of the Republic of Armenia before their ratification due to Paragraph 2 of Article 100 of the Constitution. Due to this feature, even before the ratification of the European Convention, the Constitutional Court of the Republic considered the obligations enshrined in it for compliance with the Constitution of the Republic. In its Decision DCC-350 of February 22, 2002 the Constitutional Court stated, in particular, that: "The study shows that some of the rights and fundamental freedoms enshrined in the Convention under consideration, and the respective Protocols thereto are in harmony and in the conformity with the relevant human and citizen rights and freedoms set forth in the Constitution of the Republic of Armenia, the other part - is enshrined in the Constitution in other edition and wording, and particular rights stipulated in the Convention under consideration and the respective Protocols thereto do not immediately set forth in the RA Constitution"(p. 8). Simultaneously the Constitutional Court, referring to the provisions of Article 43 of the Constitution, stressed that: "The rights and freedoms enshrined in the Constitution are not exhaustive and may not be construed to exclude other universally recognized human and citizen rights and freedoms". The mentioned constitutional provision may be interpreted in such a way that the RA citizen or any person under the jurisdiction of the Republic of Armenia may have not only a right or freedom stipulated in the Constitution, but also such rights and freedoms that are the logical continuation of the rights and freedoms enshrined in the Constitution of the Republic of Armenia or an additional guarantee to ensure their implementation". In fact, the Constitutional Court, considering the issue of the constitutionality of the provisions stipulated in the European Convention, thus, put the rights enshrined in the Convention, in the same line with the constitutionally stipulated rights, thus, recognizing the absence of any contradiction between the provisions of the European Convention and the Constitution of Armenia. It should be noted that on the basis of the mentioned constitutional power, the Constitutional Court considered the constitutionality of obligations stipulated in all of the Protocols to the European Convention. Addressing the issue of the obligation of the constitutional court to take into account European law,<sup>2</sup> in performance of its tasks, it should be noted that such an obligation may be found in a detailed analysis of the

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<sup>2</sup> In this Report the notion «European law», hereinafter, will be cover international-legal instruments adopted within the Council of Europe and its institutions, as well as case-law of the European Court of Human Rights. As for the references to the Law of the European Union in each particular case, hereinafter, it will be explicitly mentioned that it is Law of the European Union.

constitutional and legal system of the Republic of Armenia. Thus, in particular, in accordance with Part 2 of Article 3 of the Constitution of the Republic of Armenia: “The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of international law». At the same time, in accordance with Part 2 of Article 6: “International treaties are a constituent part of the legal system of the Republic of Armenia”. In accordance with Part 2 of Article 43 of the Constitution “Limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the international commitments assumed by the Republic of Armenia”.

Summarizing all the abovementioned, one may say that the legal system of the Republic of Armenia implicitly on the constitutional and legal level provides for the obligation of the Constitutional Court of the Republic of Armenia to consider European law in the performance of its tasks, at least regarding the protection of human rights.

## ***2. Are there any examples of references to international sources of law, such as***

### ***a) the European Convention on Human Rights***

In numerous decisions of the Constitutional Court<sup>3</sup> there are references to the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, references to the relevant articles of the European Convention and the Protocols thereto contained in many decisions of the Constitutional Court of the Republic of Armenia on the determination of issues of compliance of the national legislation with the Constitution of the Republic of Armenia<sup>4</sup>.

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<sup>3</sup> Decisions of the Constitutional Court of the Republic of Armenia in Armenian, Russian and English are available at the official web-site of the Constitutional Court at <http://www.concourt.am>.

<sup>4</sup> Relevant references to European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular, are made in the following decisions of the Constitutional Court of the Republic of Armenia: Decision DCC-563 of the Constitutional Court of the Republic of Armenia of May 6, 2005 “On the case concerning the determination of the issue regarding the conformity of the provision set forth in the second sentence of the second paragraph of the first point of article 7 of the Law of the Republic of Armenia “On human rights’ defender”, adopted by the National Assembly on 21<sup>st</sup> of October 2003, with the Constitution of the Republic of Armenia”; Decision DCC-720 of the Constitutional Court of the Republic of Armenia of December 11, 2007 “On the case concerning the determination of the issue regarding the conformity of article 419 point 6 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the Citizen Emma Karapetyan”; Decision DCC-914 of the Constitutional Court of the Republic of Armenia of September 14, 2010 “On the case concerning the determination of the issue regarding the conformity of article 228 part 2 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the RA human rights defender”; Decision DCC-919 of the Constitutional Court of the Republic of Armenia of October 5, 2010 “On the case concerning the determination of the issue regarding the conformity of article 53 part 3 of the Family Code of the Republic of Armenia with the constitution of the Republic of Armenia on the basis of the application of the citizen Igor Hakobjanyan”; Decision DCC-931 of the Constitutional Court of the Republic of Armenia of December 28, 2010 “On the case concerning the determination of the issue regarding the conformity of article 375.1 part 1 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the Court of General Jurisdiction of Syunik Region”; Decision DCC-943 of the Constitutional Court of the Republic of Armenia of February 25, 2011 “On the case concerning the determination of the issue regarding the conformity of point 4, part 1, article 426.3 and point 1, part 1, article 426.4 of the Criminal Procedure Code of the Republic of Armenia, part 12, article 69 of the RA Law on the Constitutional Court with the Constitution of the Republic of Armenia on the basis of the applications of the citizens S. Asatryan and A. Manukyan”; Decision DCC-997 of the Constitutional Court of the Republic of Armenia of November 15, 2011 “On

Moreover, the Constitutional Court refers to the European Convention also in decisions on the cases concerning the determination of the issue regarding the conformity of the obligations stipulated in the International treaties of the Republic of Armenia with the Constitution of the Republic of Armenia<sup>5</sup>.

***b) the Charter of Fundamental Rights of the European Union***

Taking into account that the Republic of Armenia is not a member of the European Union, the reference to the Charter of Fundamental Rights in the rulings of the Constitutional Court is not observed.

***c) other instruments of international law at European level***

The decisions of the Constitutional Court of the Republic of Armenia, as a rule, contain references to relevant international instruments adopted at the European level. Moreover, the Constitutional Court refers not only to the binding international agreements of the Republic of Armenia adopted in the framework of the Council of Europe, such as the European Social Charter<sup>6</sup>, the European Charter of Local Self-Government<sup>7</sup>, but also advisory documents, for example, the European Charter on the Statute of the Judges<sup>8</sup>, other law instruments of advisory nature adopted within the Council of Europe, in particular, the recommendations of the Committee of Ministers of the Council of Europe (for example, Recommendation No. R (85)11 of the Committee of Ministers to Member States on the Position of the Victim in the

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the case concerning the determination of the issue regarding the conformity of article 1087.1 of the RA Civil Code with article 14, article 27 parts 1, 2 and 3 and article 43 of the Constitution of the Republic of Armenia on the basis of the application of the RA human rights defender”.

<sup>5</sup>See, in particular, Decision DCC-453 of the Constitutional Court of the Republic of Armenia of November 11, 2003 “On the case concerning the determination of the issue regarding the conformity of the obligations stipulated by the Protocol of 15 May 2003 amending the European Convention of the Suppression of Terrorism signed in Strasbourg with the Constitution of the Republic of Armenia”; Decision DCC-550 of the Constitutional Court of the Republic of Armenia of January 14, 2005 “On the case concerning the determination of the issue regarding the conformity of the obligations stipulated by the Freedom of Association and Protection of the Right to Organize Convention with the Constitution of the Republic of Armenia ”

<sup>6</sup>See, in particular, Decision DCC-667 of the Constitutional Court of the Republic of Armenia of February 7, 2007 “On the case concerning the determination of the issue regarding the conformity of Article 73 and Article 75 part 3 of the RA Labour Code with the Constitution of the Republic of Armenia on the basis of the applications of the citizens H. Kharatyan, A. Abrahamyan and A. Ghukasyan ” ; Decision DCC-716 of the Constitutional Court of the Republic of Armenia of October 23,2007 “On the case concerning the determination of the issue regarding the conformity of Article 57 of the RA Law on State Pensions with the Constitution of the Republic of Armenia on the basis of the applications of the citizen Albert Movsesyan”; Decision DCC-792 of the Constitutional Court of the Republic of Armenia of February 24, 2009 “On the case concerning the determination of the issue regarding the conformity of point 9, part 1, Article 113 and point 5, part 4, Article 114 of the RA Labour Code with the Constitution of the Republic of Armenia on the basis of the application of G. Karakhanyan, the judge of the Court of General Jurisdiction of Kentron and Nork-Marash Communities”;

<sup>7</sup>See, in particular, Decision DCC-721 of the Constitutional Court of the Republic of Armenia of December 18, 2007 “On the case concerning the determination of the issue regarding the conformity of Article 5 point 2 of the RA Law on Local Referendum with the Constitution of the Republic of Armenia on the basis of the application of the citizens Artur Saqunc, Khachik Shahbazyan, Karine Ayvazyan, Sevak Derdzian, Volodya Abazyan and Edgar Khachatryan” ;

<sup>8</sup>See, in particular, Decision DCC-647 of the Constitutional Court of the Republic of Armenia of September 20, 2006 “On the case concerning the determination of the issue regarding the conformity of the provisions of Article 1 of the RA Law on Making Amendments to the Ra Law on the Status of the Judge(the new wording of Article 18) with the Constitution of the Republic of Armenia”;

Framework of Criminal law and Procedure<sup>9</sup>, or Recommendation No. R (95)5 of the Committee of Ministers to Member States concerning the Introduction and Improvement of the Functioning of Appeal Systems and Procedures in Civil and Commercial Cases<sup>10</sup>), the resolution of the Parliamentary Assembly of the Council of Europe (for example, the PACE Resolution 1577(2007) of 4 October 2007 "Towards Decriminalization of Defamation",<sup>11</sup> PACE Resolution on January 30, 2003 1320 ( 2003) "Code of Good Practice in Electoral Matters"<sup>12</sup>, the instruments adopted by the European Commission "Democracy through Law" (Venice Commission) of the Council of Europe (for example "the Code of Good practice on Electoral Matters" <sup>13</sup> (CDL-AD ( 2002 ) 023rev)), as well as the documents adopted within the framework of the Office for Democratic institutions and Human Rights of the OSCE and other European institutions.

***d) other instruments of international law at international level?***

In the decisions of the Constitutional Court there are frequent links to other international legal instruments of a universal and regional character. As is the case with international legal instruments adopted within the framework of the European institutions, in this case, too, the Constitutional Court is not limited by references to mandatory international legal instruments, but also refers to documents of an advisory nature. In its rulings, the Constitutional Court refers in particular to such universal international instruments as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights<sup>14</sup>, the UN Convention on the Rights of the Child.<sup>15</sup> Constitutional Court also refers to the various resolutions, recommendations adopted by various international organizations and their organs, and especially the documents adopted at the UN General Assembly (for example, the Universal Declaration of Human Rights<sup>16</sup>, the Declaration of Basic Principles of Justice for Victims of Crime

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<sup>9</sup> See, Decision DCC-935 of the Constitutional Court of the Republic of Armenia of February 4, 2011 "On the case concerning the determination of the issue regarding the conformity of part 1, Article 426.1 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the RA Prosecutor General".

<sup>10</sup> See, Decision DCC-922 of the Constitutional Court of the Republic of Armenia of November 2, 2010 "On the case concerning the determination of the issue regarding the conformity of Article 108 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of citizen Karapet Hajiyan"

<sup>11</sup> See, Decision DCC-1027 of the Constitutional Court of the Republic of Armenia of May 5, 2012 "On the case concerning the determination of the issue regarding the conformity of Article 11, part 1, Article 31, part 1, point 3 and Article 33, part 1, point 2 of the Electoral Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the deputies of the National Assembly of the Republic of Armenia".

<sup>12</sup> See, *ibid.*

<sup>13</sup> See, *ibid.*

<sup>14</sup> See, Decision DCC-677 of the Constitutional Court of the Republic of Armenia of February 7, 2007 "On the case concerning the determination of the issue regarding the conformity of Article 73 and Article 75 part 3 of the RA Labour Code with the Constitution of the Republic of Armenia on the basis of the applications of the citizens H. Kharatyan, A. Abrahamyan and A. Ghukasyan".

<sup>15</sup> See, Decision DCC-919 of the Constitutional Court of the Republic of Armenia of October 5, 2010 "On the case concerning the determination of the issue regarding the conformity of Article 53 part 3 of the Family Code of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of the citizen Igor Hakobjanyan".

<sup>16</sup> Decision DCC-720 of the Constitutional Court of the Republic of Armenia of December 11, 2007 "On the case concerning the determination of the issue regarding the conformity of Article 419 point 6 of the RA Criminal Procedure code with the Constitution of the Republic of Armenia on the basis of the application of the citizen

and Abuse of Power (A/ RES/40/34)<sup>17</sup>) or the UN Security Council (in particular resolution 1483 (2003) of 22 May 2003 “The UN mandate in Iraq”<sup>18</sup>). The decisions of the Constitutional Court contain also links to other documents that were adopted on the regional level.

**3. Are there any specific provisions of constitutional law imposing a legal obligation on the constitutional court to consider decisions by European courts of justice?**

In the Republic of Armenia both constitutional and legislative regulations are provided, legally binding to consider decisions of the appropriate international (including European) courts. According to Article 3 of the Constitution of the Republic of Armenia “The state shall ensure the protection of fundamental human and civil rights **in conformity with the principles and norms of international law**”. Simultaneously, in accordance with Article 6 of the Constitution: “International treaties are a constituent part of the legal system of the Republic of Armenia”. Moreover, as it was noted above, according to Part 2 of Article 43 of the Constitution “Limitations on fundamental human and civil rights and freedoms may not exceed the scope defined by the **international commitments assumed by the Republic of Armenia**”, and the Article 44 provides that “Special categories of fundamental human and civil rights, except for those stipulated in Articles 15, 17-22 and 42 of the Constitution may be temporarily restricted as prescribed by the law in case of martial law or state of emergency **within the scope of the assumed international commitments on deviating from commitments in cases of emergency**”. These are the initial constitutional regulations requiring to follow the international obligations of the Republic of Armenia, consequently, acts of those international courts, giving authoritative interpretation of the relevant international norms (in this case, for example, the acts of the European Court of Human Rights).

As for the relevant legislative provisions, it should be noted that Article 15 of the Judicial Code of the Republic of Armenia provides that reasoning (including the interpretation of the law) of the judicial acts of the Cassation Court and **the European Court of Human Rights** in a case with certain factual circumstances is binding on a court in proceedings with the same type of factual circumstances, except when the latter justifies, by indicating solid arguments, that they are not applicable to the factual circumstances at hand. Moreover, according to Article 204.33 of the RA Civil Procedure Code and Article 426.4 of the RA Criminal Procedure Code the new circumstances are the basis for the review of judicial acts also in those cases when **the final judgment or decision of the international court operating with the participation of the**

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Emma Karapetyan” Decision DCC-827 of the Constitutional Court of the Republic of Armenia of September 12, 2009 “On the case concerning the determination of the issue regarding the conformity of Article 285 part 2 paragraph 2 of the RA Criminal Procedure Code with the Constitution of the Republic of Armenia on the basis of the application of the citizen Kh. Suqiasyan” .

Decision DCC-929 of the Constitutional Court of the Republic of Armenia of December 14, 2010 “On the case concerning the determination of the issue regarding the conformity of the Article 22 of the RA Law on State Duty with the Constitution of the Republic of Armenia on the basis of the application of the RA Cassation Court ”

<sup>18</sup>Decision DCC-539 of the Constitutional Court of the Republic of Armenia of December 8, 2008 “On the case concerning the determination of the issue regarding the conformity of the obligations stipulated by the Mutual Understanding Memorandum on Control of Multinational Division(Central South) in the Composition of the Iraq Stabilization Forces (MND C-S) and on the Settlement of Other Similar Issues with the Constitution of the Republic of Armenia”

**Republic of Armenia** substantiated the fact of the violation of the right of the person prescribed by the international agreement of the Republic of Armenia.

The aforementioned provisions demonstrate that acts of international (including European) courts established or functioning due to the International agreements of the Republic of Armenia are obligatory for the latter. In this context it is due to mention especially the European Court of Human Rights<sup>19</sup>.

***4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European courts of justice?***

It has already been stated the Constitutional Court of the Republic of Armenia should take into account the international obligations of the Republic of Armenia, therefore, acts of those international (including European) courts, which give an authoritative interpretation of the relevant international norms.

Taking into account the above-mentioned, the Constitutional Court of the Republic of Armenia studies the practice of the European Court of Human Rights within the frames of consideration of all cases, and often forms its legal positions on the basis of the mentioned practice. Moreover, the great importance is attached to the protection of conventional rights during the implementation of the constitutional justice in the Republic of Armenia, despite the fact that the legislation does not provide an institute of full constitutional complaint. This contributes to the reduction of the number of complaints addressed to the European Court of Human Rights against the Republic of Armenia.

***5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?***

It is due to note that the Constitutional Court of the Republic of Armenia often refers to the judgments of the European Court of Human Rights. Moreover, these references are found in almost all decisions of the organ, implementing constitutional justice. For instance,

- In the Decision DCC-827 of 12 September 2009 the Constitutional Court of the Republic of Armenia stated: "Point 3, Article 5 of the European Convention on Human Rights and Fundamental Freedoms which stipulates the right to person's freedom and personal immunity as an important guarantee for insuring the legality of depriving a person of liberty demands that the latter shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time. The precedential law of the European Court, formed on this provision of the Convention, considers as an element of the mentioned requirement of judicial review for depriving a person of liberty, amongst the other, the issue of insuring the right of trial of a given person during the examination of legality of depriving a

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<sup>19</sup>As to the European Court of Justice it is due to mention that that the Republic of Armenia is not an EU member, therefore, this Court is not operating with participation of the Republic of Armenia.

person of liberty (in particular, see Point 47 of the decision of July 13, 1995 of the European Court on the case of *Kampanis v. Greece*, and Points 47-50 of the decision of April 29, 1999 *Aquilina v. Malta*)”.

- In the Decision DCC-832 of 22 September 2009 the Constitutional Court of the Republic of Armenia stated: "According to the case law of the European Court of Human Rights, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, enshrining the legal guarantees of judicial protection of persons, in general, and the principle of the presumption of innocence fixed in its paragraph 2 apply not only in accordance with domestic legislation in respect of proceedings instituted in connection with the acts qualified as a criminal offense, but may also apply to the proceedings concerning administrative and disciplinary responsibility, conditioned by the nature of the act, as well as the types and severity of the envisaged responsibility. However, in connection with the proceedings of the administrative and disciplinary responsibility the circumstance of the applicability of the presumption of innocence and "the right to silence" interconnected with it, is not a sufficient condition to make the challenged norm as subject of consideration in the aspect of the alleged violation of the mentioned principle and right. In this regard, the content of the terms "accusation", "accused", "be accused of" is efficient. According to the case law of the European Court, the term "accusation" can be set as "a formal notice that the person has allegedly committed the given offense, directed to the person concerned by the competent authority". The accusation, in some cases, may also be expressed in other forms, but it is essential that it should indicate the assumption of the commitment of the offense (See, *Ozturk v. Germany*, Judgment of February 21, 1984) ".

- In the Decision DCC-1020 of 12 April 2012 the Constitutional Court of the Republic of Armenia stated: "The above-mentioned legal terms are also reflected in case law of the European Court of Human Rights. In particular, the European Court stated that right to public hearing prescribed in Article 6 of the Convention necessarily entails an entitlement to "oral" hearing." However, the obligation to conduct such hearings is not absolute. Thus, the absence of oral trial may be compatible with the requirements of Article 6, when the examined issue does not raise a question of fact or law which can adequately be resolved on the basis of the case materials without oral observations of the parties (*Elsholz v. Germany*, Judgment of 13 July 2000, p. 66, *Fredin v. Sweden* (no.2), Judgment of February 1994, pp, 21-22, *Fischer v. Austria*, Judgment of 26 April 1995, p.44)”.

- In the Decision DCC-983 of 12 July 2012 the Constitutional Court of the Republic of Armenia emphasized: "The European Court of Human Rights defining the scopes of State duties in the sphere of protection of the right of property guaranteed by Protocol No. 1, Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, developed the idea of positive duties of the State. The latter, in particular, is expressed in the fact that that the real and effective implementation of the right to property does not depend only on the State's duty not to interfere, but demands also

certain positive actions of defense in particular, when there is a direct link between the effective implementation of the property rights of the person and the activities the person can lawfully anticipate from the authorities (§ 134 of the Grand Chamber judgment, dated 30 November 2004 on the Case of *Öneryildiz v. Turkey*). According to the European Court, in the sphere of protection of the right to property the positive duty of the State, among the others, can include the duty to provide compensation”<sup>20</sup>.

**6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?**

Examples of different jurisprudence of the Constitutional Court and the European Courts have not been identified. It should be noted that it applies primarily to the absence of differences in the jurisprudence of the RA Constitutional Court and the European Court of Human Rights. Since the Republic of Armenia is not a member of the European Union, respectively, the issue of differences in the jurisprudence of the RA Constitutional Court and the European Court of Justice, in practice, does not arise.

**7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?**

- Article 15 of the Judicial Code of the Republic of Armenia stipulates that the reasoning of a judicial act of the RA Cassation Court or the European Court of Human Rights in a case with certain factual circumstances (including the interpretation of the law) is binding on a court in the examination of a case with identical/similar factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand. Due to the abovementioned Article jurisprudence of the European Court of Human Rights in the cases laid down by law is taken into account and applied by national courts, regardless of whether this jurisprudence was or was not used by the Constitutional Court, but in practice there have been cases where the national courts used the jurisprudence of the European Court of Human Rights, due to the fact that it was applied by the Constitutional Court, for example;

- Decision of the RA Court of Cassation (ԵԿԴ / 0066/11/12) of April 27, 2012, in which Decision DCC -997 of the Constitutional Court of the Republic of Armenia containing references to the following cases heard by the European Court of Human Rights: *Busuioc v. Moldova*, *Thorgier Thorgierson v. Iceland*, *Bladet Tromso and Stensaas v. Norway*, *Lingens v. Austria*, *Ukrainian Media Group v. Ukraine*, *Steeland Morris v. United Kingdom* was applied.

- Decision of the RA Court of Cassation (ԵԿԴ / 0066/11/12) of December 5, 2012. In the Decision, the Court applied the Decision DCC -1052 of the Constitutional Court of October 16, 2012, mentioned in the Judgment of the European Court of Human Rights of Case *Mamikonyan v. Armenia*.

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<sup>20</sup> It is due to note that only a few examples of references to the European Court of Human Rights are reflected in the Report. However, as indicated above, such references are found in almost all decisions of the Constitutional Court of the Republic of Armenia.

- Decision of the Court of Cassation (ԵԿԴ. / 0025/15/12) of December 5, 2012. In this case the Court also applied the DCC-1051.
- Decision of the Court of Cassation (ԵԿԴ. / 0074/04/09) of April 1, 2011. In the Decision the Court applied the Decision DCC -735, which in turn referred to the Judgment of the European Court of Human Rights on the Case *Zielinski and Pradal and Gonzalez and others v. France*.
- Decision of the Court of Cassation (3-1603 / ՎԴ) of November 11, 2007. - In this Decision the Court applied the DCC-649, which is turn referred to the Judgment of the European Court of Human Rights on the Case *Burdov v. Russia*
- In the following cases, the RA Courts of General Jurisdiction applied the Decision of the Constitutional Court DCC -997, and, therefore, the above-mentioned case law of the European Court of Human Rights: Civil cases ԵԿԴ / 1963/02/10, ԵԿԴ / 0790/02/11, (ԵԿԴ / 0807/02/11) and ԵԿԴ / 3203/02/11.

**8. Are there any examples of decisions of European courts influenced by the jurisprudence of national constitutional courts?**

The answer to this question is rather positive than negative. This primarily is, of course, about the impact of the Constitutional Court of the Republic of Armenia on the jurisprudence of the European Court of Human Rights. The European Court of Human Rights, considering complaints against the Republic of Armenia, often refers to the decisions of the Constitutional Court of the Republic of Armenia. At the very least, the following references to the practice of the Constitutional Court of the Republic of Armenia in the practice of the European Court of Human Rights may be noted. This, in particular, concerns the Judgments of the European Court of Human Rights on the cases of “*Melikyan v. Armenia*”, “*Minasyan and Semerjyan v. Armenia*”, “*Galstyan v. Armenia*”.

- In its Judgment on the case “*Melikyan v. Armenia*”, the European Court of Human Rights referred to the Decision of the Constitutional Court (DCC - 665) of November 23, 2006 “On the case concerning the determination of the issue regarding the conformity of Article 160 Point 1 of the RA Civil Procedure Code with the Constitution of the Republic of Armenia on the basis of applications of the citizens Sofik Gasparyan and Artak Zeynalyan”.

- In its Judgement on the case “*Minasyan and Semerjyan v. Armenia*”, the European Court of Human Rights referred to the Decision (DCC - 92) of the Constitutional Court of the Republic of Armenia of 27 February 1998 “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”.

- In the case “*Galstyan v. Armenia*” the European Court of Human Rights mentioned the Decision (DCC - 412) of the Constitutional Court of the Republic of Armenia of April 16, 2003 “On the case of the dispute on the results of the elections for RA President held on March 5, 2003”.

## **II. Interactions between constitutional courts**

### ***1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?***

According to the established tradition, when considering the cases the RA Constitutional Court examines also the practice of other European and non-European constitutional courts and in its jurisprudence refers to the available decisions on similar cases.

### ***2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?***

The Constitutional Court examines the jurisprudence of both European and non-European judicial constitutional control organs, available in English, Russian and French. References to the acts of judicial constitutional control organs of Germany, Portugal, Spain, Norway, India, the Russian Federation, Ukraine, the South African Republic, Poland, Slovenia, etc. can be found in the decisions of the Constitutional Court of the Republic of Armenia (see, for example, Decision of the RA Constitutional Court DCC-997 of November 15, 2011, Decision of the RA Constitutional Court DCC-810 of June 30, 2009). At the same time, it is necessary to emphasize that this is not the exhaustive list of the discussed organs, the practice of which is considered by the Constitutional Court of the Republic of Armenia, and the latter, as far as possible, studies all the acts of European and non-European constitutional courts available in Russian, English and French in the exercise of its powers.

### ***3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?***

As noted above, according to the established tradition, the RA Constitutional Court examines also the practice of other European and non-European constitutional courts when considering, as a rule, all the cases, regardless of the concrete field of law, to which the issue under consideration concerns.

### ***4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?***

Particular examples of the effect of the Constitutional Court of the Republic of Armenia on the jurisprudence of foreign constitutional courts are currently unavailable, however, due to the expansion of areas of cooperation between the constitutional courts, the annual Yerevan International Conference contribute to the dissemination of good experience and legal positions of the Constitutional Court of the Republic of Armenia among the institutions participating in these international forums.

### ***5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?***

The most important and effective form of non-acknowledgement type of cooperation between the constitutional courts are the initiatives of the Constitutional Court of the Republic

of Armenia, aimed to deepening of the multifaceted cooperation between the constitutional courts. Among these initiatives firstly should be noted the above-mentioned initiative to establish "Conference of Constitutional Control Organs of the Countries of New Democracy", which Constituent Assembly was held on 24 October 1997. The respective bodies of Constitutional Control of the Republic of Armenia, the Republic of Belarus, Georgia, the Republic of Kazakhstan, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan and Ukraine are members of the Conference. Constitutional courts of many countries actively cooperate with this Conference. Among the goals of the Conference mentioned in the Joint Communiqué adopted in the Inauguration Meeting are the importance and significance of constitutional institutions in the establishment of the rule of law and democratic processes in the society and on the characteristics of the transition period in the formation of an effective system of constitutional control, striving for using the opportunities of Advisory cooperation to the maximum within the organization and conduct of regular thematic discussions on topical issues of constitutional justice, mutual interest, expansion of cooperation and regular exchange of experience between the Constitutional Courts of Countries of New Democracy. Moreover, since 1998, the Constitutional Court of the Republic of Armenia publishes a quarterly bulletin "Constitutional Justice", which is information-analytical bulletin of the Conference of Constitutional Control Organs of the Countries of New Democracy. Another form of cooperation between the constitutional courts is convention of international conferences in Yerevan on contemporary issues of constitutional justice. The 18<sup>th</sup> International conference devoted to the European Legal Standards of Rule of Law and the Scope of Discretion of Powers in the Member-States of the Council of Europe was held in Yerevan from July 3 to 5, 2013 with the assistance of the European Court of Human Rights and the Venice Commission of the Council of Europe. The presentations of the participants and other conference materials are collected in the International Almanac "Constitutional Justice in the New Millennium", which is published by the Center for Constitutional Law of the Republic of Armenia due to the recommendation of the Conference of Constitutional Control Organs of the Countries of New Democracy. The Constitutional Court of the Republic of Armenia is also actively involved in the activities of the Conference of European Constitutional Courts, and is a member of the Bureau of the World Conference on Constitutional Justice.

### **III. Interactions between European courts in the jurisprudence of constitutional courts**

***1. Do references to European Union law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?***

***2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?***

***3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?***

As noted above, the Republic of Armenia is not a member of the European Union. Accordingly, references to the jurisprudence of the European Court of Human Rights are found in the jurisprudence of the Constitutional Court of the Republic of Armenia, in order to prove as a rule the presence or absence of certain international legal practice on a particular matter which is the subject of the constitutional court, thus it is impossible to give clear answers to the questions listed in this section.

## SUMMARY

The first part of the report presents the ways and forms of influence of the European law on the practice of the Constitutional Court of the Republic of Armenia. There are numerous examples of references contained in the decisions of the Constitutional Court of the Republic of Armenia to the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, to other international instruments adopted at the European level, including advisory documents as well as the Judgments of the European Court of Human Rights. Such references could be found in a number of decisions of the Constitutional Court. The examples of jurisprudence in the decisions of the Constitutional Court of the Republic of Armenia, which differ from the practice of the European Court of Human Rights, have not been identified. In this part of the report it is also stressed out the impact of the practice of the Constitutional Court of the Republic of Armenia to the jurisprudence of the European Court of Human Rights. In particular, it is noted that the European Court of Human Rights, considering the complaints against the Republic of Armenia, is often referring to the decisions of the Constitutional Court of the Republic of Armenia.

The second part of the report focuses on the interaction of constitutional courts. There exist acknowledgement and non-acknowledgement types of cooperation between the constitutional courts. Particular examples of the impact of the Constitutional Court of the Republic of Armenia on the jurisprudence of foreign constitutional courts at the moment are not revealed, however, due to the expansion of areas of cooperation between the constitutional courts, the Annual Yerevan International Conference contribute to the dissemination of experience and legal positions of the Constitutional Court of the Republic of Armenia amongst the participants. The most important and effective form of cooperation of non-acknowledgement type of practices between the constitutional courts are the initiatives of the Constitutional Court of the Republic of Armenia, aimed to deepening of the multifaceted cooperation between the constitutional courts.

It is noted in the Report that it is impossible to give a definite answer to the questions presented in the third part of the questionnaire as the Republic of Armenia is not a member of the European Union. It is also noted that that the Constitutional Court of the Republic of Armenia refers to the jurisprudence of the European Court of Human Rights, as a rule, in order to prove the presence or absence of certain international legal practice on a particular matter.