

REPORT

EREVAN SEMINAR (Armenia, 16-18 October 1996)

ON "MONITORING CONSTITUTIONALITY AND DEMOCRATIC PROCESSES IN THE NEWLY INDEPENDENT STATES"

A delegation from the European Commission for Democracy through Law (Venice Commission) comprising Mr Marques Guedes (Portugal), Ms Nemeth (Hungary), Mr Nicolas (Spain) and Ms Remy-Granger (France), as well as Mr Buquicchio, Secretary to the Commission, and Mr Polakiewicz, member of the Secretariat, visited Erevan from 16 to 18 October 1996 to take part in the seminar on "Monitoring constitutionality and democratic processes in the newly independent states" organised jointly by the Constitutional Court of the Republic of Armenia and the Venice Commission. It was also planned to hold discussions with the Armenian authorities regarding the priorities for future co-operation between the Commission and Armenia.

The delegation held meetings with the Armenian political authorities and with all the members of the Constitutional Court (see programme of visit in Appendix I). The Armenian representatives all stressed their country's great interest in co-operating with the Council of Europe and the political importance of its accession to the organisation.

Throughout the discussions, the delegation made clear that accession to the Council of Europe requires an unconditional commitment to democracy, human rights and political pluralism. In this connection, it is essential that the doubts surrounding the regularity of the presidential elections on 22 September 1996 be cleared up. It would therefore be desirable for the Constitutional Court to rule on the validity of the results of those elections (see III below).

I. The Constitutional Court

The Constitutional Court of the Republic of Armenia was set up on the basis of the new Constitution of 5 July 1995. The act establishing the Court was promulgated on 6 December 1995.

The powers of the Court are laid down in the new Constitution (Article 100). In particular, it is called upon to decide whether laws, resolutions of the National Assembly, orders and decrees of the President of the Republic and Government resolutions are in conformity with the Constitution. In addition, prior to the ratification of international treaties, it determines whether the obligations assumed therein are in conformity with the Constitution. On questions of constitutionality, the Court may only hear cases submitted by the President of the Republic or at least one third of the Deputies (Article 101 of the Constitution). It may also rule on disputes concerning the results of presidential or parliamentary elections. However, the Constitution makes no provision for the referral of cases to the Constitutional Court by either the ordinary courts or individual citizens.

In under one year of existence, the Court has examined around thirty cases, almost all of which concerned the constitutionality of international treaties. In only one case did it find that the treaty in question, a bilateral agreement with Germany on the protection of investments, was not in conformity with the Constitution.

There is still little awareness in Armenia of the functions and powers of the Constitutional Court. In order to remedy this situation, the Court has taken a number of steps such as organising special seminars and university courses, setting up a constitutional law centre and publishing reference material for the general public on the Constitution and the monitoring of constitutionality.

The President of the Court, Mr Haroutunian, took the opportunity of thanking the Commission for its assistance, adding that the Bulletin on Constitutional Case-Law and the CODICES database were most useful for the work of the Court. There were plans to appoint a liaison officer in the near future, who would report regularly on the Court's most important decisions.

II. Seminar on "Monitoring Constitutionality and Democratic Processes in the Newly Independent States"

The seminar was held at the National Academy of Science of the Republic of Armenia in Erevan. The smooth conduct of the seminar bore witness to the effectiveness of the preparations by both the Armenian authorities and the Venice Commission. The only difficulties concerned interpretation, which was affected by the poor quality of the equipment available.

Around fifty leading personalities took part in the seminar (the Minister of Justice, all the members of the Constitutional Court, academics, NGO representatives; see list of participants in Appendix II). The decision to devote as much time as possible to discussion proved to be a wise one. A lively and fruitful exchange of views took place on the following subjects:

- the form and purpose of the monitoring of constitutionality;
- the advantages and disadvantages of *a posteriori/a priori* monitoring;
- the independence and impartiality of constitutional court judges;
- the relationship between the Constitutional Court, the ordinary courts and other State authorities;
- the advantages and disadvantages of introducing the right of individual appeal to the Constitutional Court.

III. The presidential elections

The presidential elections on 22 September 1996 were mentioned several times in the course of the discussions held by the Commission delegation during its visit. On the basis of the official results published by the Central Electoral Commission, Mr Ter Petrossian (candidate of the Republic Bloc) was elected President of the Republic with 51.75% of the votes cast. The conduct of the elections was criticised by the OSCE (see OSCE final declaration in Appendix III). According to the OSCE, the observer mission identified numerous irregularities during the counting of the votes, including some very serious violations of the electoral law. Although the observer mission made clear that such irregularities did not affect the entire process of vote counting, it said that those identified did raise doubts about the integrity of the electoral process.

Under Article 100 (3) of the Constitution, the Constitutional Court has powers to rule on disputes concerning the results of presidential elections. Cases may be referred to it by the President of the Republic, at least one third of the deputies or the presidential candidates. At the time of the seminar, no appeal had been lodged with the Constitutional Court. In the course of a meeting with the Commission delegation, the President of the Republic, Mr Ter Petrossian, said that if the main opposition candidate, Mr Manoukian, did not lodge such an appeal, he himself would do so in order to clear up any doubts about the integrity of the electoral process. The delegation stressed the importance of the Court's role as an independent and impartial arbiter in this affair.

IV. Possibilities for future co-operation

All the parties met by the delegation stressed the importance they attached to close co-operation with the Venice Commission and, in general, with the Council of Europe in the legal field. They showed a clear desire to find out about the experience of other European states and to move towards joining the Council of Europe.

A number of the delegation's Armenian discussion partners, in particular the President of the National Assembly, Mr B Ararktsian, said there was a need for ongoing assistance in the legislative field. The National Assembly had committed itself to enacting all the laws and sets of legislation needed to reform the country's legal system within the next two years. Assistance from the Council of Europe could be particularly useful with regard to the following legislative reforms:

- reform of local and national electoral laws;
- local authority reform;
- reform of media legislation.

With regard to co-operation with the Constitutional Court, reference was made to the possibility of organising regular meetings between the members of the constitutional courts that had recently been established in the region. The three Trans-Caucasian republics (Armenia, Azerbaijan and Georgia) had set up - or were in the process of setting up - specialised constitutional courts. Given the similarity of the problems facing these countries as they transformed their legal systems, the Commission delegation felt that joint meetings of this kind would be justified. It believed that such meetings would also make an important contribution to promoting closer co-operation between the countries themselves.

APPENDIX I

Programme of the visit by the Venice Commission delegation to Erevan (16-18 October 1996)

Tuesday 15 October

Arrival and reception of delegation in Erevan

Wednesday 16 October

12.30-13.30 Meeting between the Venice Commission delegation and the President of the Constitutional Court of the Republic of Armenia, Mr G Haroutunian, and the Minister of Justice of Armenia, Mr M Aleksanian

14.00 Opening of the seminar by the President of the Constitutional Court of the Republic of Armenia, Mr G Haroutunian

Address by Mr G Buquicchio, Secretary to the European Commission for Democracy through Law of the Council of Europe

First session chaired by G Buquicchio, Secretary to the Venice Commission

14.30-15.00 Report: International experience and the lessons of monitoring the constitutionality of laws (Mr G Haroutunian, President of the Constitutional Court of the Republic of Armenia)

15.00-15.30 Debate

15.30-15.55 Report: The monitoring of constitutionality (Ms D Remy-Granger, *Chargee de mission aupres du President du Conseil constitutionnel*, France)

15.55-16.25 Debate

16.30-17.30 Visit to the Matenataran Museum of Ancient Manuscripts

18.00-19.00 Cultural programme at Erevan Conservatory

Thursday 17 October

Second session chaired by Mr N Vitruk, member of the Constitutional Court of Russia

10.00-10.25 Report: Relations between the Constitutional Court and other public institutions (Ms A Nemeth, Constitutional Court, Hungary)

10.25-10.50 Debate

10.50-11.15 Report: The nature of the deliberations of constitutional courts (Mr M Sevan, member of the Constitutional Court of the Republic of Armenia)

11.15-11.35 Debate

11.35-11.45 Coffee break

Third session chaired by Mr G Haroutunian, President of the Constitutional Court of Armenia

11.45-12.10 Report: The legislative powers of the Constitutional Court (Mr N Vitruk, member of the Constitutional Court of Russia)

- 12.10-12.30 Debate
- 12.30-13.20 The purpose and object of the monitoring of constitutionality - comparative analysis. Round table organised by Henrik Khatchatrian, member of the Constitutional Court of the Republic of Armenia
- 13.20-14.00 Coffee break
- 14.00-15.00 Visit to the monument commemorating the genocide of Armenians in 1915

Fourth session chaired by A Demetrashvili, President of the Constitutional Court of Georgia

- 15.00-15.30 Report: Human rights guarantees in the system for monitoring constitutionality in the newly independent states (V Hovhannissian, member of the Constitutional Court of the Republic of Armenia)
- 15.30-16.00 Debate
- 16.00-16.30 Report: Constitutional human rights guarantees and constitutional justice (J Nicolas, Professor of Law, Madrid)
- 16.30-17.00 Debate
- 18.00-19.00 Meeting with His Holiness Garegin I, Catholicos of all Armenians

Friday 18 October

- 10.00 Reception hosted by the President of the National Assembly of the Republic of Armenia, Mr B Ararktsian

Fifth session chaired by G Haroutunian, President of the Constitutional Court of Armenia

- 11.00-11.30 Report: Guarantees for the independence of the monitoring of constitutionality (Ms A Gulumian, member of the Constitutional Court of Armenia)
- 11.30-11.50 Debate
- 11.50-12.15 Report: The independence of Constitutional Court judges (A Marques Guedes, member of the Venice Commission, former President of the Constitutional Court of Portugal)
- 12.15-12.40 Debate
- 12.40-13.10 Conclusion and close of seminar
- 13.30-14.30 Meeting with the President of the Republic, Mr L Ter Petrossian
- 15.30 Visit to Garni and Geghart monuments
- 20.00 Official reception for the seminar participants hosted by the President of the Constitutional Court of the Republic of Armenia

18-19 October

Return of participants to their own countries