

Strasbourg, 4 June 1998  
<s:\cdl\doc\98\cdl\58.e>

Restricted  
CDL (98) 58  
Or. Eng.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**SERIES OF MEETINGS WITH ARMENIAN AUTHORITIES  
ON THE INTRODUCTION OF AN INDIVIDUAL COMPLAINT  
TO THE CONSTITUTIONAL COURT**

**22-26 May 1998**

**Synopsis**

Following an invitation by the Armenian Constitutional Court, a delegation of the Venice Commission composed of Messrs Bartole and Endzins and Mr Dürr for the Secretariat visited Armenia on 22-26 May 1998. Prof. Schwartz (American University, Washington) participated in the meetings representing USAID. The main purpose of the visit by these international advisers was to discuss with the Armenian authorities the introduction of an individual complaint to the Constitutional Court.

Meetings were held with the Constitutional Court representatives of Parliament, the head of the Presidential Commission on the amendment of the Constitution, the Minister of Justice, the Union of Judges and the Law Faculty of the Yerevan State University. Apart from the introduction an individual complaint other subjects of a general constitutional reform which the newly elected President has undertaken to implement were discussed. The President outlined his objectives for constitutional reform during one of the meetings of the advisers with the Constitutional Court .

The main issues of the constitutional reform are:

1. Reducing the powers of the President in favour of Parliament;
2. Attributing more powers to the Constitutional Court (applications by the individual and local authorities);
3. The introduction of the office of an ombudsman;
4. Double citizenship for Armenians living in the diaspora;
5. The election of presidents of regional administrations as opposed to their appointment.

There seems to be general agreement on the first three points, whereas the last two are controversial within the presidential commission which is to propose amendments to the Constitution.

According to the Constitution in force, any amendments to it can only be made by way of a referendum. In order to simplify the procedure of amendments the Armenian side suggested in a first step to have a referendum only on articles regulating amendments to the Constitution (chapter 8 of the Constitution). This first amendment would thus only foresee that future amendments could be adopted by a two-thirds majority in Parliament, subject to approval by the President and by the Constitutional Court. This procedure would involve all three branches of power.

The international advisers pointed out that this was a most unusual solution; approval by the President would raise questions of separation of powers; nevertheless scrutiny of a constitutional amendment by the Constitutional Court according to the basic principles of the Constitution as laid down in chapters 1 and 2 of the Constitution (foundations of the constitutional order and human rights) could be a positive element and had some resemblance to the certification of the final Constitution of South Africa by the Constitutional Court of this country.

As concerns the adoption of a new electoral law, the dilemma of guaranteeing equal voter representation versus stable parliamentary majorities was pointed out by the Armenian interlocutors. The international advisers replied that one of the most important goals of electoral legislation would be to ensure an efficient, workable Parliament.

The main thrust of discussions during the meetings, however, was devoted to the introduction of the possibility of an individual complaint to the Constitutional Court. According to Article 101 of the Constitution, the President, one third of the members of Parliament, presidential and parliamentary candidates on disputes concerning election results and the Government in some specific cases have the right to appeal to the Constitutional Court. The main question which was discussed is whether this list was exhaustive or whether the Constitution also permits other complainants to have direct access to the Constitutional Court.

This issue has to be seen in the light of Article 6 of the Constitution which stipulates that unconstitutional laws must not be applied. This would indicate that any State body including ordinary courts would have to check the compliance with the Constitution by this body of a law to be applied. In practice, it seems that ordinary courts in Armenia are not yet prepared to take up this function. Therefore, the Constitutional Court pleaded for the introduction of an individual complaint which would remedy to the inaction of ordinary courts whose judges lacked proper training to be able to do this assessment. Even if ordinary courts would take up this issue and would refuse to apply laws which they deemed not to be constitutional a mechanism would lack linking these courts to the Constitutional Court. Ordinary courts are not contained in the list of possible applicants to the Constitutional Court of Article 101 of the Constitution.

In order to quickly overcome the problem of the application of unconstitutional laws by ordinary courts, the Minister of Justice presented a draft system of indirect access to the Constitutional Court which would be applied in the transitional period until an amendment of the Constitution came into force. Ordinary courts should inform a new Council of Chairmen of Courts to be created of doubts as to the constitutionality of laws. If it shared the doubts, the Council should forward the question to the President who in turn would appeal to the Constitutional Court if he also shared these doubts. In order to streamline this complicated procedure, the international advisers proposed to oblige ordinary courts to appeal directly to the President once an individual raised a substantiated issue of constitutionality. The President would then in turn appeal to the Constitutional Court.

As concerns the introduction of an individual complaint in the transitory period until a constitutional amendment, Prof. Schwartz maintained that its introduction would be possible via a simple law. The members of the Venice Commission underlined that this issue should rather be regulated at the level of the Constitution. While participants agreed that a constitutional solution was preferable, it was acknowledged that the urgency of protection of human rights by the Constitutional Court might justify to base the individual complaint on an interim basis on a simple law which would remain valid only until a constitutional amendment and a new law based on this amendment came into force.

Concerning a lasting solution via a constitutional amendment, the members of the Venice Commission highlighted three major systems of constitutional control of human rights:

1. Preliminary questions by ordinary courts to the Constitutional Court (the proceedings in the ordinary court are suspended until the Constitutional Court has decided on the constitutionality of the norm to be applied by the ordinary court)

2. The individual complaint to the Constitutional Court. Here, the choice on requesting the verification of constitutionality rests with the individual. In order not to overburden the Constitutional Court, filters have to be built in (e.g. exhaustion of remedies, complaint only concerning the violation of human rights, time-limits for the introduction of the appeal following the administrative or judicial act attacked, requirement of the assistance of the individual by a lawyer, monetary limits concerning the damage involved, taking up only questions of fundamental importance - the last two filters are deemed not to be appropriate in a country in transition)
3. Appellate jurisdiction to the Constitutional Court (American model)

The amendment to the Armenian Constitution could provide for a combination of models 1 and 2 for the sake of easy access of the individual to human rights protection. The institution of the ombudsman to be created could have access to the Constitutional Court as well.

The members of the Venice Commission offered further assistance by the Commission not only as regards the individual complaint but also concerning other issues of constitutional reform.